

FMG Respondents' outstanding objections and evidence subject to limitations under the *Evidence Act 1995* (Cth) (EA)

Witness Statement of Michael Woodley

Paragraph / Part of Paragraph	Objection	Applicant's response	Resolution/ Ruling Required
<p>[14], [99] (1st sentence), [125] (2nd sentence: reference to "...because of the division in the community caused by the establishment of Wirlu-Murra in 2010"), [191]-[193], [209], [218] (3rd sentence: reference to "how FMG had divided the community"), [322], [333]-[334], [338]-[349], [350]-[364], [366]-[374], [376]-[405], [409]-[437]</p>	<p>Relevance (Social disharmony)</p>		<p>Resolution: the parties have agreed that the ruling on this objection is appropriately dealt with when judgment is delivered because whether social disharmony is compensable under Part 2, Division 5 of the NTA is a matter in issue between the parties.</p>

<p>[374] (11th sentence; 13th sentence)</p>	<p>Speculation Opinion</p>	<p>The statement is relied upon as evidence of Mr Woodley's belief, and not for the truth of its contents. Pressed on that limited basis.</p>	<p>Resolution: The 11th sentence and the 13th sentence are admitted for the limited purpose of showing Michael Woodley's belief of the matters therein under s 136 of the <i>Evidence Act 1995</i> (Cth).</p>
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Form 1
Rule 2.13(2)

STATEMENT OF MICHAEL WOODLEY

No. WAD37 of 2022

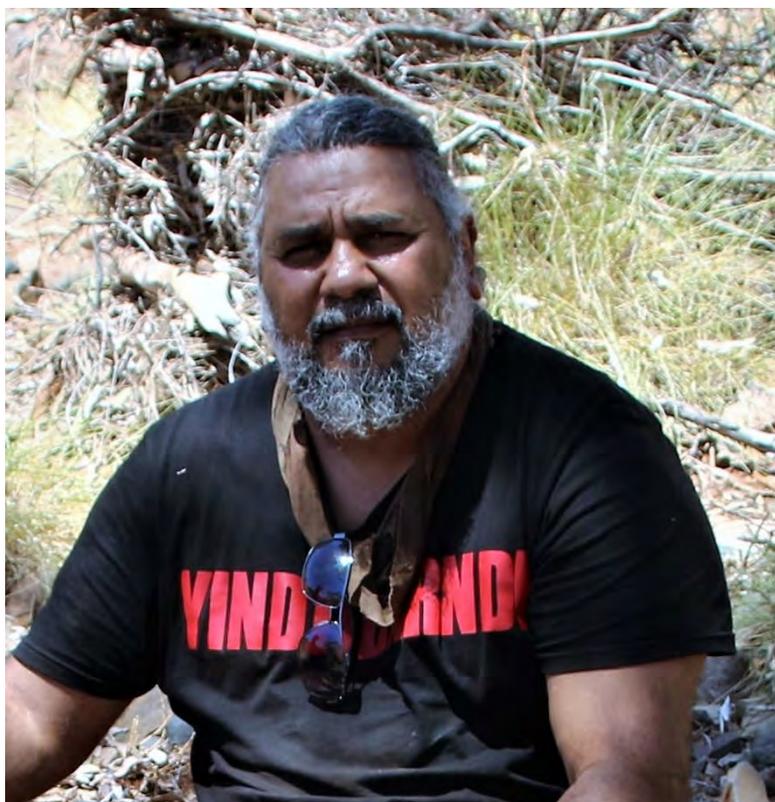
Federal Court of Australia
District Registry: Western Australia
Division: General

Yindjibarndi Ngurra Aboriginal Corporation RNTBC (ICN 8721)

Applicant

State of Western Australia and others

Respondents



Filed on behalf of (name & role of party) The Applicant
Prepared by (name of person/lawyer) Simon Blackshield
Law firm (if applicable) Blackshield Lawyers
Tel (08) 9288 4515 / 0414257435 Fax _____
Email simon@blackshield.net

Address for service Level 28, AMP Tower, 140 St Georges Terrace PERTH WA 6000
(include state and postcode)

I, Michael Woodley, of Ngurrawaana Community in the State of Western Australia, Chief Executive Officer, say as follows:

1. I manage and oversee the day-to-day operations of the Yindjibarndi Ngurra Aboriginal Corporation RNTBC (**YNAC**) and Yindjibarndi Aboriginal Corporation RNTBC (**YAC**). I am also the Chief Executive Officer of Yindjibarndi Nation Limited (YNL).
2. I am common law native title holder as recognised by the Determination of the Federal Court in *Daniel v State of Western Australia* [2005] FCA 536 and upheld by the Full Court in *Moses v State of Western Australia* [2007] FCAFC 78 (**Ngarluma Yindjibarndi**) and in *Warrie on behalf of the Yindjibarndi People v State of Western Australia (No 2)* [2017] FCA 1299 (**Yindjibarndi #1**).
3. YAC is the Prescribed Body Corporate (**PBC**) for the Yindjibarndi part of the Ngarluma Yindjibarndi determination.
4. YNAC is the PBC for the Yindjibarndi #1 determination.
5. Yindjibarndi Nation Ltd is part of a bigger corporate structure that I call the Yindjibarndi Nation. I talk more about the Yindjibarndi Nation structure below in my statement.
6. I am also the Chairperson of the Ngarluma Yindjibarndi Foundation Limited (**NYFL**), which is an organisation set up through an agreement between the Yindjibarndi and Ngarluma people and Woodside Energy, established in 1998.
7. I have made many statements of evidence and affidavits over the years dealing with FMG. I know that some of these statements and affidavits are being used in this case. Many of them are from the Yindjibarndi #1 Applicant opposing FMG applications in the National Native Title Tribunal (**NNTT**) for the grants of tenements. The earliest goes back to 2009. I have stood up for my *ngurra* in the best way I know how. That is to try and explain the Yindjibarndi People's connection to their *ngurra* under our laws and customs and how Solomon Hub (**the mine**) would affect us. All the knowledge, information and beliefs I have passed on in my statements and affidavits I have learned from my Yindjibarndi elders, particularly my *abigees* (mother's fathers). All of this goes to the core of who I am as a person. I feel like I have been saying the same things over and over again.
8. The Mine is mostly on Yindjibarndi *ngurra* (country).

9. It is in Gamburdayinha (Hamersley Ranges) in an area of Yindjibarndi *ngurra* called Garliwinyji. Ganjingarringunha (Kangeenarina) *wundu* (watercourse) goes through it.
10. Ganjingarringunha *wundu* (watercourse) is particularly significant for Yindjibarndi People. Barrimirndi is always present there. Barrimirndi is the Marrga who, in the form of a great *warlu* (serpent), created all the *wundu* in Yindjibarndi *ngurra* during the Ngurra Nyujunggamu. Ngurra Nyujunggamu means “when the world was soft” and it is the Yindjibarndi creation time. There is a permanent pool on Ganjingarringunha *wundu* called Bangkangarra. It’s in a gorge. It is just outside of the Mine. There is always water there. It is a very significant place for Yindjibarndi People.
11. There are three main impacts of the Mine on Yindjibarndi People.
12. The first is that FMG is the *manjangu* (stranger) and it is mining without an agreement or the consent of the Yindjibarndi People. This means that the Yindjibarndi People as the owners of the *ngurra* cannot exercise our rights and interests under our Law or our native title rights and interests. Most importantly we cannot exercise our rights and interests in relation to *manjangu*. Yindjibarndi cannot look after the *ngurra* by making decisions about it and we are denied a fair share of the resources that FMG takes from our *ngurra*. It also means the Yindjibarndi People cannot exercise our rights and interests under our Law to access our country, to hunt, to camp, to gather and to perform rituals. This is against our Law.
13. The second is that the mine has had a huge impact on our *ngurra* and destroyed many significant Yindjibarndi sites. The impact includes *yamarra* (rock shelters), *jinbi* (springs), *wundu* (water courses), *thungari* (burial sites), *thalu* (increase sites and healing sites), *budbungarli* (artefacts), *yarna-ngarli* (ochre quarries), sacred Birdarra ceremony stones and songlines. This has had a physical impact and a spiritual impact. The two cannot be separated. Our songs and stories are just as much a part of the *ngurra* as these things. They, and our spiritual connection to the *ngurra* are also impacted. I and other Yindjibarndi People are fearful of spiritual punishment because of this impact.
14. The third is that the mine has divided the Yindjibarndi People.

My connection to Garliwinyji and Ganjingarringunha is spiritual

15. Ganjingarringunha has always been significant and important to me as an Yindjibarndi person and for all Yindjibarndi People. My *abigees* would always *wangka* (speak) to me about it.
16. My *abigees* were Woodley King, Ned Cheedy, Alec Ned, William Ned, Yilbie Warrie and Billy King.
17. My *abigees* told me stories about how the old Yindjibarndi people kept their Law. They told me it came from the *ngurra*. They explained how our sacred songlines, the Bundut, Yurna, Jalurra and Jawingarli, are connected to the first Law ground on the Yaandanyirra (Fortescue River). These songlines are a direct link to Minkala (Sky God), Marrgangarli (creation spirits), Thalungarli (sacred sites), the spirits and to our *ngurra*. Without these songlines Yindjibarndi have no connection to these things and there would be no Yindjibarndi People.
18. When I and other Yindjibarndi People go out on *ngurra* we do *wuthurru*. It is a welcome to *ngurra* ritual. I put bowar (water) into my mouth, blow it out and then speak to the *ngurra*. I say "I am Yindjibarndi and I am here". My *wangka* tells the *ngurra* I am Yindjibarndi. Then I can make myself at home. To give thanks to the *ngurra* for taking care of me and my family I sing the songs that connect us to that place. I am saying to the *ngurra* "*gunum*" which means "you fulfil me". I don't thank the *ngurra*. There is no word in Yindjibarndi to say thank you. What there is instead is *nyinyaard*. *Nyinyaard* means sharing. Everything is shared in a reciprocal way. So, I look after you, you look after me, we look after the *ngurra* and the *ngurra* looks after us. *Gunum*, we fulfil each other because it's the Yindjibarndi way.
19. My *abigees* told me sometimes that the *ngurra* and the spirits will sing the songs back to you because they *nurruwarni* (happy) to see and hear Yindjibarndi People on *ngurra*. My *abigees* told me a story about the Yindjibarndi elder Long Mack. He was an Yindjibarndi leader and a father to my *abigees*. One time Long Mack took them to Ganjingarringunha and they sang songs like I have described. When they were singing they heard singing coming back from the hills. It was the spirits. "*Tharlungarli yirramarnu*", the spirits are singing they said. "*Tharlungarli nurruwarni*", the spirits are happy they said.
20. My grandfather's taught me these things. The songlines, *wuthurru*, *nyinyaard* and always to be *yunayigu* (giving), freely in heart and in spirit.

21. I have sat with the old Yindjibarndi men while they sang the Bundut at our Birdarra Law ceremonies, where we put young fellas through the Law. The men sing at the ceremony and they teach us there. They teach us what the songs mean and which part of the *ngurra* they are connecting to.
22. There are seven songs in the Bundut about Ganjingarringunha. There are over one hundred songs in the Bundut. The songs connect Yindjibarndi People to the *ngurra* and to our *ngaarda* (Indigenous) neighbours. The Bundut is not just important to Yindjibarndi People. It is important to other groups too.
23. That is why an Yindjibarndi person can get concerned if something happens on a neighbour's *ngurra*. I have heard old Yindjibarndi men who knew the Bundut well ask what is going on with a place outside of Yindjibarndi *ngurra* because it is sung in the Bundut. They worry about that place. They do not want to make it and the spirits angry.
24. Each Yindjibarndi generation has the responsibility to teach the next generation the songlines and stories of the *ngurra* that connect us to the *ngurra*. If this does not happen then we become *yulu* (empty) and *yalyalu* (hollow). We would become *ngaarda* without a purpose. My *abigees* taught me this. Elders tell this to the next generation to make them think long and hard about our responsibility as Yindjibarndi People. I tell young people now too. When I think about losing our songlines, our connection to the *ngurra*, I get sad and very emotional. The thought of losing it all is a very daunting prospect which grabs my heart and twists it so I cannot breathe. *Ngaarda* can lose their connection to *ngurra* if it is destroyed.
25. Yunurrunha (Mt Newman) is an example. It is on Nyiyaparli country and it is sung in the Bundut. I have heard old Yindjibarndi men say after singing the song "*marnu Yunurrunha manggungarla wagba ngarliya nhunagu yala wirndanha, jamba nhunha barni yulu nhani nhantharri yala yirramagi*". This means "We are sad and sorry for Mt Newman. It got taken by the Whiteman and now his being broken him up, soon he will be gone and then we will have nothing to sing for that place". David Stock is a Nyiyaparli elder. When he has come to a Birdarra Law ceremony I have heard the old singers say "*marnu Nyinda juju Marnda nyingardu jajmarli*". This means "We feel sorry for old man Mt Newman hill that belong to you is being rubbished".
26. I feel the same way about what FMG is doing to Ganjingarringunha. I am worried that like Mt Newman soon we will have nothing to sing for him. This will be devastating. Yindjibarndi People hold our Birdarra Law ceremonies at Woodbrook on Ngarluma *ngurra*. But when we sing our Bundut songs I feel my feet standing on my *ngurra* and my *wirriird* (spirit feeling) traveling with songs through that place. This is

one of the best feelings, being able to travel with the songlines. If there is nothing to sing for Ganjingarringunha because it is gone then I and other Yindjibarndi People lose that connection.

27. I feel very sad about these things when I think about them. I cry to myself and I cry thinking about my old people who are all gone now and wonder what would they be thinking and how would they deal with this if they were here. I sometimes think it's better that they aren't here seeing this, their *ngurra* being destroyed.
28. I and other Yindjibarndi People also believe that by failing to protect Garliwinyji and Ganjingarringunha we will be punished in a spiritual way and that the *ngurra* will not provide the things the Yindjibarndi People need. The *nyinyaard*, the reciprocal relationship, between Yindjibarndi People and the *ngurra* is damaged. This is why it is so important for Yindjibarndi People to be involved in the decision making for our *ngurra*. I have talked a lot about Yindjibarndi People's connection to our *ngurra* under Yindjibarndi Law and our rights and responsibilities under our Law in my earlier statements and affidavits.
29. This is also why the impact of the Mine is so much more than physical destruction of the *ngurra* and Yindjibarndi sites. The *ngurra* and the sites have deep spiritual significance to Yindjibarndi People. There is a spiritual impact and I and other Yindjibarndi People believe it will have real world consequences.

Garliwinyji and Ganjingarringunha

30. I explained my connection to Garliwinyji *ngurra* in my affidavit dated 14 February 2011 lodged in the NNTT in WF10/19. I am *ngurrara* for that area under my great-great-grandfather Yingarri. That area belongs to all Yindjibarndi People. As *ngurrara* I have a grave responsibility as taught to me by my *abigee* Woodley King to look after it under Yindjibarndi law and customs.
31. I have visited Garliwinyji and areas near there all my life. I know that part of our country well and I know the songs and stories for it.
32. I remember going there as a kid with my *abigee* Woodley King. He showed me the country. He took me camping and hunting. When I became a man he and my other elders taught me the songs and stories for that part of our country. They taught me the rituals to perform there.

33. There are many significant Yindjibarndi sites areas around Garliwinyji and Ganjingarringunha. I have talked about them in my earlier statements and affidavits including in my affidavit dated 25 May 2009 and lodged in the NNTT in WF08/31 and WF09/1. I have explained the significance of the *ngurra* and our sites under Yindjibarndi laws and customs. I have explained our rights and responsibilities under Yindjibarndi Law to look after the *ngurra* and our sites.
34. I have seen from a distance at Bangkangarra how much of an impact the Mine has on our *ngurra*. It is a huge physical impact. While I have not seen it with my own eyes I know that many of our significant Yindjibarndi sites have been destroyed. I know this because FMG has had lots of section 18 applications under the Aboriginal Heritage Act (WA) and I have looked at a recent satellite image of the mine and can see where it all goes.
35. I am very worried about Ganjingarringunha *wundu*, the permanent waterholes and Barrimirndi. From the satellite image I have seen it looks the Mine impacts the main creek. It has had a big impact on the eastern branch of the creek between the Fairetail bits. It looks like there is a road and other infrastructure that runs along it. This is the area I have talked about in my earlier statements and affidavits where there are sacred stones Yindjibarndi people use in their Birdarra Law ceremonies.
36. I have visited Garliwinyji many times since FMG first applied for mining tenements there.
37. Shown to me now marked **MW-1** and annexed to my statement are two photos from a field trip. They are taken from where the Firetail pit area is now. There is a branch of Ganjingarringunha *wundu* here. This branch of the creek is where the sacred stones are located for our Birdarra Law ceremonies. This field trip was from back in the early exploration days. There was just a few tracks around. This trip was not a heritage survey. My memory is that Angus Mack and my grandfather, the late Thomas Jacob had gone on a survey and identified the *yarna* (ochre) place. We went there to have a look. In the first photo have painted the Yindjibarndi brand on a flat rock with *yarna* from the *yamarrara* (rockshelter or cave). I have got a ceremonial shield from my mother's father's father Wimiya King that shows the same brand.

38. In about 2020 a family in Adelaide returned some artefacts to us. One of the artefacts is a shield with same brand taken from around Millstream over 100 years ago. In the second photo I am singing to the country. The people in the photos are Angus Mack, Thomas Jacob, Wayne Stevens, Phil Davies and Ingka. Ingka was a volunteer at Juluwarlu. He was doing the filming for this trip, which is kept in the Juluwarlu archive. Juluwarlu recorded all the trips I talk about in this part of my statement.
39. Shown to me now marked **MW-2** and annexed to my statement are five photos from a later trip I went on to the Firetail area. In the first photo I am standing next to my uncle Wayne Stevens. He is a Guruma man from his father's side but could be Yindjibarndi if he followed his mum. The following photos show what the *ngurra* looked like around there. You can see lots of *yamararra* (rockshelters) in the photos. The last photo is a close up shot of a *yamararra* showing some rocks put there by our ancestors. The *yamararra* are important because it is where our ancestors sheltered. They are burial and storage places too. The other people on this trip were Thomas Jacob, Angus Mack and Phil Davies. Phil Davies took the photos.
40. Sometime in 2011 I was notified that human remains had been found in a *yamararra* in the Mine area. Shown to me now marked **MW-3** and annexed to my statement is a letter from Dr Kathryn Przywolnik dated 12 May 2011 about the remains. Around this time 4 Corners was doing a story on the dispute between YAC, Wirlu-Murra and FMG. The production crew was interested in the existence of a confirmed burial site. A large group of us went on a field trip out there with the 4 Corners crew. Thomas Jacob, Stanley Warrie and Angus Mack were there. We camped at Buminji. We all travelled to the FMG exploration camp. There was no mining at the time. At the camp an FMG person gave me two letters. They were from Vince Adams and John Sandy, and maybe Jimmy Horace. They are Wirlu-Murra members. The first letter said it was disrespectful for 4 Corners to film the burial site. The other one said we had no cultural authority to go to the burial site. We went to the burial site without the 4 Corners crew. I performed a ceremony at the burial site. It's a ceremony for when you got to any *thunggari* (burial place) and handle bones or objects from that place. We go and get *jami* bush medicine and rub it over our body with. The we get gum leaves and burn the gum leaves. You handle the bone or object with leaves and cleanse it with smoke. It's respecting the dead. And, it's protecting the living from any illness. I have not been back to this place since doing the ceremony. ■■■
■■■■■ Shown to me now marked **MW-4** and annexed to my statement are four photos from this trip.

41. Later in 2011 a group of Yindjibarndi men went to Ganjingarringunha *wundu* and the Firetail area to inspect it. I went on this trip. We did not tell FMG we were doing it. We just went. We drove upstream along Ganjingarringunha *wundu*. Shown to me now marked **MW-5** and annexed to my statement are eleven photos from this trip. The first photo was taken late in the day. We are on a hill overlooking what is now the Firetail ore processing facility. The people in the photo are from left to right – Stanley Warrie, Angus Mack, Mark Lockyer, Thomas Jacob, Curtis Lockyer, me, David Hicks (obscured behind me), Charlie Cheedy and Gary Ansel on the video, I do not remember the name of the person holding the camera. Phil Davies was also there. He took the photos. We drove to this hill past the area in the second photo, which was an area about to be blasted. We drove past the sign shown in the third photo. The next three photos show the view from where we were on the hill. The photos after that show us travelling upstream along Ganjingarringunha. In one of them I am doing the *wuthurru* ritual at a pool. The next two show dinner. In the last one Thomas Jacob, Charlie Cheedy and I are singing to the country. We drove to the top of the hill overlooking where the Firetail ore processing facility is later in the afternoon. When we went on this trip we realised that the *yamararra* with the ochre we visited two or so years before was gone. This is the *yamararra* shown in the photos marked **MW-1**. Seeing this before my eyes made me sick inside. I remember my grandfather Thomas speaking emotionally to the spirits in the *ngurra* in Yindjibarndi language that we were sorry for allowing this to happen. This stuck with me as it was a very deep admission of responsibility when we had no power to stop this destruction of our *ngurra*.
42. Shown to me now marked **MW-6** and annexed to my statement are two photos. I remember this trip. I was with Angus Mack, Thomas Jacob, Lorraine, Phil Davies and Matylda. We drove to the entrance of the Mine and were denied access by two FMG staff. The first photo shows some signs and a bank restricting access. In the next photo I am objecting to the FMG staff for denying us access. The reason we went to the Mine on this trip is that the Department of Indigenous Affairs or DIA was doing an investigation there. FMG had made some section 18 applications and YAC opposed them. YAC wanted to do its own surveys of the areas because we disagreed strongly with the process FMG was using. I talk more about this trip later in my statement.

43. Not long after FMG denied us access to their tenements a large group us returned. On this trip we had archaeologists who had volunteered to come with us to help us survey the areas where FMG had made section 18 applications. YAC asked FMG for access to these areas but we disagreed over the conditions FMG wanted to place on us.
44. On this trip we went to front gate and asked to enter the FMG tenement areas. The FMG people refused, which I expected. My plan B was to drive up Ganjingarringunha *wundu*, like we did for the men's trip earlier in the year, and camp at Bangkangarra. While we were driving along the Rio Tinto access road to get to the Mine there was a plane hanging around us. Given YAC disagreed with FMG's access conditions and the fact we told FMG we were going anyway I believe it was FMG watching us from the sky. We camped at Bangkangarra for a couple of nights. We bought kids with us. All these sorts of trips are good for connecting people to their *ngurra* and teaching them about it. When we tried to get access to FMG's tenements the road leading there from Bangkangarra was blocked. FMG people were there making sure we did not come in. I objected to FMG denying us access but we did not try to force our way in. We went back to Bangkangarra. The next day there was a helicopter flying around us. I talk more about this trip later in my statement too.
45. Shown to me now marked **MW-7** and annexed to my statement are 11 photos from this trip. The first photo is a photo of the plane that was hanging around us when we were driving. In the second photo I am doing the *wuthurru* ceremony at the same pool I did it on the men's trip. The next two photos are of people swimming at Bangkangarra. The first photo shows the permanent waterfall. In the second photo Lorraine is swimming with some kids including two of our own. The fourth photo shows our camp at Bangkangarra. The fifth photo shows how FMG blocked access to their tenements and one of their vehicles in the background. The next three photos are taken a short distance from Bangkangarra. In the first two you can clearly see Ganjingarringunha *wundu* on the right. The creek is out of shot on the right hand side on the third one. The second last one is of me, Lorraine, Thomas Jacob and Angus Mack playing with the kids. The last one is FMG checking out what we are doing in a helicopter. Being on our *ngurra* always feels good but to be under FMG surveillance made me and others feel worried. Part of this fear for me comes from the fear you have as a *ngaarda* that comes from the history of white people being in a position of control, asserting their power and then frightening us. The fear is that something bad might happen to us.

46. Last year a large group of us went on a field trip to Bangkangarra with Kingsley Palmer. He was doing field work for his anthropology report YNAC is using in this case. We camped again for a couple of nights. The first night we camped at Buminji, north of the Mine. The second at Bangkangarra. Phil rang FMG to let them know that we were planning a trip to Bangkangarra. Not long after the Roebourne Police rang and said that FMG had made a complaint and that I was not to go near the Mine site, which I said that we had no intention of doing. Shown to me now marked **MW-8** and annexed to my statement are five photos from this trip. The first two photos are our camp at Buminji. The third photo shows the dust from the mine site at Bangkangarra. The second last photo is of the women on the field trip and the last one is our camp at Bangkangarra.
47. This was the last time I saw the country around it and the Mine. I remember walking a short distance to a hill where I could see the Firetail pit part of the Mine. I felt torn inside and sad for me and for my people. I felt that I am hopeless to do anything about it. I sometimes feel ashamed because I am letting down my old people, my ancestors down and the future generations.
48. In March 2023 Phil Davies took a team of archaeologists to Bangkangarra as part of the Desert People Project (**Project**) that is a five year research project lead by archaeologist Dr Peter Veth and funded by the Australian Research Council. Dr Veth has worked with the Yindjibarndi People before and has a long-standing relationship with *ngaarda* right across the Pilbara. He is a specialist in rock art. The purpose of the Project is to address a concern that very significant sites of human occupation need to be recorded so they can be properly used and cared for by traditional owners. The Project team works with traditional owner groups from Cape Range, the Pilbara and the Western Desert. The two areas of interest in Yindjibarndi *ngurra* are Jindawarana (Millstream) and Bangkangarra. to do research on potentially very old sites of human occupation. I did not go on the trip this year. Shown to me now and marked **MW-9** and annexed to my statement are four photos that Phil Davies took on this trip. I recognise where the photos have been taken from. They were taken a short distance from Bangkangarra. It is a similar location to where the landscape photos were taken in **MW-7**. The earlier photos show where the big processing facility visible in the later photos was built.
49. Shown to me and marked **MW-10** and annexed to my statement are four aerial photos of part of the Mine. I have had the photo for a long time. I do not remember where I got it from but I know the country. The construction site mid-shot on the left hand side is the same plant as shown in **MW-9** but it is shot from the opposite direction. You can see the hills in the background where Phil Davies took the images in **MW-9**.

Ganjingarringunha *wundu* is out of shot on the left-hand side. The eastern branch of Ganjingarringunha *wundu* runs between the hills. I can point this out to the Court when I give evidence. I can also point out where I did the ceremony at the *thunggari* (burial place) and where the ochre place used to be before it was destroyed.

50. I would like to sing some of the songs for Garliwinyji and Ganjingarringunha *wundu* for the Judge. Singing these songs is like travelling through the country and seeing and feeling it. If you want to travel to any particular place, you can do so by singing. The *ngurra* knows when we sing it. We were taught by Minkala and Marrga to do this. The songs I would like to sing and talk about are these ones.
51. A song about Barrimirndi and Ganjingarringunha *wundu*. It is called *Warlu jowi*. We sing this song with a *walbarra* (spear thrower) and a *midirriyinba* (bow type instrument).
52. A bit of the Bundut that is about Garliwinyji and Ganjingarringunha, and some *yamararra* around Ganjingarringunha. The Bundut is the song we sing at our Birdarra Law ceremonies when we are putting our young fellas through their initiation.
53. Gamburdayinha *jowi*. This song is about the Hamersley Ranges and is not just about Garliwinyji. It is a song that *wandangarli* (Dreaming spirits) gave to an Yindjibarndi elder called Bambardu. His other name was Blind Billy. He was blind. He was taken by spirits in his Buwarri dream and was given the songs that he sang about. Blind Billy was my grandmother Shirley Woodley's step-grandfather. He and Shirley's grandmother raised Shirley from a little girl after her mum passed away.
54. A song my mother's father's father Wimiya was given for Barngekawyinham *marnda* (hill). This hill is just out of the Yindjibarndi #1 determination area. There is a Dreaming story about how it was made by two Marrga fighting over a woman. The song mentions Wirlumarranha (Wirlu-Murra, Weelumurra) *wundu*, which goes through the determination area on the western edge of the Mine. Wirlu-Murra is where old people practised Birdarra Law and ceremony in the old days.

Personal and family history

55. I have talked about my personal and family history in nearly all the statements and affidavits I have made over the years. Most recently, and in the most detail, I talked about these things in my witness statement and evidence in the Yindjibarndi #1 native title case Exhibit C called the witness statement of Michael Woodley tendered 7 September 2015. My statement in Yindjibarndi #1 forms part of the documents that the Applicant contends the Court should adopt under s.86 of the *Native Title Act 1993* (Cth). I want to add some things to what I have already said.

Early years in the Village

56. I was born at the Roebourne Hospital on the 7th January 1973. My birth certificate does not identify my dad. It says unknown. It records my home address as Kujara, which was the Old Reserve at Roebourne. My mum lived there in my great-grandfather Wimiya's camp. They lived in a tin shed. His tree is still there. We moved to the Village in 1974 or 1975. I spent my childhood at the Village and went to Roebourne Primary School until I left in year 6 and went to live with my *abigee* Woodley King at Ngurrawaana.
57. I have two younger brothers. Their names are Davin and Clarence. We have got different dads. Their dads were local *ngaarda*.
58. I don't remember life on the reserve. My memory of growing up is in the Village. The Village was State housing. The government moved people there from the Old Reserve. The Village is no longer there. All the houses are gone now.
59. My earliest memories as a child were living in a house in the Village at the end of what was known as the Top Street.
60. It was my job to watch over my brothers and care and protect them.
61. There wasn't much difference between white and black at school except for one thing. It was when the lunch time bell would ring and most of the *ngaarda* kids and kids from the Village didn't have lunch. We most often went to school without a packed lunch (I did not know what one was) or without money to buy lunch. Our parents did not have any money. When pension day came food was on the table, but it didn't last long. In most cases we had a situation of overcrowding. This was normal.

62. My *abigee* was me and my brothers' answer when times were really tough. He would find clothes for us to wear, chucking on anything that fitted, or didn't. I remember the winter times feeling cold and my bones cracking when I had to shower for school having no gas for cooking or to heat up the water. My *abigee* would collect scrub from the tamarind that lined across the boundaries of our house and next door to make fire and to cook *babal*. It was poverty food. Hot water and flour mixed together with sheep dripping. *Abigee* mixed it to perfection, like the head chef preparing a cake for the king of England. To give *babal* taste and sweetness he would add sugar, honey or jam, whatever we had. It kept me and my brothers going all day.
63. A strong childhood memory for me was my *nyirrdi*, John Pat's mum, mourning her son. I do not call out her name for cultural reasons. She lived in a house in the Village on a street we called the Top Road. The house stood out because there were not many others around it. Over the years I remember my *nyirrdi* singing out and crying out for her son when she had been drinking. When she did this the Village went quiet for her. I remember mob saying "*Barnima gunhu jardanha ngardimu manygayu garlingumagu*". That means "Be still grieving mother is again mourning for her son she lost". Being quiet while she mourned was a sign of respect for her. John Pat died when he was 16 years old in Police custody that was a result of a head injury sustained by him outside the Victoria Hotel.
64. My *abigee* saw that I wasn't going to school anymore, so he took me to Ngurrawaana and basically got me helping him with odd jobs around the camp. He taught me to drive his truck and other bits and pieces. He passed on so much knowledge to me when I was there. He was very passionate about Yindjibarndi People and country. The *ngurra* was very precious to him. I would see this in his eyes and in the way he spoke about it. It was as if nothing else mattered. That is what sparked my interest and learning in everything Yindjibarndi.
65. My mum did not like me staying at Ngurrawaana, she said I was going to be dumb and that I would struggle. My *abigee* did not care. He was happy to show me the Yindjibarndi way. I did find it hard having very little education especially being married young and having a child. I had to start off a process of re-educating myself as a young adult.

Ngurrawaana

66. Going to live at Ngurrawaana with my *abigee* was not the first time I went on Yindjibarndi country. Before that we used to go out in a yellow bus with the elders like Long Mack, Alan Jacob, Yilbie Warrie, Kenny Jerrold, Alec Ned, Willis Wally, Ned Cheedy, Harrold Ned, Morice Jacob, Jumbo Wally, Thomas Jacob, Mable Albert, Hilda Jacob, Joey Willis, Bridgett Warrie, Sylvia Allen, Judy Albert and Maudi Jerrold. Other adults and lots of kids used to go. The yellow bus was a community bus that seated around 45 people.
67. I travelled with my *abigee* all over Yindjibarndi *ngurra* together. Going out on country with him were some of the best times I had. He would teach me how to hunt Kangaroo, where to look for them and how to skin and cook them, how to fish by using bait in the mud that lie on the banks of the river what we call Yirriyirra (Earwig), how to hunt and cook emu and bush turkey which has a special way of being cooked. I also liked the time when we would go and look for Jiwurra (Hairback Herring) in shallow water and get them by hitting them with fencing wire we would find near old fence lines. I was taught the names and places where Yindjibarndi People were born and buried, places that were important to us because that had connections to our Bundut and ceremonies and dreamtime stories on how everything was one.
68. One of my distinctive memories was going out with him hunting as we had no meat in the house at Roebourne. He took me and my two young brothers on this day to the Harding Dam area, a place call Nhandunha. We parked up under the railway line as the car he had could not go down to the river. He left me to care for my brothers while he went hunting on foot and came back with two *mardiwarra* or young male kangaroos. He skinned them both and hardly wasted anything, cutting the kangaroo in pieces and cooking all the other parts like the *bularra* (heart), *ngamarri* (liver), *ngarlu* (stomach), *ngaranyungu* (kidneys) and putting the *buya* (head) in the ground oven as well. The part of that day that always stuck with me was he cut off the *buda* (testicles) and threw them on the coals and once cooked he gave one to me and said to eat it this will make you grow up strong like a *nganggungu*, a mature male boomer kangaroo. I never saw that happen before or since with anyone.
69. My *abigee* and I travelled all over Yindjibarndi *ngurra* together, at least to places where the truck could get to.

70. He was always taking me and others to Millstream which was the most important place on Yindjibarndi *ngurra* as it represented the Laws of the *ngurra*. He would take us to all other places like Gawildnha (old letter box), a Birdarra Law ground where Yindjibarndi had practised Birdarra ceremony and where his brother Yilbie Warrie went through his initiation. Nharndartnha (Fishpool), the birthplace of Harrold Ned. Jindinha and Kangiangi out camp from Millstream where he worked as a young man and where his son Bruce Woodley and daughter Susie Woodley, my mum, were born in the river. Gudawurrunha, top end Kangiangi Creek where his father Wimiya King would set up camp when riding his bike from Roebourne up to Yindjibarndi *ngurra* to collect wood for his artifacts making. Buminjinha (old ration camp) where he was a boy right to a young man and where Ned Cheedy and Old Pat went through their Birdarra initiations. Marduthanganhuna (Haystack Flats) where he went through his Birdarra initiation. Thunggawarna (on Tambery Station) where his mother was born. Tharryina spring where we would go to get wild dates. Buthunha (Hooley Creek) to have dinner and sit by the pool. Thaliwurruganha (Clobar Well) where his younger brother Norman King went through his Birdarra initiation. Buthurrunguhna (Pigeon Camp) where Kenny Jerrold was born, Ganjingarrinhuna (Kangeenarina Creek) to tell stories about old times and how the spirits would sing back to Long Mack when he was performing his songs. Garliwinjinha *his abigee* Yingirri's *ngurra*. My *abigee* took me to many more places.
71. Through these trips I gained a close physical connection with our *ngurra*. I know it well. This connection came in handy when Lorraine and I started Juluwarlu and the Yindjibarndi cultural history project. We recorded our elders and took them out on *ngurra*. I remember finding places that I last visited as a kid with my *abigee*.
72. I am lucky to have had this teaching and for having Woodley as my *abigee*. He was to me a great man. He taught me my responsibility under Yindjibarndi Law to look after the *ngurra* and to pass our Law and culture on to future generations.
73. When I was living at Ngurrawaana I still used to come into town. And people used to visit all the time. It wasn't isolating. I started spending more time back in Roebourne in my teens.

Marriage and family

74. Lorraine was my kindergarten sweetheart. I got married at 16 and we have been married for 35 years. I was a father by 17. Lorraine is a local like me and we had similar family connections. We have a straight marriage. We are the right Galharra for each other under Yindjibarndi and Galharra Law.

My traineeship at Hamersley Iron and re-education

75. I was 21 when I started my process of re-education. I was working for Hamersley Iron at the time. What triggered it was that my work supervisor told me he was going on leave and he wanted me to fill-in. I said no. I didn't want to tell him I only went to school to year 6. He said he would not take no for an answer. I felt that I had two choices - tell him the truth or resign. Lorraine bought me a laptop. That was in about 94 or 95. I taught myself on that. I wrote long stories on it. Sometimes I was so focussed writing on the computer the alarm I set for 5am for me to go work would go off. Then I would get ready and go to work. To further my education I picked up books and read them. I love reading. I have been learning ever since.
76. I did a traineeship with Hamersley Iron. Because of my education I wasn't the best and brightest. During the recruitment process a workshop was held in Roebourne to begin the recruiting for trainees. I went into the workshop and sat at the back. I was not one of the educated, confident ones at the front of the room. I was there because I wanted a job to support my wife and family. I was not chosen because the training instructor became only interested with the people sitting in the front row. They were selected to go onto the next stage, which was a driving test. I knew my name would not be on the list. Lorraine nagged me about it afterwards, telling me to go and ask for a driving test. I was worried about getting exposed. The start of the driver training was near where we lived in Roebourne. Sometimes people turned up for the driving test and sometimes they didn't. One day I went over and spoke to the guy. I told him I went to the recruitment workshop but my name was not on the driving test list. I said I was interested in getting a job. He told me to come for a ride in the morning and to meet him at 7 am. Lorraine made me get there at 6.30 am. I went for a drive with this guy. I could drive a truck as I learned when I was 10. My *abigee* who had a similar truck. He taught me how to drive and the value of hard work. After doing the driving test the guy went back to the Hamersley recruitment people and told them that there are two guys on the list he recommended to take on and one that wasn't on the list which was me for reasons that he later told me. That is how I got my opportunity. I did the training - 13 months. I had some family in the training program who would help me fill out forms when I needed them. What I lacked with education I made up with skill.

Birdarra Law ceremonies and leadership

77. I stepped back from a leadership position in our Birdarra Law ceremonies around 2005 or 2006. I go to Law meetings when I have family going through and play a low-key role nowadays. Otherwise, I stay away.
78. I went through Law when I was 17. Law meetings were very important to me. Before going through initiation I would spend time on the law camps when I wasn't in Ngurrawaana. I was helping families and elders with chores around the camp like collecting fire wood, making bough sheds, carting water by foot to and from the camps to the water pipeline, which was about 200 to 300 meters away and going hunting for kangaroo in the hills. The old people told me that the only meat the initiates could eat was hill Kangaroos, *mardiwarra* (young boomers). When it was my time to go through Law I was very happy and couldn't wait. When I finished I went with the elders and all the other men all over the place. I wanted to learn as much as I could from the elders.
79. Part of law time involves taking the boys going through to other communities and returning for the ceremony with people from that community. When the boys do this they are called *walarra*. Johnny walker used to take a lot of *walarra* to other communities for our Law. I said to the elders that I was more than happy to do that too. You have to be the same side of the skin group as the *walarra*. I only did a couple of trips though. The first young fella I was boss for was Jeremy Sandy, my *marra* (young brother). He is my uncle John Sandy's son. The second young fella was my *gambali*, the late Gary Daniels. He was the son of my late father-in-law David Daniels. The old people stopped me doing it. They asked me to stay in the law camp to help them with preparations there. That was a big vote of confidence in me. Taking a *walarra* is a very important job. The elders asked me to give that up so I could stay with them. I was in my late 20s and early 30s when this was happening. This meant I came to have a leadership position in the Law at a relatively young age. I was responsible for helping people who were older than me at our ceremonies. This rubbed people some people up the wrong way.
80. All the old Law carriers were passing away in the early 2000s. Ned Cheedy outlived them. He was too old then to run Law meetings but would always guide the next leaders the right way. The main guys at this time were Tim Douglas, Kenny Jerrold and Alec Ned. I could see that these guys were nervous taking up the leadership role. They were nervous about the travellers who come to Law meetings and what they would think about them leading the Birdarra Law. The travellers were the elders who came from other communities. And *mabarn* was always in the back of their mind. I worked with Tim, Kenny and Alec to help remove their fears by telling them it

was alright and that our old people gave them the Bundut and that there was nothing to worry about.

81. We said no alcohol on the Law ground. We kept the Law ground clean and dry. We worked together. We were confident. We put the role and the responsibility of the Galharra groups back in place. There was a lack of confidence about this stuff. We brought it back. We brought the teaching back. We made people feel confident about their roles and responsibilities and how they fit in. There was structure. My thought was that we should stand strong on our ground. We did this for about 3 or 4 years.
82. My *abigee* taught me not to let the Law consume me. He taught me that it can consume a person so that they need the leadership for power and recognition. It's like the force in Star Wars, it can be used for good and for evil. I saw some of my other elders walk away from the Law because of people challenging them.
83. Birdarra and Bundut are my foundation. The confidence I gained in those things went on to other things in my life. It helped me take on responsibility in the community and beyond. They made me strong.
84. It is essential that Yindjibarndi People practice their Law and culture. Birdarra and Bundut are the heartbeat.

Leadership roles in the community

85. I was in my twenties when Lorraine and I moved our young family to Ngurrawaana and I managed the community. Both of us came to have leadership roles through our work at Juluwarlu. Around the same time the old Law bosses asked me to stay and help them at the Birdarra Law camp rather than take *walarra* to communities at Law time. The elders placed faith and confidence in us.
86. I was not heavily involved in native title in the early 2000s. I had been a witness in the Ngarluma Yindjibarndi case. I was interested in what was happening. I was founding member and director of YAC. But I was not on the Yindjibarndi working group and when I went to meetings it was to observe what was happening. The main exception was the re-negotiation of the Robe agreement around 2005. At the time Lorraine and I were focussed on our work at Juluwarlu.
87. I took on a leadership role at YAC when Juluwarlu started running the day-to-day operations of YAC including cultural heritage. I was in my mid-30s then. I was determined to make sure that the recording, preservation and communication role of Yindjibarndi culture was much more prominent. This motivation lay behind the changes to the way we did cultural heritage surveys and much else. It guided my leadership of YAC through all our negotiations with FMG between 2007 and 2010.

A break from Roebourne and our return to Ngurrawaana in October last year

88. Lorraine and I have taken some breaks from Roebourne with our kids. In 2015 we moved the family down to Perth for about 12 months because the Yindjibarndi #1 native title claim was creating tensions and generating violence. Our two oldest kids had been at boarding school. While we were in Perth our next two kids, Michael and Wimiya went to Clontarf School at Perth. Our youngest ones went to Canning Vale primary school. There was a YAC office at Jolimont and then at Ascot. I worked from there and travelled to and from Roebourne when I needed to attend meetings and other important events related to PBC matters. Our children were being bullied at school in Roebourne. There was violence. We returned to Roebourne sometime in 2016 or 2017 after the hearing finished.
89. My and Lorraine's plan was to transition to Ngurrawaana over three years. Before we moved we wanted to make sure Ganalili and Juluwarlu would continue to grow and prosper and serve the community. We are forming a link from Ganalili and the Juluwarlu office in Roebourne to Ngurrawaana and Millstream so that our projects with art and culture will grow and still contribute to Yindjibarndi's self-determining model. Lorraine and I have moved back to Ngurrawaana. We moved in October 2022 to give my family some peace. Roebourne is on Ngarluma country and they indicated to me that the Yindjibarndi culture in Roebourne was tending to dominate. I appreciate their position and respect them. I work from Ngurrawaana and come into town when I need too.

Beating the grog

90. After everyone were moved from the Old Reserve to the Village in the 1970's it was full of over 1000 *ngaarda* that included Yindjibarndi, Ngarluma, Banjima, Guruma and others.
91. My *abigee* Woodley was a very special man to me. He was one of my main teachers. I keep a portrait of him in our house. He also became a drinker and a fighter for a time back in the old days.
92. My *abigee* got off the grog. That was one of the main reasons he set up Ngurrawaana – to give people a place to go away from it. Two Catholic Sisters of Mercy living at Roebourne at the time helped my grandfather do this. They were sisters Bernadine and Bernadette. They got to know my grandfather and became close over time. The Pilbara Aboriginal Church (**PAC**) was running then. Both the Catholics and the PAC did good work in the community and helped lots of people. My grandfather and Long Mack were the elders who supported the Sisters.

93. Lorraine and I visit Sisters Bernadine and Bernadette when we go to Perth. They are an important part of our lives.
94. In the 1980's other elders also tried to get people off the grog and to maintain cultural discipline. It was difficult for them as the grog drove people's self-respect and sense of responsibility down the drain.

Native Title environment

95. When native title started me, the elders and Yindjibarndi People were living in the Village and were thrown into complicated legal and government processes for which I had no preparation. I felt that we were thrown into the native title system without any training and very little guidance. Everyone in the system was trying to find their way. It was new for me and everyone.
96. The native title environment for members of our community involved lots and lots of meetings. There were often lawyers and people from government and industry coming to Roebourne. There was always lots of information and lots of decisions to make. Often, complex negotiations were taking place. Based on what I have observed at meetings over the years different people have different levels of understanding about what was going on. People who have more formal education and speak high English typically had a better understanding. The elders had English as a second language. Many of them could not read and write.
97. One of the things that happened in the native title environment was that younger and better educated people started to play a more prominent role. They were entrusted by our elders to act on the community's behalf
98. Our old people taught us the importance of our connection to *ngurra* as Yindjibarndi People. This connection was precious to them and they held it close. They had to place trust in younger, better educated people to uphold this connection and our responsibilities to *ngurra*.
99. I have observed that native title and the FMG Mine has had a corrupting effect on the Yindjibarndi People and undermined our community structure and internal authority. The Yindjibarndi community did not have a mine on our country until the Mine was built.

Juluwarlu

100. I described Juluwarlu in most of the statements and affidavits I have made over the years in the NNTT, Supreme Court and Federal Court. Juluwarlu in Yindjibarndi means “all together as one”.
101. Lorraine and I established Juluwarlu to record, preserve and maintain Yindjibarndi language and culture. It is a resource for our people and especially Yindjibarndi children so that they may learn their language and their culture. It is also a way to share Yindjibarndi culture, beliefs and tradition with the Yindjibarndi community and *non-ngaardas*.
102. Exile and Kingdom was made by Roger Solomon and Frank Rijavec about the Yindjibarndi People losing their sites because of the construction of the Harding River Dam. Later, Frank Rijavec worked with me and Lorraine on the Juluwarlu projects. When I was working for Hamersley Iron in the ATAL program in the early 90s I remember Roger Solomon having many long conversations with me about the importance of cultural knowledge, Law and responsibility. Lorraine and I were inspired to record these things from our old people for all Yindjibarndi People.
103. Juluwarlu began when Lorraine and I were living at Ngurrawaana with our young family in the late 1990s. We drove regularly between Ngurrawaana and Roebourne with my grandfather Woodley King. He would always open up and start talking when driving through the country. I remember when Lorraine bought a National tape recorder from K Mart at Karratha and started recording interviews with him. Lorraine did a lot of this early work interviewing, recording and writing things down.
104. We did not have much money then. I left my job at Hamersley Iron. My salary for managing the community was a fraction of my salary at Hamersley. Lorraine worked as a CDEP coordinator. People working on the CDEP program would come to Ngurrawaana to work and she coordinated that work.
105. Lorraine, the kids and I returned to Roebourne in 2000. We rented the old Frontier Services building where the new Yaandina old people’s home is now, opposite the hospital. We paid a pepper corn rent. The old people’s home was there then. I remember old people walking through the fence to come and do interviews with us. We had the first right of refusal for the building and when it was put up sale in the early 2000s we did not have the \$16,000 to buy it. Me and Lorraine were both working for CDEP then. We incorporated Juluwarlu in 2000.
106. In 2003 we moved to the old kindergarten on Hampton Street, Roebourne, which was the Juluwarlu office until we moved back to Ngurrawaana in October 2022.

107. In the early 2000s we got some administrative and financial help from Wangka Maya, a Pilbara Language Centre. They helped prepare grant applications for us and some of their people worked with us. Vicki Webb, a linguist, worked for Juluwarlu back then. She is back with us now after nearly 10 years. She works in our archive. She is working on digitising our collection and upgrading our database.
108. When we moved to Roebourne we carried on the work we started at Ngurrawaana. We worked with the elders in the Village and at Cheeditha Community. We branched out and started to collect cultural material from other places – linguists, anthropologists, non-indigenous people who had lived and worked in Roebourne, libraries, museums and so on. We started to build a big collection of audio recordings, video recordings, stills, documents and objects. We put all the information we could into a Filemaker database. Work on this collection continues today. In this way we gradually created a detailed electronic record of the cultural inheritance of the Yindjibarndi People that we can pass on to our future generations.
109. Juluwarlu as an organisation did not have much money in the early 2000s. We relied on grants mostly. One of the ways we made some money was by doing cultural awareness training for mining companies and government. I did lots of these training sessions. Michelle Adams was one of the first employees who also helped run training courses.
110. We did our first major cultural fieldtrips in 2004. This was for a project called “Two Rivers”. The two rivers are the Yaandanyirra (Fortescue) and Jigurranha (Sherlock). Yaandanyirra goes through Yindjibarndi country. Jigurranha goes through Ngarluma country. The idea for the project was to record the cultural connection of Ngarluma families to Jigurranha and Yindjibarndi families to Yaandanyirra. We wanted to include Ngarluma families because we had done the Ngarluma Yindjibarndi case together.
111. We did 4 fieldtrips in 2004 at different locations along these two rivers. There were between 20 and 60 *ngaarda*. Frank Rijavec worked with us then and filming was done by a young Ngarluma man Tyson Mowarin who was at the time employed by Juluwarlu. We had a surveyor and a mapping person. There were people from Conservation and Land Management and the Department of Environment. We had volunteers. We produced many, many hours of digital video footage on these trips.

112. Following the field trips in 2004 there were other shorter ones collecting information for two books we were working on at the time. There were Wanggalili first published in 2005, and Garruragan in 2006. Wanggalili is a book about Yindjibarndi and Ngarluma plants. Garruragan is about Yindjibarndi animals. The making of these books involved a lot of round table discussion with elders at the Juluwarlu office. Images of plants and animals were displayed at that discussion. Everything was recorded into our database and, from this, we produced the books.
113. In 2007 Juluwarlu published “Ngurra Warndurala Buluyugayi – Exploring Yindjibarndi Country”. The book records places around Millstream from a Yindjibarndi perspective. It includes cultural and historical information. It records 53 places and includes detailed maps. Regular cultural fieldtrips for the book started in 2006. The field trip process was well bedded down after the Two Rivers project.
114. In 2008 the following were published:
- a. “Ngurra Warndurala Buluyugayi Wuyumarri – Exploring Yindjibarndi Country – Gregory Gorge”; and
 - b. “Ngurra Warndurala Buluyugayi Yawajunha – Exploring Yindjibarndi Country – Lockyers Gorge”,
- which were published in 2008.
115. Juluwarlu received funding from the Commonwealth and State governments to publish the books. We started work on the Lockyers Gorge one at the urging of Yindjibarndi elders Dora Solomon and Bridget Warrie before we had funding for it. Sadly, Bridget died before the book was published.
116. Juluwarlu’s ambition for the Ngurra Warndurala Buluyugayi project is to map all Yindjibarndi country. We won’t be able to do this for a large part of Garliwinyji now because of the Mine. We have the information ready to go for a book about the Hooley Station area and a book about the Jindinha area.
117. In 2005 we renovated the old teacher’s house next to the Juluwarlu office to make a video production centre and to broadcast. It was called Murru Warru Mya Media Centre in memory of John Pat. We had lots of video footage from all the field trips we had done and we used this to make our first documentary Wanggangarra in 2006. Wanggangarra means “that which gives life”. It tells the story of Yindjibarndi families and their country. It talks about *ngurra* and explains our Galharra system and the importance of respect in our culture. Tyson Mowarin did a lot of work on this documentary. He ended up working with Juluwarlu for about 5 years. I exhibit a copy of this documentary on a USB stick labelled **MW Ex. 1**.

118. Juluwarlu owned and operated a community television station called JTV34. This has evolved into Ngaarda Media, which has its office and studio now at 45 Roe Street, Roebourne. Ngaarda Media is separate to Juluwarlu now although Juluwarlu still holds the broadcast licence.
119. In the early 2000's Juluwarlu also got the rights to re-release 'Exile and the Kingdom' on DVD. Since it was released it has been used as an education tools in schools and universities. The updated version included extra features for schools and workplace training. These included illustrated biographies of the old Yindjibarndi People in the film, 34 recordings of Yindjibarndi songs, teaching notes and a PDF version of the booklet that came out with the documentary "Know the Song Know the Country".
120. Juluwarlu employed its first person in 2005. This was Phil Davies. He started as an administrator and quickly picked up other roles. Then archivist Joanne Pritchard was employed in 2007. We employed Yindjibarndi men Angus Mack and Thomas Jacobs as heritage officers. Around 2006 we had about 15 people working with us including volunteers. We still have always had volunteers helping at Juluwarlu.
121. The collection, preservation and dissemination of Yindjibarndi history and culture is Juluwarlu's core business. Its purpose is to record the cultural inheritance of the Yindjibarndi People so that we can pass it on to our future generations.
122. From around 2009 it became increasingly difficult for Juluwarlu to do this work. When Juluwarlu took on the day-to-day running of YAC and when I took on the YAC CEO role YAC became very busy responding to the demands of native title the mining boom, including dealing with FMG.
123. A significant project though not completed yet is a sequel film to "Exile and the Kingdom" called "Heirs of Exile". Shooting for this project is substantially done. It includes footage shot at events as they occurred over a number of years including footage of field trips to the Mine area. The documentary will include footage from the 20 odd hours of original footage shot for "Exile and the Kingdom" and from Juluwarlu's archive. Scripting for the documentary is also substantially done. A draft was workshopped by groups of Yindjibarndi elders over 5 days in June and July 2016. These scripts contain descriptions and explanation of Yindjibarndi Law and culture. Lorraine and I participated in all the script workshops.
124. Shown to me now marked **MW-11** and annexed to my statement is an extract of the draft script of "Heirs of Exile" describing Yindjibarndi Law and culture that is relevant for this case. The extract is a true and correct record of Yindjibarndi Law and culture based on what I have been taught throughout my life by my *abigee* elders and other senior *ngaarda*.

125. In 2016 Juluwarlu established the Juluwarlu Art Group (**JAG**) with start-up funding from Australia Council for the Arts. Part of the reason for starting JAG was that some Yindjibarndi artists could not make their art at existing art centres in Roebourne because of the division in the community caused by the establishment of Wirlu-Murra in 2010.
126. The establishment JAG was also an important cultural initiative for Juluwarlu. The art group and the programs it runs are for deepening intergenerational cultural knowledge and to extend individual creative self-confidence.
127. Since 2017 Juluwarlu Art Group has run artist camps and artists in residence programs. There were three artists in residence programs in the first year in the first year. The first artist in residence was Fiona Gavino. This involved a 5 day artist camp with 62 Yindjibarndi participants and 10 days of artist workshops at Juluwarlu in Roebourne. Filming for “Heirs of Exile” took place on the artists camp. The second artist in residence was Katie West, a woman with Yindjibarndi descent. The third were established non-*ngaarda* artists Eveline Kotai and Giles Hohnen. Eveline and Giles have become friends and mentors to many of the artists in the group. They continue to work with Juluwarlu. Recently, they helped with the Juluwarlu production of Ngurra Nyujunggamu at the Red Earth Arts Festival at Karratha, which I talk about more below.
128. JAG had its first exhibition at the Revealed Art Marked at the Fremantle Arts Centre in 2018. Since then, JAG has exhibited its art work at many places including the Darwin Aboriginal Arts Fair, where we showed off some of our clothing lines on the catwalk, and had a stall that had all our other merchandise and stock. The group has held its own exhibitions at The Ganalili Centre.
129. In 2021 JAG artist Jane Cheedy was a finalist in the Telstra National Aboriginal and Torres Straight Islander Art Awards. Later that year one of the groups oldest artists, Harry Mills, had a solo exhibition at the old bakery building in Roebourne.
130. The JAG studio is now at Ngurrawaana.
131. At the opening of The Ganalili Centre in 2020, which I talk more about below when talking about the 3Cs model, Juluwarlu produced a puppet show called “Ngurra Nyujunggamu”, which means “when the world was soft” that is about the Yindjibarndi creation time. JAG made the puppets and local actors performed in it.
132. Juluwarlu has produced other events at The Ganalili Centre, including celebrations for NAIDOC week in 2021 and 2022.

133. The Red Earth Arts Festival invited Juluwarlu to perform its Ngurra Nyujunggamu puppet production in May 2023 at Karratha. It premiered for one show only on 4 May 2023. We had professional directorial and production assistance, and it was a bigger production than the opening of the Ganalili Centre. Lorraine and I wrote the script in Yindjibarndi to tell 6 stories from Ngurra Nyujunggamu. Lorraine co-directed and co-produced it. Some professional actors, including our son Wimiya, performed. The performance included a lot of locals from Roebourne including my aunts Wendy Hubert and Jean Norman, and my *nyirrdi*, Lorraine's mum. Many children acted in it including some of our grandchildren. There was no dialogue. Most of the characters were animals and the action was told through puppetry, dance, movement, music and animation. Only the last story involved humans. I narrated the stories in Yindjibarndi as the play unfolded. This was an audio recording that was played during the performance. The Red Earth Arts Festival People told me that around 500 people watched the performance.
134. It was a very special and moving for me to see these stories being performed and to receive a standing ovation from the audience. Yindjibarndi People are told these stories from the time they are born. They have layers of meaning and are instructive – they show how to behave according to the laws given to us by the Minkala and the Marrga.
135. One of the stories from the show is called Nyingara the stoneman. Nyingara was big and made of stone. When we tell children this story we say that he was as big as the tallest tree we can point to. I was taught by my *abigee* and other elders that it is a story about behaviour, responsibility and consequences. It teaches Yindjibarndi People about the things I can do and the things I cannot do. And if you knowingly do the things you cannot do, after being told, then there are severe consequences and punishment.
136. Nyingara was made by *Minkala* to protect the Yindjibarndi but he became arrogant and greedy, and then he started to use his powers to only serve himself. He began to use Yindjibarndi People as his personal slave. He would make the people hunt for him and take the fattest and juiciest kangaroo. If people did not do what he wanted or did not please him he would kill them. He would crush them with his hand or look at them and turn them into stone. *Minkala* saw all this happen. *Minkala* wanted to see what type of character the Yindjibarndi People had. To see if they would continue to let it happen or do something about it. The People had been calling out to *Minkala* for help. He tested them. The people rallied together and decided to do something because *Minkala* would not help them. They decide they had to kill Nyingara. They decided the only way they could kill him was by a strong fire. They

knew that stones busted open in the fire so they tricked him. They said we are going to perform a big ceremony for you, we want to celebrate your strength, you are our *nyambarli* (leader)

137. They said we are going to put you on top of the hill and we will sing and dance at the bottom for you. We will go far and wide to get you the fattest and juiciest kangaroos and cook them how you like it, and serve you how you like it. On the other side of the hill the people made a big fire. At the top of the hill they made a seat for Nyingara that would fall down when he lost balance. When the people brought the cooked kangaroo to him they made sure the tail was pointing at him. Nyingara liked to eat the tail first. They had severed the tail beforehand. When Nyingara went to pick up the kangaroo by the tail he used too much effort, lost his balance, fell back and his seat fell. Nyingara tumbled down the hill into the fire. He tried to get out but the fire was so hot it was grabbing him and bringing him down and then his body exploded. In the country now there are green rocks that were his bladder and urine. There are black rocks that were his liver, red ones that were his heart and the whites ones that were his eyes. Then Minkala appeared and the people thought he was going to punish them. Minkala admitted it was wrong to create Nyingara but Minkala wanted Yindjibarndi to figure out how to handle the situation and they did. Minkala promised not to create another Nyingara and gave a gift to Yindjibarndi, the first *yiliwari* (rainbow).
138. The moral of the story is don't be greedy and share things otherwise people will turn on you. Stories like this are part of the law and custom in the Yindjibarndi community. There is no Yindjibarndi monarch or president. No single person to police behaviour. There are the laws from the Minkala and the Marrga that are taught to Yindjibarndi in part through stories like this and that are upheld by the elders, who have the responsibility and authority to uphold the Yindjibarndi Law.
139. I also exhibit a copy of the video recording of the performance on the USB stick labelled **MW Ex. 1**.
140. Juluwarlu is hopeful that Ngurra Nyujunggamu will be performed again soon. The reason for making the video recording is so that the show can be provided to arts festivals around Australia and overseas in order to consider including the performance in another festival.

141. Two current projects that Juluwarlu is working on are hosting an artist in residence from the Spaced program and to produce a mobile phone app to tell the Yindjibarndi creation stories. Nathan is the Spaced artist in residence and he and our son Wimiya are producing a podcast and a radio play performed by Yindjibarndi children. The podcasts are autobiographies of our elders who have passed on told in first person by children. The radio play features *marlaangu* stories. *Marlaangu* are “big foot” type spiritual beings. The radio play will be performed in Yindjibarndi and English. Juluwarlu last worked with Spaced in 2010 when images of our elders were projected onto the then boarded up Victoria Hotel in Roebourne before it became the Ganalili Centre.

Juluwarlu and YAC

142. Pilbara Native Title Service (**PNTS**) took over the ALS as the lawyers for the Ngarluma Yindjibarndi native title claim.
143. PNTS helped Yindjibarndi set up YAC in 2004 and I was founding director and member.
144. YAC was appointed as the PBC for the Ngarluma Yindjibarndi determination of native title in 2005 for the Yindjibarndi country portion.
145. YAC did not have an office or any staff between 2004 and 2007. PNTS organised directors meetings. The late Alum Cheedy worked for PNTS and was the contact person for YAC then. Alum is my uncle and a Yindjibarndi man.
146. After our determination in 2005 PNTS were the lawyers for:
- a. Yindjibarndi in their appeal from part of Justice Nicholson’s decision in the Ngarlume Yindjibarndi case;
 - b. YAC; and
 - c. the Applicant in the Yindjibarndi #1 claim.
147. PNTS also managed all the Yindjibarndi cultural heritage work. This work involved negotiating agreements with mining companies or government departments and then managing cultural heritage surveys done for those agreements. Generally, the agreements said that the mining companies or government would carry out cultural heritage surveys before doing ground disturbing work. The idea was to identify important sites and then to negotiate about how the ground disturbing work would be carried out. These agreements are commonly known as heritage agreements. Around 2005 PNTS lawyers told me about something called the Regional Standard Heritage Agreement or RSHA. My understanding is that this was a heritage

agreement negotiated between representative bodies, the government and mining companies to try and standardise the heritage process.

148. PNTS's way of consulting was to use a working group. A working group was not the same thing as the Applicant. It was a group of people that PNTS would meet with regularly to do native title and heritage business with. I cannot remember but I expect there would have always been members of the Applicant on the working group. Shown to me now marked **MW-13** and annexed to my statement is a copy of an email headed "Yindjibarndi Aboriginal Corporation AGM Thursday 8 November 2007 Roebourne Community Hall". I recognise Alum Cheedy's name in the email address at top of the document and Michael Ryan's name. Michael Ryan was the PNTS lawyer for Yindjibarndi. I see that the email is a record of the YAC AGM held in November 2007 and it says that the newly appoint governing committee for YAC would also be the working group. This is consistent with my memory of the make-up of the YAC governing committee and working group at that time.
149. Before the Yindjibarndi #1 Applicant was replaced in 2013 the members were Ned Cheedy, Thomas Jacob, Alum Cheedy, Mavis Pat, Sylvia Allan, Aileen Sandy, Edie Whalebone and me. This was the original Applicant and Alum Cheedy and I were the only young persons. I did not attend the authorisation meeting for the Yindjibarndi #1 claim. I was never a member of the Yindjibarndi working group. I went to working group meetings occasionally but only as an observer. I left it to the elders and I was focussed on my work at Juluwarlu. I remember the day Alum Cheedy came to the Juluwarlu office when he was sent by the elders to ask me if I would agree to being a member of the Applicant and I agreed on the condition that Alum Cheedy would also be an Applicant.
150. Based on the email record of the YAC AGM in November 2007 the members of the governing committee appointed at the AGM were: Stanley Warrie (Chairperson), Barry Pat, Ashley James, Harry Mills, Jimmy Horace, Stephen Hubert, Bridget Warrie, Dora Solomon, Aileen Sandy, Doris Lockyer, Rosemary Woodley and Charmaine Adams. This is consistent with my memory of the makeup of the YAC governing committee at the time.
151. In 2006, YAC asked Juluwarlu to start helping with some of the cultural heritage work. I was happy about this. At Juluwarlu we have always tried to use the most effective methods and technologies to educate and train Yindjibarndi People in our Law and culture; and to create employment opportunities that allow us to maintain our connection with our country and to carry out our obligations, under our Law, to look after Yindjibarndi country and the Yindjibarndi People. I thought that a good way to do this is through Juluwarlu arranging and managing heritage surveys for YAC, on

behalf of the Yindjibarndi People. Managing heritage surveys was also a way to make some much needed money.

152. The appointment of Juluwarlu to help manage heritage surveys was not a complete break from PNTS. It still entered into heritage agreements on behalf of Yindjibarndi and helped out with some administration.
153. PNTS remained as the lawyers for YAC and the Yindjibarndi #1 Applicant until early 2008. By this time the Federal Court had decided the appeal from Justice Nicholson's decision. The process to move away from PNTS began in 2007 after it entered into a RSHA with FMG. The YAC board was unhappy about this because it and Juluwarlu had started using our own heritage agreement. YAC did not agree that PNTS had the authority to sign the agreement on behalf of Yindjibarndi. I talk about this period with FMG in my affidavit filed in the NNTT and dated 6 October 2010.
154. I do not remember all the meetings that took place in 2007 and early 2008 that led to Yindjibarndi dismissing PNTS as its lawyers.
155. My recollection is that in 2007:
- a. the YAC directors passed a motion to appoint Juluwarlu as the manager for YAC;
 - b. the Yindjibarndi #1 native title working group and YAC directors resolved to dismiss PNTS as their lawyers; and
 - c. the Yindjibarndi #1 native title working group and YAC directors resolved to appoint YAC as their representative for the Yindjibarndi #1 claim.
156. My recollection is that in 2008:
- a. there was an Yindjibarndi community meeting early in the year that confirmed the resolution of the working group and YAC directors to dismiss PNTS and appoint YAC as the representative for the Yindjibarndi #1 claim;
 - b. YAC filed a notice in the Federal Court advising that it had been appointed as an agent for the Yindjibarndi #1 Applicant;
 - c. YAC then retained Slater & Gordon as its lawyers;
 - d. later in the year the YAC directors resolved to enter into a management agreement with Juluwarlu.
157. When Juluwarlu was appointed as the manager for YAC in 2007, Juluwarlu staff took up the day-to-day running of YAC. That was mostly me and Phil Davies at the time. My job description at Juluwarlu at the time was Operations Manager and Phil Davies was the Administration Manager.

158. Juluwarlu then arranged and managed all heritage surveys for YAC.
159. Shown to me now marked **MW-14** and annexed to my statement is a copy of a document entitled "Agreement for the implementation, provision and maintenance of the Yindjibarndi Aboriginal Corporation's Native Title, Heritage, Environmental, Cultural, Administrative and Financial Services". I recognise this document and my signature on it. It is the management agreement I mentioned at [156(d)] above.
160. Juluwarlu continued to manage the day-to-day affairs of YAC under this management agreement until 2013.
161. From late 2007 until August 2010 all Yindjibarndi native title and heritage business was done under this arrangement. YAC was the Yindjibarndi PBC and the representative of the Yindjibarndi #1 Applicant. Native title meetings were either meetings of the YAC directors or larger community meetings. Even for directors meetings it was common to have community members attend. Community members were welcome to attend all directors meetings.
162. From late 2007 most Yindjibarndi meetings were minuted and many of them were video recorded. Phil Davies was responsible for the minutes and Juluwarlu organised the video recordings. The reason for video recording the meetings was to add the recordings to Juluwarlu's archive and have an accurate record.
163. Shown to me now marked **MW-15** and annexed to my statement is a document entitled "Extract of YAC Minutes October 2007 – December 2010". I recognise this document. Phil Davies prepared it from minutes that he took at the meetings referred to in the document. Phil prepared this document for the Supreme Court case that Aileen Sandy, Sylvia Allan and Mavis Pat brought against YAC in 2011 (**Aileen Sandy case**). I do not remember all these meetings. I recall some and the document has refreshed my memory of others. I have read this document for my statement and except for some variation in names of meetings used in the heading I believe that the information recorded for each meeting is accurate. The basis for my belief is that Phil Davies was the person responsible for taking the minutes of these meetings and he prepared this document. I talk about some of these meetings in the next part of my statement.
164. Another important thing that happened around this time is that Ngarluma and Yindjibarndi decided to divide between them the financial benefits from an old agreement with Robe River. In 2007 this was one of the few agreements that paid financial benefits to Yindjibarndi.

165. Around 2005 Rio Tinto took over Robe River and Hamersley Iron. The combined business was called Pilbara Iron and later it changed to Rio Tinto. Through PNTS I found out that Pilbara Iron wanted to change the Robe Agreement to accommodate the construction of spur lines on the Robe railway rather build a new rail line. Pilbara Iron wanted to build 4 to 7 of them. One was near the Harding Dam and Pilbara Iron had to obtain a new approval to build it. I saw an opportunity to re-negotiate the Robe Agreement around that approval to get \$2.7 million and a bus for the community. The decision from the elders and Yindjibarndi members after making this agreement was to lock the money away for 10 years, to invest it. The money was paid to a professional trustee called Plan B. I asked YAC if it could request the money to be transferred over to YAC to run both the PBC and the Yindjibarndi #1 claim.

Negotiation between Yindjibarndi and FMG

166. I have talked about the negotiation process with FMG in my three affidavits:

- a. sworn on 24 February 2009 and lodged with the NNTT in WF08/31 (concerning M47/1413);
- b. sworn on 6 October 2010 and lodged with the NNTT in WF10/19 (concerning M47/1431, E47/1398 and E47/1399); and
- c. sworn on 17 January 2011 and lodged with the NNTT in WF10/19.

167. Some of these affidavits annex letters. I have not annexed the same letters to my statement.

168. I have looked at these affidavits as part of making this statement. I recognise them as mine but I do not recall specifically what they related to in the NNTT. My memory of what happened in the NNTT is a general one. I remember that YAC tried to stop the grant of M47/1049, M47/1411 and M47/1413 and that we were not successful. I remember that we appealed the NNTT decisions to the Federal Court and these were not successful either. I remember that over the years YAC objected to the grants of tenements to FMG or the expedited procedure many times in the NNTT. George Irving who started out as the YAC barrister but later worked in-house for YAC spent a lot of his time working on these NNTT matters.

2007

169. YAC and Juluwarlu's relationship with FMG started in 2007. Juluwarlu was involved in early meetings with FMG because they were about heritage.
170. The first meeting I remember with FMG staff was at the TAFE in Roebourne. I cannot remember who was there from FMG. Michael Ryan was there from PNTS. Alum Cheedy and Maudie Jerrod were there too. Alum was the PNTS contact officer for YAC and Maudie was the chairperson. The FMG people there told us FMG was doing some early studies and wanted to do some exploration drilling. One of the FMG people told us "Be ready, there is a mine coming". He said the early geological studies looked good.
171. That is the only meeting I remember having with FMG in 2007.
172. PNTS entered into a heritage agreement with FMG on Yindjibarndi's behalf around this time. Juluwarlu and YAC did not agree that PNTS had the authority to do this. I cannot remember talking to FMG about another heritage agreement. Shown to me now marked **MW-16** and annexed to my statement is a letter from Alexa Morcombe from FMG to me dated 2 July 2007. This letter does not refresh my memory of specific events that led to FMG signing the agreement attached to the letter.
173. FMG destroyed a site in about July 2007 after a Yindjibarndi survey. Andrew Forrest wrote a letter of apology to us. Juluwarlu made a video of the destroyed site with some elders. It upset me and others, like Stanley Warrie.
174. Shown to me now marked **MW-17** and annexed to my statement is a copy of an "Agreement between FMG and the Yindjibarndi Council" dated 16 August 2007. I recognise this agreement. We had this meeting after the site was destroyed.
175. It was around the time when FMG destroyed this site that YAC decided to stop doing surveys with FMG.
176. Yindjibarndi did not start talking with FMG about a land access agreement until late 2007. I do not remember how this happened. By this time Juluwarlu was the day-to-day operations manager for YAC. I remember that in late 2007 YAC wrote to FMG as follows:
- a. about Yindjibarndi agreeing to negotiate a land access agreement;
 - b. about Yindjibarndi suspending heritage surveys until there was an agreement;
and
 - c. about Yindjibarndi wanting to negotiate according to the "Marrga Protocols".

183. I do not remember a meeting with Blair McGlew in Roebourne in January 2008.
184. I remember having negotiation meetings with FMG in 2008 about a land access agreement. The parties to the negotiation were FMG and Yindjibarndi represented by YAC as the Yindjibarndi PBC as the agent for the Yindjibarndi #1 Applicant. This process was confirmed sometimes at Yindjibarndi meetings. In my experience this is the normal process when mining companies negotiate native title agreements with traditional owners.
185. The biggest sticking point in meetings in 2008 was compensation. Yindjibarndi People started off asking for an uncapped 5% royalty. FMG did not agree. Yindjibarndi reduced this to 2.5% later in the year. Much later, in 2010 after seeking agreement of the YAC Board, I wrote to Andrew Forrest and said YAC would agree to 1.25% royalty. FMG and Yindjibarndi never reached an agreement.
186. My general recollection is that during 2008 Yindjibarndi maintained the position that it would not do heritage surveys. I am aware that Yindjibarndi agreed to do some specific surveys for FMG around this time. I cannot remember the details. I am also aware that around this time FMG organised consultants to do some heritage surveys without any Yindjibarndi participants present.
187. Sometime in 2008 YAC set up an FMG negotiation team. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
188. I was always keeping the Yindjibarndi People up to date. I recall that on 23 May 2011 I gave a presentation setting out a chronology of the negotiation process. Shown to me now marked **MW-23A** and annexed to my statement is a copy of this presentation. During this busy negotiation time I recall YAC had many meetings as follows:
- a. Yindjibarndi community meeting held with FMG on 12 February 2008 (**MW-24**);
 - b. Yindjibarndi community meeting held with FMG on 10 March 2008 (**MW-25**);
 - c. Yindjibarndi community meeting held on 19 March 2008 (**MW-26**);
 - d. YAC directors meeting held on 23 April 2008 at which representatives from FMG attended (**MW-27**);
 - e. Yindjibarndi community meeting with FMG held on 10-12 June 2008 (**MW-28**);

- f. YAC directors meeting held on 19 June 2008 (**MW-29**); and
 - g. YAC annual general meeting held on 17 December 2008 (**MW-30**).
189. The minutes of these meetings are marked as indicated in the paragraph above and annexed to my statement.
190. The minutes have refreshed my memory of the meetings.
191. I was late to the basketball court meeting in February 2008. I did not know it was on. My ~~late~~ law brother Howard Lockyer came to the Juluwarlu office and told me there was a meeting at the basketball courts and people were talking about me and Alum Cheedy was talking about selling Yindjibarndi land. I hurried down there. I found out that Vince Adams had organised the meeting. He was working for PNTS at the time. I remember people talking about a meeting that had been held at 5 Mile community where Allery Sandy and Pastor Marshall Smith live.
192. I did not know about the meeting at 5 Mile when it happened. I found out about it through Pansy Cheedy Sambo. She came up to me while I was parked in front of Bruno's store in Roebourne. She was angry and repeated allegations made at the 5 Mile meeting that I was using Ned Cheedy and stealing his information. I was shocked Pansy would say or think this. She apologised later.
193. I remember seeing Andrew Forrest and Blair McGlew picking up rubbish around the 50-cent Hall before the community meeting on 10 March 2008. I was watching them from the door of the hall. I remember having a short meet and greet meeting with both of them at Juluwarlu before the main meeting. 2009
194. I have looked at the following letters:
- a. my letter to Jane Pemberton from FMG dated 16 April 2009 (**MW-31**);
 - b. my letter to Blair McGlew dated 20 April 2009 (**MW-32**);
 - c. my letter to Blair McGlew dated 17 June 2009 (**MW-33**);
 - d. Blair McGlew's letter to me dated 25 June 2009 (**MW-34**);
 - e. Sukhpal Singh's letter to YAC's then lawyers Slater & Gordon dated 28 July 2009 (**MW-35**);
 - f. Blair McGlew's letter to YAC's then barrister George Irving dated 13 November 2009 (**MW-36**); and
 - g. Blair McGlew's letter to George Irving dated 15 December 2009 (**MW-37**).
195. They are held in YAC's records. They are marked as indicated in the paragraph above and annexed to my statement.

196. I do not specifically recall my letter to Fiona Pemberton but I do remember YAC agreeing to do a 10 day survey as mentioned in the letter.
197. I have a general recollection of meeting Sukhpal Singh in 2009 and coming away from that meeting understanding that FMG wanted to start negotiating with YAC again.
198. My letter to Blair McGlew dated 20 April 2009 prompted me to remember that we did try to negotiate with FMG about specific tenements. This was different to whole of country agreement we had talked about with FMG before. We did not reach any agreement on specific tenements.
199. To my knowledge YAC did not respond to Blair McGlew's letters to George Irving. 
200. Shown to me now marked **MW-38** and annexed to my statement is a copy of the minutes for the YAC annual general meeting held on 15 December 2009. I attended this meeting. I prepared the power point presentation attached to the minutes and used it to give a presentation to the meeting.
201. I was aware that FMG continued to do heritage surveys without any Yindjibarndi participants in 2009. I recall that a consultant called Rob Tickle was involved in some of them. I do not recall how I knew about this at the time.

NNTT

202. Looking at my previous affidavits and the NNTT decisions I can see FMG went to the NNTT in late 2008 and early 2009
203. Section 29 notices for M47/1049, M47/1411 and M47/1413 were sent to the Yindjibarndi #1 Applicant. FMG went to the NNTT asking for these tenements to be granted. I was familiar with the right to negotiate procedure and George Irving was always very good with telling me about when these things happened.
204. The NNTT decisions I have looked at for my statement are:
- a. *FMG Pilbara Pty Ltd / Ned Cheedy and Others on behalf of the Yindjibarndi People / Western Australia* [2009] NNTTA 38 (24 April 2009);
 - b. *FMG Pilbara Pty Ltd / Wintawari Guruma Aboriginal Corporation / Ned Cheedy and Others on behalf of the Yindjibarndi People / Western Australia* [2009] NNTTA 63 (23 June 2009);
 - c. *FMG Pilbara Pty Ltd / Ned Cheedy and Others on behalf of the Yindjibarndi People / Western Australia* [2009] NNTTA 91 (13 August 2009); and

d. *FMG Pilbara Pty Ltd / Wintawari Guruma Aboriginal Corporation / Ned Cheedy and Others on behalf of the Yindjibarndi People / Western Australia* [2009] NNTTA 99 (27 August 2009).

205. Shown to me is a copy of my affidavit dated 25 May 2009 and lodged in the NNTT in WF08/31 and WF09/1. I remember doing lots of affidavits trying to explain our connection to our country, our creation stories, our culture and our laws and customs. I do remember that I started to add more detail to the affidavits as I did for the NNTT more and more.

206. Shown to me is a copy of my affidavit dated 14 February 2011 and lodged in the NNTT in WF10/19 where I have gone into more detail. This affidavit contains information about the stones we use in men's business. I made a conscious decision to do this. I thought that if I went into more detail then the NNTT would understand our Yindjibarndi laws and customs. I spoke to my elders Ned Cheedy, Alec Ned and Thomas Jacob about this first. They agreed with me and told me to put in the information. They said I had to tell the white man about Yindjibarndi culture. I took a risk doing this because the spirits of the country could have taken me because I revealed things that I am not culturally allowed to do by the Yindjibarndi Laws. Wiru-Murra people put in affidavits saying that I should not be doing this because it was sacred and men's business. The NNTT did not agree with the Yindjibarndi's opposition to FMG's applications and we lost that case.

[REDACTED]

Wardens court

208. Shown to me is a copy of my affidavit dated 1 April 2010 and lodged in the Wardens Court at Perth. That affidavit has refreshed my memory that YAC was a party to cases in the Wardens Court but I do not recall the details.

2010

209. In 2010 the negotiations with FMG broke down and a serious division in the Yindjibarndi community started.
210. In early 2010 FMG wanted to have a community meeting to satisfy itself that the community rejected FMG's previous offers. I and the YAC board objected to this happening. My view was that the Yindjibarndi community had clearly rejected FMG's offers and it was not FMG's place to go around YAC and satisfy itself. I thought this was FMG not respecting the native title process. FMG organised a meeting at Roebourne in March 2010.
211. Michelle Adams called me about a conversation she had with Blair McGlew before the meeting with FMG took place. George Irving, Phil Davies and I went to meet her at the old CDEP office where she was working. We asked her not to meet with FMG. After a long discussion with Michelle about why a meeting with FMG would be bad for Yindjibarndi she agreed it should not go ahead.
212. The March 2010 FMG meeting went ahead anyway. I did not go but Bigali Hanlon gave me the information paper that FMG handed out at the meeting. [REDACTED]
[REDACTED]
[REDACTED] I was concerned that statements like those in the information paper had the potential to convince people that the only way to get any compensation from FMG was to abandon YAC's position and accept its offer.
213. After the FMG meeting in March 2010 there was a YAC community meeting at Juluwarlu. I attended this meeting. Lots of Yindjibarndi People were there. George Irving gave a long legal presentation. I remember this meeting because Michelle Adams got up and spoke about a letter she sent to Stanley Warrie as the chairperson for YAC. Shown to me now marked **MW-39** and annexed to my statement is a copy of this letter. I recognise it as the letter Michelle talked about.
214. The next thing I remember happening is a meeting that FMG organised in July 2010. Someone told me about it and I went with Stanley Warrie, Thomas Jacob, Angus Mack and Lorraine as it finished. I saw Michael Gallagher and Alexa Morecombe coming out of the old Forum in Roebourne. I approached them and asked what they were doing having a meeting without first discussing it with the YAC Board. I had no notice of the meeting which is why I arrived late. Michael Gallagher and Alexa Morcombe told me they had every right to meet with the Yindjibarndi People and to pass on information about what FMG was doing on our country. I was angry and upset but I stayed composed. I did not yell at them or abuse them. They asked me whether I was threatening them. This shocked me. I said no and that I wanted to

have a discussion with them about their presence at a meeting about native title matters that had not notified the whole of the Yindjibarndi #1 claim group. They said again that what I was doing sounded like a threat. I felt offended. By this time we had a long history of meetings with FMG and I had always behaved professionally and with courtesy

215. I organised a community meeting a day or two after the FMG meeting. I moved quickly because I wanted to have a meeting before a heritage survey that FMG wanted to arrange. I remember Michael Gallagher also came to this meeting. I said at the meeting that I objected to any heritage surveys going ahead that did not concern the YAC Board's or the Yindjibarndi #1 Applicant's approvals. I said that the men who were going on the survey did not have the cultural authority to make decisions about that country. The survey still went ahead.

216. Shown to me now marked **MW-40** and annexed to my statement is an email dated 27 July 2010 from me to Brian Wilkinson and Duncan Ord from the then Department of Indigenous Affairs about FMG's proposed heritage survey.

217. The last meeting with FMG was in August 2010. This was chaired by Graeme Neate from the NNTT. I remember from that FMG made another offer. [REDACTED]

[REDACTED]

218. Following on from the meeting in August 2010 I wrote to Andrew Forrest. I said that YAC rejected the offer made by FMG and indicated that, as a starting point, the Yindjibarndi People were prepared to reduce the royalty they sought from 2.5% to 1.5%. I also talked about the negotiations to date and how FMG had divided the community.

219. I have looked at the following documents from 2010:

- a. letter from Sukhpal Singh FMG to Slater & Gordon dated 4 February 2010 (**MW-41**);
- b. letter from me to Blair McGlew dated 9 February 2010 (**MW-42**);
- c. email from Blair McGlew to Phil Davies and others dated 16 February 2010 (**MW-43**);
- d. document entitled "Conversation between Blair McGlew and Michael Woodley from 11.53 am on 22/02/10 – the conversation was concluded at 12.28 pm on 22/02/10" (**MW-44**);

- e. letter from me to Andrew Forrest dated 23 February 2010 (**MW-45**);
- f. letter from Blair McGlew to Slater & Gordon dated 26 February 2010 (**MW-46**);
- g. email from Blair McGlew to Michael Woodley dated 10 March 2010 (**MW-47**);
- h. minutes of YAC community meeting held on 16 March 2010 (**MW-48**);
- i. letter from NNTT to YAC, FMG and Department of Mines and Petroleum dated 25 May 2010 (**MW-49**);
- j. letter from Blair McGlew to Michael Woodley dated 6 July 2010 (**MW-50**);
- k. minutes of YAC general meeting held on 8 July 2010 (**MW-51**);
- l. letter from George Irving to Graeme Neate at the NNTT dated 14 July 2010 (**MW-52**);
- m. minutes of YAC and FMG meeting chaired by Graeme Neate held on 10 August 2010 (**MW-53**);
- n. letter from Stanley Warrie as chairperson of YAC to Maudie Jerrold and Allery Sandy dated 26 August 2010 (**MW-54**);
- o. letter from me to Andrew Forrest dated 9 September 2010 (**MW-55**);
- p. letter from NNTT to YAC, FMG and Department of Mines and Petroleum dated 10 September 2010 (**MW-56**);
- q. letter from Blair McGlew to me dated 17 September 2010 (**MW-57**);
- r. letter from Grant Preller FMG to Juluwarlu and YAC dated 22 October 2010 (**MW-57A**);
- s. letter from Stanley Warrie as chairperson of YAC to Grant Preller FMG dated 10 November 2010 (**MW-58**);
- t. letter from Yindjibarndi People to the Hon. Brendan Grylls MLA dated 10 November 2010 (**MW-59**);
- u. letter from me to Blair McGlew dated 24 November 2010 (**MW-60**);
- v. letter from Blair McGlew to me dated 30 November 2010 (**MW-61**);
- w. letter from Ron Bower from Corser & Corser to the Hon. Vince Catania MLA dated 6 December 2010 (**MW-62**); and
- x. letter from me to Blair McGlew dated 8 December 2010 (**MW-63**).

220. They are held in YAC's records. They are marked as indicated in the paragraph above and annexed to my statement.

221. I remember having a telephone call with Blair McGlew in February 2010. The document entitled "Conversation between Blair McGlew and Michael Woodley from 11.53 am on 22/02/10 – the conversation was concluded at 12.28 pm on 22/02/10" was prepared by Phil Davies who was with me during the call and took a note of it.
222. The copy of the YAC community meeting minutes from the meeting held on 16 March 2010 annexed to my statement are redacted. The part redacted is a presentation from George Irving and questions that followed. A written advice from George Irving attached to the minutes is also removed from the copy.
223. From the letter from the NNTT to YAC, FMG and Department of Mines and Petroleum dated 25 May 2010 I see that the NNTT was involved some months before August 2010. I had forgotten this but having read the letter I remember having some meetings with the NNTT before August but I do not remember the details.
224. The letter from me to Andrew Forrest dated 9 September 2010 is the one I talked about at [218] above. Looking at the letter from the NNTT dated 10 September 2010 I can see that I sent the letter to Andrew Forrest the day before the NNTT mediation conference. The NNTT letter talks about the possibility of another mediation meeting with FMG. I can see from Blair McGlew's letter to me dated 17 September 2010 that FMG supported the continuation of the mediation process. I do not recall any meetings with FMG that took place after these letters to talk about an agreement. YAC did not talk to FMG about an agreement again until 2013.
225. My main memory from the end of 2010 is the agreement that Wirru-Murra negotiated with FMG and the meetings that followed into early 2011. They were the YAC AGM and a meeting at the end of the year called by Wirru-Murra to try and authorise the agreement it negotiated with FMG.

2011

226. I have talked about the meeting on 16 March 2011 in my affidavit from the Aileen Sandy case dated 18 November 2016.
227. At this time Ned Cheedy was our most senior elder. He died the following year aged around 105. He was the last of my *abigee* Woodley's generation. The last of the generation who spent decades of their life living on their *ngurra*, walking their *ngurra* like their ancestors did. He was the *nymambali* for Yindjibarndi, our most senior leader.
228. I believe that the division in the community – the setting up of Wirru-Murra and its attacks on YAC is a corruption of Yindjibarndi Law and culture.

229. Before the meeting in March 2011 I hoped that if I and others like Stanley Warrie, Thomas Jacob, Angus Mack could bring the Wiru-Murra people back to being Yindjibarndi People then we could all go to our elder, Ned, and ask for his guidance.
230. I was taught by my elders that you go to the *tharngu* or *nyambali* for guidance when dealing with questions about *ngurra*. It's ok for people to have differences of opinion about these questions. People always do. What you do is you all go to the *tharngu* or *nyambali*. It was always a 'he'. In Yindjibarndi Law only men are *tharngu* or *nyambali*. Under Yindjibarndi Law men have the burden of the responsibility of looking after *ngurra* like the Minkala and Marrga taught us. This is taught through Men's Law.
231. At the March 2011 meeting I saw Cheedy Ned was disrespected, overshadowed, spoken over, spoken against by Wiru-Murra people. This is breaking the Law as an Yindjibarndi. I spoke up for Cheedy Ned at the meeting and I said I was guided by him.
232. After the March 2011 meeting I went to see Cheedy Ned. It was just the two of us together. I asked him "who is the boss for all of Yindjibarndi *ngurra*".
233. I said that if he is the elder and the *nyambali*, if he acknowledged that, then I would advocate for him in the community. Then I asked him "*nhaana nyambali ngurrayu*" or "who is the boss for the country?".
234. He said "*banggarrima manuwarni mangkularra*" or "go and ask the babies".
235. I expected a different answer. I expected, I wanted, him to say that he was the boss for the country. Then I could just go and tell the Wiru-Murra to listen to him.
236. Over the years, recording old people, I knew that old people give you an answer that you do not understand at first. I knew this was part of a conversation. I knew that I had to engage in a conversation with him to explore it terms of what he is trying to say to me. My next question to him was "*nhani nyi manuwarni mangkularra*" or "what do I ask the babies". Ned said "*nyidda mirda manuwarni yala*" or "well you don't ask them now". I did not know what he was trying to say to me. Then he said "*nyinda manwarni ngunagirri barningu gunumba*" or "you ask them when they are elders like me".
237. We talked more and I understood that you have to wait for the baby to grow up. To grow through the stages of life and when he is like Ned you ask "who is the boss for the country". And, if this person had been taught anything about Yindjibarndi Law he would point back to the babies because the *ngurra* is not his to give, it belongs to the next generation. So, the *nyambali* for the *ngurra* is the next generation. That taught

me, with all my decision making, to do things for the next generation of Yindjibarndi. I realised then that I was working for our Yindjibarndi culture and for our connection to our *ngurra* for the future generations.

238. I have experienced the country with my elders. They showed me and taught me. I saw the male emu laying his eggs. I have always been guided by elders. Ned Cheedy reinforced my responsibilities. It's a choice to go with the old people and what they taught us not to ignore them.

After 2011

239. YAC talked with FMG in 2010 about a land access agreement for all of Yindjibarndi country including the Ngarluma Yindjibarndi and the Yindjibarndi #1 determination areas. I have had a couple of informal discussions with Andrew Forrest in 2023 but otherwise the last time formal negotiations took place between YAC/YNAC and FMG was in 2021 when Elizabeth Gaines was CEO of FMG.

240. Not long after the destruction of Juukan Gorge, in late 2020, YAC/YNAC and FMG started talking about heritage. This led to YAC/YNAC agreeing to do some heritage surveys for FMG in 2021. More discussions occurred about YAC/YNAC reconciling with Wirlu-Murra and negotiating an agreement with FMG. Unfortunately, there was no reconciliation with Wirlu-Murra and no agreement reached with FMG. FMG ended the negotiation very soon after Paul Cleary's book *Title Fight* was published. I talk more about these things below where I talk about the attempts over the years for YAC and Wirlu-Murra to reconcile.

241. I have looked at the following documents:

- a. undated document entitled "An open letter from Fortescue Metals Group to all Yindjibarndi People" (**MW-64**);
- b. letter from me to Neville Power of FMG dated 13 June 2013 (**MW-65**); and
- c. letter from Tom Weaver of FMG to me date 28 June 2013 (**MW-66**).

242. These documents are held in YAC's records. They have refreshed my memory of events. They are marked as indicated in the paragraph above and annexed to my statement.

243. There was also a short period in 2013 where YAC and FMG negotiated about an agreement. FMG ended the talks after YAC put out a press release in response to an FMG one about the first train of iron ore leaving from Firetail.

The 3Cs model – community, culture and commercial

244. In 2011 YAC started talking to Rio Tinto about an Indigenous Land Use Agreement (ILUA) for all its current and future activities on Yindjibarndi country. This rail infrastructure and exploration. The Robe and Hamersley railway lines go through our country and Rio Tinto moves around 335 million tonnes of iron ore through it each year.
245. Around the same time the YAC Board started working on a strategy for dealing with the benefits that came from the ILUA with Rio Tinto. I did not want to have a situation where YAC was not ready for these future benefits. I did not want to blindly go down a path of solely having trusts making direct welfare type payments by providing white goods, food vouchers, petrol, funerals and so on. The YAC Board members wanted to generate wealth, jobs and training for the community.
246. YAC began with a community workshop in May 2011. YAC developed the 3Cs model. The three “Cs” are community, culture and commercial. Shown to me now marked **MW-67** and annexed to my statement is a copy of an early diagram showing the model. I made the diagram. I can tell it is dated from sometime in 2013 because the new Applicant was appointed in 2013 and the Rio Tinto ILUA had not been finalised yet. “1H 13” means first half of 2013. Yurra and Sodexo are mentioned in the diagram and they are still part of the Yindjibarndi commercial arm. The diagram has prompted me to remember that I presented it to Nev Power when YAC spoke briefly about a land access agreement with FMG in 2013.
247. YAC, the Yindjibarndi #1 Applicant and Rio Tinto entered into a heads of agreement in July 2012.
248. YAC, the Yindjibarndi #1 Applicant and Rio Tinto entered into a detailed agreement called the “Yindjibarndi People and RTIO Participation Agreement” in August 2013.
249. In June 2014 YAC published an organisational prospectus that sets out the 3Cs model and the corporate structure that as at that date had been established. Shown to me now marked **MW-68** and annexed to my statement is a copy of this prospectus.
250. Money paid by Rio Tinto to YAC under the participation agreement was paid into the Yindjibarndi People Community Trust and the Yindjibarndi Commercial Trust in fixed proportions.
251. An ILUA between YAC, the Yindjibarndi #1 Applicant and Rio Tinto was registered in May 2015.

252. In 2012 and 2013 the Yindjibarndi community started its first two commercial projects.
253. Planning began for the establishment of Yurra Pty Ltd (**Yurra**). It was incorporated in 2013. Yurra was established as a joint venture with Liam Wilson from Port Hedland. It started off as a landscaping and ground maintenance business, and has diversified and grown since then. This year is Yurra's 10th year in business. It now employs 170 staff. About one third of the staff are indigenous. Last financial year its revenue was \$57 million. The business now also includes commercial cleaning, rail maintenance, civil construction and building construction and maintenance. On the rail maintenance side of things Yurra has a contract to maintain all of Rio Tinto's railway culverts over all of Rio Tinto's rail network where there are more than 2000 culverts.
254. In 2016 GBSC Yurra was established, which was a business venture between Geraldton Building Services and Cabinets and Yurra. The purpose of the venture was to re-develop the Victoria hotel site at Roebourne using an Indigenous training model. The model included training courses, school-based traineeships, apprenticeships and employment. GBSC Yurra worked with Roebourne School, Roebourne Regional Prison and Indigenous employment provider Real Employment for Aboriginal People (**REFAP**) to implement the model. About a third of the hours worked on site, more than 10,000 were by Indigenous people. GBSC Yurra has since worked on other significant projects in the region including the Walgu Park in Karratha. Yurra has now acquired a majority interest in GBSC.
255. In 2013 the Yindjibarndi People through the commercial arm of their corporate structure (Yindjibarndi Wealth Pty Ltd) purchased The Victoria Hotel for \$2.5 million, which had been boarded up since 2005. In 2016 work, by GBSC Yurra started on re-furbishing the old part of the hotel and a modern addition. The following year a large outdoor area next to the hotel was also landscaped as part of the project. All the building and landscaping works were finished in 2019. The total cost of the project was \$8.9 million. It was funded by a combination of Federal government, State government and Yindjibarndi money. Yindjibarndi contributed \$4.5 million, which came from the Rio Tinto participation agreement. Yindjibarndi renamed the building and parkland The Ganalili Centre. It is a community hub made up of work and meeting spaces, a commercial kitchen and large display area.

256. The Ganalili Centre was opened in September 2019. The official opening was a cultural celebration including Yindjibarndi dreamtime stories using large puppets and a performance of Spinifex Gum by the Marliya Choir, an Indigenous children's choir. One of their songs, Yurala, is about the significance of a *thalu* site to Yindjibarndi rainmaker my *manyga* (nephew) Long Mack that got drowned by the Harding Dam.
257. As I have talked about earlier in my statement Juluwarlu had a large display and retail area on the ground floor until October last year.
258. Shown to me now marked **MW-69** and annexed to my statement are some photos of The Ganalili Centre. The first photo is photo of the re-furbished Victoria Hotel. The addition is behind it and can be seen by the bright orange, brown and yellow detail. The second photo shows the outdoor area next door under construction. The third photo shows the Marliya Choir performing at the opening. The remaining photos are of the Juluwarlu display on the ground floor.
259. Currently, construction is underway on the Ganalili Accommodation and Training Facility. This is on the lot next door. This project is a partnership with the State government to provide transitional accommodation for people moving into or returning to the workforce. The facility will include a multi-purpose office space for training and will provide wrap-around support services to people living there. GBSC Yurra is the builder for this project also.
260. In 2021 the Yindjibarndi People and Rio Tinto started a modernisation process of the 2013 agreements. Rio Tinto approached YAC about this following the destruction of the ancient rockshelter at Juukan gorge. That negotiation was completed towards the end of 2022. As part of this modernisation process the Yindjibarndi People also modernised its corporate structure. Diagrams showing this new corporate structure and the amounts of financial benefits that flow under the modernised agreements with Rio Tinto are shown in a recent newsletter called "Yindjibarndi Nation News Ngarda Wangka". Relevant diagrams are at pages 2 and 9. Yindjibarndi has retained the original structure and added a component to it. That is the Y3CN Trust and Yindjibarndi Nation Limited. Money paid by Rio Tinto is split between the original Yindjibarndi People Community Trust and the Yindjibarndi Commercial Trust on the one hand and the Y3CN Trust on the other. The money is split in fixed proportions. YAC and YNAC as the Yindjibarndi PBCs remain at the heart of the structure. I call it the Yindjibarndi Nation. The purpose of the structure is to serve all Yindjibarndi People.

261. Shown to me now marked **MW-70** and annexed to my statement is a copy of the “Yindjibarndi Nation News Ngarda Wangka” newsletter. It was published in April this year and distributed to Yindjibarndi People.
262. The diagram on page 9 of the newsletter lists Yurra, car hire, water and Yiyangu under the commercial arm of Yindjibarndi National Limited.
263. The reference to car hire is a reference to a joint venture between Yindjibarndi and Cedrent Enterprises, which is an Indigenous organisation from South Australia. Cedrent is the franchisee for Enterprise Rent-a-Car in South Australia. Cedrent Enterprises approached Yindjibarndi about forming a joint venture for opening a franchise in Western Australia. Enterprise Rent-a-Car now operates in Karratha and Port Hedland. It will soon be operating in Newman and the venture is looking to start operations in Kalgoorlie and Onslow.
264. The references to water and Yiyangu in the newsletter are references to early-stage projects in water and renewable energy. Currently, the Water Corporation has a licence to draw 11 GL of water from three sources including Millstream. Yindjibarndi is looking at working with other companies with expertise in water to develop alternative sources of water to Millstream. The goal is to get to a point where water is no longer taken from there. Yiyangu is an Yindjibarndi controlled corporation that is in the early stages of investigating solar power projects for industry in the Pilbara. Yiyangu means new or fresh in Yindjibarndi.
265. This is an established model and structure that the Yindjibarndi People can use for any compensation paid to Yindjibarndi People.

FMG is manjangu and mining without the consent of the Yindjibarndi People

266. Under Yindjibarndi Law FMG is *manjangu*, a stranger.
267. Before Europeans came to Yindjibarndi country *ngaarda manjangu* would light a fire to let *Tharngungarli* or senior men know they were in the area. There were rules for *Manjangu* to follow. They could not just come into Yindjibarndi *ngurra*. They had to ask permission and, if the *Tharngungarli* were not satisfied of the *manjangu's* good intentions then they could be refused entry. There were well known pathways for entering another person's *ngurra*. Typically, these were *wundu* or watercourses. The *wundu* around where the Mine is now were such pathways. They were Garliwinyji, Wirlumarranha and Ganjingarringunha. My grandfather's Woodley King, Ned Cheedy, Kenny Jerrold, Darcy Hubert told me this. There were rituals to be performed. They are called *Binjimagayi* and *Binga*. I talk about these rituals in my affidavit in the NNTT dated 25 May 2009. These rituals were about fitting *manjangu* into the *Galharra* system and ensuring that *manjangu* followed Yindjibarndi Law. This

included the Law of *nyinyaard* (sharing). Yindjibarndi *ngaarda* were required to share what they had with *manjangu* and, likewise, *manjangu* were required to share what they had. My *abigee* and the elders told me that this was understood by Yindjibarndi *ngaarda* and *manjangu* alike, as it's a *ngaarda* way of doing things.

268. When it comes to *manjangu* Yindjibarndi People always have the right under our Law to say “no” or to refuse what they wanted to do on our country.
269. When a *manjangu* like FMG wants to mine our *ngurra* this is something that effects all Yindjibarndi People. Decisions around that cannot be made by one person or one family alone. In the old days when important decisions about *ngurra* were being made, the *ngurrara* (owners of country) for the area concerned had to be consulted. The *mirduwarra* would then discuss it. Following that, it would be discussed by all the *tharngungarli* sitting together with the *nyambali* as a council. But in the end, the Yindjibarndi People as a community have to agree.
270. Talking about Yindjibarndi *ngurra* and making decisions about looking after the *ngurra* is very important. Yindjibarndi spend a lot of time doing this. Our Law requires us to do so.
271. The way Yindjibarndi make important decisions about things that affect our *ngurra* has changed in the last 25 years or so. These days, important decisions like about the Mine are made by consensus at community meetings in which the senior Yindjibarndi men and women provide advice and guidance. I have talked about this in my statement from the Yindjibarndi #1 claim (Exhibit C). The community meetings I have talked about earlier in my statement are a good example of this. They may take place within a corporation like YAC but they are still cultural meetings. YAC helps by organising meetings with people and companies who want to use Yindjibarndi *ngurra*, organising field trips and the like so the Yindjibarndi community can make informed decisions.
272. I understand that non-indigenous *manjangu* will not necessarily share our spiritual and cultural beliefs, and won't necessarily feel bound by Yindjibarndi Law. I understand that under the legal system Yindjibarndi does not have a right of veto over mining on our *ngurra*.
273. But, Yindjibarndi still have obligations under our Law to look after the country and that includes what *manjangu* do on it. Our old people and the Marrga still occupy our *ngurra*; they oversee the country and make sure we are looking after our country so that our future generations get their proper inheritance. Negotiating agreements with *manjangu* is one practical way we can exercise our rights and responsibilities.

274. Our obligations are defined by five principles. The first is respect and the need to look after *Ngurra*, and to never overlook its importance to our history as cultural and spiritual people and to our survival. The second is respect for Galharra and the roles each Yindjibarndi has under the Galharra relationship system. The third is respect for *nyinyaard*. All Yindjibarndi must share with one another and care for each other. The fourth is respect and to keep our Birdarra Law in practice as the songs and dancing feeds into the *ngurra* giving anything in it a rejuvenation. The fifth is respect for *wangka* Yindjibarndi language because there is no ambiguity in what is said between Yindjibarndi and the *ngurra* only relates to our *wangka* in Yindjibarndi when we speak to it.
275. In the past, *manjangu* have come into Yindjibarndi *ngurra* without waiting to be invited. They were not properly introduced to our country, no agreements were reached, our Law was broken and our special places were destroyed. The Yindjibarndi do not want this to continue because it has caused a lot of suffering. The Yindjibarndi and the *manjangu* can be punished by the spirits for these laws that have been broken.
276. A good example of this is the Harding Dam. Manyga Long Mack was a *tharngu* for this part of the *ngurra*. He had a *thalu* site that got flooded and destroyed by the dam. With what little power he and the other old people had they fought the State government's proposal to construct the dam. They lost. Manyga Long Mack borrowed a .22 rifle from Wilson Wally and went and shot himself behind the Village. He didn't die and he walked back there. This was a very sad ending for Manyga Long Mack and his wife within weeks from one another. Old people said he was taken by the spirits for that *ngurra* because he did not stop the development of the dam – even though he didn't have the power to stop it. Many other people in the Village died in the following 12 months and old people said it was punishment from the spirits. It's hard to live with that burden and failure even though Yindjibarndi People are often powerless to do anything. The *ngaarda* spirit and the spirits of the *ngurra* collide with each other in ways we can't explain.
277. It is not easy to fulfil our obligations under Yindjibarndi Law when making agreements with *manjangu* miners. Even with our native title rights, the reality is that mining companies can get their tenements granted and approvals without an agreement. This is what FMG did. This is a hard reality. I believe it puts Yindjibarndi People and *ngaardangarli* more generally in a lose-lose situation. It makes me feel powerless. If we do not or cannot reach an agreement with a *manjangu* miner then mining can still go ahead. If we do reach agreement then we agree to impact the *ngurra* against what we were told to do by Minkala and the Marga. As I have said,

one practical thing we can do is try to negotiate an agreement so we can exercise some of our rights and responsibilities as owners of our *ngurra*, and so we can have a share of the resources that are being taken from our *ngurra*. But more importantly we fulfil our obligations and not make our elders or ourselves feel afraid and frightened of what the spirits will do to us.

278. Agreement negotiations with mining companies should take place at face-to-face community meetings.

279. YAC tries to explain to *manjangu* miners what our connection to our *ngurra* means to us, our Law and our rights and responsibilities under our Law. We try to explain that we are required to look after the *ngurra* according to our Law. YAC did this with FMG.

280. The Marrga Protocols should start with *wangka* (talking) at a community meeting with *manjangu* miner. The community would want to know who the miner is, what the miner wants to mine and what impacts the mine will have on our *ngurra*. There are lots of different impacts to talk about – ground disturbance, destruction of significant sites, stories, songs, birth places, burial places, water holes, Birdarra and *ngurrara* for example. After this *wangka* with the *manjangu* miner the community would take its own professional advice and talk about options. Our response to a *manjangu* miner would be no. It would always be no. We would have to say no to fulfil our obligations to Minkala and the Marrga who told us to look after the *ngurra* as it is. But, as I said, Yindjibarndi knows that it does not have a right of veto over mining. So, the *wangka* with the *manjangu* miner would then become about how to go from no to consent. This would involve working through our concerns as Yindjibarndi with the *manjangu* miner.

281. *Nyinyaard* would be a part of that *wangka*.

282. *Nyinyaard* is a fundamental aspect of the Galharra Law. There are two parts to it.

The first part is about sharing resources in Yindjibarndi *ngurra* and it is critical to the social fabric of Yindjibarndi. *Nyinyaard* gives rise to generosity and kindness, so life can be lived without greed and misery. It represents the good in all. Reciprocity is at the heart of it. It is a social contract under which everyone is entitled to share in the bounty of Yindjibarndi country and prosper.

283. If Yindjibarndi People don't comply with or won't acknowledge *nyinyaard* they become cursed by the country. We call this *gurruwara* and it is a death warrant.

284. *Nyinyaard* is relevant to *manjangu*. When *manjangu* are invited to stay on our *ngurra* Yindjibarndi are required to share the natural resources with them. And *manjangu* are required to share what they take from us. If *ngaarda manjangu* wish to hunt, gather or use the resources in Yindjibarndi *ngurra* then *nyinyaard* requires them to share some part of the fruits of their labour in our country with us. Under our Law the same applies to all *manjangu*.
285. There is another part to *nyinyaard*,
286. Under our Law, Yindjibarndi *ngurra* is obliged to produce and share its resources with the Yindjibarndi People but only if we continue to follow the Law by caring for our *ngurra* and our people.
287. To illustrate the first part of *nyinyaard*, in a community like Ngurrawaana, if someone goes hunting and gets a kangaroo then, according to *nyinyaard*, that person would divide the kangaroo up among the families there. If that person butchered the kangaroo in plain site and put it all in his freezer then he would be seen by others as *thathamarda* (greedy). The word has a stronger meaning in Yindjibarndi. It is greedy, selfish, bad and no heart. He could be punished publicly for doing this. It is a strong rule. Properly understood this part of *nyinyaard* means that the *manjangu* miner must divide with Yindjibarndi what it takes from the *ngurra*. In practice this means that a *manjangu* miner would be open, honest and fair when it comes to sharing what it takes.
288. As for the second part of *nyinyaard*, it requires a *manjangu* miner to acknowledge and respect that it wants to mine on Yindjibarndi *ngurra* and that Yindjibarndi People have an obligation to look after the *ngurra*. If this happens then the *ngurra* continues to look after Yindjibarndi and *manjangu*. That's *nyinyaard* too.
289. As I have said earlier in my statement, the sticking point was always compensation. At its community meetings the Yindjibarndi People consistently refused to accept the amount of compensation FMG offered. I cannot speak for other people but in my opinion what FMG offered was not fair given what it was proposing to take from our *ngurra*. Each year now FMG ships millions of tonnes of our *ngurra* for export without our consent, makes billions in revenue and does not pay us. That goes against Yindjibarndi Law. It's not *nyinyaard*.
290. The effect of FMG going around our cultural process was to deny Yindjibarndi People our rights and interests under Yindjibarndi Law to look after our *ngurra*. All the impacts of the Mine on Yindjibarndi People flow from this – the *ngurra*, *wundu*, significant sites, Birdarra Law, songs, stories, *nyinyaard* and so on. All these things could have been worked through by *wangka* and by making an agreement.

Impact on Yindjibarndi ngurra and destruction of significant Yindjibarndi sites

291. Yindjibarndi People through YAC have tried very hard to stand up for our *ngurra* and our significant sites. Yindjibarndi People have been doing this since we first started talking with FMG.
292. YAC has opposed FMG's section 18 applications to destroy our sites. I do not know if YAC opposed all of them, but I know we opposed many of them. There have been so many over the years so I cannot remember them all.
293. I know that Wirlu-Murra people have done heritage survey's for FMG since July 2010. I did not go on any of these surveys myself. Wirlu-Murra's participation is common knowledge in Roebourne and all the reports that FMG gave to the Aboriginal Cultural Heritage Committee to support their s 18 applications talked about the surveys and who went on them. I was strongly opposed to Wirlu-Murra people going on those surveys. Many of the people going on them did not know the *ngurra* there very well and the significance of it under Yindjibarndi Law.
294. Wirlu-Murra consistently supported FMG's section 18 applications. Generally, I recall that whoever their lawyers were at the time would write to the ACMC and say that Wirlu-Murra did not oppose them.
295. I remember for the first FMG section 18 applications YAC pulled out all the stops to oppose them.
296. I have an early memory of joining an ACMC committee meeting by telephone. I remember that Phil Davies was at the meeting to give a presentation. I also remember that Wirlu-Murra members Jill Tucker, Jimmy Horace and John Sandy were at the meeting and they criticised me for putting forward cultural and significant information about that part of the *ngurra*, information given to me from my grandfathers.
297. Shown to me now marked **MW-71** and annexed to my statement is a copy a YAC report dated May 2011. I recognise this as the report that Phil Davies wrote for the ACMC.
298. YAC and Juluwarlu did lots of field trips in this period. I have talked about them already in my statement. Part of the reason for doing them was to collect our own information YAC could present to the ACMC to oppose the section 18 applications.
299. Shown to me now marked **MW-72** and annexed to my statement is a copy of a FMG media release dated 7 November 2011. This one really surprised me and knocked me back a bit. I knew FMG had destroyed sites because I saw it with my own eyes when we did the men's trip earlier in the year. I felt vindicated when it eventually

came out that FMG had destroyed sites. This happened when YAC made a freedom of information request.

300. I remember going to the FMG AGM at Perth in 2011. Before the AGM I did a press conference in Perth. I got there in the morning and protested as people came into the AGM. I did some media interviews. Jan Kepatas who was working for Juluwarlu at the time attended the AGM with proxy votes. The plan was for her to ask Andrew Forrest some questions at the AGM but this did not happen. Shown to me now marked **MW-73** and annexed to my statement are four photos. The first photo is of the press conference before the AGM. The other three are of us protesting on the day. In the last photo I am talking to Herb Elliot who was a director of FMG at the time.
301. Soon after the FMG AGM I flew to Canberra with Thomas Jacob, Angus Mack, Stanley Warrie and George Irving. We went there to deliver an application under the Commonwealth Heritage Act to the Minister. The YAC board took this step because we were worried about the process FMG had gone through with its section 18 applications. Shown to me now marked **MW-74** and annexed to my statement is a photo of a press conference we did in Parliament House at Canberra. Also, shown to me now marked as indicated and annexed to my statement are the following documents:
- a. application from YAC to the Commonwealth Minister for Sustainability, Environment, Water, Population and Communities under the *Aboriginal and Torres Strait Islander Heritage Protection Act (Cth) 1984* dated 18 November 2011 (**MW-75**);
 - b. YAC media statement dated 23 November 2011 (**MW-76**);
 - c. letter from George Irving YAC to Craig Patterson, acting assistant director of the Commonwealth Department of Sustainability, Environment, Water, Population and Communities dated 2 March 2012 (**MW-77**);
 - d. letter from Yindjibarndi men to John Waters dated 23 August 2012 (**MW-78**);
 - e. letter from Yindjibarndi women to John Waters dated 24 August 2012 (**MW-79**);
 - f. letter from George Irving YAC to John Waters dated 15 October 2012 (**MW-80**);
and
 - g. letter from James Baker Assistant Secretary of Department of Agriculture, Water and Environment to Phil Davies dated 16 November 2021 (**MW-81**).

302. These documents are held in YAC's records. The first document is the application we delivered to the Minister. The second one is a media release YAC put out on the day we delivered it. The last three documents relate to an investigation that John Waters did for the Minister. I am informed by Phil Davies and believe that YAC does not have a copy of John Water's report. This process has sat around for a long time. In response to the letter from James Baker in 2021 YAC said that it wants the Commonwealth heritage process to continue.

Trying to get access to the Mine

303. I have looked at the following letters:

- a. letter from Phil Davies YAC to Alexa Morcombe FMG dated 16 November 2011 (**MW-82**);
- b. letter from Alexa Morcombe FMG to Phil Davies dated 30 November 2011 (**MW-83**);
- c. letter from Phil Davies to Alexa Morcombe FMG dated 2 December 2011 with attachments (**MW-84**);
- d. letter from Phil Davies to Alexa Morcombe FMG dated 5 December 2011 with attachments (**MW-85**);
- e. letter from Alexa Morcombe FMG to Stanley Warrie and Phil Davies dated 5 December 2011 (**MW-86**);
- f. minutes of YAC directors meeting with Blair McGlew and Tom Weaver FMG dated 7 December 2011 (**MW-87**);
- g. email from Blair McGlew to me and Phil Davies dated 7 December 2011 (**MW-88**);
- h. letter from Green Legal to Stanley Warrie, Phil Davies and George Irving dated 8 December 2011 (**MW-89**); and
- i. letter from Phil Davies YAC to the ACMC dated 14 December 2011 (**MW-90**).

304. These letters are held in YAC's records. They are marked as indicated in the paragraph above and annexed to my statement.

305. The letters and the photos marked **MW-6** and **MW-7** have refreshed my memory of the trips to the front gate at the Mine Hub and then Ganjingarrinunha.

306. The reason that I, Thomas Jacob, Angus Mack, Lorraine, Phil Davies and Matylda went to the Mine on 25 November 2011 is because the Department of Indigenous Affairs (**DIA**) was doing a heritage investigation there. The Registrar of Aboriginal Sites at the time Kathryn Pryzwolnik was there with other people doing the investigation. YAC was concerned about the heritage processes FMG had used and we wanted show the DIA that there were more significant Yindjibarndi sites there than FMG was saying there was. I had asked Phil Davies to write to FMG to tell them YAC members intended to visit Ganjingarringunha to inspect sites that FMG had section 18 applications over. This is Phil Davie's letter dated 16 November 2011 (MW-82). My recollection is that FMG did not respond to this letter. The six of us travelled to the Mine on 25 November anyway to try to meet Ms Pryzwolnik and her team. The FMG staff at the front gate would not let us in. I spoke with Ms Pryzwolnik at the front gate. I had never felt so disrespected as an Yindjibarndi on my *ngurra*. I nearly lost my cool. I had to compose myself and look through this matter and continue to see these hurdles as a challenge. And I could see that these FMG workers were only doing what they were being told to do by their bosses.
307. After this incident I talked with the YAC directors about asking FMG for access to their tenements so we could take a team there to do our own survey. Some archaeologists volunteered to help YAC do this. The plan was to do the survey with them and a big group of Yindjibarndi People. That trip and all the letters between Phil Davies and Alexa Morcombe are what led to the meeting with Blair McGlew and Tom Weaver on 7 December 2011.
308. The purpose of the meeting was to negotiate access. YAC and the archaeologists who had volunteered to help us were planning to go there the next day. I felt the conditions FMG wanted to impose on our access were unreasonable and unnecessary. Fundamentally, I objected to FMG as a *manjangu* trying to dictate the terms on which Yindjibarndi People could do a survey on their *ngurra* when FMG was planning to destroy sites. I proposed that we be allowed on the tenements on the same conditions that Kathryn Pryzwolnik and her DIA team were when they did their investigation days earlier. Blair McGlew and Tom Weaver did not agree. I remember them saying we were a "high risk". I felt angry and powerless at that moment. In the end we did not reach agreement with FMG about access and YAC decided to go ahead with the planned survey anyway.
309. During the trip from Roebourne to the Mine site there was a plane following our cars on the Rio Tinto access road and a helicopter flying around us at Bangkangarra where we were camped.

310. On the first night we were at Bangkangarra an FMG person who I think was the Site Manager hand delivered a letter from Ken Green. That letter threatened to sue YAC for trying to access our own *ngurra*.
311. There is a track from Bangkangarra to access FMG's tenement areas. Our plan was to try and access the tenements that way to do our surveys. The track was barricaded and there were FMG staff there when we tried to do this the next morning.
312. I spoke to the FMG staff and the FMG Site Manager when he arrived a bit later. While we were talking FMG trucks dumped soil on the track to block access from Bangkangarra. I remember the Site Manager saying that if we entered the tenements then he would have to stop operations and we might be liable for the costs.
313. I discussed the situation with the Yindjibarndi team. We all felt very strongly that FMG could not deny us access to our *ngurra*. We decided not to press things any further and return to Bangkangarra.
314. The thing about Bangkangarra is that it is easy to walk to areas where you get a really good view of L47/302 and M47/1413. There is a good view of Ganjingarringunha *wundu* and the east branch of it. I went and had a look along with others on the team. I could see the general areas where FMG had made its section 18 applications. Phil Davies took the larger landscape photos.
315. On this day I talked with other members of the Yindjibarndi team about what to do. We planned to stay another day for the survey. As a group we decided to leave a day early on 10 December 2011. Given the background to this trip I did not expect that FMG would just let us on their tenements. I am glad we pushed back on FMG but the whole thing also left me feeling let down by a system that gives *manjangu* free rein. It was a disappointing way to end the trip. I felt especially bad for the archaeologists who had donated their time to come on the trip.
316. This whole episode was wrong under Yindjibarndi Law. *Manjangu* cannot dictate what happens on our *ngurra*. We cannot fulfil our responsibilities to the Minkala and Marrga under our Law if this happens. It was not just the denial of access to our *ngurra* that was wrong. The reason I and many other Yindjibarndi People wanted access was to do surveys of areas that FMG had made a section 18 application over. We had not consented to the destruction of Yindjibarndi sites in these areas. We wanted to see the area for ourselves to see what would be destroyed and to try and stop it. We were trying to exercise our rights and our responsibilities under our Law. We could not do that, and our sites were destroyed.

317. I am fearful that I and other Yindjibarndi People will be punished because we have not looked about the *ngurra*. I know what the consequences under our Law are for this. I think about Manyga Long Mack and what happened to him, his wife and other Yindjibarndi People after the Harding Dam got built.
318. YNAC did do some heritage surveys for FMG in 2021. YNAC stopped doing them when it became clear that ~~it and FMG were not going to negotiate a land access agreement.~~
319. I have looked at the following letters:
- a. letter from the Hon. Peter Collier MLC to Grant Preller FMG dated 30 June 2011 (**MW-91**);
 - b. letter from State Solicitors Office to Green Legal, YAC and Wirlu-Murra dated 14 December 2012 attaching letter from the Hon. Peter Collier MLC to Grant Preller FMG date 13 December 2011 (**MW-92**);
 - c. letter from Michael Woodley YAC to the State Administrative Tribunal dated 19 December 2011 (**MW-93**);
 - d. letter from Phil Davies YAC to the Hon. Peter Collier MLC dated 21 December 2011 (**MW-94**); and
 - e. letter from Stanley Warrie YAC to the Hon. Peter Collier MLC dated 22 December 2011 (**MW-95**).
320. They are held in YAC's records. They are marked as indicated and annexed to my statement.
321. The letters have refreshed my memory that FMG applied to the State Administrative Tribunal because it was not happy with the conditions the Minister put on his consent to one of their early section 18 applications. The important conditions from YAC's perspective were 1, 4 and 5. The Minister removed these conditions after a mediation with FMG in the tribunal. I felt very let down by this decision.

322. YAC has an audio recording of Minister Collier doing an interview on RTRFM from May 2011. During the interview he is specifically asked about the negotiation between Yindjibarndi and FMG. After saying that he has heard both sides of the argument the interview goes:

Minister: I genuinely believe that Andrew Forrest has a deep compassion and interest in terms of improving the welfare of Aboriginal people.

Interviewer: Not just for his own ends?

Minister: No, no he's not. Andrew's a personal friend of mine. I take great guidance and great, great advice from his wisdom and, you know, I am at pains to emphasise I do not think for one moment that Andrew's motives with regard to Aboriginal people are anything but altruistic.

Interviewer: Do you think that, that your friendship with Andrew Forrest is likely to compromise your position in making a good decision on behalf of Indigenous people?

Minister: Not at all, not at all. I have a very deep personal affection for Aboriginal people. I am a Kalgoorlie boy where I grew up with the Wangkayi people ...

323. Later in 2011 Minister Collier watered down FMG's section 18 consent in the SAT process and took away YAC's voice to have a say about how the Yindjibarndi sites in the area covered by the application would be managed. The Minister did not call me and ask for my advice. He was my Minister too. YAC's experience opposing FMG's section 18 applications left me with no faith in the cultural heritage process. I felt like the cultural heritage process was a modern form of dispossession. I exhibit an audio recording of the Minister's interview on the USB stick labelled **MW Ex. 1**.

324. I have looked at the following documents:

- a. notice under section 18 of the *Aboriginal Heritage Act* 1972 (WA) for the "Mining and Infrastructure Phase 8" dated 27 April 2012 (without annexures) (**MW-96**);
- b. map by FMG entitled "s16 & s18 Overview Map" dated 22 May 2012 and showing locations of YIN10-111 and YIN11-028 (site references circled in yellow) (**MW-97**);
- c. letter from Janette Tavelli Integra Legal to the ACMC dated 25 May 2012 (**MW-98**);
- d. notice under section 18 of the *Aboriginal Heritage Act* 1972 (WA) for the "Mining and Infrastructure Phase 9" dated 18 June 2012 (without annexures) (**MW-99**);

- e. map by FMG entitled "S18 Application Mining & Infrastructure Phase 9 SOLOMON Ethnographic Surveyed Areas" dated 18 June 2012 and showing location of YIN10-111 (**MW-100**);
- f. letter from Phil Davies YAC to APMC dated 2 July 2012 (**MW-101**);
- g. letter from Sharan Bhaskar FMG to YAC and Wirlu-Murra dated 6 November 2013 (**MW-102**);
- h. report by Terra Rose Consulting entitled "Report on an archaeological site avoidance heritage survey, site identification heritage assessment and archaeological salvage of HWIs YIN_225, YIN_245 and YIN_248 at the Solomon Project conducted by the Yindjibarndi Traditional Owners and Terra Rosa Consulting and prepared for Fortescue Metals Group Limited" dated November 2016 (**MW-103**).

325. Phil Davies identified these documents in YAC's records and drew them to my attention. I am familiar with these sorts of documents. The documents are marked as indicated above and annexed to my statement.

326. From the maps I recognise the general location of the rockshelters YIN10-111, YIN11-028 and TRYINPAD13-03.

327. Based on these documents I believe:

- a. FMG has made section 18 applications to destroy three rock shelters with references YIN10-111, YIN11-028 and TRYINPAD13-03;
- b. Wirlu-Murra did not object to one of the section 18 applications;
- c. YAC objected to one of the section 18 applications;
- d. archaeological studies have estimated that human occupation of these rock shelters dates between 40,000 and 53,000 years.

328. The document that estimates the dates of human occupation is the Terra Rosa Report. It is section 3.2 of the report headed "Regional Background". The sites and date ranges are in table 4 from page 17.

329. Based on comparing the maps with a recent satellite image of the Mine I believe that all these rock shelters have been destroyed.

330.I have looked at the following documents:

- a. letter from Ron Bower Corser & Corser to the Chairperson of the ACMC dated 7 December 2010 (**MW-104**);
- b. notice under section 18 of the *Aboriginal Heritage Act 1972* (WA) for the “Firetail Priority Infrastructure Area” dated 18 February 2011 (without annexures) (**MW-105**);
- c. notice under section 18 of the *Aboriginal Heritage Act 1972* (WA) for the “Firetail Priority Mining Area” dated 18 February 2011 (without annexures) (**MW-106**);
- d. notice under section 18 of the *Aboriginal Heritage Act 1972* (WA) for the “Firetail Priority Mining Area” dated 17 March 2011 (without annexures) (**MW-107**);
- e. letter from YAC to Ryan Crawford at DIA dated 19 April 2011 (**MW-108**);
- f. letter from Lisa Maher FMG to Juluwarlu and YAC dated 6 May 2011 (**MW-109**);
- g. letter from Lisa Maher FMG to YAC dated 25 May 2011 (**MW-110**);
- h. extract of minutes of ACMC meeting held on 1 June 2011 (**MW-111**);
- i. letter from Lisa Maher FMG to YAC and Wirilu-Murra dated 4 August 2011 (**MW-112**);
- j. letter from Ron Bower Corser & Corser to the Chairperson of the ACMC dated 17 August 2011 (**MW-113**);
- k. notice under section 18 of the *Aboriginal Heritage Act 1972* (WA) for the “Firetail, Conveyors and Trinity TSF” dated 19 August 2011 (without annexures) (**MW-114**);
- l. letter from Roberta Molson FMG to YAC and Registrar of Aboriginal Sites dated 26 August 2011 (**MW-115**);
- m. letter from me to Lisa Maher FMG dated 13 September 2011 (**MW-116**);
- n. letter from me to Lisa Maher FMG dated 13 September 2011 (**MW-117**) (This letter is a duplicate of the previous one: MW 5.06.23);
- o. letter from Ron Bower Corser & Corser to Registrar of Aboriginal Sites dated 16 September 2011 (**MW-118**);
- p. letter from me to the Registrar of Aboriginal Sites dated 18 September 2011 (**MW-119**);
- q. letter from Lisa Maher FMG to me dated 21 September 2011 (**MW-120**);

- r. notice under section 18 of the *Aboriginal Heritage Act 1972* (WA) for the “Firetail Central, West & Rail Loop” dated 7 October 2011 (without annexures) (**MW-121**);
- s. extract of minutes of ACMC meeting held on 13 October 2011 (**MW-122**);
- t. Wirlu-Murra media release dated 18 October 2011 (**MW-123**);
- u. fax from me to the State Administrative Tribunal dated 25 October 2011 with attachment (**MW-124**);
- v. YAC media release dated 9 December 2011 (**MW-125**);
- w. respondent’s (Minister for Indigenous Affairs) chronology and reasons for decision on the reconsideration decision dated 13 December 2011 for the State Administrative Tribunal, dated 13 January 2012 (**MW-126**);
- x. letter from Theo Hooy Assistant Secretary of Commonwealth Department of Sustainability, Environment, Water, Population and Communities to Michael Gallagher Wirlu-Murra dated 23 January 2012 (**MW-127**);
- y. letter from Lisa Maher FMG to YAC and Wirlu-Murra dated 7 February 2012 (**MW-128**);
- z. YAC press release dated 11 September 2012 (**MW-129**); and
- aa. article entitled “No legal action for FMG over sacred site desecration” dated 12 September 2012 (**MW-130**).

331. I recognise these documents. They are held in YAC’s records. I have not referred to them specifically in my statement but I believe they relate to all the things YAC was doing during this time to oppose FMG’s section 18 applications. They are marked as indicated and annexed to my statement.

332. There have been many more section 18 applications over the years. Like I said, I know YAC has opposed most if not all of them. The way FMG has managed cultural heritage over the years with Wirlu-Murra has been a huge issue for YAC. YAC has always objected to it. YAC has used lots and lots of resources – people, time and money – opposing the section 18 applications.

Division in the Yindjibarndi People

333. The community has been divided around the proposed FMG agreement since the end of 2010.
334. The division has not effected Yindjibarndi's relationship with other companies and the government. When I say Yindjibarndi here I mean YAC, YNAC and the Yindjibarndi #1 claim group.
335. YAC and YNAC has a good relationship with Rio Tinto. We have just finished negotiating a modernisation agreement with Rio Tinto, which I have talked about above.
336. YAC and YNAC has good working relationships with Hancock Prospecting, Water Corporation and the City of Karratha.
337. When these organisations want to engage with the Yindjibarndi People they do so through YAC and YNAC. They do not go and talk to Wirilu-Murra.
338. YAC and YNAC do not have a relationship with FMG. There have been a few attempts over the years since 2010 to negotiate an agreement but otherwise we have nothing to do with FMG or the Mine. FMG's only relationship with Yindjibarndi People is through Wirilu-Murra
339. The division has had many impacts in the community. It impacted on family relations and the social fabric of Roebourne. It has generated violence and trauma between families. I talk more about the impacts of the division later in my statement. Even so, it is not a total or fixed division. Outside of YAC, Wirilu-Murra and FMG some parts of life have continued as they did before Wirilu-Murra started. A good example is Juluwarlu. Even after Wirilu-Murra started elders from Wirilu-Murra came and participated in or cultural activities. Sylvia Allan used to do this. Another example is NYFL. I am the Chairperson of NYFL. I support membership applications made by Wirilu-Murra members asking for support which I approve without bringing any personal views into it. NYFL regularly grant assistance to members of Wirilu-Murra. One more example is the Pilbara Aboriginal Church. I don't go there but I know that it is a place where lots of Yindjibarndi People go to worship including Wirilu-Murra members. Together they all sit and pray.

The Division

340. I refer to the letter from Michelle Adams to Stanley Warrie dated 8 March 2010 (MW-39). Michelle Adams expresses concerns on behalf of people about various things including the misuse of YAC assets. My position title at YAC at the time was Executive Officer. After George Irving gave his long legal presentation at the YAC

community meeting on 16 March 2010 there was a heated discussion about Michelle Adams' letter. By the end of the meeting, there was general agreement from those that attended to support the process and the strategy and to support my leadership.

341. The next meeting organised by FMG in July 2010 some people such as Vince Adams agreed to go on a survey for FMG. Then Bruce Woodley, Allery Sandy and Jill Tucker announced at the meeting in August 2010 they were going their separate way. Later FMG helped these and other people set up Wirilu-Murra. I now know that Corser & Corser lawyers helped them to do this while YAC was still negotiating, with the help of the NNTT, with FMG.
342. Very quickly after Wirilu-Murra was set up, it negotiated an agreement with FMG and tried to get the broader Yindjibarndi community to authorise it. On 16 March 2011 FMG and Wirilu-Murra called a meeting to replace the Yindjibarndi #1 Applicant and for the claim group to agree to the FMG proposed agreement. Soon after Wirilu-Murra members commenced the Aileen Sandy case. John Sandy and Paul Aubrey have a current court case against YAC.
343. In June 2015 FMG and Wirilu-Murra again tried to replace the Applicant for the Yindjibarndi #1 claim just before the Yindjibarndi #1 hearing started. The resolutions for that meeting included a resolution telling the new Applicant to stop the Yindjibarndi #1 case, agree to the FMG proposed agreement and agree to non-exclusive native title rights like the Ngarluma Yindjibarndi determination.
344. In about July 2015 the Eastern Guruma filed a revised determination application over the Yindjibarndi #1 claim and overlapping claim in December 2015. This delayed the Yindjibarndi #1 hearing. FMG were involved in the Eastern Guruma's last minute applications.

Before the division

345. Before Wirilu-Murra was set up there was an Yindjibarndi community with an identifiable Yindjibarndi structure and system of authority, based in Roebourne.
346. The Yindjibarndi community was the families who were moved off the stations on Yindjibarndi county onto the Old Reserve at Roebourne in the late 1960s. Those families then got moved to the Village in the 70s. Some families went to Cheeditha Community. There was an identifiable Yindjibarndi community in Roebourne.
347. When I was growing up the Yindjibarndi community elders were from my *abigee's* generation who got moved off their country with all their families who lived in the Village. The community was strong. I saw the rules for the community were enforced by the elders and by mutual acknowledgement and respect for them. The rules

meant that any arguments did not weaken the community and were dealt with by the elders in each family.

348. At no time when I was growing up was there a division like now with Wirlu-Murra. No family or families went outside the structure and authority of the community to pursue separate ways. This was inconceivable amongst my *abigee*'s generation.

349. This community fought together in the Ngarluma Yindjibarndi case. The elders who were witnesses in that case were from all the Yindjibarndi families. That social unity did not occur for the Yindjibarndi #1. Wirlu-Murra families did not contribute that case or for this compensation claim.

350. In setting up Wirlu-Murra with FMG the Wirlu-Murra members decided not to do things within the Yindjibarndi community, its structure and the elder's authority under Yindjibarndi laws and customs.

Impacts of the division

351. In terms of people the division is between supporters and members of Wirlu-Murra on one and supporters and members of YAC, YNAC and YNL on the other. Everyone has family on either side of the division.

352. For example, the Sandys are all family to me. My *abigee* Woodley was the eldest in his family. He had a younger sister Lila. Her married name was Lila Sandy. She is the mother for Allery, John, Ken, Aileen and Ricky Sandy. They are my aunts and uncles. I was close with their Aileen's sons Birchell, Anthony and Jason Munda. They are my younger brothers. When Lorraine and I moved with our young family back to Ngurrawaana in the 1990s I saw a lot of my brothers. They were working for CDEP at the time. They would come out to Ngurrawaana for the week. As the community manager I worked with them closely. On Friday afternoons we would go shooting to get some meat for everyone in Roebourne. All of us, Lorraine and the kids included, would drive back into town for the weekend. Since the division in the community I do not have a relationship with my brothers. On the few occasions I have seen Jason he behaved aggressively toward me. He told me I was treating his mother badly. She was the one taking YAC to court!

353. Aileen Sandy passed away a couple of weeks ago.

354. Shown to me now marked **MW-131** and annexed to my statement is a photograph from the front cover of a Millstream management plan dated 2011. The photo is taken in the early 2000's, well before the division. We were at Millstream performing a dance. I am not painted up because I was singing with Ned Cheedy. From left to right the men in the photo are Ken Sandy, Preston Woodley, Chat Woodley, me,

Charlie (Weston) Sandy, Birchell Munda, Clarence Woodley and Kingsley Woodley. Ken is my uncle. The rest of us are brothers because we all have the same grandfather. Ken, Charlie and Birchell are all Wirilu-Murra members. Charlie has passed away.

355. Another example is the late Hilda Jacobs' children. Her children were Maudie Jerrold, Thomas Jacob, Jill Tucker and Annie Jacob. Maudie, Jill and Annie are still alive. There were three dads. Maudie and Thomas had different dads. Jill and Annie had one dad. Maudie, Jill and Annie were original supporters of Wirilu-Murra. Thomas was always a supporter of YAC. Thomas was a full brother to my grandmother Shirley Woodley. I am related to Maudie, Jill and Annie too through my grandmother Hilda Jacob.
356. A big impact of the division in the community has been the fighting that has come out of it. Some people have had anger and fights on the streets. There has been a lot of fighting over the years. At YAC and Juluwarlu we often heard when they were coming. Because of social media. Fights were not organised at community meetings. They got organised in people's homes and social media. Often by people who do not come to our meetings.
357. I remember Lorraine called me from the Juluwarlu office. Allery Sandy, Janice Sandy and John Sandy were yelling at Lorraine and her mum. They and some other ladies were playing cards. Angus Mack and I went up there. I saw Allery, Janice and John, and asked what was going on. John said to me "You the one who needs a good fucking hiding". We had a fight on Harding Street. He punched me in the eye socket. He ended up on the ground. His son came up to me and wanted to fight me too. He was my family, my younger brother culture way. It was not an honourable fight.
358. This fight was about the FMG agreement that was a native title issue that involved all the Yindjibarndi community. These are issues to be discussed. There are processes to follow, through PBCs and their rule books and Yindjibarndi Laws. In the past fighting was a way of solving personal disputes like beating a champion, men cheating with women, protecting family and so on. Native Title is about the nation working together not about something that can be resolved with violence.
359. Ken Sandy was one of my mentors when I was growing up and he taught me about Yindjibarndi rules of behaviour. Yindjibarndi People know that native title is not a matter to be dealt with using our fists. Wirilu-Murra members did not use violence at first, it only started when Wirilu-Murra failed to take control of YAC after a few community meetings.
360. The fight with John Sandy was not my last. I was mobbed by gangs a few times.

361. At first people were taking their anger out at me. And then they started taking it out on Lorraine and our kids. This happened around 2012 and 2013 our second youngest son Wimiya was only 10 or 12 and our youngest Wil was 7 is 16 now, our other kids Hayden, Michael, John and Finola were teenagers. All of them were bullied and got caught up in the violence. It has had a big impact on them. Lorraine has been hospitalised and traumatised by these ongoing attacks. The trauma we have experienced is part of the reason we have returned to Ngurrawaana earlier than we planned. I wanted to protect my family from the violence.

362. My family has paid a high price because of the division in the community. Sometimes I wonder if it was all worth it. What has kept me going is my belief that the work is too important. There is a bigger challenge, to fix our community and stay connected to our *ngurra* for future generations.

Court cases against YAC

363. The division within the Yindjibarndi community has been strengthened by multiple court cases taken by members of the Wirlu-Murra against YAC that have distracted YAC/YNAC from the important cases such as Yindjibarndi #1 and this compensation proceeding where Wirlu-Murra is not a party. The cases taken by Wirlu-Murra members has also drained YAC of funds.

364. The first case in the Supreme Court was the Aileen Sandy case. Aileen Sandy, Sylvia Allan and my *nyirrdi* started the Aileen Sandy case in 2011. Later my *nyirrdi* stopped being a plaintiff and said she wanted nothing to do with it. I now know that Wirlu-Murra paid for that case. Paul Aubrey said at a meeting between some YAC and Wirlu-Murra men on 28 May 2021 that Wirlu-Murra paid for the Aileen Sandy case. [REDACTED]

365. After every YAC AGM, through one of the 3 Supreme Court proceedings, there would be another pleading containing more allegations about what YAC had done wrong. One of the big issues in this case was membership of YAC. From 2011, YAC started receiving hundreds of membership applications often organised and lodged by Michael Gallagher who was then working for Wirlu-Murra. At one point there was a mediation and YAC reached an agreement with Sylvia Allen and Aileen Sandy in the first of the Supreme Court proceedings. There was a process to go through all the membership applications. I remember it took up a lot of time and resources. I remember our lawyer George Irving was very stressed during this time. The mediation agreement did not hold. YAC still ended up going to trial at the end of

2016. I was a witness along with some YAC directors and George Irving. Justice Pritchard made her decision in 2018. Aileen Sandy and Sylvia Allen won some things and YAC won some things. The Judge did not appoint a receiver, which is what Aileen Sandy and Sylvia Allen were seeking. The Judge awarded Aileen Sandy and Sylvia Allen some of their costs.

366. There was then a fight over costs that only finished this year. There was negotiation, a mediation and finally a Court hearing about the costs. YAC paid almost \$680,000 to Aileen Sandy's and Sylvia Allen's lawyers in April 2023.

367. While the Aileen Sandy case was going on there were two other court cases against YAC. The first one was by two YAC Directors at that time, Jill Tucker and Charmaine Adams. As YAC Directors, they called a YAC general meeting to replace the then Board of Directors with Wirilu-Murra members. They went to the Supreme Court to have their meeting notice upheld that related to a meeting held in November 2014. YAC opposed the proceeding. I remember the November 2014 meeting very well because Jill Tucker's and Charmaine Adams' lawyer Martin Bennett was there wearing a T-Shirt that said "yes" written on it. The T-Shirts were being handed out by Wirilu-Murra people at the meeting. The poll to replace the Board of Directors with Wirilu-Murra people failed. In June 2015 FMG organised to replace the Yindjibarndi #1 Applicant and settle the Yindjibarndi #1 claim. [REDACTED]

[REDACTED] YAC had to pay Jill Tucker's and Charmaine Adams' costs of the Supreme Court proceeding. From memory the amount was around \$100,000. What sticks out more in my memory is that they tried to get personal costs orders against me and George Irving.

368. The background to the November 2014 meeting is that Jill Tucker and Charmaine Adams are senior Wirilu-Murra people. I remember the YAC 2014 AGM went for a long time. At one point Paul Aubrey put a motion to adjourn it. It did not pass and the meeting kept going. Lots of Wirilu-Murra left the meeting then. Jill Tucker and Charmaine Adams stayed. They were nominated as YAC Directors and were appointed. Then within a month they called the November 2014 meeting to replace the YAC Directors. That was the last time to my knowledge that any Wirilu-Murra members were appointed Directors of YAC. I believe this is significant in terms of the division in the community given the democratic processes used by YAC to make decisions at YAC general meetings. Shown to me now marked **MW-132** and annexed to my statement is a copy of the minutes for the YAC AGM held on 10 September 2014.

369. The second case was one by John Sandy in the Supreme Court in about 2015.

Again, Martin Bennett was their lawyer. There were two trials in this case. The first one was for contempt of court. The second one was the substantive proceeding. I was a witness in the substantive proceeding. Justice Le Miere decided to appoint a receiver for a short period. The main thing to come out of that case was a YAC general meeting that the Registrar of Indigenous Corporations came to. That meeting voted on new directors and no Wirlu-Murra members got voted in. It is another example where at a big community meeting the Yindjibarndi People supported the leadership and general direction it was going. And again, YAC had to pay John Sandy's and Paul Aubrey's costs from this case. I do not remember what they were.

370. Before Justice Pritchard made her decision in the Aileen Sandy case John Sandy and Paul Aubrey started another case in November 2017 against YAC in the Supreme Court. Mostly the allegations they make are allegations that Justice Pritchard would not let Aileen Sandy and Sylvia Allen make because they were made too late in that first Supreme Court proceeding. YAC tried unsuccessfully to strike out this case as an abuse of process. There was also a lot of toing and froing about documents. John Sandy and Paul Aubrey wanted to use documents from the Aileen Sandy case and there was a fight in court about that. Otherwise, the third Supreme Court case has not been active until this year. In the last month or two John Sandy and Paul Aubrey have filed affidavits. YAC will need to file its evidence too. This will be challenging because of this compensation case. It was this case and the costs from the Aileen Sandy proceeding that YAC asked Wirlu-Murra to drop when we last spoke with them about reconciling in 2021. Unfortunately, the case goes on and is distracting YAC/YNAC from the compensation claim.

371. I know that in these cases the judges have found that YAC has not complied with its rule book and the CATSI Act at different times. I know there has been criticism of me and of the YAC Directors. I accept that and am happy to bear my share of the responsibility for the legal consequences. At the end of the day though I believe that all these cases are connected to Wirlu-Murra and FMG.

372. While the Aileen Sandy case was going there were parts of the Yindjibarndi #1 native title claim that I believe are related to the division in the community. The first one was the attempt by Rodney Adams, Sylvia Allan, Maudie Jerrold, Francis Phillips, Allery Sandy, Ken Sandy and Diana Smith to replace the applicant. They are Wirlu-Murra members. This attempt was a meeting held on 23 June 2015 that Justice Rares said FMG heavily orchestrated. This happened about 6 or 7 weeks before the hearing of the Yindjibarndi #1 native title claim. I remember that the

pressure at the time dealing with this and other court hearings before the trial was immense. I was very stressed and thought that the Yindjibarndi #1 applicant would be replaced, they would settle the claim for non-exclusive native title and agree to \$4 million dollars a year with FMG.

373. The second part of the Yindjibarndi #1 claim that in my opinion is related to the division in the community was the part played by the Todd family. Members of the Todd family were respondents to the claim and were funded by Wirlu-Murra. The Todds said they were Yindjibarndi and they number more than 300 people if they joined YAC as Yindjibarndi people.
374. There were two other court cases the Yindjibarndi #1 Applicant had to deal with just before and during the hearing of its native title claim. About three weeks before the hearing started the Eastern Guruma PBC, Wintawarri Guruma Aboriginal Corporation, tried to make a revised determination application. There was lots of confusion at the time about the location but Wintawarri said that a place called Satellite Springs was Eastern Guruma country. Some people call Bangkangarra Satellite Springs because that is what FMG started calling it. The Yindjibarndi #1 Applicant had to go to court about this before the hearing of its native title claim or otherwise the Eastern Guruma would have joined as a party and delayed the hearing. Justice Rares threw the case out. That was not the end of it though. Some Eastern Guruma people made an overlapping claim while we were partway through the native title case. Justice Rares threw this claim out too in 2016 and order costs against the Eastern Guruma. As someone involved at the time these court cases added an enormous burden to everyone involved on the Yindjibarndi side. Based on everything that FMG had done up to this point I believe that it was supporting Wintawarri and the Eastern Guruma People to make these claims. Wirlu-Murra did not play any direct part in these cases. However, I believe Wirlu-Murra knew what was going on. Wirlu-Murra and Wintawarri have a commercial joint venture together at the Mine for FMG. Wirlu-Murra did not do anything to help the Yindjibarndi #1 Applicant fight these cases. As Yindjibarndi People the Wirlu-Murra members had a lot to lose too if Eastern Guruma were successful in them.
375. Except for the Wintawarri and Eastern Guruma ones, these are the court cases that I believe are relevant to the division in the community. There have been other court cases too.

376. There have been numerous NNTT inquiries involving FMG that YAC has opposed. Sometimes FMG called supporting evidence in these inquiries from Wirlu-Murra members. The one where lots of Wirlu-Murra members put in affidavits against me in 2011 was a low point for me personally. When the NNTT allowed the grant of FMG's three mining leases in 2009 YAC appealed to the Federal Court. YAC lost the appeal and another appeal to the Full Court.

377. There was also the Yindjibarndi #1 native title claim. Amongst all the court cases going on around it the Applicant finished this hearing. There was a determination at Millstream in 2017. FMG appealed to the Full Court and lost. FMG then tried to appeal to the High Court and lost that too. The court cases for the claim came to an end finally in 2020.

378.

[REDACTED]

YAC has spent a lot of money on legal fees for all of these proceedings.

Wirlu-Murra's relationship with FMG

379. I have already talked about how Wirlu-Murra did heritage surveys for FMG and supported FMG's section 18 applications.

380. I believe that the relationship between Wirlu-Murra and FMG is about more than just doing heritage surveys. I believe that FMG has treated Wirlu-Murra as a valued partner over the years and it is a deep relationship.

381. Shown to me now marked **MW-133** and annexed to my statement is a report from Terra Rose entitled "Report of the Consultation Process and Prior History the Documentation of Kangeenarina Creek, Conducted by the Yindjibarndi Traditional Owners and Terra Rose Cultural Resource Management Pty Ltd for Fortescue Metals Group Ltd and Wirlu-Murra Tableland Heritage Pty Ltd on Behalf of the Wirlu-Murra Yindjibarndi Aboriginal Corporation" dated February 2013.

382. This is an example for me of the partnership between FMG and Wirlu-Murra. I did not participate in this consultation about Ganjingarringunha *wundu*. All the people who did are Wirlu-Murra.

383. Another example for me of the partnership relationship between FMG and Wirlu-Murra is the Today Tonight news story available on YouTube at <https://www.youtube.com/watch?v=ebyPMESnXnc>. The name of the story is “Fortescue Metals Group (FMG) launches Aboriginal cultural and historic research” and is dated 26 August 2014.
384. I have watched this video. I recognise the location as Bangkangarra. Nev Power called it Satellite Springs. The Yindjibarndi word is Bangkangarra. FMG did not have a hand in “re-discovering” Bangkangarra. My *abigees* taught me about it as a kid. I have known about it most of my life. I know the stories and the songs for it and the larger area around Ganjingarringunha, Garliwinyji and Gamburdayinha. I am glad Rodney Adams and Diana Smith spoke up for the *ngurra*. They are both members of Wirlu-Murra.
385. I know that Wirlu-Murra:
- has a commercial relationship with FMG;
 - has a joint venture with the Eastern Guruma PBC Wintawarri; and
 - provides contracting services to FMG at the Mine.
386. I do not know the detail of these arrangements. What I do know I have learned from talking to people, looking at the Wirlu-Murra financial reports and looking at FMG and Wirlu-Murra news.
387. Shown to me now marked **MW-134** and annexed to my statement is the most recent financial report for Wirlu-Murra available on the ORIC website. It is for the financial year ended 30 June 2022.
388. Shown to me now marked as indicated and annexed to my statement are some FMG and Wirlu-Murra media releases and publications about their commercial relationship:
- undated FMG publication entitled “The Break Through” Issue 04 (**MW-135**);
 - FMG publication entitled “Fortescue Update” Issue 01 dated January 2013 (**MW-136**);
 - Business news article entitled “Aboriginal contractors win \$200m FMG deal” dated 21 February 2013 (**MW-137**);
 - FMG media release entitled “Traditional Owners form historic mining joint venture” dated 21 February 2013 (**MW-138**);
 - letter from FMG to ASX Limited dated 6 May 2013 (**MW-139**);

- f. Wirlu-Murra newsletter entitled “Wirlu-Murra Wangka” dated June 2013(**MW-140**); and
- g. Wirlu-Murra newsletter entitled “Wirlu-Murra Wangka” dated May 2014 (**MW-141**).

389. Looking at these media releases and publications now makes me feel sad and frustrated. I strongly believe that the relationship between any *manjangu* miner and the Yindjibarndi People should be through the PBCs.

Attempts to reconcile with Wirlu-Murra

390. There have been lots of attempts for YAC members and Wirlu-Murra members to reconcile. None have worked.

2021

391. The most recent one was in 2021. The attempt in 2021 was bound up with an attempt to negotiate a land access agreement with FMG.

392. I have looked at the following documents, which are marked as indicated and annexed to my statement.

- a. notice of meeting for all Yindjibarndi to be held at the Ngurin Centre Roebourne on 4 May 2021 (**MW-142**);
- b. minutes of meeting held at Ngurin Centre Roebourne on 4 May 2021 (**MW-143**);
- c. email from Tom Weaver FMG to me, John Sandy, Rodney Adams, Paul Aubrey and Phil Davies date 9 May 2021 attaching a document entitled “Proposed Agreement Framework” dated 8 May 2021 (I have not annexed a copy of the attached document because it is marked confidential and without prejudice) (**MW-144**);
- d. minutes of Yindjibarndi working group meeting held at Wirlu-Murra office, Roebourne on 13 May 2021 (**MW-145**);
- e. minutes of Yindjibarndi community meeting held at the Roebourne 50-cent Hall on 18 May 2021 (**MW-146**);
- f. minutes of Yindjibarndi working group meeting held at the Wirlu-Murra office, Roebourne on 28 May 2021 (**MW-147**);
- g. document entitled “Truth and Reconciliation Statement” (**MW-148**);
- h. email from me to Phil Davies date 3 June 2021 (**MW-149**);
- i. email chain between me and Tom Weaver FMG with the most recent email from me to him and others dated 16 June 2021 (**MW-150**);

- j. letter from Tom Weaver FMG to me, John Sandy, Rodney Adams and Paul Aubrey dated 28 July 2021 (**MW-151**);
- k. email from me to Tom Weaver FMG dated 30 July 2021 (**MW-152**);
- l. letter from the Wiru-Murra board of directors to the YNAC and YAC directors dated 23 August 2021 (I have not annexed a copy of this letter to my statement because it is marked without prejudice);
- m. email from Tom Weaver to me dated 2 September 2021 (**MW-154**);
- n. email from me to John Sandy and Rodney Adams dated 6 September 2021 (**MW-155**);
- o. meeting notice for Wiru-Murra, YAC and YNAC meeting held at the Ibis Styles at Karratha on 13 October 2021(**MW-156**);
- p. email chain with the most recent email from Me to John Sandy, Rodney Adams, Paul Aubrey, Vincent Adams, Ken Sandy and Allery Sandy dated 19 October 2021 (**MW-157**); and
- q. letter from Tom Weaver to me dated 22 February 2022 (**MW-158**).

393. These documents are held in YAC's records.

394. These documents have refreshed my memory of the meetings and events where the Yindjibarndi community tried to come together.

395. The process started off with a meeting of a group called the Yindjibarndi Working Group. This was a group made up of some YAC men and some Wiru-Murra men. This group came out of a meeting I had with Elizabeth Gaines. We met to talk about negotiating an agreement and we also talked about bringing the community back together.

396. The general idea was to unite the community over negotiation of a land access agreement with FMG. Tom Weaver suggested a framework for the agreement with his "Proposed Agreement Framework". There was some toing and froing about this document. I have not annexed a copy of it because it was always marked confidential and without prejudice.

397. YAC insisted in this process that Wiru-Murra drop their legal cases against it as part of coming together. At the time there were two. Aileen Sandy and Sylvia Allan were still chasing YAC for their legal costs from the Aileen Sandy case. John Sandy and Paul Aubrey had the second case in the Supreme Court against YAC. Unfortunately, this was the sticking point. The YAC Board told the Wiru-Murra members of the Yindjibarndi working group that Wiru-Murra could not be part of the negotiation with

FMG if it would not drop the cases. I thought this was a necessary step to show good faith in the process. I believed that Wirilu-Murra had a conflict if it maintained court cases against YAC that FMG supported on the one hand and negotiated with YAC against FMG on the other.

398. There was an Yindjibarndi community meeting that Elizabeth Gaines from FMG attended. This was our first meeting with FMG about a land access agreement. I gave an address for the meeting called "Truth and Reconciliation". That is the "Truth and Reconciliation Statement above". Some of the Yindjibarndi women made damper in the morning and took it to the meeting. We broke bread with Elizabeth Gaines to show our commitment to these talks. I hoped that the coming together would mean we could settle and be all together with FMG for an agreement. My email to Phil Davies contains my written summary of what happened at the meeting.
399. FMG offered to provide a mediator to help YAC and Wirilu-Murra resolve outstanding matters between us.
400. The YAC directors declined the offer from FMG.
401. The letter from the Wirilu-Murra directors to the YAC and YNAC directors dated 23 August 2021 contained a proposal from Wirilu-Murra to unite as a community. This led to another meeting with Wirilu-Murra later in the year.
402. Before that happened YAC and YNAC's negotiations came to an abrupt halt when Tom Weaver emailed me to say that FMG would not attend a planned negotiation meeting because of what Paul Cleary had written in his book "Title Fight". Tom was unhappy that some information about our recent meetings with FMG ended up in the book. I do not agree with Tom that I or YAC breached any confidentiality agreement. I passed the news onto the YAC and YNAC directors.
403. I also passed on the news to John Sandy and Rodney Adams at Wirilu-Murra by email. I encouraged them keep trying to unite Yindjibarndi.
404. Wirilu-Murra members, YAC members and YNAC members had a meeting at the Ibis in Karratha. I attended the meeting. At this meeting the YAC and YNAC members agreed with almost all the proposal for uniting Yindjibarndi in Wirilu-Murra's letter dated 23 August 2021.
405. Unfortunately, the sticking point was the Wirilu-Murra court cases against YAC again. I heard through YAC's lawyers soon after the meeting at the Ibis that Wirilu-Murra was continuing with the court cases. That was the end of that attempt of trying to unite Yindjibarndi. It was the last attempt.

406. Tom Weaver did contact me again later in the year. We had been in touch a couple of times by text message about catching up to see if there was any way for FMG and Yindjibarndi to re-engage.

407. There have been no whole of Yindjibarndi meetings to include YAC, YNAC or Wirlu-Murra since the meeting with Elizabeth Gaines in 2021.

408. I have had a couple of informal discussions with Andrew Forrest this year about a possible agreement between FMG and Yindjibarndi.

2018

409. Not long after Justice Pritchard made her decision in the Aileen Sandy case YAC and Wirlu-Murra did a mediation with The Hon. Ben Wyatt MLA and Tony McRae. Ben Wyatt contacted me after the court case to suggest it.

410. I have looked at the following documents:

- a. meeting notice to discuss possible mediation between YAC and WMYAC at the Juluwarlu office on 26 June 2018 (**MW-159**);
- b. record of meeting held on 26 June 2018 (**MW-160**);
- c. undated document entitled "Yindjibarndi Aboriginal Corporation (YAC) – issues for discussion" (**MW-161**);
- d. email from Tony McRae to me and Michelle Adams dated 5 July 2018 (**MW-162**);
- e. letter from David Sanders Bennet + Co to the Hon. Ben Wyatt MLA dated 20 July 2018 (**MW-163**);
- f. letter from Lyn Cheedy YAC to the Hon. Ben Wyatt MLA dated 24 July 2018 (**MW-164**); and
- g. chain of emails with the most recent an email from me to Phil Davies, Lorraine Coppin, George Irving, Angus Mack and Lyn Cheedy dated 11 December 2018 (**MW-165**).

411. These documents are held in YAC's records. They are marked as indicated and annexed to my statement. They have refreshed my memory of the mediation.

412. The mediation was not successful. I remember having some meetings with Tony McRae just with YAC members. At a meeting I attended the YAC members came up with the "Yindjibarndi Aboriginal Corporation (YAC) – issues for discussion". The YAC directors attended a meeting with the Wirlu-Murra directors at which these issues were discussed. Wirlu-Murra had their own list of issues. Ben Wyatt and Tony McRae were at this meeting. I did not attend the start of it. I was invited in by the

directors after it had been going for a while. My recollection of this meeting is that there was a lot of agreement on issues. I felt encouraged afterwards.

413. That was the only meeting we had where we all came together with Tony McRae.

414. Tony McRae came to the YAC AGM at the end of 2018. This was the last meeting I remember from this process.

415. My recollection is that the sticking point for this mediation was the ongoing court cases against YAC.

2014

416. In 2014 YAC members and Wirlu-Murra members came together without lawyers to try and unite the community.

417. I have looked at the following documents:

- a. letter from me to Paul Aubrey Wirlu-Murra dated 6 February 2014 (**MW-166**);
- b. letter from Paul Aubrey Wirlu-Murra to the Chairperson and directors of YAC dated 11 February 2014 (**MW-167**);
- c. letter from YAC directors to Paul Aubrey Wirlu-Murra dated 21 February 2014 (**MW-168**);
- d. letter from Paul Aubrey Wirlu-Murra to the Chairperson and directors of YAC dated 26 February 2014 (**MW-169**);
- e. letter from Thomas Jacob YAC to Paul Aubrey Wirlu-Murra dated 10 March 2014 (**MW-170**);
- f. letter from Paul Aubrey Wirlu-Murra to the Chairperson and directors of YAC dated 13 March 2014 (**MW-171**);
- g. letter from Thomas Jacob YAC to Paul Aubrey Wirlu-Murra dated 14 March 2014 (**MW-172**);
- h. undated document setting out five points of agreement between YAC directors and Wirlu-Murra directors (**MW-173**);
- i. letter from Wirlu-Murra directors to the Chairman and directors of YAC dated 20 March 2014 (**MW-174**);
- j. letter from Thomas Jacob YAC to Paul Aubrey Wirlu-Murra dated 21 March 2014 (**MW-175**);
- k. letter from Thomas Jacob YAC to Paul Aubrey Wirlu-Murra dated 2 April 2014 (**MW-176**);

- l. letter from Wirilu-Murra directors to the Chairperson and directors of YAC dated 8 April 2014 (**MW-177**);
 - m. letter from Thomas Jacob YAC to Paul Aubrey Wirilu-Murra dated 10 April 2014 (**MW-178**);
 - n. minutes from Yindjibarndi community meeting held at the 50-cent Hall on 11 April 2014 (**MW-179**);
 - o. letter from Allery Sandy and Charmaine Adams Wirilu-Murra to the Chairperson and directors of YAC dated 15 April 2014 (**MW-180**);
 - p. letter from Thomas Jacob YAC to Paul Aubrey Wirilu-Murra dated 28 April 2014 (**MW-180A**);
 - q. YAC media release dated 8 May 2014 (**MW-181**);
 - r. letter from Tom Stephens Yindjibarndi Community and Commercial Limited (YCCL) to the Chairperson of FMG dated 26 May 2014 (**MW-182**);
 - s. letter from Tim Langmead FMG to Tom Stephens YCCL dated 9 June 2014 (**MW-183**);
 - t. letter from Andrew Forrest FMG to Tom Stephens YCCL date 12 June 2014 (**MW-184**); and
 - u. letter from Middleton Cheedy acting Chairperson of YAC to YAC members dated 16 July 2014 (**MW-185**).
418. These documents are held in YAC's records. They are marked as indicated and annexed to my statement. They have refreshed my memory of events relating to the meeting on 11 April 2011.
419. In the background there was an ongoing YAC membership process going on that was part of the Aileen Sandy case. There had been a mediation and an agreement reached. Part of the agreement involved following a process to consider membership applications.
420. YAC asked Michelle Broun to assist with getting some basic understanding from some of the WMYAC leaders of what was really the problem they had with YAC and what could be done to bring the people together.
421. That was the beginning of this process.
422. The YAC directors approved what I called the 5-point plan. They are the points in the letter from Thomas Jacob to Paul Aubrey dated 10 March 2014.

423. I was willing to resign for the good of the Yindjibarndi Nation and to bring Yindjibarndi back together.

424. I was very pleased the Yindjibarndi community meeting went ahead on 11 April 2011. I attended and participated in the meeting. It was well attended and some of the Wirlu-Murra leaders were there. People from either side of the fence came together at this meeting. It felt like a real reconciliation. There was a lot of agreement on the 5-point plan that had by then become the 7-point plan.

425. It was very disappointing for me that this meeting did not lead to a reconciliation in the community. There was no single event where this became clear.

426. I was reinstated as CEO of YAC a few weeks after the meeting.

427. I do not recall any more talks or meetings about the 5-point plan after Middleton Cheedy's letter.

2012

428. The first attempt to come back together was in early 2012.

429. Kerry Savas was a lawyer from Corser & Corser who acted for Wirlu-Murra. I knew him because he was working on a fly-in fly-out basis from Roebourne. I saw him around. He approached me at the beginning of 2012 and asked if I and other men from YAC would attend a men's meeting with the Wirlu-Murra men.

430. We had a meeting at Woodbrook, which is our land ground where we have our Birdarra Law ceremonies. This was followed by a meeting at the basketball courts in Roebourne.

431. I have looked at the following documents:

- a. letter from Stanley Warrie YAC to Corser & Corser dated 8 February 2012 (**MW-186**);
- b. letter from Janette Tavelli Integra Legal to Stanley Warrie YAC dated 10 February 2012 (**MW-187**);
- c. notice of YAC meeting with Rio Tinto to be held at the 50-cent Hall at Roebourne on 13 and 14 February 2012 (**MW-188**);
- d. minutes of YAC annual general meeting held on 21 March 2012 (**MW-189**);
- e. minutes of Yindjibarndi #1 claim group meeting held at the 50-cent Hall on 24 March 2012 (**MW-190**);
- f. letter from Stanley Warrie YAC to Wirlu-Murra members dated 26 March 2012 (**MW-191**); and

- g. letter from Stanley Warrie to Yindjibarndi People dated 5 July 2012 (**MW-192**).
432. They are held in YAC's records. They are marked as indicated and annexed to my statement. They have refreshed my memory of events.
433. I remember the meeting with Rio Tinto on 13 and 14 February. This was around the beginning of our negotiation with Rio that led to the agreements with them in 2013.
434. There was not a meeting after the one on the basketball courts to talk about coming together again. This meeting and the Woodbrook meeting got overtaken by all the other meetings going on.
435. I remember having the AGM and the section 66B meeting a few days apart. There was mediation going on at the time in the Yindjibarndi #1 claim. Aileen Sandy and Sylvia Allan had applied to the Federal Court to replace the applicant in the claim. That was the background to the section 66B meeting. I remember that Greg McIntyre SC was at both meetings. At the AGM I remember Greg saying that FMG was paying his bills.
436. YAC's offer to pay Wirlu-Murra \$1 million came out of the negotiations with Rio Tinto at the time. Rio agreed to release \$2 million of the financial compensation as an advance payment when the heads of agreement document was signed. Wirlu-Murra did not accept the offer.
437. Ultimately, nothing came out from all these meetings in terms of uniting YAC and Wirlu-Murra. That was very disappointing for me but I was also heartened that at the section 66B meeting a large majority of the people there to support YAC and the direction it was taking. I believe that this is a very important part of the division in the community. There has been a division since 2010 but the Yindjibarndi community at its big meetings has consistently voted to support YAC's direction.

Consultation and consent with Yindjibarndi People about compensation claim

438. I was present throughout the meeting of Yindjibarndi common law holders held at the 50-cent Hall in Roebourne on 11 December 2021.
439. On 15 February 2022, I signed a *Certificate in relation to Consultation and Consent*, in my capacity as CEO of YNAC. A copy of that certificate is annexure **SCB-37** to the affidavit of Simon Charles Blackshield affirmed 1 May 2023. I say that the text of that certificate provides a true and correct account of what happened at the meeting. Further, I say that the copies of published notices annexed to that certificate are true and correct.

440. It has long been public knowledge that the Yindjibarndi People proposed to lodge a claim in the Federal Court seeking compensation from FMG for the damage caused by the Mine. On 29 May 2021, a post from twelve months earlier was reposted on the Yindjibarndi Aboriginal Corporation's Facebook page. In that post, I was correctly attributed with identifying the "next phase" (now that FMG had exhausted its appeals against the finding that the Yindjibarndi People held rights of exclusive possession over parts of the Yindjibarndi claim area) was to "look at compensation from FMG". I was correctly quoted in that post as saying:

"We now move to prepare and lodge a compensation claim in the Federal C Federal Court."

441. Shown to me now marked **MW-193** and annexed to my statement is a screenshot of that Facebook post.

442. In the weeks leading up to the 11 December 2021 meeting, I spoke with as many Yindjibarndi People as I could, talking about the proposed compensation claim against FMG.

Signed:

A handwritten signature in black ink, appearing to be 'M Woodley', with a large, sweeping flourish extending to the right.

Michael Woodley

5 June 2023

“MW-1”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “MW-1” referred to in the witness statement of Michael Woodley dated 5 June 2023.



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“MW-2”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following three pages is the annexure marked “MW-2” referred to in the witness statement of Michael Woodley dated 5 June 2023.



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“MW-3”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “MW-3” referred to in the witness statement of Michael Woodley dated 5 June 2023.



Government of **Western Australia**
Department of **Indigenous Affairs**

ENQUIRIES: Ryan Crawford 9235 8117

OUR REF:

YOUR REF:

Mr Michael Woodley
Executive Officer
Juluwarlu Group Aboriginal Corporation
P.O. Box 111
ROEBOURNE WA 6718

Dear Mr Woodley,

REQUEST TO ATTEND INSPECTION OF POSSIBLE SKELETAL REMAINS AT WALLED NICHE IN YINDJIBARNDI #1 NATIVE TITLE CLAIM AREA, HAMERSLEY RANGE, PILBARA

I write in response to your letter to Mr Jeremy Elliott, dated 1 April 2011, regarding the identification and management of skeletal remains associated with a walled niche in the vicinity of Fortescue Metals Group's proposed Firetail Mine within the Yindjibarndi #1 Native Title Claim Area, Pilbara.

DIA was advised on 11 March 2011 by Mr Stuart Rapley, Principal Archaeologist for Archae-Aus Consultants, that the walled niche and contents had been the subject of a police investigation that day. Mr Rapley and the police officers photographed the contents of the walled niche and provided the photographs to the State Pathologist for identification. I understand that during the Police inspection the three rocks comprising the walled section were removed by Mr Rapley and the contents were photographed *in situ*. On 12 April 2011 the Registrar of Aboriginal Sites was advised that the State Pathologist had not been able to make a determination on whether the material is bone, either animal or human and has requested further information be provided to allow for proper assessment.

In order to assist the State Pathologist, DIA officers will be travelling to the location of the walled niche soon to conduct an inspection and would like to extend the opportunity for representatives of YAC to participate in this inspection. At this stage the inspection is an information-gathering exercise to better inform the State Pathologist of the contents of the niche and subsequent discussions on potential management options.

At your earliest convenience could you please advise whether yourself and other representatives of YAC wish to participate in the inspection with DIA representatives and possible dates of availability.

Yours sincerely,

Dr Kathryn Przywolnik
Registrar of Aboriginal Sites

12 May 2011

“MW-4”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following two pages is the annexure marked “MW-4” referred to in the witness statement of Michael Woodley dated 5 June 2023.



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“MW-5”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following four pages is the annexure marked “MW-5” referred to in the witness statement of Michael Woodley dated 5 June 2023.



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“MW-6”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “**MW-6**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

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“MW-7”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following four pages is the annexure marked “MW-7” referred to in the witness statement of Michael Woodley dated 5 June 2023.



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“MW-8”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
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Applicant

STATE OF WESTERN AUSTRALIA & ORS

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“MW-9”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following two pages is the annexure marked “MW-9” referred to in the witness statement of Michael Woodley dated 5 June 2023.



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“MW-10”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

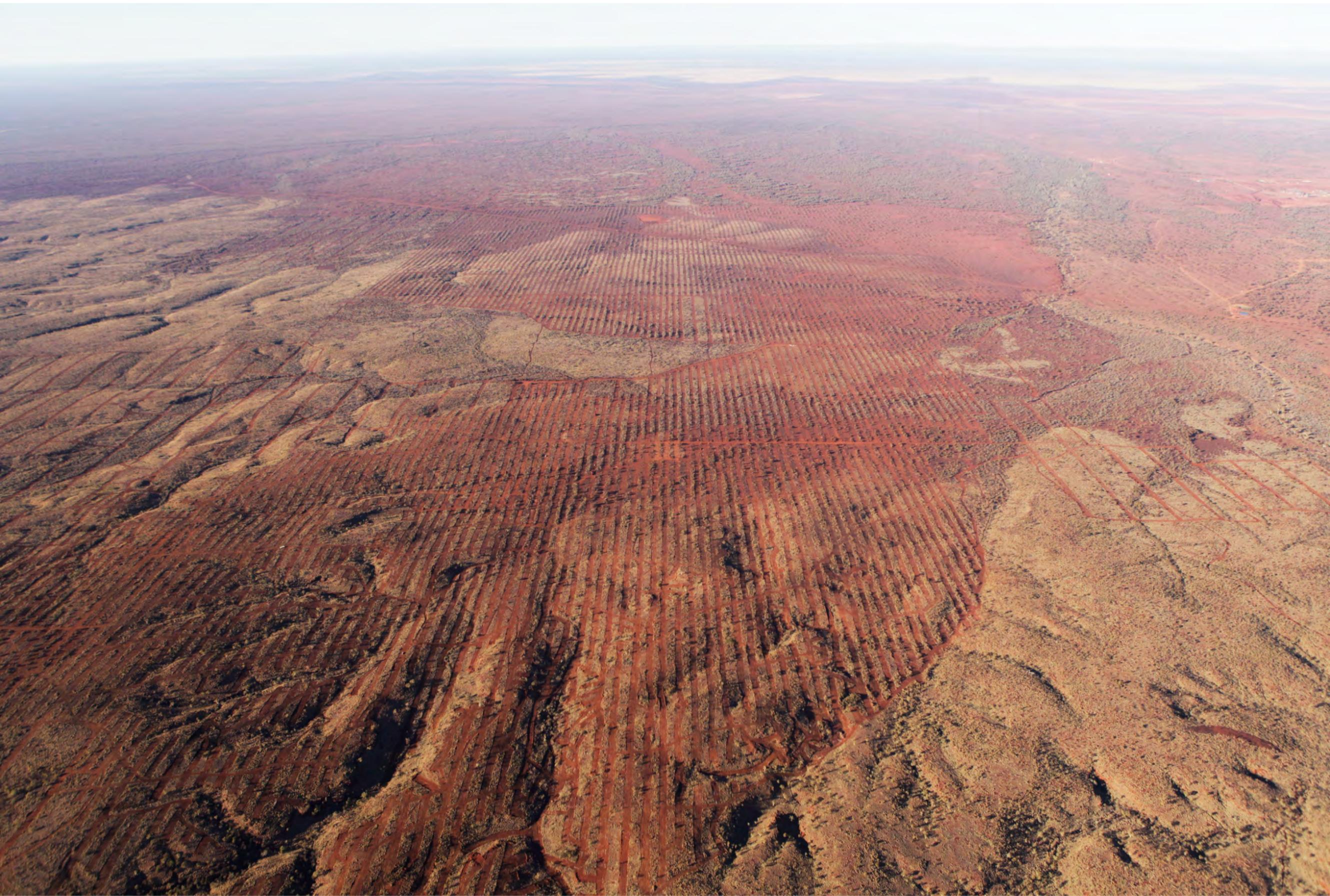
Respondents

This and the following four pages is the annexure marked “**MW-10**” referred to in the witness statement of Michael Woodley dated 5 June 2023.









“MW-11”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 32 pages is the annexure marked “MW-11” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Heirs of Exile

Part 1: *GUMBAYIRRANHA*

Facing The Mountain

...

WITH FOUR ROOTS, *YINDJIBARNDI* LAW GROWS DOWN

1. With four roots, *Yindjibarndi* Law grows down into the Ngurra:
 - a. ***Birdarra Law***—for the discipline needed to bring renewal to all living things; for modesty and being a good teacher and mentor. *Birdarra* is uplifted in the spirit of every *Yindjibarndi* man and woman who sings *Burndud*, or dances, or goes into the *Ngurra* to regenerate the life of our world.
 - b. ***Wangka***—for the river of *meaning* between us that brings us together in solidarity and strong cultural life. *Wangka* is not just ‘talk’, but listening—above all, listening to the voice inside yourself—listening to what *Ngurra* tells you.
 - c. ***Nyinyaart***—for sharing and giving, and against greed.
 - d. ***Galharra***—for respecting each other; for understanding where we belong in marriage and relationship; and for knowing what our responsibilities to each other are.
-

CREATION FLOWED FROM SONG

1. In the beginning *Mingkala*—the Creator of Creators—sang the songs from which all life and ngurra flowed—the *Burndud* songs.
2. From the deep soft ground of this song, *Mingkala* pulled up the powerful *Maarga* spirits—the *Bulinyjinmarra* and *Nayalyu* mob—and put them into the world.
3. *Maarga* themselves are the *Manggarn* of the ngurra—very tall, lean—they are filled with the creative force of *Mingkala*. They were *Mingkala*'s workers—His *Bilagurda*—skilled hands of creation.
4. *Maarga* got up and travelled through the soft world singing the *Burndud*, pulling out one song then the next—hills, rivers, plains, animals, birds, trees, the bodies in the sky, fertility sites—grew up in their track, taking shape in the powerful and joyful beat of the *Burndud*.
 - a. The first song was *Marrala Gurrbaru*—butcherbird. *Gurrbaru* calls the first light, “lifting the sky”.
 Many other songs follow:
 - b. *Yurra*—singing the heat of the sun.
 - c. *Wilara*—singing the light of the moon.
 - d. *Birndirri Barnduranha*—singing the morning star.
 - e. *Jirdha*—singing seeds and flour that make us strong.
 - f. *Bulinyjinmarra*—singing *Maarga* and *bargunyji* (python).
 - g. *Mumiya*—singing the joker-thief we cannot refuse; and who takes from those who have, and gives to the needy.
 - h. *Waramurrungga*—singing fruit bat.
 - i. *Winyarrangu*—singing bush fig.
 - j. *Thurdunha*—singing the hill that marks our western boundary, ‘big sister’, which also stands for the high degree of *Birdarra* Law.
 - k. *Mungayiya*—song for starting the marriage-partner game that follows the *Galtharra* Laws of straight marriage (tin-a-meat song).
5. These are a few of more than a hundred *Burndud* songs.

6. But more song was needed to complete *Birdarra Law*, another body of song to follow the *Burndud*. And so *Mingkala* gave the ***Yurna***. *Yurna* are the last songs *Mingkala* gave to *Maarga*, the finishing touch—*Yurna* rounded off the work off creation—sealed life and Law.
 7. The Creation unfolded—sometimes in a wild flood, sometimes in a cool dream—and was moving to completion.
 8. Today *Burndud* is sung on summer nights in the *Birdarra Law* camp, with families in earshot.
 9. *Yurna* are secret, and sung at daybreak for the initiates only, in the men's camp, on the last day of ceremony.
-

SPIRIT BIRDS, SKY DOGS, STONEMAN

1. *Mingkala* was like an old gun at the beginning of time—fearless, flying— a master waking up the soft world with song.
 2. *Mingkala* tried his hand. Sometimes failed. Tried again. Succeeded. Winds of Song swept over the *Ngurra* making and remaking the world—more beautiful, more complete with each pass.
 3. Sometimes *Maarga* fell short in shaping *Mingkala*'s song, or their work was lacking, unfinished. Something else was needed. *Mingkala* then created another class of *Maarga* and let them loose in the Creation—the Birds:
 - a. *Garranyga*—Black Kite, *Jiruna*—Pelican, *Garruragan*—Blue-wing Kookaburra, *Bardurra*—Bush Turkey, *Wawulungga*—Night Heron, *Birdarra*—White Cockatoo, *Jarnjurna*—Emu, *Jarburrungu*—Wedgetail Eagle, *Wangagga*—Crow, *Jirrijirri*—Willy Wagtail, *Yilimbirra*—Magpie Lark, *Karlamana*—White Collared Sparrow Hawk.
 - b. The *Yugurru* (*Nhawurr Wanja*): the two sky dogs given to *Bulinyjumarra*, who, along with *Jirriwi*—Echidna—came from sea and carried Law far beyond *Yindjibarndi* *Ngurra*, into the desert.
 - c. *Nyingkarranha*: The stone man who, for the sins of abusing power and monstrous greed, was burned up—the shattered pieces of his body flung far and wide over the country.

And later in the Creation—
 - d. *Barrimirndi*: the great snake who travels underground, whirlwinds rising from his track, who creates deep springs of pure water on his way, and punishes those who break Law for water places.
 4. *Mingkala* gave all these ‘creation beings’ a role in shaping the world. And their actions are written on the world, and told in our history of *becoming*.
-

TROUBLE IN CREATION—LAWBREAKERS WERE SET STRAIGHT

1. The Maarga were Good and bad. Creative and destructive. Creation was a battle of order and life, against devilry and death.
2. *Bulinyjinmarra* Maarga were open hearted—creative—the good spirited.
3. *Nayalyu*—the bad Maarga—made up their own rules—were mischievous—deadly—possessed by sexual lust that broke *Galharra* Law. They were troublemakers—rotten apples—wreckers in the Creation.

FIRST INITIATION AT BIRLINBIRLIN

1. There was no doubt about what must be done. The work of putting a stop to *Nayalyu* trouble fell to *Bulinyjinmarra*. *Bulinyjinmarra* waited for the right time.
 - a. In the bed of the river that cut through the middle of our soft world—*Yarndnyirranha*—*Nayalyu* mob came together in a spree, to eat, kick up and dance.
 - b. Slowly, *Bulinyjinmarra* Maarga stalked them, came close. Their guts tight with food, their legs falling from under them—*Nayalyu* were drunk with themselves.
 - c. *Bulinyjinmarra* leapt on the *Nayalyu* cutting them to pieces. Two *Nayalyu* brothers got away, running up the river, but could not outrun *Bulinyjinmarra* who caught them at *Jirdha*, and locked them up for Law.
 - d. *Bulinyjinmarra* Maarga sat in the riverbed at *Ganiyanha*, on the *Birlinbirlin*, and sang the *Burndud* for those two *Nayalyu* brothers—and the *Bulinyjinmarra* women danced around them through the night. When the sun got up, *Bulinyjinmarra* cut the brothers, putting them through *Nyuju* Law, teaching them respect, proper *Galharra* relationship, and rules for good life.
 - e. This was the first *Birdarra* Law—the first initiation ceremony.
 - f. But *Nayalyu* could not hold or carry the Law. The Law was too strong for them. This was the beginning of their end. Over time, shamed and defeated, they were banished and lost in the gullies and caves and deep holes of Creation. They hide away there still—wicked, harmful spirits that have many names—*Barri*. *Joonha*. *Noogangali*. *Malangngu*. *Wanda*. *Jinnagarbarri*. *Murdhungali*.
 - g. Putting *Nayalyu* through the Law was a turning point in Creation. Balance was restored.

FIRST NGAARDA

1. Song by song ... the world was dreaming... The *Maarga*, Spirit Birds, and other Creation beings played their role in making the world. Towards the *end days* of Creation *Mingkala* dreamed a new being, another worker—*Ngaarda*—Aboriginal men and women like us.
 - a. *Mingkala wangkanha Marrgayu yala nhyinda Ngarda waramagayi—Ngarda wangarrinha marwanga Marragangga wangka Mingkalarndu.*
 - b. *Mingkala* told *Marrga*, you are now to make *Ngaarda*—*Ngaarda* will come to life by your hands guided by my command.
 2. The first *Ngaarda* lived in the same raw world as the Beings who moved in the learning times—*Maarga*, the Birds, *Nhawurr Wanja*, *Nyingkarranha*, *Barrimirndi*—but *Ngaardangali* were not big actors in the Creation.
 3. *Ngaarda* had no part in the Creation of the World, but their responsibility for what would come after Creation, would be as great.
-

GUMANHA—TIME OF THE NGAARDA

1. Further up the river, at *Gumanha* hill, *Mingkala* brought together the *Maarga* Creation Beings and Birds... and *Ngaarda*.
2. The name *Gumanha*, makes the *Yindjibarndi* word, *gumawarni*, ‘coming together’.
3. The world was made in the passionate and fruitful season of song and action by the *Maarga*, Spirit Birds, and others—but a special quality was needed to keep the Balance.
4. *Mingkala* wanted to know who would carry his songs, hold the Law, celebrate and make the Creation new again, season after season, for all time—who would look after the world? He looked to *Ngaardangali*.
5. When *Bulinyjinmarra Maarga* put *Nayalyu* through *Birdarra* Law, the Law was too strong for them, *Nayalyu* could not carry *Burdud* or hold Law. They could not be trusted.
6. Now *Mingkala* needed to know if *Ngaarda* were strong enough for the responsibility of watching over the rivers, plains, hills, animals that grew up in the track of the *Burdud*—that stirred under the stars, moon, sun—that multiplied after rain.

TESTING NGAARDA

1. *Bulinyjinmarra* tried *Ngaarda* in the Law—This was the first *Birdarra* Law for *Ngaarda*.
2. *Bulinyjinmarra* was boss of the ceremony—*Jirla Jimjangnu*—driving the *Burdud*, teaching Law and sacred song to *Ngaarda*, and on the last day, *Bulinyjinmarra* initiated them, *hard way*.
3. *Mingkala* saw that not all *Ngaarda* at *Gumunha* took to *Birdarra* initiation the same way. They could carry Law—they could sing to make the world new—but they had their own ways—their own strengths and weaknesses—and *hard Law* was not for everyone.

DIVIDING NGAARDA

1. By weighing how they stood up under *Birdarra* initiation, *Mingkala* divided *Ngaarda*, and created the different *Ngaarda* Nations of the Pilbara—*Yindjibarndi*—and the many other Nations of the Pilbara.

GIVING LANGUAGE

1. In its great river of song, *Burndud* holds pieces of all languages—all *Wangka*.
2. *Mingkala* then created *Wangka* for each Nation to speak as its own—separate language that would mark their identity. *Mingkala* created the body of each language from the seeds of the *First Language*—the language of the *Burndud*.

GIVING BIRDARRA, BURNDUD & YURNA

1. At *Gumunha*, *Birdarra* Law stood as the first and only Law—and it was the pulse of the *Burndud* and *Yurna* that throbbed at the beginning of life—the Creation.
2. Who, then, would be given *Birdarra* and *Burndud* to carry?
3. When *Bulinyjinmarra* Maarga put *Ngaarda* through *Birdarra* Law, each in turn, *Mingkala* watched them: Who screamed with pain or bled to death? Who did not bleed too much? Who did not complain for the pain? Whose *wirba* (feeling/soul) was closest to *Birdarra* and *Burndud*?
4. And so it was *Yindjibarndi* who proved themselves most worthy, and were given the responsibility of carrying *Birdarra* and *Burndud* and *Yurna*. We carry them to this day.
5. Later in the Creation, other Nations, too, would be given their own Law—Law for *their* country—to carry. First *Mingkala* had to find a place in the Creation for each nation to call home—*Ngurra*.

GIVING NGURRA

6. *Mingkala* sent each of the Nations out into the lands born out of the *Burndud* and *Yurna*—each territory with its own special features and character—seaside—mountains or tablelands—greater and smaller rivers—deeper or shallower springs... .. and with each Nation *Mingkala* sent the Birds.
7. In the story of the Greed that almost destroyed *Thama*—Fire—we learn that *Jirrijirri*—Willy Wagtail—was given *Yindjibarndi wangka*, and *Julgungunha*—Night Heron—was given *Ngarluma wangka*. In the *Burndud* we learn that *Wardida*—Wedgetail Eagle—was given *Banyjima wangka*.
8. So, it was *Jirrijirri*, leading all the other birds, that showed *Yindjibarndi* the compass of their *Ngurra*; *Julgungunha* that led *Ngarluma* to their *Ngurra*; *Wardida* that led *Banyjima* to their *Ngurra*... and so, other birds for other Nations—great flocks of birds and *Ngaarda* set off into the new lands.

9. Before giving each Nation possession and responsibility for their Ngurra, *Mingkala* told the Spirit Birds to put each *Ngurra* to the test—to make sure that the *Ngurra* was alive to the *Ngaarda* and the *Wangka* for that *Ngurra*—to see that the union of each *Ngurra* and *Ngaarda* Nation was fertile and fruitful.
 10. *Jirrijuri* saw that *Yindjibarndi Wangka* and *Yindjibarndi Ngaarda*—who had shown they could carry *Birdarra* and *Burndud*—were good for *Yindjibarndi Ngurra*—all along the river we call *Yarndanyirra*—Sun Mirror—and into the mountains—*Gambulaynha*. And so it is that Yindjibarndi are *Ngurrara* for this country at the centre of creation—the holy land.
 11. In the same way, *Ngaarda* of other languages and nations were bonded to, and took on the responsibilities for their *Ngurra*.
 12. But there was more to do.
-

CREATION OF WALAJINGA INITIATION & CEREMONY

1. Yindjibarndi had been given *Birdarra Law* and *Burndud* at *Gumunha*. Now *Mingkala* gave other nations Law for their *Ngurra*.
 2. *Mingkala* turned to *Bulinyjinmarra Maarga* and told him to go to *Narngganurnha*, in the heart of Yindjibarndi *Ngurra*—Deep Reach, Millstream *Wajbala* say—overflowing and deep in water today, but in Creation times, just a small creek.
 3. *Mingkala* told *Bulinyjinmarra Maarga* to pull two plain kangaroos out of the water at *Narngganurnha*—The giant spirit kangaroos—*Bathuguthuhrra*.
 4. They call those two *Bathuguthuhrra*, *Bunumali* in the *Burndud*.
 5. With him, out of the water, the *Bathuguthuhrra* pulled out new *jina* for Law—new tracks. He pulled out *Mirlgu* Law and *Yirrgabi* Law.
 6. And just as *Birdarra* Law is driven by *Burndud* and *Yurna* song—
 - a. *Mirlgu* Law is driven by *Wallawalla* song, and
 - b. *Yirrgabi* Law is driven by *Wadilba* song.
 7. *Bulinyjinmarra* told the two *Bathuguthuhrra* to carry *Mirlgu* and *Yirrgabi* ceremony to all *Ngaardangali* who were not given *Birdarra*—who were still waiting for Law.
 8. In huge bounds *Bathuguthuhrra* travelled far from *Narngganurnha* and way beyond *Yindjibarndi* country—carrying new *jina* for Law to *Ngaardangali*. This Law tracked the country of other Nations, and gave them the power they needed to keep their land alive—*Waljingha* Law.
 9. Now the time of *Ngaarda* had truly come—all the people possessed Law to care for and renew the Creation in their own *Ngurra*.
-

THURDUNHA—BIG SISTER OF THE LAW

1. Today, the Law carried by *Yindjibarndi—Birdarra*—is called *Thurdunha*—the big sister of Law—by all other law carriers across the Pilbara, who recognise that *Birdarra* is the first Law—a Law that their Law flows from, and is tied to.
 2. Yindjibarndi say—our *Birdarra* Law started at *Birlinbirlin*—there where the Nayalyu law breakers were put through the Law.
 3. Nations that carry *Mirlgu* and *Yirrgabi* ceremony say—our Law came from *Narngganurnha*—there where *Bathuguthurra* pulled out new *jina* for Law.
 4. *Mirlgu* and *Yirrgabi* ceremony belong to the family of *Waljingha* Law.
 5. And the songs of the *Wallawalla* and *Wadilba* song cycles, flow from the first songs of Creation—*Burdud* and *Yurna*. They are different only in that they start in a different place, take a different track, mark other places in Creation.
 6. *Wallawalla* and *Wadilba* songs take a track for regenerating the *Ngurra* of all those Nations beyond *Yindjibarndi Ngurra*.
 7. When *Yindjibarndi* sing *Burdud* and *Yurna*, we celebrate the oldest language—the first language.
 8. But taken together, *Burdud* and *Yurna*, and *Wallawalla* and *Wadilba* songs, track all of the Creation through the lands of all Nations.
 9. And so this *Yindjibarndi Ngurra*—which is at the beginning of Creation and at the root of all Law—is honoured by all law carriers in the West, and East far into the desert, as Sacred.
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THE WORLD BECAME HARD

1. Their work in the soft world done, the ‘learning times’ drawing to an end—the *Bulinyjinmarra Maarga* went into the water at *Ngarrgangurnha*—into the water where they pulled out the two *Bathuguthuhrra*—but *Bulinyjinmarra* did not vanish.
2. *Bulinyjinmarra Maarga* became two—He gave himself to our world as preying mantis—the insect we call *Maarga*. And same time, *Maarga* lives as *Manggarr*—spiritual force—*inside* the world we see.
3. *Maarga* left themselves in the rock too—two arms, two legs like a *Ngaarda*, but tall—long body—arms crooked like preying mantis ready to strike—clawed feet and hands—small head with long spike curling back from the crown like a *Jurlawurdu*—spinifex pigeon—or *Wiru*—cockatiel.
4. Just as *Bulinyjinmarra Maarga* left himself in the *Ngurra* as preying mantis, all other great beings of the creation gave themselves to us as the animals we see today—*Bayuwanarra*, *Gurumanthu*, *Mujira*, *Bargunyji*, *Waramurungga*, *Jirriwi*, *Marndanyungu*.
5. After leading all the *Ngaardangali* to their *Ngurra*, the Spirit Birds too, took their worldly shape in the lands they found—*Garranyga*, *Jarburrungu*, *Wangagga*, *Jirrijirri*, *Jiruna*, *Bardurra*, *Wawulungga*, *Karlamana*, *Yilimbirra*, *Birdarra*, *Garruragan*, *Jarnkurna*.
6. Now the soft world became firmer, harder.
7. Every hill, rockhole, ridge, riverbed, gully, gorge, cave, dirt plain, rocky flat, cliff—settled down—became country fit for *Ngaarda* to walk on and live in.
8. At *Birlinbirlin*, in the bedrock of the River, the *Maarga* left signs of the most powerful events of Creation: *Wilara*—Moon. *Yurra*—Sun. *Birndirri* *Barnduranha*—Morning Star. *Galtharra*. *Barri/Nayalyu*—demon spirit. And the *Burndud* ring—where the men sang and the women danced the first *Burndud* to discipline the troublemaking *Nayalyu*—the birthplace of our *Birdarra* Law.

BIRDARRA & BURNDUD CEREMONY—WOODBROOK

1. But Creation of the world did not take place once and for all time, but takes place every day.
 2. Now, in the hard world, it falls to us, to *Ngaardangali* alone, to sing the songs and hold ceremony that renew life from season to season, generation to generation.
 3. And behind the face of this world—always *Manggarn*—spirit—life force—of the *Maarga*, Spirit Birds and other Creation beings—watching us... Filling us with power and joy when we honour the dream—cursing us with pain and sickness when we betray our birth right.
 4. Cooking on the coals and crawling at our feet, are the animals and insects who, in another time, shaped the Creation—reminding us that the greatest, and the most powerful, are also the most humble, and defenceless.
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YINDJIBARNDI LAW—POWER TO CHOOSE RENEWAL AND REGENERATION

1. Our elders called *Ngurranjunggamu*—‘the learning times’—because it is from *time before time* that *Birdarra* Law, lessons for good life, and respectful behaviour came to us—*Before* whiteman stole our Ngurra—*Before* mining—*Before Ngaardangali* were rounded up in camps and government ‘reserves’—*Before* our people were poisoned by money and grog.
 2. *Yindjibarndi* possessed Law and knowledge for good life *Before* White Law ‘went over us, covered us’—before it started eating at the spirit of our world.
 3. This White Law puts the dollar before respectful relationship—wrecking before renewal—domination before humility—the individual before the people—possession before sharing.
 4. In *Birdarra Law* given to us by *Mingkala*—Yindjibarndi have the power to choose *renewal* and *regeneration*—*respect* and *humility*.
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BIRDARRA & BURNDUD IN FULL SWING

INTRODUCTION BIRDARRA

[SUPER: WOODBROOK LAW GROUND, SOUTH OF ROEBOURNE]

1. For all of us—men, women, girls, boys—our *learning times* start with our first words and first steps, within our close family, where we learn the ‘*values*’ held in *Galtharra*, *Nyinyaart*, *Wangka*—values that will guide us and support us as we grow—the Roots of *Yindjibarndi* Being.
 2. These *values* can be seen in action in *Birdarra* Law ceremony, where, when our boys come of age, *Yindjibarndi* people—but others who follow *Birdarra Law* too—come together to perform ceremony—to initiate their boys into higher, more serious responsibilities.
 3. In this ceremony, each *Birduwangu*—each *boy-becoming-man*—begins a lifetime journey of learning, working for, and putting into practice the *Birdarra Law* given to us by *Mingkala*.
 4. Each *Birduwangu* takes on the never-ending responsibility of working for the Creation.
 5. Without their work, the *Yindjibarndi* world will end.
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YINDJIBARNDI TEACHINGS—BIRDARRA

SUPER: BIRDARRA

6. To guard and serve the Creation—this was the responsibility given to *Yindjibarndi* at *Gumanha*.
 7. And *Birdarra* Law is the universe of song, knowledge, ceremony and discipline given to the *Yindjibarndi* People, to fulfil their sacred duty of bringing renewal to *Ngurra*, and to all living things.
 8. Birdarra is nothing without action. If *Yindjibarndi* people do not use their strength, full attention and instinct to fulfil the promise of renewal—*Birdarra* is hopeless.
 9. When *Yindjibarndi* people devote themselves to *Birdarra*—it is the unifier—it brings order to our lives—it stands like a tree at the centre of the *Yindjibarndi* world. And the roots of *Birdarra* are—*Wangka*, *Galharra*, *Nyinyaart*, *Birdarra*.
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YINDJIBARNDI TEACHINGS—WANGKA

Super: WANGKA

1. *Wangka* is talk—but more than talk—is Yindjibarndi language—and much more than language—*Yindjibarndi Wangka* is the key that opens our *wirrard* (spirit) to Creation—and the other way—*Wangka* opens the Creation to *Yindjibarndi wirrard*.
2. *Yindjibarndi Wangka* is a sacred seal—word sworn on one’s life. *Wangka* cannot be given lightly. *Yindjibarndi Wangka* is a vow that—dishonored or betrayed—risks of death.
3. When given, *Yindjibarndi Wangka* is like *Warduarrara*—halo—that covers and protects *Yindjibarndi* People and *Ngurra* like a shield—a charm.
4. In *Tuninyjarri*, *Wangka* reveals free spirit—In *Tuninyjarri* language rises and falls like song that sends the meaning and joy of the words into your heart, where they will always stay with you.
5. *Yindjibarndi Wangka* holds many secrets and lore:
 - a. ***Wathan*** is leaves. *Wathan* is also lungs. Leaves that breathe for the trees like lungs breathe for *Ngaarda*.
 - b. ***Birdirra*** is Law, but also the bed of leaves where *Garnggu* sit, and over which the *Nuju* walk to their beds. *Birdirra* is also white galah or corella—under the tree where *Birdirra* roost you will find a bed of leaves too.
 - c. ***Marndanyunggu*** means ‘belonging to the mountains’. *Marndanyunggu* describes the *Yindjibarndi* people who belong to the high country, but also names the hill kangaroo—*Marndanyunggu*.
 - d. ***Marndamarrangga*** means ‘stone hand’ and is the *Yindjibarndi* word for Policeman from Colonisation when police came with chains of iron in their hands—*Marndamarrangga*.
 - e. ***Guna*** is shit. ***Gurnan*** is the seam of black ochre in the banks of the river at Millstream—sacred ochre—which is the shit of water snake—*Barrimirndi*. *Gurnan* is a powerful rainmaker used by Lawmen to raise up *Barrimirndi* with rain, and is rubbed over the body of the *Nuju* during ceremony too. If *Nuju* washes, and water touches *Gurnan*, *Barrimirndi* knows straight away. That is forbidden, because *Nuju* must never wash in the river. The Law of *Gurnan* protects the *Nuju* from infection.

- f. **Bardu** is feather. **Bardurarra** means ‘feather maker’, and describes the work of a *Mawarnkarra* to revive, using the feather of an eaglehawk, a victim who has had their neck screwed. *Mawarnkarra* also use feathers of Emu (*Jarnkunha*) and White Cockatoo (*Birdarra*) in ritual for leaving their body and travelling to the target of a death warrant.
- g. Just as **birndu** (food) both fortifies *manggarn* (the spirit), and satisfies hunger—**Ngarlu** is stomach, gut, the basket of a man’s intestines, and also the engine of spiritual power. Body fat clinging to intestines is the essence of power, as is fat around the kidney. When men **Ngarlumagu**—are folded in each other’s arms and give each other their guts, it is a greeting—a meeting of spirits—an opening of one’s *Manggarn* to another in trust.
- a. This greeting—between relatives of the deceased; or meeting after long absence—is also called **Binyjumagayi**.
 - b. But **Ngarlumagu** also means to kill with the power of *Mawarn*—spiritual power. *Ngarlumagu* is to strike with spiritual power.
 - c. *Ngarlumagu* is also taking out the gizzards of an animal ready for cooking.
- h. **Thalu** is sacred place for ceremony to make a thing in the Creation many or stronger—more turkeys, brighter moon. But *Thalu* also means to ‘tame’; and it can mean pet. **Thalumagu** means to tame a dog—and also mean to drive a *Thalu* site.
- a. **Thalungali** is also used for animals. *Thalungali* are all the animals of the Creation under you protection and care.
- i. **Ngurra** is earth. *Nyuju* is soft. And **Ngurranyujunggamu** means ‘time when the earth was soft’. *Yindjibarndi Wangka* remembers an age before life when the earth buckled and boiled, flowed like the tide. A formless wilderness tamed by *Burndud*. And *Nyuju* also means newly initiated boy. A boy ‘soft’ and immature in the knowledge of *Birdarra* Law. Like the world, he too will be seasoned by *Yindjibarndi Ngurra* and tamed by *Burndud*.
6. Without *Yindjibarndi Wangka*, *Ngurra* is silent, cannot truly be seen or heard. And without *Ngurra*, *Yindjibarndi* language is **wangkawaji–wangkabirdi–wangkawirru...** it is barren, meaningless nonsense. Without *Wangka*, *Yindjibarndi* are powerless in the Creation.
7. Together, *Yindjibarndi Wangka* and *Yindjibarndi Ngurra* dance like **Wanangga**—wind on the back of the water snake.

8. When *Yindjibarndi* ride Wangka *into* the country—we sink *Jila* (roots). This dance between *Wangka* and *Ngurra* gives *reality* to life—It gives *identity* and purpose. In this connection *Wangka* becomes a fuse for life. It lights a fire that stirs reverence and fear for the Creation, and at the same time warms *Yindjibarndi* life from inside.
9. Without *Jila*, *Yindjibarndi* *Wangka* blows around like a beggar in the hungry culture that hooks us, grabs our throat—*Wajbala* culture that wants to buy us, swallow us, sell us—that knows the dollar-price of everything.

WANGKA MAPS BOUNDARIES

1. In *Yindjibarndi* names for hills, rivers, gorges, springs, plants, thalu—we have our map for *Yindjibarndi* *Ngurra*. The *Wangka* tells us how far our boundary goes—and where the territory of our neighbours—*Banyjima*, *Gurrana*, *Ngarluma*, *Kariyarra*, *Nyama*—starts.
2. When *Yindjibarndi* move through country, language and song rise up out of the ground—fills our ears. We can hear the sound of the *Ngurra* and know it is *Yindjibarndi*. But when we cross over to *Banyjima* or *Gurrana*, say, there's a different sound—a different song—you can hear it. Each *Ngurra* has its tongue.

WANGKA & LEADERSHIP—MIRRANGKANHA

1. *Yindjibarndi* sorted out problems on the Old Reserve themselves, and with others who shared *Birdarra*. We didn't call a policeman or lawyer. There *Mirrangkanha*—our elders—carried Law. Their authority was never debateable, or in question. *Yindjibarndi* walked along the road of consensus—unity—solidarity—and strong cultural life, inside the kingdom of *Yindjibarndi* *Wangka*.
2. Within this stronghold of *Wangka*, *Wajbala* could not trespass. *Wajbala* lie and talk about money in English—not in *Yindjibarndi*.
3. *Birdarra* Law is not a free-for-all that can be played by individuals for their own benefit. *Birdarra* Law is not 'anybody's'. It follows codes of honour, in which force is last.
4. A good leader does not stand over the Law ground, he is a humble master in the house of *Wangka*, open to advice, willing to listen. Same time, *Mirrangkanha* is clear and firm so doubt does not debase Law.

WANGKA IS THE BREATH OF CEREMONY

1. From the day the Mother & Father give their go-ahead, men and women gather at every stage, to steer the ceremony:
 - a. agree whether the *malulu* will go through *warmalu* or *nuju*;
 - b. mobilise all the *Jinjanganu* workers;
 - c. make sure the right *Marnygaji* line are ready to grab the boy, lock him up;
 - d. carry word out ahead to the law camps up the line so they are ready to receive the boy on his journey of learning;
 - a. manage *Marnygaji* lines—choose the right *Marnygaji* to perform the initiation;
 - b. and finally, after the business is done and the boy is back with his family in the *burnda—Miyangurr*—when everyone gathers around to witness the *Marnygaji*—so everyone knows their avoidance-respect relationship with the *Marnygaji*.
- c. If there have been mistakes—when *Jinjanganu* are lazy or careless—when *Marnygaji* too close to *Ganngu* have been chosen, and family could be isolated from each other, or exiled in their own community by *Marnygaji* avoidance law—there is a place for *Wangka* after *Miyangurr*, when the aggrieved can point the finger, get it off their chest; when wrongdoers have a chance to come clean—when exceptions to *Marnygaji* avoidance can be negotiated, and everyone can let the bad feeling go once and for all. That is the Law of *Wangka*.

MIRRANGKANHA IS THE EYE OF MANY VOICES

1. Everybody drives *Birdarra* Law and *Burndud*. *Birdarra* is weak when knowledge is in the mouths of too few—supreme when lawmen join their voices together. *Burndud* is nothing in the voice of one—but attains power in the voices of many.
2. A *Yindjibarndi* Law boss—*nyambali*—is not self-made. He rises on the tide of voices that hear, and the hands of Lawmen that weigh his character over many seasons. Only with the support of these hands and voices, is *Mirrangkanha* able to bear his responsibilities.

WANGKA INSIDE

1. When we lose *Yindjibarndi Wangka* the world grows dull. *Yindjibarndi*, *Birdarra* and *Burndud* are hushed in the Creation. *Ngurra* becomes barren, lonely. And the emptiness is filled with grief, sickness, madness—we see this all around us today.
 2. But the madness will never rule our world if *Yindjibarndi* keep *Wangka* in their *wirard*—if *Yindjibarndi* listen to the voice inside themselves—listen to what *Ngurra* is telling us.
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YINDJIBARNDI TEACHINGS—GALHARRA

SUPER: GALTHARRA

1. *Galharra* Law is for dignified and honest relationship, not only with blood family, but everyone who comes from *Ngurra*.
2. *Galharra* tells us our rights; who we can marry; how to carry and fulfil our responsibilities; and our role in *Birdarra* ceremony. It is Law that governs the whole life of *Yindjibarndi*.
3. ***Banaga, Burungu, Garimarra, Balyirri***—Since *Marrala Gurrbaru* called the first light—every animal, every plant, water place, the sun, the moon, the stars, fire, wind, *ngurra* and *Ngaarda*—everything that is *Yindjibarndi* belongs to one of these groups. *Galharra* makes one family of them all.
4. *Galharra* is a code of *belonging*—it fits everyone in.
5. A baby's *Galharra* is made by the *Galharra* of his or her parents:
 - a. A *Banaga* man marries a *Burungu* woman and their children—boys and girls—are *Balyirri*. A *Burungu* man marries a *Banaga* woman and their children are *Garimarra*.
 - b. On the other side, *Garimarra* men marry *Balyirri* women and their children are *Burungu*. *Balyirri* men marry *Garimarra* women and their children are *Banaga*.
6. In the *Ngaarda* world relations outside *Galharra* are impossible—you cannot be *Ngaarda* without knowing your duties, rights, role.
7. *No Yindjibarndi can be Garmburra—an orphan*. Everyone has a Father and a Mother—though your birth mother and father might have died—or run away. The *Wajbala* idea that a child might be orphaned, is as fearful as death to *Ngaarda*.
8. Our brothers and sisters, who were born to station squatters or mining workers—white men who abandoned their kids—all those kids have fathers—are all fitted into Law—were never cast out or alone... .. except when poverty and the government took some away.
9. That can never be in *Yindjibarndi* Law—no-one should be so poor, so isolated from support or discipline of wider family, or so powerless that children are taken from them. That disgrace belongs to *Wajbala* Law.

10. When *Manjangu Ngaarda*—strangers or visitors—come into *Yindjibarndi* Country—into our community—they are met by *Yindjibarndi* Lawmen and Law-Women, who fit them into our community. This is *Binjimagayi*—the visitor is connected to one of the four *Galharra*.
11. *Galharra* is our ‘bond’. Our identity. Without connection through *Galharra* we might have everything—big money, fancy job, flash car, big name—and yet, be nobody—Without *Galharra* we are poor, blind, naked.
12. *Galharra* gives discipline and order to relationships—and also freedom and play. *Galharra* tells you where reserve and care is needed—and where you can be more free, say with—*Mali, Abiji, Tami, Gowali, or Kunderi*. And so, according to *Galharra*, the education of a child has two schools—the serious and the playful.
13. At the heart of *Galharra* relationship, always, is *respect*.
14. When *Galharra* breaks down there is no end to argument, violence, abuse of power, family breakdown, tears.

GALHARRA ON THE LAW GROUND

1. In the *Birdarra* ceremony—and in the relations between everyone who meets on the Law ground—*Galharra* can be seen in action.
2. According to their *Galharra* and relationship to the *Birduwangu*, each man and woman know if they are *Jirnjanggnu*—the brothers, sisters, cousins, grandparents for the *Birduwangu*. If they are *Jirnjanggnu* they serve the mothers and fathers of the *Birduwangu*, and do the work of the ceremony.
3. *Garnggu*—those in mother-father or uncle-aunty relationship to the *Birduwangu*—guide the *Jirnjanggnu*—receive the ceremony—rest in the camp and open themselves to *Manggarn* that rises up in *Birdarra*, to take their sons.
4. *Jirnjanggnu* will build the *yartha*, fetch and spread *warthan* on the *Birdarra*—dig the *burnda*—get firewood—collect ochre and other sacred gear—paint the *Garnggu* with *marni* and stay *Murrumarniya*—collect *Gamari* (food) for the *Birduwangu* and his Law party, for their journey of learning to other Law camps. *Gamari* shows law bosses that the *Garnggu* mother and father are serious about starting the ceremony. *Jirnjanggnu* must spread word of the meeting on their journey, and bring mobs back for the final part of the ceremony—and look after the *Birduwangu* all the way through...

5. Whether *Jirnjangu* or *Garnggu*, *Galharra* will tell every *Ngaarda* in the ceremony what to do—where they sit on the *Birdarra*—if they sing and dance down the river and then, surrounding them like a cyclone singing, lead them back to the family with the *Walimarra* song; or if they stand at the head of the *Birdarra* to receive their brothers.

GALHARRA RESPECT

1. *Respect* is drawn from deep in the well of *Galharra*. In singing *Burndud*, it is never about *what you know*—about how many songs or how much knowledge you carry in your head, how good a singer you think you are—*Respect* is the gift of feeling those around you—for their wisdom, everything they might offer—or for their fear and inexperience and everything they might learn—and in seeing this, knowing how to lead or how to step back, and make room.
2. *Respect* is knowing your place. Waiting your turn to shine. Our old people said—*Barni Bulungga*—sit, be quiet, show respect. Know self-control. If you are younger, or you are *Manjangu* or visitor, you should hold your tongue, wait until your time to speak comes.
3. Bigheads or show-offs are not tolerated in the *Burndud*. This is *Gurnduwaranha*—disrespect, thoughtlessness to elders present and past. *Respect* cannot be begged or asked—respect grows like a flower in a garden of unselfish, mindful spirits.

MARRIAGE

4. In **marriage** choice of partner must be made from the *one* of the four *Galharra* that is straight for you—meant for you—your *Nhuwa*. The other three *Galharra* are forbidden to you.
5. When wrong-married, the place of a couple in ceremony is clouded, confused—because the blood father must stand aside in the *Birdarra* and a straight *Galharra* replacement takes his part next to the mother. This causes hurt—especially to the son whose blood father is not at the head of the *Birdarra* to receive him.
6. Wrong-marriage pits a couple against the odds—unhappiness—break-up—birth defects—bad luck...
7. The old people were very serious, very frightened, when kids who were not straight got together—this caused fights between families that ended in maiming and even death.

8. Understanding your *Galharra*, marrying the partner that is straight for you, makes for strong Law and happy *Birdarra*, and earns you respect in the community.
9. Wrong-married parents burden their children, who, all through their life, face the frustration of not knowing how they should relate to others—caught between respecting or following the *Galharra* of their mother... or their father.
10. Wrong-marriage is a sickness in the body of *Birdarra*—a lawlessness and disorder that, once spread too far, kills *Birdarra*—wrecks the system of relationships and obligations that rule us in our work of regenerating the world.
11. Straight marriage gives good fortune. Sex, communication, feeling, are richer, sweeter, more fruitful when *Galharra* is straight. The food your *nhuwa* cooks will taste better, and the man will be a better hunter—***Gurnmairdi***.

MUNGAYIYA

1. In the *Burdud* there is ***Mungayiya*** (tin-a-meat song)—a song for the sex-partner game. This song speaks of *Galharra* Law for straight marriage. But *Mungayiya* goes to *respect* too—*Mungayiya* goes to balance of power. In this ritual, men must *surrender* to the power of all the *Garnggu* mothers who rule the *Birdarra*. *Mungayiya* puts the men in their place—pinned to the ground under any straight woman who wants them—understanding the limit of their authority.

ANIMAL GALHARRA

1. *Galharra* gives Law not just for relations between *Yindjibarndi* people, but between *Ngaarda* and animal or plant, water place, ngurra, food, *murla*—all these relations are bound by the *Galharra* Law of *respect*.
2. Plain kangaroo, *Bayuwanarra* - is *Garimarra*. Hill kangaroo, *Marndanyungu* —is *Balyari*. Wedge tail eagle, *Jarburungu* - is *Garimarra*. Bush Turkey, *Bardurra* - is *Burungu*. Goanna, *Gurumarntu* - is *Burungu*. Perente goanna, *Bandawayi* - is *Bananga*. Catfish, *Ganggurja* - is *Burungu*. And so all the animals, and plants have *Galharra* too.
3. When we drive a fertility site—*Thalumagu*—to regenerate life and renew Creation, *Galharra* tells us how. Men and women who perform the ceremony must be straight for that site—in correct *Galharra* relationship with that site—whether for *Bayuwanarra* or *Gurumarntu* or *Bardurra*.

4. If the ceremony is powerful and the spirit of the *Yindjibarndi Thalu* driver is *alive* to that *Thalu*, then *Ngurra* will give. Creation turns—the country will be plentiful with *Bayuwanarra*, *Gurumanthu*, *Bardurra*.
5. When *Yindjibarndi* kill *Bayuwanarra*, we kill a *Garimarra*. When we kill *Gurumanthu* we kill a *Banaga*. When we kill *Bardurra* we kill a *Burungu*. When we kill *Marndanyungu* we kill a *Balyari*.
6. *Yindjibarndi* feel *Galharra* that runs from one to the other—from *Ngaarda* to animal—animal to *Ngaarda*. *Yindjibarndi* receive meat from *Ngurra* as a blessing, and deeply respect this gift.
7. When we *Ngarlumagu*—give our *ngarlu* (stomach) to *gurrumanthu*—skin to skin—heart to heart—we give thanks and acknowledge the bond between us. The gift of meat from the *Ngurra* is never just food for our stomach—its is a union of our spirits.
8. If *Ngurra* gives us *jirriwi*, before we kill, we must ask *jirriwi* to give himself to us—and then he will open, uncurl, and show us his chest scars, it is there we must strike him. And then we sing the *Manjubi* song as we turn him over in the fire, so that his quills will fall out easy, and he will be smooth, ready for the earth oven. Fail to *respect jirriwi* with song and feeling, and his death will be tortured, his quills will spite you, and his spirit will be lost—and then, *Jirriwi* will trouble your dreams, roam through your guts and your camp looking for his body.
9. It's the same with any animal we kill. *Yindjibarndi Galharra* Law is eternal bond that reaches from life, through death, to after life—bringing *Ngaarda* and all things in Creation into the same circle.
10. *Respect* is also in the discipline that forbids some people eating an animal.
 - a. If a man or woman was conceived by a particular animal spirit—say, *ganggurija* (catfish)—they would not eat catfish because relationship is too close.
 - b. *Jirriwi* is *nganjali*—forbidden to young girls, who, if they break this Law, will have long, hard labour in childbirth.
 - c. *Bayuwanarra* is forbidden to children, to young men and young women, who, if they eat *bayuwanarra*, will grow old before their time. Nor should *Bayuwanarra* be eaten by anyone before swimming in *yinda* or anywhere along a river running from that *yinda*—because *bayuwanarra* belongs to *Barrimirndi*, the Creation being who made permanent water places.

- d. *Jarnkurna* (emu) is forbidden to boys until they have been initiated—when they are finished and ready to be released from the Law camp, the taboo is lifted in ceremony where emu fat is rubbed over their body. In this way the *Nyujju* are welcomed by elders into the brotherhood of men, and to the privilege of eating emu. Pregnant women are forbidden *jarnkurna* too—if they eat *jarnkurna* delivery will be painful and the baby might have inborn sickness, allergy or birth defect. And in wintertime no one hunts *jarnkurna* because the mothers are laying eggs and the fathers are sitting on the nest.
11. This discipline means that there is no free-for-all on eating *ganggurija*, *juirriwi*, *bayuwanarra*, *jarnkurna*. Through respect relationship the gift of their meat can not be taken for granted. *Nhugangali*—it is forbidden to you—or—*Nayumbarra*—you eat the animal only when that meat is right for you—is yours.
12. *Galharra Respect* promises that *Ngurra* will continue to give us meat—and the Creation is preserved.

NGURRA GALHARRA

1. *Galharra* makes sure we are straight with, and safe in country. All through the ngurra there are places loaded with power—a *Thalu*, hill or *Yinda* that was charged with spirit in the Creation times—and is loaded with that force. All *yindangali* have *Galharra*, so when a mob approach that *Yinda*, the man who is brother—same *Galharra* as the pool—must go first—speak to the *Manggarn*—let the *Manggarn* taste him. Then his family can follow.
2. A child might drown, sickness, accident, no fish—bad luck *Wajbala* might say—no—that is what happens when people are not conscious, forget where they are, do not care, *fail to show respect*.
3. When you rip out a plant for *jami* or cut a tree for *wirra*—*Galharra* and respect again. That *Jami* and *wanda* were put there by *Mingkala* in the Creation—to rip it or cut it is not a free right for anyone. *Jami* knows. *Wanda* knows if you are *Yindjibarndi*—if you belong—if you work to regenerate the creation as easily as you use it up. *Ngurra* knows if you take and a use without respect. If you are ill the *jami* will not heal you. The wood will split and splinter, go against you.

4. Finally, when you are finished and your spirit goes its way, and your body goes in the ground—it will be *jimjangu*—your *Galharra* brothers or grandchildren—that shovel the dirt. And your close family, in their grieving that will fast—stop eating some animals—until Law and ceremony releases them—allows the spirit of that animal to pass their mouth again.
-

YINDJIBARNDI TEACHINGS—NYINYAART

SUPER: NYINYAART

1. *Nyinyaart* is duty and obligation to meet the need of another—*Ngaarda*, birds, animals, trees, water places—the *Ngurra* itself.
2. It is a duty to the wellbeing everything and everyone *but yourself*.
3. “*I look after you. You look after Me. We look after the land. The land looks after us.*”
4. *Nyinyaart* does not expect return or reward—No—it stands on the knowledge that only the wellbeing of the group allows your well being as one man or one woman.
5. Keeping for yourself something that is extra to your needs, something another needs and is important for their support, wellbeing and health, is *Greedy, Heartless, Callous, Cruel*, in the Law of *Nyinyaart*.
6. *Nyinyaart* goes beyond the giving of things—it is about having care for someone, being there for somebody, even when you have nothing to give. With nothing in your hands and nothing to say, standing beside someone is enough. Offering your spirit is *Nyinyaart*. Togetherness is *Nyinyaart*.
7. For Yindjibarndi, and all *Ngaarda* who keep the Law that was given at *Gumunha*, turning your back on *Nyinyaart* is unthinkable—it is the worst.

NYINYAART IN THE LAW CAMP

1. In the *Birdarra* Law camp, if it is happy, *Nyinyaart* is everywhere.
 - a. Law brothers supporting each other in the work of the *Jirnjanggur*,
 - b. Families and friends who have come a long way, together in camp, close in each other’s company—sharing joys, miseries, complaints—everything they have;
 - c. Hunters bringing emu, kangaroo, bulliman—anyone with cash chucking in for stores—all shared with those who need food.
2. *Birdarra* ceremony without *Nyinyaart* is stillborn—an empty act robbed of the creative and healing spirit—because *Birdarra* is nothing without full and free participation, reciprocation, cooperation—the fulfilment of ones *Galharra* responsibilities and relationship to *Garnggungali* and *Nyujungali*.

3. *Birdarra* marks the end of childhood—and the beginning of responsibility. The lawman touches a novice on the shoulders, chest, back—this tells him, ‘*you come to the wundu to learn*’—it is *Nyinyaart* that tells the novice he is now a channel for Law—he has a voice—he must make decisions.
4. In singing *Burndud* there is *Nyinyaart* in the passion and joy younger men offer up in their voices to the paddlers—the masters and directors of song. And the other way—the patient teaching and encouragement given by elders to novices—talking each song through between sets—is *Nyinyaart* in sharing knowledge
5. *Nyinyaart* declares that all generations have the same entitlement under the Law. Elders or Lawmen have no more entitlement to the wonders of Creation than a newborn baby. Yes, Elders and Lawmen have greater responsibility to upkeep what has been put in their hands—but no greater rights.
6. Passing on to the next generation knowledge, understanding, know-how in the celebration and renewal of the Creation—is *Nyinyaart*.
7. To pass on something less—to fail in passing on the Creation in all the richness and power it was passed down to you—is a crime against Creation, and all *Yindjibarndi* people to come.
8. “*Ask The Baby*” who the Creation belongs to, our elders said, because it does not belong to any one *Yindjibarndi*, but to our children and all future *Yindjibarndi*—for now, and ever after. Carrying *Birdarra* Law and passing it on is never ending *Nyinyaart* between generations.

SHARING BLESSINGS

1. Sometimes, *Yindjibarndi* families will give their sons to *Wallijingha* law, and *Wallijingha* families will give their sons to *Birdarra* Law—they give their sons to fathers of neighbouring Law—a gesture of enormous respect and trust that bonds the *Birdarra* and *Wallijingha*—that unites different movements of the Creation... and strengthens relations between communities across all of *Mingkala’s* fields of Creation
2. Within *Birdarra* Law, a man will give his son to a brother—to another father—who may not have sons—to put through the Law, so he too can play his part as a *jirra Garnngu* in *Birdarra* ceremony.

3. When *Mungayiya* is sung and the marriage-partner ritual begins on the *Burndud* ground, men watch their wives exercise their *Galharra* right to choose any man who is marriageable from the circle of *Burndud* singers, lay that man on the ground and lay on top of him for all to see. There is no jealousy—just as the man gives himself—so the woman gives herself—and the husband lets his wife go—in the marriage-partner play that honours *Galharra*, and teaches the next generation how to follow straight marriage.
4. It of young people the galharra marriage laws and why it is important to hold the law straight.
5. *Nyinyaart* is there too when a man dies, leaving behind wife and children. *Nyinyaart* says that a man will adopt his brother's family—look after his wife and children as if his own.

THALUMAGU IS ANSWERED

1. When men sing *Burndud*, or men and women go into the Ngurra to drive the sacred places that multiply life; when *Yindjibarndi* reach out to lonely country with *Wangka*, with visitation of their families that fills the country with voices—*Nyilali*—this joining of ones spirit to the call of Creation is *Nyinyaart*.
2. And when *Thalumagu* is answered with rain, a rich breeding season for the animals and plants, for seeds, medicine or a bright moon—so *Nyinyaart* is unfolded from the belly of Creation.
3. Self control—the following of *Galharra* Law forbidding the eating of an animal—control of your want and your hunger—this self-sacrifice is *Nyinyaart* that leaves something for others—that preserves the Creation—that accepts not everything your eyes want is yours.

BETRAYAL OF NYINYAART

1. It happens that one sees a need, and desperately wants to meet that need in *Nyinyaart*, but cannot. Because one has nothing to offer—no extra food, no money, not the strength in spirit or body to help.
2. *Yindjibarndi* feel no deeper hurt than the hurt of not being able to give, having nothing to share with another's need. It is a failure that weighs down our spirit.
3. It happens too, that *Nyinyaart* is betrayed, sold out to petty hatreds or broken on the rocks of double dealing, treachery, lies and even more serious betrayals.

4. On the Law ground we see *Nyinyaart* shot to pieces as families shun ceremonies for each other's boys; hold back their help as *Jirnjangnu* and their voice in the *Burndud*; deny their respect as *Garnggu* on the *Birdarra*.
 5. In the wider world, not a week goes by when we do not suffer the disrespect of *Wajbala* who come into our communities to earn their wages without filling any need, without easing suffering. We suffer the selfishness of billionaires who make themselves rich digging iron, annihilating history and culture from our *Ngurra*—who add salt to wounds with their boasts of charity, while leaving our community poorer in spirit.
 6. When *Nyinyaart* is broken, ceremony will not save us. Money, jobs, *Wajbala* education will not save us.
 7. When *Nyinyaart* is betrayed—without shame, without correction—something truly rotten is among *Yindjibarndi*. It is sign that Birdarra is perishing—that Creation is coming undone.
-

“MW-13”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following three pages is the annexure marked “MW-13” referred to in the witness statement of Michael Woodley dated 5 June 2023.



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Yindjibarndi Aboriginal Corporation AGM Thursday 8 November 2007 Roebourne Community HALL [Inbox](#)

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YAC members present: Celia Sandy, Gabrielle Cheedy, Alum Cheedy, Joyce Hubert, Michelle Adams, Ashley James, Maudie Jerrold, Dora Solomon, Stylvia Allen, Barry Pat, Bridget Warrie, Michael Woodley, Aileen Sandy, Wendy Hubert, May Adams, Harry Mills, Aileen Sandy, Jill Tucker, Amy Jerrold.

Other Yindjibarndi people present: Joelene Warrie, Rosemary Woodley, Marion Cheedy, Kaye Warrie, Alice Guinness, Joanne Willis, Marlene Harold, Steven Hubert, Angus Mac, Charmaine Adams, Doris Lockyer, Barbara Guinness

Governing committee members present: Joyce Hubert, Bridget Warrie, Sylvia Allen, Maudie Jerrold, Dora Solomon, Michael Woodley, Jimmy Horace, Ashley James, Jill Tucker, Amy Jerrold.

The governing committee members passed a resolution accepting Joelene Warrie, Rosemary Woodley, Marion Cheedy, Kaye Warrie, Alice Guinness, Joanne Willis, Marlene Harold, Steven Hubert, Angus Mac, Charmaine Adams, Barbara Guinness and Doris Lockyer as new members of Yindjibarndi Aboriginal Corporation.

Maudie Jerrold, deputy chair, welcomed all the members to the AGM and asked Alum Cheedy to present the governing committee's report on their behalf.

Alum Cheedy, on behalf of the committee presented the outgoing committee's report to the members present at the AGM (copy to be attached).

Nomination were called for a new governing committee, and the following committee was elected unanimously:

- Stanley Warrie
- Charmaine Adams
- Harry Mills
- Stephen Hubert
- Jimmy Horace
- Ashley James

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Aileen Sandy
Doris Lockyer
Barry Pat
Bridget Warrie
Dora Solomon
Rosemary Woodley

It was resolved by the Yindjibarndi community that this committee will also be the working group for the Yindjibarndi #1 native title claim.

The AGM closed at 12:12pm.

The new committee elected Stanley Warrie as Chairperson and Charmaine Adams as deputy chair.

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YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE (PBC)
ANNUAL GENERAL MEETING (AGM)

**ALL YINDJIBARNDI PEOPLE ARE INVITED TO
ATTEND**

- Thursday 8 November 2007
- Roebourne community 50c hall
- 9:00am – 2:00pm
- Morning refreshments & lunch will be provided.

AGM AGENDA:

- a. Attendance
- b. Apologies
- c. Governing Committee's Report
- d. Appointment of Governing Committee

OTHER MATTERS TO BE DISCUSSED:

1. Juluwarlu presentation and update on:
 - Heritage – Fortescue Metals Group (FMG), Pilbara Iron, Cazaly and Hancock Prospecting.
 - Proposed negotiation protocol
2. Details of heritage work conducted through the PNTS prior to Juluwarlu.

**THIS NOTICE HAS BEEN SENT TO MEMBERS OF YINDJIBARNDI ABORIGINAL CORPORATION.
PLEASE LET OTHER YINDJIBARNDI PEOPLE KNOW ABOUT THIS MEETING.**

“MW-14”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following four pages is the annexure marked “**MW-14**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

Agreement for the implementation, provision and maintenance of the Yindjibarndi Aboriginal Corporation's Native Title, Heritage, Environmental, Cultural, Administrative and Financial Services

THIS AGREEMENT is valid from the 20th of August 2008 and continues until either of the parties terminates this agreement by notifying the other in writing giving one month's notice of the termination.

THIS AGREEMENT IS BETWEEN:

The Yindjibarndi Aboriginal Corporation (I.C.N. Number 4370 and A.B.N. Number 97 456 543 455), for and on behalf of the Yindjibarndi people, represented by the Yindjibarndi Aboriginal Corporation as directed by the Yindjibarndi Aboriginal Corporation Constitution.

AND

The Juluwarlu Group Aboriginal Corporation (I.C.N. Number 3543 and A.B.N. Number 52 300 944 909), being an Yindjibarndi organisation whose objectives are to collect, record, document, and professionally archive the past, current and future lives, stories, language, culture and history of the Yindjibarndi people.

THIS AGREEMENT HAS RESULTED FROM THE MOTION MADE AND UNANIMOUSLY PASSED BY THE YINDJIBARNDI ABORIGINAL CORPORATION DIRECTORS AT THEIR DIRECTORS MEETING HELD ON THE 20TH OF AUGUST 2008 WHICH STATED:

Resolution 2 – Yindjibarndi Aboriginal Corporation Directors Meeting Held 20/08/08

The Yindjibarndi Aboriginal Corporation agrees that Juluwarlu Group Aboriginal Corporation continue to manage the administration, native title, heritage and financial affairs of the Yindjibarndi Aboriginal Corporation. This management agreement is on a monthly basis – therefore the Juluwarlu Group Aboriginal Corporation management agreement can be terminated by the Yindjibarndi Aboriginal Corporation by giving a month's written notice to Juluwarlu Group Aboriginal Corporation

Moved: Stanley Warrie

Seconded: Doris Lockyer

Passed Unanimously

AT THE YINDJIBARNDI ABORIGINAL CORPORATION MEETING HELD ON 29/10/08 AT THE ROEBOURNE COMMUNITY HALL THE YINDJIBARNDI ABORIGINAL CORPORATION DIRECTORS ONCE AGAIN REITERATED THEIR SUPPORT FOR JULUWARLU GROUP ABORIGINAL CORPORATION TO MANAGE THE AFFAIRS OF THE YINDJIBARNDI ABORIGINAL CORPORATION BY PASSING THE FOLLOWING RESOLUTION:

Resolution One - Yindjibarndi Aboriginal Corporation Directors Meeting Held 29/10/08

The Yindjibarndi Directors and the community members present at this meeting agree to partially fund the next Juluwarlu books on the Hooley and the Harding Dam areas, to pay Juluwarlu on a monthly basis for their services, and to pay \$7,000 for May Adams operation.

Moved: Thomas Jacobs

Seconded: Bigali Hanlon

Passed unanimously



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

PRESENTATION

- A. The Yindjibarndi People are the registered native title holders and claimants for the Yindjibarndi Native Title Determined (WC 99/14) and Yindjibarndi #1 Native Title Claim (WC 03/03) areas.
- B. The Yindjibarndi Aboriginal Corporation (YAC) is the only native title prescribed body corporate representative body for the Yindjibarndi People, providing directions for and on behalf, of its members.
- C. The parties to this contract acknowledge, respect and abide by the Australian Government's Ngarluma/Yindjibarndi Native Title Determination (WC 99/14) set down by The Honourable Justice Nicholson on Monday the 2nd of May, 2005 which directed the Yindjibarndi people to set up their Yindjibarndi prescribed body corporate to specifically deal with all native title matters arising from his decision, defined how Yindjibarndi people are classified, verified their inalienable connection to designated territory, and granted Yindjibarndi people the lawful right to access, protect, care for, engage with, and utilise their traditional lands.

The Yindjibarndi Aboriginal Corporation (YAC) and Juluwarlu Group Aboriginal Corporation (JGAC) acknowledge this agreement pursuant to the roles and responsibility of Juluwarlu as native title, heritage, environmental, cultural, administrative, banking and financial managers, and to the Yindjibarndi Aboriginal Corporation which ultimately speaks for the protection of all Yindjibarndi matters and concerns:

The Yindjibarndi Aboriginal Corporation and the Juluwarlu Group Aboriginal Corporation agree to work in a mutually beneficial, transparent, collaborative and accountable manner, in good faith and in honesty.

The Yindjibarndi Aboriginal Corporation reserves the right to assess and comment on the professional conduct, quality of administration, reportage, and appropriate cultural conduct, of Juluwarlu Group Aboriginal Corporation. The Yindjibarndi Aboriginal Corporation expects Juluwarlu Group Aboriginal Corporation to carry out their duties by upholding the Yindjibarndi Aboriginal Corporation, Directors and members, with the highest esteem and respect. The Yindjibarndi Aboriginal Corporation will review Juluwarlu Group Aboriginal Corporation's performance on a regular basis, reserving the right to cancel this agreement at any time by writing to JGAC giving one month's termination notice.

ROLES AND RESPONSIBILITIES VIA THIS AGREEMENT

The Yindjibarndi Aboriginal Corporation (YAC)

- 1 The YAC is to pay \$22,500 (excluding GST) per month to Juluwarlu Group Aboriginal Corporation for providing the service that is the subject of this agreement. If or when this agreement is terminated by either party the YAC are to reimburse all expenses accrued to the JGAC as specified by the JGAC MYOB set of accounts independently verified by the YAC.
- 2 All YAC Directors will act honestly, transparently and openly in all matters relating to all Yindjibarndi financial and heritage matters.
- 3 All YAC members are to publicly support and uphold the decisions that are made by the majority of the Directors of the YAC.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

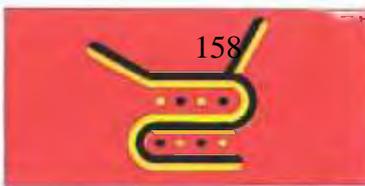
The Juluwarlu Group Aboriginal Corporation (JGAC)

JGAC agrees to undertake the implementation and effective management of the Yindjibarndi Aboriginal Corporation native title, heritage, environmental, cultural, administrative, banking and professional needs and requirements on behalf of the Yindjibarndi Aboriginal Corporation. The service offered by Juluwarlu Group Aboriginal Corporation includes the following:

- a. Dealing, negotiating and consulting on behalf of the YAC with all proponents who wish to engage with Yindjibarndi on all native title matters. The JGAC must keep all Yindjibarndi members as far as is practicable informed at all times.
- b. Implementing the protocols set down by the YAC at all times, especially including the protocols regarding how to deal with proponents who wish to engage with the Yindjibarndi over their land and waters.
- c. Overseeing and protecting the native title rights and interests of the Yindjibarndi people.
- d. Overseeing the documentation, protection, professional and effective storage of all Yindjibarndi heritage, language and history and making that data available for all Yindjibarndi people.
- e. Providing timely, accurate and efficient financial data including profit and loss and cash flow statements, asset inventory; raising, maintaining, overseeing, distribution and collection of invoices; maintaining all banking requirements; payment of all accounts that have been approved for payment by the Yindjibarndi Aboriginal Corporation; pay all GST and PAYE tax in a timely manner; provide acquittals and audits; implement strategic, business and marketing plans; distribute monies to Yindjibarndi members; maintain a current and up to date register of all Yindjibarndi members; arrange and distribute notices and maintain the meeting minutes for the Yindjibarndi Aboriginal Corporation meetings; and undertake any other financial services deemed necessary by the Yindjibarndi Aboriginal Corporation

CONFIDENTIALITY

- 1 The people associated with the Yindjibarndi Aboriginal Corporation can only disclose the contents of this agreement to anyone outside the Yindjibarndi Aboriginal Corporation members, by a majority resolution passed at an Yindjibarndi Aboriginal Corporation Directors Meeting.
- 2 Members who step outside of the process outlined in Point 1, headed Confidentiality, will have to justify their actions in a meeting held by the Yindjibarndi Aboriginal Corporation.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

EXECUTION OF THIS CONTRACT

This Contract was duly signed and executed by the parties below who are legally authorised to negotiate and sign on behalf of the Contract parties:

Executed for and on behalf of the Yindjibarndi Aboriginal Corporation:

As the Chairperson of the Yindjibarndi Aboriginal Corporation I state that I fully understand and comprehend and am legally authorised by the Yindjibarndi people to fully endorse and execute this contract by placing my signature below on their behalf

Signed Stanley Warrle

FULL NAME (PRINT) STANLEY WARRLE

For and on behalf of the Yindjibarndi Aboriginal Corporation and its members

WITNESSED BY:

I witnessed the Chairperson of the Yindjibarndi Aboriginal Corporation utter and sign the statement above on the date that appears on page 1 of this Contract.

Witness Signature Inge Oumheim

WITNESS FULL NAME (PRINT) INGE OUMHEIM

WITNESS ADDRESS (PRINT) 288 NAIRN ST, 6714 KARRATHA

Executed for and on behalf of the Juluwarlu Group Aboriginal Corporation:

As the Operations Manager of Juluwarlu Group Aboriginal Corporation I state that I fully understand and comprehend, and am legally authorised by the organisation I represent, to fully endorse and execute this contract by placing my signature below on their behalf

Signed Michael Woodway

FULL NAME (PRINT) MICHAEL WOODWAY

For and on behalf of Juluwarlu Group Aboriginal Corporation and its members

WITNESSED BY:

I witnessed the representative of Juluwarlu Group Aboriginal Corporation utter and sign the statement above on the date that appears on page 1 of this Contract.

Witness Signature Vicki Webb

WITNESS FULL NAME (PRINT) VICKI SUSANNE WEBB

WITNESS ADDRESS (PRINT) 288 NAIRN ST KARRATHA 6714

SIGNED 07/11/08 L.O.
S.W.

“MW-15”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following fifty-five pages is the annexure marked “**MW-15**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

EXTRACT OF YAC MINUTES -

October 2007 – December 2010

3 October 2007 - Yindjibarndi Council Meeting with Hancock Prospecting

Yindjibarndi Mob: Aileen Sandy, Lyn Cheedy, Judith Albert, Gabrielle Cheedy, Rosemary Woodley, Maudi Jerrold, Jimmy Horace, Joyce King, Bridget Warrie, Michael Woodley, Lorraine Coppin, Dora Solomon, Travis Hubert, Angus Mack, Barry Pat, Stanley Warrie, Ned Cheedy, Marion Cheedy. **Support:** Philip Davies, Alan Thompson

Voting: The Group agreed that due to the various people able to attend the meeting, the voting council would be arranged in the following way: **Chief Councilor:** Stanley Warrie (as proxy for Ned Cheedy) – Ned came late at 1.20pm. **Voting Councilors:** Rosemary Woodley (as proxy for Bruce Woodley), Barry Pat, Gabrielle Cheedy (as proxy for Barbara Guinness), Aileen Sandy, Bridget Warrie, Dora Solomon, Judy Albert, Joyce King, Angus Mack (as Proxy for Stephen Hubert), Lorraine Coppin (as Proxy for Rose Cheedy), Lyn Cheedy (as Proxy for Berry Malcolm), Jimmy Horace, Maudi Jerrold.

YAC and Juluwarlu Agreements

Michael Woodley tabled three draft agreements between the Yindjibarndi Council and Juluwarlu Group Aboriginal Corporation, regarding Heritage, Land Use Negotiations between the Yindjibarndi Council and Fortescue Metals Group, and the management of the Yindjibarndi Council Prescribed Body Corporate (PBC). The Draft Agreements are not legally binding documents, and Michael asked the Yindjibarndi Councilors to consider the draft agreements – If the Agreements are signed by the Councilors and Juluwarlu Group Aboriginal Corporation, then they will further support the standing of the Yindjibarndi Council as the only entity who can speak for Yindjibarndi country. If the Yindjibarndi Councilors agree with the concept of the Agreements for heritage, the negotiation protocols and the PBC, then Michael asked that a general Yindjibarndi meeting be called so that all members can view, discuss the Draft Agreements and vote on their implementation.

Resolution:

The Yindjibarndi Council agreed to call another Yindjibarndi meeting for all Yindjibarndi members to put the Draft Agreements on the table before the people. Any other Yindjibarndi person can also put their proposals to the people at this Yindjibarndi meeting.

13 Nov 2007 - Yindjibarndi Working Group Meeting

Working Group Members: Bridget Warrie, Barry Pat, Doris Lockyer, Jimmy Horace, Stanley Warrie, Rosemary Woodley, Dora Solomon, Stephen Hubert, Aileen Sandy, Ashley James. **Apologies:** Charmaine Adams, Harry Mills. **Others:** Ned Cheedy, Michael Woodley, Lorraine Coppin, Angus Mack, Joyce King. **Support:** Philip Davies.

Resolutions:

Write a letter to Andrew Forrest at FMG asking to commence negotiations on the Solomon Mine prospect; and, write a letter to Alum Cheedy and PNTS to ask for all documents relating to the organisation, including the cheque book, bank statements and all agreements that PNTS have entered into on behalf of the Yindjibarndi Working Group.

20 Nov 2007 - Yindjibarndi Working Group Meeting

Working Group Members: Bridget Warrie, Barry Pat, Doris Lockyer, Jimmy Horace, Stanley Warrie, Dora Solomon, Stephen Hubert, Harry Mills, Aileen Sandy. **Apologies:** Charmaine Adams, Ashley James, Rosemary Woodley. **Others:** Michael Woodley, Lorraine Coppin, Angus Mack, Wendy Hubert, Ned Cheedy, Gabrielle Cheedy, Thomas Jacobs. **Support:** Philip Davies.

Resolutions:

The minutes of the previous Yindjibarndi Aboriginal Corporation meeting held on 13/11/07 were read and accepted as accurate

Moved: Stanley Warrie
Seconded: Dora Solomon
Passed Unanimously

Invite Alum Cheedy to the next Yindjibarndi Aboriginal Committee Meeting to present all the documents of the Yindjibarndi Aboriginal Corporation

Moved: Stanley Warrie
Seconded: Jimmy Horace
Passed Unanimously

Write to PNTS to confirm that: we do not want the PNTS to enter into any heritage agreements on our behalf; all heritage agreements are to be handled by Juluwarlu Group Aboriginal Corporation on behalf of the YAC; the role for the PNTS is to “receive letters under section 29 of the *Native Title Act 1993 (Cth)* (letters advising us about applications for mining tenements) and to lodge objections to the expedited procedure applying to applications for exploration licences when instructed to do so”; and, to direct mining companies to Juluwarlu Group Aboriginal Corporation to discuss entering into a heritage agreement and to arrange heritage surveys.

Moved: Barry Pat
Seconded: Stephen Hubert
Passed Unanimously

Write to the Eastern Gurrama group, including a DVD and map of the Yindjibarndi country, to illustrate the way the Native Title claim area for the Yindjibarndi 1 boundary is wrong – including details of Ned Cheedy’s information.

Moved: Jimmy Horace
Seconded: Barry Pat
Passed Unanimously

Write to Philip Williams - Plan B – demanding that the Yindjibarndi Directors of the Yindjibarndi West Angeles Charitable Trust are stood down, all business managed by the current Yindjibarndi Directors is ceased, and invite Philip Williams to the next YAC meeting to discuss the future of the Yindjibarndi West Angeles Charitable Trust.

Moved: Stanley Warrie
Seconded: Jimmy Horace
Passed Unanimously

27 Nov 2007 – YAC Governing Committee Meeting

Governing Committee Members: Bridget Warrie, Barry Pat, Doris Lockyer, Stanley Warrie, Dora Solomon, Aileen Sandy, Rosemary Woodley, Stephen Hubert, Harry Mills, Charmaine Adams, Ashley James, Jimmy Horace. **Apologies:** None. **Others:** Michael Woodley, Lorraine Coppin, Angus Mack, Wendy Hubert, Ned Cheedy, Thomas Jacobs, Joyce King. **Support:** Philip Davies.

Resolutions

The minutes of the previous Yindjibarndi Aboriginal Corporation meeting held on 20/11/07 were read and accepted as accurate.

Moved: Stanley Warrie
Seconded: Dora Solomon
Passed Unanimously

That the current Yindjibarndi Aboriginal Accounts that were handed over by Alum Cheedy today be audited.

Moved: Stanley Warrie
Seconded: Charmaine Adams
Passed: Unanimously

That Juluwarlu Group Aboriginal Corporation (JGAC) takes over the role as the manager of the Yindjibarndi Aboriginal Corporation (YAC) on behalf of the YAC Directors. The Directors authorise Mr Michael Woodley (Operations Manager – JGAC) and Mr Philip Davies (Administration Manager and Anthropologist - JGAC) to contact and liaise with the Office of the Registrar of Aboriginal Corporations (ORAC), the Australian Tax Office (ATO), the Commonwealth Bank, and any other institutions necessary, to update YAC's contact details and apply for any taxation concessions that are relevant for the Yindjibarndi Aboriginal Corporation (YAC).

Moved: Stanley Warrie
Seconded: Stephen Hubert
Passed: Unanimously

11 Dec 2007 – YAC Governing Committee Meeting

Governing Committee Members: Bridget Warrie, Barry Pat, Doris Lockyer, Stanley Warrie, Dora Solomon, Ashley James, Jimmy Horace, Aileen Sandy. **Apologies:** Rosemary Woodley, Stephen Hubert, Harry Mills, Charmaine Adams. **Others:** Michael Woodley, Angus Mack, Wendy Hubert, Thomas Jacobs, Lorraine Coppin, Joyce Hubert. **Support:** Philip Davies.

Resolutions:

The minutes of the previous Yindjibarndi Aboriginal Corporation meeting held on 27/11/07 were read and accepted as accurate

Moved: Stanley Warrie
Seconded: Barry Pat
Passed Unanimously

The Yindjibarndi Governing Committee fully re-endorse the approved resolution passed by the Ngarluma and Yindjibarndi community members at the Plan B Meeting held at the Roebourne Basketball Courts on 05/12/07 – that is to disperse all current and future funds that reside within the Ngarluma and Yindjibarndi West Angeles Charitable Trust equally and fairly to the Ngarluma Aboriginal Corporation and the Yindjibarndi Aboriginal Corporation or to the appropriately structured entities nominated by them.

Moved: Stanley Warrie
 Seconded: Barry Pat
 Passed Unanimously

The Signatories to the YAC account for the cheque account will be Dora Solomon, Joyce Hubert, Jimmy Horace, Stanley Warrie and Philip Davies. Juluwarlu will also organise internet banking for the YAC – the signatories for internet banking will be Stanley Warrie – Chairperson and Philip Davies.

Moved: Batty Pat
 Seconded: Doris Lockyer
 Passed Unanimously

That the Yindjibarndi 1 Native Title Working Group and the Yindjibarndi Aboriginal Corporation who are one and the same twelve people, resolve to immediately dismiss the Pilbara Native Title Service (PNTS) as their representatives for the Yindjibarndi 1 Native Title Claim. They resolve to appoint the YAC as the lead organisation that represents all Yindjibarndi in the Yindjibarndi 1 Native Title Claim. YAC resolve to directly and immediately appoint Michael Robinson and Mark Chambers to represent them in the presentation of the Yindjibarndi 1 Native Title Claim to the West Australian State Government. They resolve to immediately send letters to each of the parties to inform them of the decision. Even though the YAC and the Yindjibarndi Working Group, being the same group of people, terminate the services of PNTS as our lead representatives in the determination of the Yindjibarndi 1 Claim, they would still like to retain the option to engage their services on legal matters relating to the Yindjibarndi 1 Native Title Claim.

Moved: Stanley Warrie
 Seconded: Dora Solomon
 Passed Unanimously

The Yindjibarndi Aboriginal Corporation (YAC) resolves to terminate all previous heritage agreements entered into on the Yindjibarndi people's behalf by the Pilbara Native Title Service (PNTS). All entities who wish to engage with the Yindjibarndi people on Yindjibarndi country need to deal directly either with the Yindjibarndi Aboriginal Corporation, or their heritage representatives, Juluwarlu Group Aboriginal Corporation.

Moved: Doris Lockyer
 Seconded: Jimmy Horace
 Passed Unanimously

The YAC agreed to pay Stanley Warrie for his time when he is working for the YAC.

Moved: Ashley James
 Seconded: Doris Lockyer

Passed Unanimously

The Governing Committee of the Yindjibarndi Aboriginal Corporation (YAC) resolves to appoint Philip Davies as the Public Officer for the Yindjibarndi Aboriginal Corporation

Moved: Stanley Warrie

Seconded: Doris Lockyer

Passed Unanimously

The Governing Committee agreed for Juluwarlu Group Aboriginal Corporation to organise a Common Seal for the YAC; and, also that Doris Lockyer, Stephen Hubert, Stanley Warrie, Harry Mills, Rosemary Woodley and Charmaine Adams should officially join the YAC as members, even though they have been elected at the YAC AGM.

23 Jan 2008 – YAC Director's Meeting

Directors: Bridget Warrie, Barry Pat, Doris Lockyer, Stanley Warrie, Dora Solomon, Ashley James, Jimmy Horace, Joyce Hubert (Proxy for Stephen Hubert), Aileen Sandy. **Apologies:** Rosemary Woodley, Harry Mills, Charmaine Adams. **Others:** Michael Woodley, Angus Mack, Wendy Hubert, Thomas Jacobs, Lorraine Coppin. **Support:** Philip Davies.

Resolutions:

The minutes of the previous Yindjibarndi Aboriginal Corporation meeting held on 11/12/07 were read and accepted as accurate

Moved: Doris Lockyer

Seconded: Jimmy Horace

Passed Unanimously

The Yindjibarndi Aboriginal Corporation (YAC) Directors agree to invest the funds that are currently in the YAC bank account, which totals \$96,563.32, to successfully achieve the Yindjibarndi 1 Native Title determination. They agree to pay all costs associated with engaging Paul Sheiner as their Solicitor, Michael Robinson (Anthropologist) and Mark Chambers (Anthropologist) and any Yindjibarndi members, who work on their behalf to negotiate with the WA State Government on the Yindjibarndi 1 Native Title claim.

Moved: Stanley Warrie

Seconded: Barry Pat

Passed Unanimously

The Directors agreed that the best approach for people who wish to become Yindjibarndi members is for them to write a letter to the Yindjibarndi Aboriginal Corporation (YAC) and ask for membership. The YAC will then decide if that person/s is allowed into the group and let them know of the Director's decision via letter. The YAC Directors agreed that this process must be done via letters and official correspondence signed by the YAC Directors.

Moved: Jimmy Horace

Seconded: Doris Lockyer

Passed Unanimously

The Yindjibarndi Aboriginal Corporation (YAC) Directors agreed to write a letter to Howard Lockyer and Michelle Adams to congratulate them on their election to the Murujuga Aboriginal Corporation (MAC) Governing Committee, and to notify them that they will need to report all MAC activities and actions to the YAC on a regular basis.

Moved: Stanley Warrie

Seconded: Doris Lockyer

Passed Unanimously

The Directors want Juluwarlu Group Aboriginal Corporation to operate the accounts of the YAC, and to do it correctly – they want the YAC to be registered for GST and for JGAC to investigate whether the YAC is eligible for DGR and charitable status.

The PNTS have called a meeting for all Yindjibarndi members to make sure that all Yindjibarndi members agree to dismiss PNTS as their heritage and native title representatives. The Directors agreed that they want to stick to the plan and to dismiss PNTS as their representatives, because YAC want to represent themselves – so they can make their own decisions for their own Yindjibarndi country. The YAC directors want to make their own decisions – which has not been, and is not, possible when PNTS represent the Yindjibarndi.

30 Jan 2008 – Yindjibarndi Community Meeting called by PNTS

Yindjibarndi Community Members: Lorraine Coppin, Alice Guinness, Joyce Hubert, Rosemary Woodley, Sylvia Allan, Wendy Hubert, Lyle Wally, Glen Toby, Thomas Jacobs, Angus Mack, Stanley Warrie, Michael Woodley, Barry Pat, Mark Horace, Doris Lockyer, Tootsie Daniels, Marlene Harold, Celia Sandy, Dawn Sandy, Vince Adams, John Sandy, Rosie Cheedy, Allery Sandy, Aileen Sandy, Harry Mills, Jimmy Horace, Rebecca Cheedy, Marion Cheedy, Lyn Cheedy, Jill Tucker. **PNTS Officers:** Justin Edwards, Caroline Tan, Hannah Nijam, Rodney Parker, Vince Adams. **Others:** Mark Chambers. **Support:** Philip Davies. **Film Crew:** Glen Toby and Lyle Wally of Juluwarlu Group Aboriginal Corporation.

Resolution:

That all the Yindjibarndi people at this Yindjibarndi community meeting held on the 30/01/08 in the Roebourne Community Hall completely and fully support the resolution made by the Yindjibarndi Aboriginal Corporation Directors at their Director’s meeting held at Juluwarlu Group Aboriginal Corporation on 11/12/07 which read: “That the Yindjibarndi 1 Native Title Working Group and the Yindjibarndi Aboriginal Corporation (YAC) who are one and the same twelve people, resolve to immediately dismiss the Pilbara Native Title Service (PNTS) as their representatives for the Yindjibarndi 1 Native Title Claim. They resolve to appoint the YAC as the lead organisation that represents all Yindjibarndi in the Yindjibarndi 1 Native Title Claim”.

Moved: Doris Lockyer

Seconded: Jimmy Horace

Passed Unanimously

12 Feb 2008 – Yindjibarndi Community Meeting called by FMG

Yindjibarndi Community Members: Lorna Walker, Angus Mack, Stanley Warrie, Thomas Jacobs, Barry Pat, Warrick Sambo, Alec Tucker, Michael Woodley, Lorraine Coppin, Dora Solomon, Jimmy Horace, Clifton Mack, Marion Cheedy, Jane Cheedy, Ashley James, Aileen Sandy, Ellery Sandy, Hayden Woodley, Lesley Walker, Rosemary Woodley, Maudie Jerrold, Bridget Warrie, Joyce Hubert, Allum Cheedy, Harry Mills, Shane Cheedy, Jimmy Albert, Kaye Warrie, Tamara Edgar, Maisie Inje, Sharon Warrie, Susan Samson, Dot Moses, Stephen Hubert, Dwayne Toby, Bruce James, Joylene Warrie, Marlene Harold, May Adams, Diana Smith, Celia Sandy, Amy Jerrold, Shirley Walker, Mavis Pat, Judy Albert, Tanya Jacob, Terry Pat, Billy King, Mark Horace, Kylie Mowarin, Kerry Warrie, Amorette Lockyer, Desmond Whalebone, Jean Norman, Deborah Coppin, Dawn Dale, Fabian Cheedy, Jill Tucker, Barbara Guinness, Lorraine Jacob, Harry Mills, Caroline Faseldine, Tootsie Daniels, Tom Ferguson, Donna Willis, Wendy Warrie, Tenellia Lockyer, Kaylene Daniels, Judith Coppin, Elizabeth Coppin, Esther Pat, Janice Warrie, Wendy Hubert. **Support:** Phillip Davies. **Film Crew:** Alan Thompson.

5 Mile meeting At the commencement of this meeting Michael Woodley (MW) and Stanley Warrie (SW) sought and obtained permission for the meeting to be filmed, “so that all issues are transparent”. Before the arrival of the FMG representatives, there were internal discussions about a meeting at the “five mile” community, on 7 Feb 08, at which YAC and the leadership of Michael Woodley was considered. The following exchanges are extracted from the minutes (at pp 2-3):

Pansy Sambo (PS) addressed the group – I’ve only got 15 minutes before I have to go – PS wants to say that yes they had a meeting at the 5 Mile – I had a talk with MW on Saturday following the 5 Mile meeting – we had the meeting at the 5 Mile because I had heard rumours which I wasn’t happy about - but I made a mistake – It took me this meeting at 5 Mile to understand that I had listened to rumours and that is not the Christian way – I want to be and act like a Christian – But now we are sorry that we had that meeting because I was misinformed – I need to come to more Yindjibarndi meetings if I want to know about Yindjibarndi issues, but I am restricted by my work – As a Christian I understand that our affairs need to be discussed together and not in separate meetings – I am going to support MW and SW – and the Yindjibarndi Aboriginal Corporation and the Juluwarlu Group Aboriginal Corporation

Ellery Sandy (ES) – The reason that I was involved in the 5 Mile Meeting because I trust Marshall Smith who is my spiritual leader – I am a Christian and there was nothing wrong with the 5 Mile meeting because we wanted to discuss these issues – we were not going against MW or SW – sometimes we need to discuss things where we want to go.

Michael Woodley (MW) replied – was concerned that at the 5 Mile Meeting people were discussing me in a bad way.

ES – I listen to Pastor Marshall Smith (MS) – I don’t listen to others.

MW – I talked to MS and he told me this – “People were raising concerns about you and the way you were running things – I told them to go and talk to you about their concerns”.

MW – the meeting at 5 Mile was wrong – we need to stick to the process.

Alum Cheedy (AC) – I went to the 5 Mile meeting to talk about the Yindjibarndi PBC issues – that is the only reason that I was there.

Maudie Jerrold (MJ) – I do my own thing – I don’t go around talking about Yindjibarndi issues in the community – I don’t have any concerns with anything – you wanted to start this corporation.

MW – you were the Chairperson of this corporation.

MJ – what is this corporation – is this the same corporation that I was Chairperson for last year?

MW – yes this is the same corporation that you were the Chairperson of.

MJ – is the Yindjibarndi Aboriginal Corporation registered?

MW – Don't you know this – you should know this.

MJ – you (MW) should ask other people to talk - I don't want to talk about this.

Marion Cheedy (MC) – I went to the 5 Mile too – I am a Christian person and my loyalty lies with the Lord and to my family – Pansy wanted us to go with her to support her as a family member – we were confused about these issues – we can't just keep fighting – we can't walk away from a meeting feeling bad – we need to understand what is happening in the meeting and to understand the issues – but we have talked to MW and have put our issues behind us – we are comfortable with MW and the work he is doing for the Yindjibarndi.

Rosemary Woodley (RW) – we need to stick together – don't rubbish Michael – he will lead us and he is trying to do the right thing.

SW – that is why I have asked people to come to Juluwarlu Group Aboriginal Corporation to find out what is happening with Yindjibarndi affairs

Lyn Cheedy (LC) – I was one of the people at the 5 Mile Meeting – I support the process that is happening – and we support the Directors of the Yindjibarndi Aboriginal Corporation – If you have something to say then people should say it.

MW – the 5 Mile meeting happened outside the process – it does not help the Yindjibarndi in the long run – people need to support the process

MJ – I have no concerns with the process as it stands at the moment (see Minutes at pp2-3)

FMG Representatives: Blair McGlew, Alexa Morecombe joined the meeting at 11.45am.

Resolution:

That the Yindjibarndi people continue to hold their position with the Fortescue Metals Group (FMG) – that is that we will continue to suspend and not perform Yindjibarndi heritage surveys for FMG until the Yindjibarndi people, via their representatives, reach a signed Land Access Agreement with FMG on their three tenements - E47/1333, E47/1334 and E47/447.

Moved: Billy King

Seconded: Marion Cheedy

Passed Unanimously

10 Mar 2008 – Yindjibarndi Community Meeting with FMG

Yindjibarndi Community Members: Stanley Warrie, Barry Pat, Bruce Woodley, Thomas Jacobs, Angus Mack, Jimmy Horace, Wendy Hubert, Lorraine Coppin, Dora Solomon, Janice Guinness, Maisie Ingie, Joyce Hubert, Maudi Jerrold, Jill Tucker, May Adams, Judith Coppin, Maisie Pat, Jeffery Adams, Lorna Walker, Aileen Sandy, Trish Pat, Jean Norman, Clifton Mack, Billy King, Michelle Adams, Dennis Hubert, Esther Pat, Cindy Meek, Barbara Guinness, Michael Woodley, Alice Guinness, Mark Horace, Dwayne Toby, Marion Cheedy, Lyn Cheedy, Jane Cheedy, Pansy Sambo, Rosie Cheedy, Vince Adams, Sylvia Allan, Rodney Adams, Harry Mills, Bridgette Warrie, Wendy Hubert, Charmaine Adams, Renee Wally,

Tootsie Daniels, Alum Cheedy, Rachel Wally, Amy Jerrold, Wendy Warrie, Sonia Churnside, Dot Moses, Kylie Mowarin. **Support:** Philip Davies, Alan Thompson, Fernando Hincapie.

Fortescue Metals Group Representatives: Andrew Forrest, Blair McGlew.

This was a negotiation meeting at which no formal resolutions were passed.

In exchange for what FMG called a “*Whole of Claim Land Access Agreement*”, FMG offered (following three years of productive mining on Yindjibarndi country), an annual training and employment package valued at \$1.2 million; and an additional annual payment of \$3 million or \$3.4 million to the Yindjibarndi. The Yindjibarndi people who were present at the meeting sought a 5% royalty payment. In the course of the negotiations there were direct exchanges between Andrew Forrest (AF) and, Michael Woodley (MW), Bruce Woodley (BW), Stanley Warrie (SW), Jill Tucker (JT), Vince Adams (VA) and Charmaine Adams (CA) for the Yindjibarndi People.

These included the following exchanges, which are extracted from the minutes (at 2-3):

MW – the Yindjibarndi have a different way to conducting business than others – we have an issue with some heritage stuff – we have committed to doing heritage – to move forward – we need FMG to take our position seriously – the position we put to FMG in the document that we sent on Saturday

AF – we can’t agree to the Yindjibarndi Heritage Agreement – it is completely contrary to our current funding arrangements with our bankers and our investors – but it is a start – we want to be friends with you for generations – every day pushes us towards the Native Title Tribunal – we are happy to give some money up front – and we are happy to enter into a royalty agreement but it has to have a cap on it – BM and MW can discuss the cap – maybe BM will start at 1 Million and MW may start at 4 Million – we will be just as fair with your group as we have been with other groups

MW – we are major stakeholders in this – we want to reach an agreement where Yindjibarndi will develop far and beyond – we have our own plans which we would like to develop – FMG’s responsibility is to look after your company – our responsibility lies with ourselves - we want to share the benefits.

AF – I want a relationship with the Yindjibarndi people – not just give you a big bag of money.

MW – we can have a relationship – we have our own big picture – we want to develop our own core business

AF – it sits with you whether you get any money – I can’t do that agreement – it would destroy the company

MW – 5% is not negotiable

AF – I was swimming with my kids at Pretty Pool – Native Title is not property rights – it goes to a Native Title Tribunal – the people who hold out for a bag full of money will get nothing

Stanley Warrie (SW) – what about Gina Reinhart and Lang Hancock – how can they get money when it is not even their land that their deals are done on – and you are telling us we can’t do the same thing

AF – no I am saying we can do a deal but it can’t be like it is here

SW – we own that land – we have the right to get something out of it along the same lines as Gina Reinhart and Lang Hancock

AF – we have employed a heap of people, we have paid out money – we can sort it out themselves – what MW will get out of BM in their negotiations will be the best that FMG can do

SW – we are living in poverty – we don't want to live on government handouts

Vince Adams (VA) – we are losing something that is dear to us – we are losing our land – you are going to build mines on our country – we are losing our history – you are talking about your losses – but we are making a huge contribution

AF – what we can't do is tell you we can do something which we can't

VA – we want to establish here today that establishes ourselves – our kids may want to be lawyers etc – we may not want to be haul pack drivers – we don't want to be treated as second class citizens

AF – if your people want to be lawyers we can help with that – we have a huge obligation to return that land to as it was

VA – nothing has been done to clean up other sites – this is the thing – they don't give us this power – you are telling us what you can do for us – but we don't want that – we want to do this ourselves – we want to empower ourselves – you are going to make money out of that and we want a share of that wealth – you guys need to understand that this is what we want to do – this is our deal that we have presented to you

AF – do you do that through education and training or do you do it via a bag of money

VA – we have education and we have jobs – but we need the resources to empower ourselves

AF – the reason why I don't come here often is because I don't want to take the bucket for all the things that have happened in the past – I really respect you – by not accepting charity you will be strong

MW – we are in a position to make our own decisions – we are here to succeed – we want a hand up – we can walk and chew gum at the same time – we want to manage our own affairs – I want to get back to the seven points

AF – Lang Hancock and Gina Reinhart are good examples of how people have sold out early simply for the money – but FMG is not like that – my philosophy is to stick around – I don't want to sell – I am keeping you fellas alive – I want to provide the people in this community and other communities with help

The Yindjibarndi people who were present at the meeting talked about the offer made by FMG and rejected it; they agreed they should put together a negotiating team of approximately 6 people to negotiate with FMG.

19 Mar 2008 - Yindjibarndi Community Meeting

Yindjibarndi Community Members: Stanley Warrie, Barry Pat, Thomas Jacobs, Angus Mack, Jimmy Horace, Lorraine Coppin, Joyce Hubert, Maudi Jerrold, Jill Tucker, Jean Norman, Clifton Mack, Michelle Adams, Michael Woodley, Sylvia Allan, Rodney Adams, Harry Mills, Wendy Warrie, Kaye Warrie, Rosemary Woodley, Glen Toby, Mark Horace, Paul Duggan, Lesley Walker, Sharona Walker, Dora Solomon, Bridget Warrie, Antonia Hicks, Howard Lockyer, Lorna Walker, Renee Walker, Wendy Hubert, Gabrielle Cheedy, Aileen Sandy, Charmaine Adams, Vince Adams, Lyn Cheedy, Tootsie Daniels, Esther Mungo, Stephen Hubert, Jeff Gilbey, Tamara Edgar, Rosie Cheedy, Aaron Hubert, Stephen Hubert, Max Ranger, Joylene Warrie, Thomas Hubert, Travis Hubert, Shane Chubbie, Amalyn Smith, Tiffany Lockyer, Estelle Daniels, Renee Wally, Doris Lockyer, Casey

Cheedy, Alice Guinness, Jane Cheedy, Maisie Ingie, Sarah Hicks, Jessica Allan, Lyle Wally.
Support Team: Philip Davies, Alan Thompson.

In the course of this meeting there was a discussion about the roles and responsibilities of YAC; and the following discussion is extracted from the minutes (at pp 2-3):

MW said that the YAC is just like any other corporation – Directors are elected at an AGM – and they are responsible for the Yindjibarndi interests – but they represent all members – if we are happy with the process then we should say – if they are not happy then all people are entitled to have a say

Wendy Hubert (WH) said that we are sitting on Ngarluma land and we need to stick together with the Ngarluma people and try and fix this housing situation up

Stanley Warrie (SW) – said that we are struggling for money to make these negotiations happen – we won't have Christmas money or sitting fees – we want to negotiate on the big one to get a good deal – we may need to sacrifice stuff now to fight the mining companies – and then hopefully we will do a good deal which will set us up

Maudi Jerrold (MJ) – if it was up to me I would have signed an agreement that helped all the Yindjibarndi people – I don't want to be sitting around here for years – I want an agreement now – we can be strong too – we are not getting anywhere at the moment

Charmaine Adams (CA) – What MW is saying that we want to stick together so we can get a good deal – we want to stick to the 7 points we put up on the board – that will be a good agreement if we stick to it – but we need to stick to the plan

Thomas Jacobs (TJ) – we are the future – we can read and write – we need to set our own agenda

SW – the money that FMG is offering is peanuts – that is not enough money to go around – the lack of money would simply cause heaps of arguments between us because it is not enough

MW – we need to use our rights to the fullest – other groups can sign agreements but we don't have to agree to what others have signed – we have the seven points which we can work on – we have asked for 5% and FMG say this is too much – FMG don't want to pay that much

MJ – you are the directors you sort it out

SW – no, we are here to talk to our members because everyone's views are important – we are telling you what is going on

MJ – are FMG mining yet?

MW – no they have not started mining yet – they are drilling – we have held up their drilling for 5 months

MJ – one more thing – what is going to happen today – who can give us some sort of advice on how we are going to deal with these fellas

SW – if you want to be updated on what is happening you can just ask – you can go to the Juluwarlu office or anywhere else

MJ – is there a conflict of interest if you are representing the YAC and being up at Juluwarlu?

CA – We don't have any money to rent or buy an office – we got nothing – why would we set up another office for the YAC

MW – how is there a conflict between the YAC and Juluwarlu/NYFL

MJ – why did you take this role on in the first place?

MW – my role in this thing – Juluwarlu is an organization is dedicated to recording the history and culture of the Yindjibarndi people – I have never charged Yindjibarndi for one cent for all this work

MJ – I am not against Juluwarlu – but I need an open account of what is happening with the Yindjibarndi money

MW – the Yindjibarndi money is set aside to run our negotiations and to do the Yindjibarndi 1 Native Title Claim

SW – we are fighting for the same thing

MW – we got nothing to give nobody at the moment

MW – is everybody happy with the current process

Everybody – said yes they are happy to go on with the process as it stands

This meeting also made decisions about two negotiating teams to undertake negotiations with FMG and Rio Tinto; and the following is extracted from the minutes (at pp 7-8):

MW asked for nominations for the negotiating team – the suggestion is for 6 Elders to oversee the 6 people who will make up the negotiating team. The people at the meeting agreed that the following 6 Elders will make up the Elders negotiating team

- a. Ned Cheedy
- b. Alec Ned
- c. Bridget Warrie
- d. Dora Solomon
- e. Joyce Hubert
- f. Sylvia Allan

The Yindjibarndi people decided that they would form two negotiating committees – one for FMG and one for Rio Tinto – to be made up as follows:

Yindjibarndi FMG Negotiating Team

- I. Stanley Warrie
- II. Thomas Jacobs
- III. Jill Tucker
- IV. Charmaine Adams
- V. Vince Adams
- VI. Esther Pat
- VII. Jimmy Horace

Yindjibarndi Rio Tinto Negotiating Team

- I. Stephen Hubert
- II. Lyn Cheedy
- III. Maudi Jerrold
- IV. Rosemary Woodley
- V. Howard Lockyer
- VI. Tootsie Daniels
- VII. Michelle Adams

Resolutions:

The minutes of the meeting held on 10/03/08 between the Yindjibarndi and FMG were read and accepted as accurate

Moved: Barry Pat
 Seconded: Charmaine Adams
 Passed Unanimously

The Yindjibarndi people at the meeting agree to continue their negotiations with FMG according to the seven points put to them at the last meeting, and they agree to start negotiating with Rio Tinto along the lines that Michael Woodley has just laid out to the people at this meeting.

Mover: Stanley Warrie
 Seconded by: Charmaine Adams
 Passed Unanimously

The Yindjibarndi people agree that Jean Norman and her family are once again accepted into the Yindjibarndi group and that she and her family be regarded as Yindjibarndi people from now on. The people agreed that Jean Norman should write a letter to the Wongatoo to terminate her membership with that group

Mover: Jill Tucker
 Seconded by: Stanley Warrie
 Passed Unanimously

The Yindjibarndi people agree that the two negotiating teams will represent the Yindjibarndi in their negotiations with FMG and Rio Tinto – the meeting also agree that Michael Woodley and Phil Davies of Juluwarlu Group Aboriginal Corporation will act as consultants for the Yindjibarndi negotiating teams, and the people also agree to engage a commercial lawyer to oversee the writing of the final agreements with FMG and Rio Tinto.

Moved: Angus Mack
 Seconded by: Rosemary Woodley
 Passed Unanimously

23 Apr 2008 – Yindjibarndi Meeting with FMG

Yindjibarndi Directors: Bridget Warrie, Barry Pat, Stanley Warrie, Dora Solomon, Aileen Sandy, Rosemary Woodley, Harry Mills, Ashley James, Jimmy Horace, Charmaine Adams.
Yindjibarndi Community Members: Alec Ned, Thomas Jacobs, Michael Woodley, Lorraine Coppin, Angus Mack, Joyce Hubert, Jean Norman. **Support Team:** Philip Davies (minutes), Glen Toby (filming), Jo Pritchard (food).

Resolutions:

The meeting decided that the 10 directors present would be paid \$500 each. Two other Elders would stand in as proxies for Doris Lockyer and Stephen Hubert – Therefore the group decided to pay Alec Ned and Joyce Hubert \$500 each for today.

The Yindjibarndi Directors of the Yindjibarndi Aboriginal Corporation once again reiterate that the Yindjibarndi community, whom they represent in total, are not a member of, nor do we wish to hold a shareholding in, nor do we intend to be any part of, or represented by, the Marnda Mia CNC. The Yindjibarndi people, via the Yindjibarndi Aboriginal Corporation, resolve to continue to represent themselves in all native title negotiations and affairs. All parties interested in engaging with the Yindjibarndi people must deal directly with the Yindjibarndi Aboriginal Corporation via the protocols they have set down.

Moved: Jimmy Horace
 Seconded: Charmaine Adams
 Passed unanimously

6 May 2008 – YAC Directors Meeting with Rio Tinto

Yindjibarndi Directors:

Barry Pat, Stanley Warrie, Dora Solomon, Aileen Sandy, Rosemary Woodley, Harry Mills, Ashley James, Jimmy Horace, Charmaine Adams, Dennis Hubert (proxy for Stephen Hubert), Sylvia Allan (proxy for Doris Lockyer), Bridget Warrie. **Yindjibarndi Elders:** Joyce Hubert, Alec Ned, Maudie Jerrold, Shirley Woodley, Marie Edwins, Gabrielle Cheedy, Lyn Cheedy, Sharona Walker, Lorna Walker. **Yindjibarndi Community Members:** Thomas Jacobs, Michael Woodley, Lorraine Coppin, Angus Mack, Jean Norman, Alum Cheedy, Jill Tucker. **Support Team:** Philip Davies (minutes), Triin Pehk (filming), Alan Thompson (filming), Jo Pritchard (food)

Resolutions:

The Yindjibarndi Aboriginal Corporation (YAC) Directors, including the five YAC Directors (Stanley Warrie, Barry Pat, Charmaine Adams, Dora Solomon and Jimmy Horace) who were duly elected and appointed as West Angeles Charitable Trust Advisory Trustees at the community meeting held between the Yindjibarndi and Ngarluma people and the Plan B management representatives at the Roebourne basketball courts on 05/12/07, re-iterate their direction put at that duly constituted meeting, that all current funds in addition to all future payments due to be paid into the West Angeles Trust, be paid immediately to the nominated entities of NAC and YAC, effectively finalizing and winding up the West Angeles Charitable Trust.

Moved: Stanley Warrie
 Seconded: Jimmy Horace
 Passed Unanimously

The Yindjibarndi Aboriginal Corporation (YAC) Directors agree to appoint Slater and Gordon and the Barrister, George Irving, to act and represent the Yindjibarndi Aboriginal Corporation in all and any activities they authorise. The YAC Directors agree for Stanley Warrie, Michael Woodley and Philip Davies to liaise with Slater and Gordon to sign the necessary authority that allows Slater and Gordon to work for the Yindjibarndi Aboriginal Corporation. The Yindjibarndi Aboriginal Corporation agrees to deposit \$45,000 into the Slater and Gordon trust account that Slater and Gordon will be setting up on behalf of the Yindjibarndi Aboriginal Corporation.

Moved: Charmaine Adams
 Seconded: Dora Solomon
 Passed Unanimously

The Yindjibarndi Aboriginal Corporation (YAC) Directors agreed that they have acted in good faith for some time now in conducting Yindjibarndi heritage surveys without a signed Yindjibarndi Heritage Agreement in place with Fortescue Metals Group (FMG). The YAC Directors agree not to conduct any more Yindjibarndi heritage surveys for Fortescue Metals Group until the Yindjibarndi heritage agreement is agreed to and signed by FMG and the YAC representatives.

Moved: Charmaine Adams
 Seconded: Ashley James
 Passed Unanimously

29 May 2008 – YAC Directors Meeting with Polaris Metals

Yindjibarndi Directors Barry Pat, Stanley Warrie, Aileen Sandy, Harry Mills, Ashley James, Stephen Hubert, Doris Lockyer, Charmaine Adams, Jimmy Horace, Bridget Warrie, Dora Solomon, Rosemary Woodley **Yindjibarndi Elders** Ned Cheedy, Joyce Hubert, Alec Ned, Sylvia Allan, Rosie Cheedy, Maudie Jerrold, Jill Tucker, Shirley Woodley **Yindjibarndi Aboriginal Corporation Executive Officer** Michael Woodley **Yindjibarndi Community Members** Thomas Jacobs, Lorraine Coppin, Angus Mack, Dennis Hubert, Lesley Walker, Max Hubert, Lyn Cheedy, Gabrielle Cheedy, Jean Norman, Sharon Togo, Sharon Walker, Renae Walker **Support Team** Philip Davies (minutes), Lyle Wally (filming)

Discussions:

MJ said that it is time for the Yindjibarndi to be involved in these business arrangements

Jill Tucker (JT) I don't want any other language groups surveying on our country

MW – we have allowed this stuff to happen in the past – we are now controlling our own country and the heritage on that country – we will find out if other groups are going onto our country and doing heritage

MW – if anybody is not clear on what we are talking about then speak up – we are all equal and this is your country just as much as anybody else

MW raised the issue that Gurruma has a native title determination on Yindjibarndi country – MW suggested to write a letter to Gurruma asking for this country back – and that they recognise that the country they have claimed in their native title determination be given back to Yindjibarndi – PNTS handled this issue vary badly because this country is rightly Yindjibarndi

MW have written a letter from the Yindjibarndi to the Eastern Gurruma which MW read out – the Yindjibarndi people agreed to sign the letter

Resolutions:

The Yindjibarndi Aboriginal Corporation (YAC) Directors agreed to give Polaris Metals NL the Yindjibarndi/Polaris Heritage Agreement (document file dated 29/05/08), and agreed that they are willing to enter into a business partnership with Polaris Metals NL.

Moved: Stanley Warrie
 Seconded: Charmaine Adams
 Passed unanimously

The Yindjibarndi Aboriginal Corporation (YAC) Directors agreed to send a letter to the Eastern Gurruma people inviting them to a meeting in the Roebourne Community Hall – the reason for the meeting is to ask the Eastern Gurruma to recognise that they have Yindjibarndi country in their Eastern Gurruma native title determination and that they give that country back to the Yindjibarndi.

Moved: Aileen Sandy
 Seconded: Barry Pat
 Passed unanimously

10-12 June 2008 – YAC Meeting and Negotiations with FMG

Yindjibarndi Negotiating Team and Community Members who attended the three days: Ned Cheedy, Stanley Warrie, Thomas Jacobs, Maudi Jerrold, Rosemary Woodley, Charmaine Adams, Howard Lockyer, Lyn Cheedy, Michael Woodley Joyce Hubert, Sylvia Allan, Jill Tucker, Dora Solomon, Bridget Warrie, Tootsie Daniels, Doris Lockyer, Dot Moses, Wendy Warrie, Kaye Warrie, Esther Pat, Aileen Sandy, Maisie Ingie, Clifton Mack, Anne Jacobs, Kaileen Daniels, Regina Daniels, Barry Pat, Jean Norman, Judith Coppin, Bruce James, Amy Jerrold, Bruce Woodley, Stephen Hubert, Max Hubert, Stephen Hubert (2), Ashley James, Bruce Monadee, Jennifer Toby, Jimmy Horace, Dennis Hubert, Sue Edwards, Jessica Allan, Harry Mills, Angus Mack, Marion Cheedy, May Adams, Rebecca Cheedy, Vince Adams, Wendy Hubert, Sharona Walker, Renae Walker, Charlene Ranger, Len Aubrey, Alec Tucker.

Support Team: Philip Davies (minutes), Lyle Wally (filming), Glen Toby (filming), Maria Rodner (filming), Lorraine Coppin (Food), Jo Pritchard (Food), Sharona Walker (Food), Renae Walker (Food), Fernando Hincapie, Charlene Ranger (Food), Adrian Murphy, from Social Licence, Simon Millman from Slater & Gordon, George Irving, Barrister.

Fortescue Metals Group representatives: Blair McGlew, David Forrest, Bruce Larson, Briony McGinty

This was a negotiation meeting in which the Yindjibarndi again sought a commitment from FMG for a 5% Royalty in return for their consent to a Land Access Agreement over the Yindjibarndi #1 claim area and FMG rejected that approach. In the course of the discussions the following exchange took place involving Blair McGlew (BM) and Vince Adams (VA) (at pp13-14):

BM – I am talking about the Yindjibarndi 1 Claim area – I am talking about all the approvals we need – all the things we need for our project in Yindjibarndi 1 – this is the offer – we will offer a signing payment of \$250,000, a VTEC royalty of 8 cents per tonne up to \$2,000,000 annually, and 5% FOB royalty up to \$3,000,000 annually.

VA – what are the figures you have just put up based on?

BM – the value of the work we put into employment programs, what feels fair, it's not like petrol where we can pick and choose from the bowsers

VA – why do you put the offer at 8cents per tonne and then they are capped – why is that? – how do you arrive at the cap – if you cap it then the cents per tonne is meaningless – you are gambling on how many tonnes are in the country – we are giving you our country – we are being fair – we are giving you something – we are losing a hell of a lot more – what is your formula

BM – sorry I got the question wrong – I understand the question – 5% FOB of any income that FMG makes – I can guarantee that this is not in any other native title claim – this is extortionally high – what is the reason behind asking for that

VA – we want to take control of our own affairs – we need that sort of funds to do our own business, to learn and practice our culture

BM – money won't give you that – I am telling you that if we give you that money you will blow it because you don't have the skills to do it – if we give you a lot of cash then you will not know how to handle it

VA – we can handle our own money – we can do our own business – we can develop our own community alongside FMG – the formula you have up there doesn't compute with the Yindjibarndi people.

19 Jun 2008 – YAC Directors Meeting with De Beers, API Management and Aquilla

YAC Directors: Barry Pat, Stanley Warrie (Chairperson), Aileen Sandy, Ashley James, Doris Lockyer, Charmaine Adams, Jimmy Horace, Dora Solomon, Rosemary Woodley, Bridget Warrie; Yindjibarndi Elders: Ned Cheedy, Joyce Hubert, Sylvia Allan, Rosie Cheedy, Maudie Jerrold, Jill Tucker, Alec Ned, Shirley Woodley, Marie Edwins; YAC Executive Officer Michael Woodley; Yindjibarndi Community Members: Thomas Jacobs, Lorraine Coppin, Angus Mack, Lyn Cheedy, Jean Norman, Sharon Togo, Sharona Walker, Glen Toby, Lyle Wally, Wendy Hubert, Lesley Walker.

Support Team Philip Davies (Minutes), Glen Toby (Filming), Lyle Wally (filming), Sharona Walker (Food), Sharon Togo (Food), Lorraine Coppin (Food), Fernando Hincapie, Vicki Webb, Jo Pritchard

This was a negotiation meeting.

The following discussion concerning financial assistance to members took place (minutes at p 4 and pp 5-6):

Jill Tucker (JT) said she would like to start her own business and would like to get funds from the Yindjibarndi to assist her

Maudie Jerrold (MJ) said she would like assistance quickly and wants to come to an agreement with FMG

Stanley Warrie (SW) – said that we have to hang tough

Michael Woodley (MW) – said that these negotiations may take time – hopefully if we do a good enough deal then we can assist our own people with our own Yindjibarndi money

MJ – is it alright if I set up a roadhouse, a workshop in Millstream and I have a heap of other ideas

Michael Woodley (MW) – your ideas are good – but this is too early – we just need to negotiate a good deal and we can spend our own money on what we want

MJ – you haven't looked at my proposal – can you back us up

MW – the Yindjibarndi will back you up

Barry Pat – that's what we want – we want a good deal so we can do our own business

JT – we have a new camp at Millstream – it would be great to see some of our own Yindjibarndi out there doing our own stuff – we can go joint ventures with the CALM – and then when we have a good hold we can go it alone

MW – the Yindjibarndi Aboriginal Corporation (YAC) is the only committee that governs all Yindjibarndi business – this committee is the peak body – later in the year there will be an Annual

General Meeting where the Directors are elected in an open honest transparent manner – we feel your pain but the YAC is aiming to get the best deal

Resolutions:

That the Yindjibarndi Aboriginal Corporation (YAC) is the only entity that governs all Yindjibarndi affairs – Yindjibarndi members are not to go outside the Yindjibarndi Aboriginal Corporation process.

Moved: Charmaine Adams
Seconded: Stanley Warrie
Passed Unanimously

That the Yindjibarndi Aboriginal Corporation (YAC) invite Simon Millman (Slater and Gordon), George Irving (Barrister) and Adrian Murphy (Social Licence) to represent the YAC in all other matters from this point in time onwards until they are told otherwise.

Moved: Charmaine Adams
Seconded: Jimmy Horace
Passed Unanimously

That the Yindjibarndi Aboriginal Corporation (YAC) dismiss Michael Rynne as their Barrister representing them in the Yindjibarndi 1 native title claim – a letter will be sent to Michael Rynne telling him of this decision asking him to send a final account to the Yindjibarndi Aboriginal Corporation for any work completed on the Yindjibarndi claimant's behalf.

Moved: Aileen Sandy
Seconded: Charmaine Adams
Passed Unanimously

30 Jul 2008 – YAC Directors and Elders Council Meeting with RTIO & Department of Environment

Yindjibarndi Directors: Barry Pat, Stanley Warrie, Rosemary Woodley, Ashley James, Stephen Hubert, Dora Solomon, Jimmy Horace, Charmaine Adams, May Adams (Proxy for Aileen Sandy), Thomas Jacobs (Proxy for Bridget Warrie), Bigali Hanlon (Proxy for Doris Lockyer) **Yindjibarndi Elders:** Ned Cheedy, Joyce Hubert, Sylvia Allan, Rosie Cheedy, Dot Moses (Proxy for Alec Ned), Lyn Cheedy (Proxy for Maudi Jerrold), Russell Sandy (Proxy for Shirley Woodley), Angus Mack and Gabrielle Cheedy (both Proxy for Bruce Monadee – to be paid \$250 each) **YAC Executive Officer:** Michael Woodley; **Yindjibarndi Community Members:** Thomas Jacobs, Lorraine Coppin, Angus Mack, Gabrielle Cheedy, Bigali Hannan, Jean Norman, Russell Sandy, May Adams, Tiffany Churnside, Warrick Sambo, Jill Tucker, Alec Tucker, Sarah Jacobs, Sharon Togo, Sharona Walker, Renae Walker, Wendy Hubert

Yindjibarndi Support Team: Philip Davies (minutes), Lyle Wally (filming), Fernando Hincapie, Adrian Murphy (Social Licence), George Irving (Barrister), Simon Millman (Slater and Gordon), Kate George (Claypan Services), Lesley Walker, Lorraine Coppin

The meeting with RTIO was a negotiation meeting and no resolutions were passed. The meeting with the Department of Environment was for Yindjibarndi to meet the new Acting Regional Manager, Keith Hockey. Mr Hockey made a short presentation and then said:

“anything the Yindjibarndi people wish to do - let us know of their aspirations then we may be able to assist”.

The following discussion regarding financial assistance to members took place (minutes at p 8):

MW – there are two Yindjibarndi members – Maudi Jerrold and Jill Tucker who would like to start a tourist operation – is this possible with the help of DoE

KH – we are prepared to look at all ideas however we don't have any funds to add to the tourist venture

Bigali Hanlon (BH) then made a presentation regarding the Buminji Aboriginal Corporation (minutes at p 8):

BH - would like to give all her paperwork to the Yindjibarndi Aboriginal Corporation for them to take over

MW – Are the family members happy for the Buminji Aboriginal Corporation to be handed to the Yindjibarndi Aboriginal Corporation – I don't think the YAC Directors have a problem with taking it on but the Buminji family members have to be happy with the thought that the assets of the Buminji Aboriginal Corporation go to the Yindjibarndi Aboriginal Corporation

20 Aug 2008 - YAC Directors and Elders Council Meeting with Water Corporation

Yindjibarndi Directors: Barry Pat, Stanley Warrie, Rosemary Woodley, Dora Solomon, Harry Mills, Doris Lockyer, Ashley James, Aileen Sandy, Charmaine Adams, Jimmy Horace, Thomas Jacobs (as Proxy for Bridget Warrie), Max Hubert (as Proxy for Stephen Hubert); **Yindjibarndi Elders:** Ned Cheedy, Joyce Hubert, Sylvia Allan, Jill Tucker (as Proxy for Maudie Jerrold), Brenda Greenwood (as Proxy for Alec Ned), Wendy Hubert (as Proxy for Shirley Woodley), Bruce Monadee, Rosie Cheedy; **YAC Executive Officer:** Michael Woodley; **Yindjibarndi Community Members:** Lorraine Coppin, Angus Mack, Russell Sandy, Brenda Greenwood, Gabrielle Cheedy, Lyn Cheedy, Tootsie Daniels, Lesley Walker.

Yindjibarndi Support Team: Philip Davies (minutes), Fernando Hincapie, Jo Pritchard, Vicki Webb, Warrick Sambo, Rose Butler (Filming), Inge Olmheim (Filming)

Discussion re **West Angeles, Burrup Fertilisers and the Straits Resources Agreements** (minutes at pp 5-7):

MW – the West Angeles Agreement, Burrup Fertilisers and the Straits Resources are agreements that have funds attached that go to the Yindjibarndi Aboriginal Corporation - \$505,000 has gone into the YAC account from Plan B (West Angeles Charitable Trust), with \$125,000 due to be paid by Burrup Fertilisers, and \$32,500 to be paid by Straits Resources. – The Yindjibarndi Aboriginal Corporation is negotiating for funds on the Yindjibarndi people's behalf – Rio Tinto is a good example – they have aims to get to 320 million tonnes of iron ore per year – they have signed with the Ngarluma Aboriginal Corporation (NAC) to get access to their land – the Yindjibarndi is in a prime position to negotiate a good deal with Rio Tinto.

MW – for the last 6-8 months Juluwarlu has been doing this work for the Yindjibarndi Aboriginal Corporation – I am proposing that we continue to invest the funds that we have in the YAC in getting good deals for the Yindjibarndi people – via our lawyers we have objected to the mining leases being granted via the Mining Act and the Native Title Act – we are going to be applying for mining royalties to be paid to the Yindjibarndi via the mining act. – We are trying to put as much pressure on these companies as possible to get good deals – by putting a good team together for the best interests of Yindjibarndi – that team includes the Yindjibarndi Directors, the Elders, and Juluwarlu Group Aboriginal Corporation – we all got problems but if we can stick to the plan then my opinion is we

need to invest our money in this process now – we need to invest our money in our cultural business. – I am proposing that we use the funds in the YAC account to manage our affairs and to try and get good deals for the long term – we are trying to achieve good deals

Jill Tucker (JT) – why can't we give some money to the people – what mostly matters is us – put a charitable fund aside so that we can benefit – we have suffered – what about us as Yindjibarndi people here – surely there is some little amount that can be put aside

MW – that is my point to – you need to ask yourself if this is the right thing to do – do you want to give yourself money first or the people who can run the business for you

JT – I agree that the people running our business should be paid first – but after all that we need to put money aside for the Yindjibarndi people at a later date

MW – I put everything on the table – I am open and honest with everything – it is not right that Andrew Forrest, Gina Reinhart and the others are getting rich off our country while we remain poor

JT – you are a strong person Miggo – we are very happy with the way you are running the corporation

MW – you can invest the money in the Yindjibarndi Aboriginal Corporation account into our business or you can pay all the money to all the Yindjibarndi people

JT – yes we want the money invested in the business

MW – we know that Rio will pay compensation – but they only want to pay Yindjibarndi what they have paid everybody else

MW – I want to put my cards on the table - I want to get an agreement between Juluwarlu and the Yindjibarndi Aboriginal Corporation on a monthly basis – then if Juluwarlu is doing the wrong thing or if the Yindjibarndi are not happy with our work then they can sack us on a monthly basis – that way the YAC always remain the decision makers – in control – I want to let you make the decision about keeping me at the head and running and operating the Yindjibarndi Aboriginal Corporation

SW – it is far better for us to be running our own corporation rather than holding the white fella's hands – because they don't run our business for us – only for them – I see the bigger picture – by using Juluwarlu we can get to the bigger picture – we are running our own affairs – by putting our business in someone else's hands we will be finished

Thomas Jacobs (TJ) – we need to support Juluwarlu if we want to move ahead

MW – my job is to get Yindjibarndi in a good position over a long term

JT – so are you asking for the YAC to pay you on a monthly basis?

MW – we have tried to put the Yindjibarndi in a strong position – and we have been doing this for a long time

JT – we understand that we need to pay the people in the short term but in the long term we can't forget the people and that we need to look after the people in the long run

Lorraine Coppin (LC) – well if there are other people who are not happy with the process then they should come to the meetings

MW – I have been working for the Yindjibarndi cause for the last 8 years – and I will continue to work for the Yindjibarndi in all native title matters

JT – I support you

MW – my position is to take the Yindjibarndi forward

JT – to MW you have come a long way

Resolutions:

Following today's meeting the Yindjibarndi Aboriginal Corporation (YAC) sends a letter to the Water Corporation saying the Yindjibarndi people don't agree with any further development and damage to any Yindjibarndi sites in the Millstream area until:

1. They pay compensation to the YAC for all the water taken from the Millstream area since all bores were erected
2. They agree to pay the YAC compensation for every litre of water that will be taken from this area in the future
3. That the Water Corporation supply the YAC with copies of any heritage agreement they may have signed with the Yindjibarndi people in the past (perhaps via PNTS) and also examples of other heritage agreements the Water Corporation has with other native title groups
4. That the Water Corporation enters a land swap agreement with the Yindjibarndi to compensate the Yindjibarndi for all land lost to the Yindjibarndi by the Water Corporation activities
5. That the next meeting with the Yindjibarndi Aboriginal Corporation and the Yindjibarndi Elders Committee is to be held in country at Millstream

Moved By: Stanley Warrie

Seconded: Rosie Cheedy

Passed unanimously

The Yindjibarndi Aboriginal Corporation agrees that Juluwarlu Group Aboriginal Corporation continue to manage the administration, native title, heritage and financial affairs of the Yindjibarndi Aboriginal Corporation. This management agreement is on a monthly basis – therefore the Juluwarlu Group Aboriginal Corporation management agreement can be terminated by the Yindjibarndi Aboriginal Corporation by giving a month's written notice to Juluwarlu Group Aboriginal Corporation

Moved: Stanley Warrie

Seconded: Doris Lockyer

Passed Unanimously

27 Oct 2008 – Yindjibarndi Aboriginal Community Meeting

Yindjibarndi Community Members: Michelle Adams, Bigali Hanlon, Alice Guinness, Dora Solomon, Judy Albert, Doris Lockyer, Jill Tucker, Angus Mack, Michael Woodley, Charmaine Adams, Sylvia Allan, May Adams, Jean Norman, Stanley Warrie, Harry Mills, Thomas Jacobs, Barry Pat, Rosemary Woodley, Lorraine Coppin, Jimmy Horace, Tootsie Daniels, Joylene Warrie, Kaye Warrie, Tiffany Lockyer, Tania Jacob, Lyn Cheedy, Gabrielle Cheedy, Donny Walker, Rodney Adams, Clifton Mack, Maudie Jerrold, Judith Coppin, Ashley James, Rose Cheedy, Wendy Warrie, Karen Toby, Leslie Walker, Lynda Ryder, Aileen Sandy

Support Team: Philip Davies (Juluwarlu - Minutes), Rose Butler and Inge Olmheim (Juluwarlu - Filming), George Irving (Barrister), Adrian Murphy (Social Licence)

The purpose of this meeting was to workshop ideas to develop a business and community development plan for the Yindjibarndi People.

Discussion:

MW – started the meeting by addressing those present discussing the purpose for today’s meeting – the purpose for today’s meeting is to develop the Yindjibarndi community plan – we want this document so we can explain to proponents where we want to go with our community – The only way we can grow as a nation is to fund our own ideas and responsibilities – we need to have a constant income to develop and fund our plans and aspirations – today is dedicated to developing the plan – there are no sitting fees for today

Jill Tucker (JT) why haven’t we agreed with Rio yet?

MW – well we want 2.5% not 0.5% - Lang Hancock made a deal for 2.5% 40 years ago – we are wanting what Lang gets – we are only going down this road because we are going for the best deal possible

Michelle Adams (MA) – what is the time frame here with Rio Tinto

MW – we are waiting for them to get to the table – we would like to develop our Yindjibarndi business plan by the end of this year

MW – Rio are wanting to increase their tonnage per annum

George Irving (GI) and Adrian Murphy (AM) arrived at the Roebourne Community Hall at 11.55am

At 12.10pm MW introduced GI and AM to those present

GI brought those present up to date with many of the issues that the Yindjibarndi have recently been dealing with and how GI is developing the Yindjibarndi case so that the Yindjibarndi may be able to win some ground and leverage

Adrian Murphy (AM) then started the Yindjibarndi Business Planning session.

Adrian Murphy explained that the first step in building a Community Plan was to identify and prioritise the “Big Issues” or “Goals”. The next steps would be to consult with Yindjibarndi people to identify Yindjibarndi Capabilities and Options; and to identify how traditional decision making processes might be incorporated into the PBC structure.

The outcomes from this workshop were written up and attached to the minutes of the subsequent YAC meeting held on 29 October 2008). The following issues were identified by Yindjibarndi participants as the “Main Issues” that needed to be addressed in any Community / Business Plan (the numbers at the beginning of each issue show the number of times the issue was identified as a “Main Issue”):

*116 - Increase day to day use of Yindjibarndi Language

*109 - Nourish and Grow Yindjibarndi Culture for current and future Yindjibarndi people because that is our way

*64 - Generation and sustainment of Yindjibarndi Business Opportunities (Cleaning, Artefact, Gardening and Child Care products and services)

*54 - Yindjibarndi responsibility for Land and Water Management including the management of land and water

*50 - Maintain a commercially successful Yindjibarndi Investment Program for current and future generations of Yindjibarndi People

*46 - Coordinate and Provide Yindjibarndi community activities that respect and protect Culture and Country

- *42 - Benefits for Yindjibarndi People from Country
- *38 - Personal and Community Security for Yindjibarndi People
- *36 - Good Health Care for all Yindjibarndi People
- *31 - Appropriate and sufficient Housing for Yindjibarndi people where they need it
- *29 - Develop appropriate, accurate and successful Yindjibarndi Governance structures
- *26 - Support for a successful Education system, programmes and facilities for Yindjibarndi People including children, adults and the elders
- *23 - Support for existing and new Homeland Movement projects to enable people to live well on country ie Millstream, Ngurawaana, Bumiji and Cheeditha
- *20 - Create and sustain attractive and rewarding employment options for Yindjibarndi People
- *15 - Organise Social and Community Activities for Yindjibarndi People that are valued and supported
- *10 - Protect and Defend Yindjibarndi Country for current and future Yindjibarndi people because that is our way
- *8 - Sustainable and renewable funding to support Yindjibarndi to create its future.

29 Oct 2008 – YAC Directors and Elders Council meeting with Hancock Prospecting

Yindjibarndi Directors: Barry Pat, Stanley Warrie, Rosemary Woodley, Dora Solomon, Harry Mills, Doris Lockyer, Don Walker (as Proxy for Ashley James), Aileen Sandy, Charmaine Adams, Jimmy Horace, Thomas Jacobs (as Proxy for Stephen Hubert), May Adams (as Proxy for Stanley's Mum) **Yindjibarndi Elders:** Ned Cheedy, Joyce Hubert, Sylvia Allan, Maudie Jerrold, Bigali Hanlon (as Proxy for Ned's brother), Shirley Woodley, Berry Malcolm (as Proxy for Bruce Monadee), Rosie Cheedy; **YAC Executive Officer:** Michael Woodley; **Community Members:** Lorraine Coppin, Angus Mack, Ricky Sandy, Lyn Cheedy, Clifton Mack, Michelle Adams, Judith Coppin, Gabrielle Cheedy, Amorette Lockyer, Ricky Sandy, Lesley Walker, Michelle Adams, Judy Albert, Lyn Cheedy.

Yindjibarndi Support Team: Philip Davies (Juluwarlu - minutes), Rose Butler (Juluwarlu - Filming), Inge Olmheim (Juluwarlu - Filming), Arian Murphy (Social Licence), George Irving (Barrister), Warrick Sambo (Juluwarlu), Jo Pritchard (Juluwarlu)

This meeting was a negotiation meeting and no formal resolutions were passed concerning Hancock Prospecting. At the conclusion of the negotiations the following issues were discussed (minutes at pp 3-4):

Extra country to be claimed (native title) by the Yindjibarndi

MW discussed the extra Yindjibarndi country that the Yindjibarndi wish to make a claim on – Michael presented a map that has been produced at Juluwarlu with Ned Cheedy describing the country that is Yindjibarndi country – MW pointing to Ned Cheedy – that is the man with the knowledge

Michelle Adams (MA) – I reckon we should ask the Eastern Gurrama for a meeting to discuss the issue of them being on our country

Charmaine Adams (CA) – we have already asked them

MW – the problem is that the Eastern Gurrama is continuing to ignore the Yindjibarndi request to meet with them (the Eastern Gurrama)

Next Juluwarlu Group Aboriginal Corporation Cultural Mapping Books

MW asked those present for the YAC to assist with funding the next books – which will document, photograph and film the country in the Hooley and the Harding Dam areas – the cost to produce each book is about \$140,000 – we are asking the YAC to assist Juluwarlu to produce the books – we will be making presentations to other funding bodies to match the funds put in by the Yindjibarndi Aboriginal Corporation – I will think about and get back to the YAC regarding how much we are asking for the YAC contribute to the projects

Letter from Charmaine Adams re funding for May Adams operation

Charmaine Adams (CA) presented a letter to the Chairperson regarding funding an operation for May Adams- the operation won't be covered by Medicare. NYFL has said they can contribute \$5,000 and then CA is asking the YAC for \$7,000 so the operation can go ahead.

May Adams (MA) – if I can get some sort of funding and some sort of help then I would be grateful

The Juluwarlu Group Aboriginal Corporation fee for service

MW – I am asking for the endorsement of the YAC group to continue to pay for the Juluwarlu services on a monthly basis – our monthly service costs are between \$20,000 and \$24,000 per month

Resolution:

The Yindjibarndi Directors and the community members present at this meeting agree to partially fund the next Juluwarlu books on the Hooley and the Harding Dam areas, to pay Juluwarlu on a monthly basis for their services, and to pay \$7,000 for May Adams operation.

Moved: Thomas Jacobs

Seconded: Bigali Hanlon

Passed unanimously

17 Dec 2008 – YAC Directors Meeting

YAC Directors: Barry Pat, Stanley Warrie, Rosemary Woodley, Dora Solomon, Harry Mills, Doris Lockyer, Aileen Sandy, Jimmy Horace, Stephen Hubert; **Yindjibarndi Elders:** Ned Cheedy, Joyce Hubert, Sylvia Allan, Maudie Jerrold, Shirley Woodley, Rosie Cheedy; **YAC Executive Officer:** Michael Woodley; **Yindjibarndi Community Members:** Lorraine Coppin, Angus Mack, Ricky Sandy, Lyn Cheedy, Clifton Mack, Michelle Adams, Gabrielle Cheedy, Lesley Walker, Judy Albert, May Adams, Roxanne Adams, Stephen Adams, Jessica Allan, Alum Cheedy, Fabian Cheedy, Kasey Cheedy, Rebecca Cheedy, Robert Cheedy, Shantelle Cheedy, Tiffany Churnside, Tootsie Daniels, Susan Edwins, Kevin Guinness, Alice Guinness, Bigali Hanlon, Tony Harrold, Kaysha Hicks, Sarah Hicks, Thomas Jacobs, Jennifer Toby, Amy Jerrold, John King, Curtis Lockyer, Howard Lockyer, Bruce Monadee, Jean Norman, Esther Pat, Celia Sandy, John Sandy, Ken Sandy, Russell Sandy, Diana Smith, Karen Toby, Sharon Togo, Jill Tucker, Renea Walker, Janice Warrie, Joylene Warrie, Kaye Warrie, Sharon Warrie, Wendy Warrie, Rebecca Williams, Finola Woodley, Hayden Woodley, Preston Woodley.

Yindjibarndi Support Team: Philip Davies (Juluwarlu - minutes), Inge Olmheim (Juluwarlu - Filming), George Irving (Barrister for the Yindjibarndi Aboriginal Corporation), Jo Pritchard (Juluwarlu), Fernando Hincapie (Juluwarlu)

Discussion:

Jill Tucker addressed the group requesting support from the YAC members to investigate the possibility of setting up a tourism venture in Millstream. The Department of Environment (DEC) have offered Jill and Sylvia Allan to go on an investigative trip within Australia to have a look at other parks and tourist ventures – she may go to Sydney, Adelaide, the Kimberley, Broome etc Jill is a member of the Millstream Park Council who liaise with DEC on these issues.

Barry Pat and Kevin Guinness both spoke in favour of the trip.

However members expressed their wish that the Park Council does not enter into Yindjibarndi native title dialogue with all native title matters being referred back to the YAC – they said that DEC can be very sneaky and manipulative and not to trust them – they may be after Yindjibarndi land and heritage clearance work and simply use the Park Council for this purpose – no Yindjibarndi member should do any heritage surveys for DEC without the express permission of the YAC.

Resolutions:

That the minutes of the Directors meeting held on 20/10/08 be accepted as read with no amendments:

Moved: Thomas Jacobs
 Seconded: Rosemary Woodley
 Passed Unanimously

The Yindjibarndi people support Jill Tucker and Sylvia Allan to investigate the possibilities of developing Yindjibarndi cultural tourism at Millstream – the group agrees for Sylvia and Jill to do this on behalf of the Yindjibarndi people.

Moved: Barry Pat
 Seconded: Stanley Warrie
 Passed Unanimously

The Yindjibarndi Directors accept the nominations of Lorraine Coppin, Ricky Sandy, John Sandy, Glen Toby, Vince Adams, Mark Horace, Wendy Hubert, Bella Samson, Dawn Sandy, Glen Toby, Lyle Wally, Clifton Mack, Gabrielle Cheedy, Lesley Walker, Judy Albert, May Adams, Roxanne Adams, Stephen Adams, Jessica Allan, Fabian Cheedy, Kasey Cheedy, Rebecca Cheedy, Robert Cheedy, Shantelle Cheedy, Tiffany Churnside, Tootsie Daniels, Susan Edwins, Kevin Guinness, Bigali Hanlon, Tony Harrold, Kaysha Hicks, Sarah Hicks, Thomas Jacobs, Jennifer Toby, Amy Jerrold, John King, Curtis Lockyer, Howard Lockyer, Jean Norman, Celia Sandy, Ken Sandy, Russell Sandy, Diana Smith, Karen Toby, Sharon Togo, Renea Walker, Janice Warrie, Sharon Warrie, Wendy Warrie, Rebecca Williams, Finola Woodley, Hayden Woodley, Preston Woodley to become members of the YAC in this General Meeting held today the 17/12/08.

Moved: Jimmy Horace
 Seconded: Thomas Jacobs
 Passed Unanimously

17 Dec 2008 – YAC AGM

YA) Directors: Barry Pat, **Stanley Warrie**, Rosemary Woodley, Dora Solomon, Harry Mills, Doris Lockyer, Aileen Sandy, Jimmy Horace, Stephen Hubert; **Yindjibarndi Elders:** Ned Cheedy, Joyce Hubert, Sylvia Allan, Maudie Jerrold, Shirley Woodley, Rosie Cheedy; **YAC Executive Officer:** Michael Woodley; **Yindjibarndi Aboriginal Corporation Members:**

Lorraine Coppin, Angus Mack, Ricky Sandy, Lyn Cheedy, Clifton Mack, Michelle Adams, Gabrielle Cheedy, Lesley Walker, Judy Albert, May Adams, Roxanne Adams, Stephen Adams, Jessica Allan, Alum Cheedy, Fabian Cheedy, Kasey Cheedy, Rebecca Cheedy, Robert Cheedy, Shantelle Cheedy, Tiffany Churnside, Tootsie Daniels, Susan Edwins, Kevin Guinness, Alice Guinness, Bigali Hanlon, Tony Harrold, Kaysha Hicks, Sarah Hicks, Thomas Jacobs, Jennifer Toby, Amy Jerrold, John King, Curtis Lockyer, Howard Lockyer, Bruce Monadee, Jean Norman, Esther Pat, Celia Sandy, John Sandy, Ken Sandy, Russell Sandy, Diana Smith, Karen Toby, Sharon Togo, Jill Tucker, Renea Walker, Janice Warrie, Joylene Warrie, Kaye Warrie, Sharon Warrie, Wendy Warrie, Rebecca Williams, Finola Woodley, Hayden Woodley, Preston Woodley.

Yindjibarndi Support Team: Philip Davies (Juluwarlu - minutes), Inge Olmheim (Juluwarlu - Filming), George Irving (Barrister for the Yindjibarndi Aboriginal Corporation), Jo Pritchard (Juluwarlu), Simon Millman (Lawyer for the Yindjibarndi Aboriginal Corporation – Slater and Gordon - Simon arrived at the meeting at approximately 1.50pm after flying up from Perth), Fernando Hincapie (Juluwarlu)

Chairperson's Report:

Stanley Warrie thanked the people for electing and supporting him as their Chairperson for the past year and a bit. Stanley said he has had a lot of things he wanted to do for the Yindjibarndi people and he is particularly pleased that the YAC has Juluwarlu managing the affairs of the YAC on a daily basis, and that there is a legal team in place that can fight some of the battles that the Yindjibarndi people have been so frustrated about for so long. He is very happy that now companies who wish to make money out of Yindjibarndi land have to come and see the people before they can do any development.

Stanley said he has seen a lot of suffering for a long time and he knows that if we stay strong as a group we may finally be able to get some social and economic justice from Australian Governments and the companies who become rich from our land while giving us nothing – he said they just give the Yindjibarndi rubbish, peanuts compared to what they are making – while we continue to live in poverty

He concluded by saying that we have a big fight on our hands to achieve justice, but he is confident we have the right team together, and he hopes the Yindjibarndi people give him the chance to complete the job we have started by re-electing him as a Director, and hopefully as Chairperson.

Executive Officer's Report:

After working on the Yindjibarndi history and culture for 8 years at Juluwarlu Group Aboriginal Corporation I feel that we may finally be able to succeed by bringing companies to account for their discrimination against us. The legal and management team that we have put together have developed some great arguments that we want to run.

I want to thank the Yindjibarndi community and Directors for supporting the Yindjibarndi vision in an open, honest and transparent manner. All decisions that we make are made in these types of meetings where all Yindjibarndi people have a voice. If you have an opinion on something then you can give it. We are given a clear direction by you – the Yindjibarndi people – so that we can act in our own interests. And we are using our resources to the best of our ability to try and get justice for the Yindjibarndi people. We have been ignored and discriminated against for to long.

All our meetings are open for all Yindjibarndi people, they are all held in Roebourne where the companies have to come to meet us, they are all filmed and good minutes are taken, and all Yindjibarndi are welcome to come for the information at any time.

Juluwarlu has just finished its fifth book – this one on the Wurumarri area – these are all great documents for us now and into the future – because we are documenting our culture so that it remains strong into the future

We are in the best position possible and what has put us in this position is that you people have made the commitment to invest in arguments that will support our cases in our negotiations and in the courts – we all know that costs money but we are hoping that it will pay us big dividends in the future

YAC Management Accounts:

Phil Davies presented the management accounts, being the YAC Balance Sheet and the Profit and Loss, for the 2007/2008 financial year for the YAC – they are attached to these minutes – He explained that these figures are not the audited accounts. The management accounts have gone to the YAC's accountant – Gary Slee who will prepare them for the YAC auditor – Ric West & Associates – however Philip does not anticipate that the audited accounts will materially be any different to the management accounts presented here today except that the Auditor will also produce the Director's Report. Philip suggested that these figures be accepted by the members as an interim measure, while the audited accounts are still being prepared, and we will aim to have the final audited accounts for 2007/2008 presented to the YAC members at the YAC Special General Meeting to be held in February 2009.

Resolutions:

That the minutes of the previous YAC **Annual** General Meeting held 08/11/07 be accepted as read with no amendments:

Moved: Michelle Adams
 Seconded: Aileen Sandy
 Passed Unanimously

That the management accounts being the YAC Balance Sheet and the YAC Profit and Loss for the 2007/2008 financial year presented by Philip Davies here today be accepted by the members in the interim while the audited set of accounts and Director's report are still to be prepared by the YAC auditor. We will aim to have the final audited accounts ready for the YAC Special General Meeting which is scheduled to be held in February 2009.

Moved: Barry Pat
 Seconded: Harry Mills
 Passed Unanimously

That we aim to have the ORIC CATSI compliance requirements ready to be implemented into the YAC Constitution for the YAC Special General Meeting which is scheduled to be held in February 2009.

Moved: Stanley Warrie
 Seconded: Bigali Hanlon
 Passed Unanimously

That Ned Cheedy, Joyce Hubert, Bigali Hanlon, Maudie Jerrold, Sylvia Allan, Shirley Woodley, Bruce Monadee and Diana Smith make up the Yindjibarndi Elders Council and will be placed with this task for the coming year until at least the next Yindjibarndi Annual General Meeting.

Moved: John Sandy
 Seconded: Thomas Jacobs
 Passed Unanimously

The following nominations for YAC Directors having been received:

1. Tootsie Daniels Nominated by Jill Tucker
 Tootsie accepted the nomination

- | | |
|---|------------------------------|
| 2. Thomas Jacobs
Thomas accepted the nomination | Nominated by John Sandy |
| 3. John Sandy
John accepted the nomination | Nominated by Thomas Jacobs |
| 4. Rosemary Woodley
Rosemary accepted the nomination | Nominated by Lorraine Coppin |
| 5. Stanley Warrie
Stanley accepted the nomination | Nominated by Lorraine Coppin |
| 6. Gabrielle Cheedy
Gabrielle accepted the nomination | Nominated by May Adams |
| 7. Stephen Hubert
Stephen accepted the nomination | Nominated by Maudie Jerrold |
| 8. Lyn Cheedy
Lyn accepted the nomination | Nominated by Rosie Cheedy |
| 9. May Adams
May accepted the nomination | Nominated by Rosie Cheedy |
| 10. Jimmy Horace
Jimmy accepted the nomination | Nominated by Rosie Cheedy |
| 11. Clifton Mack
Clifton accepted the nomination | Nominated by Maudie Jerrold |
| 12. Rosie Cheedy
Rosie accepted the nomination | Nominated by Lorraine Coppin |

That the 12 people nominated for the 12 vacant YAC Director's positions be appointed as Directors for the Yindjibarndi Aboriginal Corporation until the next YAC Annual General Meeting.

Moved: Angus Mack
Seconded: Aileen Sandy
Passed Unanimously

That the YAC re-appoint Ric West & Associates as the auditors for the Yindjibarndi Aboriginal Corporation for the 2008/2009 financial year.

Moved: Thomas Jacobs
Seconded: Bigali Hanlon
Passed Unanimously

That the YAC re-appoint Philip Davies as their Public Officer until the next YAC Annual General Meeting. It is our intention for Philip to also act as the YAC Contact Officer after the new CATSI regulatory requirements are incorporated into the YAC Constitution, if as expected, they are incorporated into the Constitution before the next YAC AGM.

Moved: Tootsie Daniels
Seconded: Rosemary Cheedy
Passed Unanimously

26 Feb 2009 – YAC Directors and Elders Council Meeting with Department of Water

Yindjibarndi Directors: Tootsie Daniels, Thomas Jacobs, John Sandy, Rosemary Woodley, Stanley Warrie, Gabrielle Cheedy, Aileen Sandy (as proxy for Stephen Hubert), Lyn Cheedy, Charmaine Adams (as proxy for May Adams), Jimmy Horace, Clifton Mack, Rosie Cheedy; **Yindjibarndi Elders:** Ned Cheedy, Joyce Hubert, Barry Pat (as proxy for Bigali Hanlon), Maudie Jerrold, Sylvia Allan, Dot Moses (as proxy for Shirley Woodley), Bruce Monadee, Dora Solomon; **YAC Executive Officer:** Michael Woodley; **Community Members:** Lorraine Coppin, Angus Mack, Amorette Lockyer, Russell Sandy, Celia Sandy, Ellery Sandy, Rodney Larry, Renae Walker, Sharona Walker, Joylene Warrie, Harry Mills, Doris Lockyer, Barry Pat. **Yindjibarndi Support Team:** Philip Davies (Juluwarlu - minutes), Rose Butler (Juluwarlu - Filming), Inge Olmheim (Juluwarlu - Filming).

This meeting involved negotiations over future allocations of water from the Millstream Aquifer; and management of water reserves. Following these negotiations there were discussions about the West Angeles Charitable Trust. Michael Woodley also discussed the next two Yindjibarndi cultural mapping books (Harding Dam and Hooley Books) – The YAC have agreed to commit \$90,000 to the projects and NYFL have agreed to commit \$100,000 to the projects – MW reported that the Harding book is progressing well and we will start putting together the Hooley book straight after the Harding book.

Resolutions:

The Yindjibarndi people have decided to terminate the Millstream Park Council as of today. All Yindjibarndi business should come directly to the Yindjibarndi Aboriginal Corporation (YAC). The group agreed to send this resolution to the Department of Environment and Conservation (DEC) straight away to let them know that all DEC business is to directed straight to the YAC and that the Park Council is cancelled from today. Please note that the Millstream Park Council members, the majority of whom are present today, fully agree with this resolution.

Moved: Lyn Cheedy
 Seconded: Maudie Jerrold
 Passed Unanimously

The Yindjibarndi people request Plan B to pay 50% of the \$359,267.24 that was paid into the Ngarluma Yindjibarndi West Angeles Charitable Trust on 12/12/08 to the Yindjibarndi Aboriginal Corporation (YAC) immediately. These funds are held by Plan B on behalf of the Ngarluma and Yindjibarndi peoples. In response to Philip William's request for information regarding the operations and expenditure of the YAC made in an email to Philip Davies on 18/02/09; the Yindjibarndi do not agree to disclose this information to Philip Williams of Plan B – these are matters only for the Yindjibarndi Aboriginal Corporation Directors, management and members, and the legal entities to which it lawfully reports. The YAC do and always have complied with all legal charitable status responsibilities in line with the obligations set down in the YAC constitution.

Moved: Stanley Warrie
 Seconded: Jimmy Horace
 Passed unanimously

24 Apr 2009 – YAC Directors Meeting with RTIO re Damage to Gurrwaying Yinda

Yindjibarndi Directors: Tootsie Daniels, Thomas Jacobs, John Sandy, Rosemary Woodley, Stanley Warrie, Jane Cheedy as proxy for (Gabrielle Cheedy), Dennis Hubert as proxy for (Stephen Hubert), Lyn Cheedy, May Adams, Jimmy Horace, Clifton Mack, Rosie Cheedy ; **Yindjibarndi Elders:** Ned Cheedy, Joyce Hubert, Bigali Hanlon, Maudie Jerrold, Sylvia Allan, Shirley Woodley, Bruce Monadee, Dora Solomon; **YAC Executive Officer:** Michael Woodley; **Yindjibarndi Community Members:** Ellery Sandy, Harry Mills, Angus Mack, Marlene Harold, Barry Pat, Jill Tucker, Wendy Warrie, Nadine Sandy, Alice Guinness, Jane Cheedy, Amy Jerrold, Dennis Hubert, Lorraine Coppin, Lynda Ryder, Lesley Walker, Jessica Allan, Kaye Warrie, Casey Cheedy; **Support Team:** Philip Davies (minutes), Inge Olmheim (filming), Lorraine Coppin (food), Jo Pritchard, Jan Kapetas (food), Noelene Harrison (food).

This meeting was a negotiation meeting which focussed on the damage caused to Gurrwaying Yinda by the building of a temporary causeway by RTIO. No resolutions were passed.

22 Jul 2009 – YAC Directors Meeting with RTIO re Damage to Gurrwaying Yinda

Yindjibarndi Directors: Thomas Jacobs, Stanley Warrie, Jimmy Horace, Clifton Mack, Tootsie Daniels, Rosemary Woodley, Gabrielle Cheedy, May Adams, Rosie Cheedy; **Yindjibarndi Elders:** Ned Cheedy, Bigali Hanlon, Maudie Jerrold, Sylvia Allan, Bruce Monadee, Dora Solomon, Joyce Hubert; **YAC Executive Officer:** Michael Woodley; **Yindjibarndi Community Members:** Charlie Cheedy, Harry Mills, Finola Woodley, Barry Pat, Lorraine Coppin, Kaylene Daniels, Delfine Daniels, Cherry Rose Cheedy, Alice Guinness, Celia Sandy, Wendy Hubert, Vince Adams, Berry Malcolm, Amy Jerrold, Aileen Sandy, Doris Lockyer, Esther Pat; **Support Team:** Philip Davies (minutes), Inge Olmheim (filming), Lorraine Coppin (food), Rose Butler (Filming), Jan Kapetas (Food).

This meeting was a negotiation meeting to discuss the Minister's conditional consent to further damage the Gurrwaying Yinda site and to negotiate the terms of a Cultural Heritage Management Plan. No resolutions were passed.

7 Dec 2009 – YAC Directors Meeting with RTIO re Damage to Gurrwaying Yinda

Yindjibarndi Directors: Thomas Jacobs, Stanley Warrie, Jimmy Horace, Clifton Mack, Tootsie Daniels, Rosemary Woodley, Gabrielle Cheedy, May Adams, Rosie Cheedy, Aileen and Celia Sandy (as proxy for John Sandy), Barbara Guinness and Diana Smith (as proxy for Lyn Cheedy), Bruce Woodley (as proxy for Stephen Hubert); **Yindjibarndi Elders:** Bigali Hanlon, Maudie Jerrold, Sylvia Allan, Dora Solomon, [Joyce Hubert (\$500) and Kaye Warrie (\$250) (split the money)], Bruce Monadee, Shirley Woodley, Berry Malcolm and Amy Jerrold (as proxy for Ned Cheedy); **YAC Executive Officer:** Michael Woodley; **Yindjibarndi Community Members:** Harry Mills, Barry Pat, Lorraine Coppin, Alice Guinness, Marlene Harold, Joylene Warrie, Jill Tucker, Michelle Adams, Rodney Adams, Jessica Allan, Wendy Hubert, Kingsley Woodley, Lesley Walker; **Support Team:** Philip Davies (minutes), Frank Rijavec and Angus Mack (filming), Jan Kapetas (Facilitator), George Irving.

This meeting was a further negotiation meeting to discuss a comprehensive settlement agreement, following the loss of the Supreme Court action to set aside the Ministers decision giving consent to RTIO to cause further damage to Gurrwaying Yinda site. No resolutions were passed.

8 Dec 2009 – YAC Directors Meeting with RTIO re Damage to Gurrwaying Yinda

Yindjibarndi Directors: Thomas Jacobs, Stanley Warrie, Jimmy Horace, Tootsie Daniels, Rosemary Woodley, Gabrielle Cheedy, My Adams, Rosie Cheedy, Celia Sandy (as proxy for John Sandy), Barbara Guinness and Diana Smith (as proxy for Lyn Cheedy), Bruce Woodley (as proxy for Stephen Hubert), Clifton Mack; **Yindjibarndi Elders:** Bigali Hanlon, Sylvia Allan, Dora Solomon, [Joyce Hubert (\$500) and Kaye Warrie (\$250) (split the money)], Shirley Woodley, Berry Malcolm and Amy Jerrold (as proxy for), Ned Cheedy, Bruce Monadee; **YAC Executive Officer:** Michael Woodley; **Yindjibarndi Community Members:** Harry Mills, Barry Pat, Lorraine Coppin, Alice Guinness, Joylene Warrie, Wendy Hubert, Kingsley Woodley, Lesley Walker, Marlene Harold, Charmaine Adams, Charlie Cheedy, Aileen Sandy, Ellery Sandy, Judie Hubert, Aileen Percy, Joanne Willis, Stephen Hubert, Christine Toby, Jennifer Toby, Sheryl Toby, Lyle Wally, Wendy Warrie, Jessica Allan, Aaron Hubert, Jean Norman, Howard Lockyer; **Support Team:** Philip Davies (minutes), Frank Rijavec and Angus Mack (filming), Jan Kapetas (Facilitator), George Irving (Legal).

This was a continuation of the previous day's negotiation with RTIO representatives.

Resolutions:

That the Yindjibarndi people present at this meeting agree to negotiate an ILUA with RTIO in accordance with the following principles:

1. Provides certainty for RTIO in respect of future acts on Yindjibarndi Country over the next 30-50 years (access/heritage)
2. Provides for compensation in respect of both future acts and past acts
3. Establishes a substantial draw-down account (offset against any agreed compensation payments) which can be used by YAC for community development purposes including:
 - a. The development of an independent review mechanism by an individual agency (such as transparency international) to conduct an initial and periodic review of the provisions of the ILUA
 - b. The development of a business plan which provides the opportunity for Yindjibarndi to manage RTIO's mining activities on Yindjibarndi country
 - c. The development of Yindjibarndi institutions for governance which are framed by the principles enshrined in the Delegation of the Rights to Indigenous peoples, the Harvard project and other international best practice standards
 - d. Meeting current needs through a responsible structure

Moved: Bigali Hanlon

Seconded: Charmaine Adams

Passed unanimously by a vote from the floor with all for and none against

The Following were agreed as the Rules of Engagement for negotiations with RTIO:

- Budget set for 12 months
- Meetings commence from February 2010
- Meetings will be in Roebourne
- Keep a filmed record which belongs to the Yindjibarndi and RTIO may eventually want an edited record of the talks between the parties
- That agreed minutes will be kept
- That these meetings should be facilitated
- That all Yindjibarndi will be welcome at all meetings, with the reservation that some meetings may involve a small group (which can be overseen by other Yindjibarndi) to negotiate on specific details.
- RTIO and Yindjibarndi will work together to get heritage work done
 - Rehabilitation at Bridge 11
 - Railway works
 - Water pipeline
 - Exploration
- RTIO will pay (in addition to heritage survey costs)
 - \$250,000 on signing MOU
 - \$250,000 for caring for country programmes identified by YAC
- YAC to co-operate with RTIO to withdraw and not object to access for the projects for 1 year (while we negotiate)

The following persons were chosen as the Yindjibarndi Negotiating Team for negotiations with RTIO:

1. Stephen Hubert
2. Lyn Cheedy
3. Maudi Jerrold
4. Rosemary Woodley
5. Kaye Warrie
6. Tootsie Daniels
7. Michelle Adams
8. Aaron Hubert
9. Bigali Hanlon
10. Charmaine Adams

15 Dec 2009 – YAC Directors Meeting

YAC Directors: Tootsie Daniels, Thomas Jacobs, John Sandy, Rosemary Woodley, Stanley Warrie, Gabrielle Cheedy, Stephen Hubert, May Adams, Jimmy Horace, Clifton Mack, Rosie Cheedy; **Yindjibarndi Elders:** Joyce Hubert, Bigali Hanlon, Maudie Jerrold, Sylvia Allan, Shirley Woodley, Bruce Monadee, Dora Solomon; **YAC Executive Officer:** Michael Woodley; **Yindjibarndi Community Members:** Charmaine Adams, Lorraine Coppin, Angus Mack, Ricky Sandy, Michelle Adams, Lesley Walker, Stephen Adams, Jessica Allan, Kevin Guinness, Alice Guinness, Amy Jerrold, John King, Curtis Lockyer, Howard Lockyer, Jean Norman, Esther Pat, Celia Sandy, Russell Sandy, Diana Smith, Karen Toby, Sharon Togo, Jill Tucker, Renea Walker, Janice Warrie, Joylene Warrie, Kaye Warrie, Sharon Warrie, Wendy Warrie, Rebecca Williams, Finola Woodley, Hayden Woodley, Wendy Hubert, Bruce Woodley, Jimmy Alberts, Nathaniel Moody, Dinah Ingie, Jennifer Williams, Ruth Williams, Linda Norman, Sonya Wilson, Eileen Percy, Lynette Wilson, Kiniesh

Thorne, Joyce Wilson, Vicky Wilson, Max Hubert, Andy King, Dennis Hubert, Billy King, Christine Toby, Stephen Hubert, Brenda Hubert, Terrance Pat, Glen Toby, Carol Norman, Stella Hubert, Daniel True, Mervin Warrie, Kerry Warrie, Terrance Warrie, Aaron Wilson, Gillian Aubrey, Maria Wilson, Travis Hubert, Barbara Guinness, Janice Guinness; **Yindjibarndi Support Team:** Philip Davies (Juluwarlu - minutes).

Apologies: Lyn Cheedy, Lorraine Allen, Leanne Allen, Michelle Broun, David Woodley, Lisa Allen, Jessica Allen, Alison Woodley, Mark Horace, Ned Cheedy, Middleton Cheedy, Fabian Cheedy, Simon Zuuich

Resolution:

that the minutes of the previous YAC Directors General Meeting held over two days on 07/12/09 and 08/12/09 be accepted as read with no amendments:

Moved: Rosemary Woodley
 Seconded: Charmaine Adams
 Passed Unanimously

The Yindjibarndi Directors accept the nominations of Jimmy Alberts, Nathaniel Moody, Dinah Ingie, Jennifer Williams, Ruth Williams, Linda Norman, Sonya Wilson, Eileen Percy, Lynette Wilson, Kiniesh Thorne, Joyce Wilson, Vicky Wilson, Max Hubert, Andy King, Dennis Hubert, Billy King, Christine Toby, Stephen Hubert, Brenda Hubert, Terrance Pat, Carol Norman, Len Aubrey, Paul Aubrey, Noel Aubrey, Jason Aubrey, Glen Aubrey, Gloria Lee, Stella Hubert, Daniel True, Mervin Warrie, Kerry Warrie, Terrance Warrie, Aaron Wilson, Gillian Aubrey, Maria Wilson, Travis Hubert, Barbara Guinness, Janice Guinness, Mavis Pat, Florence Toby, Terrance Williams, Clifford Guinness, Nicky Guinness, Esther Guinness to become members of the YAC in this General Meeting held today the 15/12/09.

Moved: Bruce Monadee
 Seconded: Pansy Sambo
 Passed Unanimously

15 Dec 2009 – YAC Annual General Meeting

YAC Directors: Tootsie Daniels, Thomas Jacobs, John Sandy, Rosemary Woodley, **Stanley Warrie**, Gabrielle Cheedy, Stephen Hubert, May Adams, Jimmy Horace, Clifton Mack, Rosie Cheedy; **Yindjibarndi Elders:** Joyce Hubert, Bigali Hanlon, Maudie Jerrold, Sylvia Allan, Shirley Woodley, Bruce Monadee, Dora Solomon; **YAC Executive Officer:** Michael Woodley; **YAC Members:** Charmaine Adams, Lorraine Coppin, Angus Mack, Ricky Sandy, Michelle Adams, Lesley Walker, Stephen Adams, Jessica Allan, Kevin Guinness, Alice Guinness, Amy Jerrold, John King, Curtis Lockyer, Howard Lockyer, Jean Norman, Esther Pat, Celia Sandy, Russell Sandy, Diana Smith, Karen Toby, Sharon Togo, Jill Tucker, Renea Walker, Janice Warrie, Joylene Warrie, Kaye Warrie, Sharon Warrie, Wendy Warrie, Rebecca Williams, Finola Woodley, Hayden Woodley, Wendy Hubert, Bruce Woodley, Jimmy Alberts, Nathaniel Moody, Dinah Ingie, Jennifer Williams, Ruth Williams, Linda Norman, Sonya Wilson, Eileen Percy, Lynette Wilson, Kiniesh Thorne, Joyce Wilson, Vicky Wilson, Max Hubert, Andy King, Dennis Hubert, Billy King, Christine Toby, Stephen Hubert, Brenda Hubert, Terrance Pat, Glen Toby, Carol Norman, Stella Hubert, Daniel True, Mervin Warrie, Kerry Warrie, Terrance Warrie, Aaron Wilson, Gillian Aubrey, Maria Wilson, Travis Hubert, Barbara Guinness, Janice Guinness; **Yindjibarndi Support Team:** Philip Davies (Juluwarlu - minutes).

Apologies: Lyn Cheedy, Lorraine Allen, Leanne Allen, Michelle Broun, David Woodley, Lisa Allen, Jessica Allen, Alison Woodley, Mark Horace, Ned Cheedy, Middleton Cheedy, Fabian Cheedy, Simon Zuuich.

Chairperson's Report:

Stanley Warrie thanked the members for retaining him as Chairperson during 2009. He stated that all the Yindjibarndi are one family and that there is still a lot of work to do to achieve justice. He said the Yindjibarndi have to stick together if we are to get any sort of benefits out of the mining companies or the government coming onto Yindjibarndi land.

CEO's Report:

Michael Woodley made a powerpoint presentation to the members present titled 'Yindjibarndi Ngurra; Nhantharriyandu Marni - Direction Plan'. The text in the presentation was as follows:

Yindjibarndiyandu Wangka Mission Statement:

- ✓ *To restore Yindjibarndi access and connection to our country so that every generation will enjoy their religious freedom, happiness, and wellbeing that comes from practicing our culture, keeping our Law, speaking our language, and caring for our country in the ways that Yindjibarndi were commissioned and taught to survive these past 75 thousand years.*
- ✓ *And by the hands of Marrga restore to us our fundamental birthrights as landowners of Yindjibarndi country so that all will benefit from our resources and from our entitlement we have the rights to develop, modify and sustain Yindjibarndi future.*

Yindjibarndi Team in the past 18 months:

Stanley Warrie – YAC Chairperson; CEO Michael Woodley; Administration Officer/Anthropologist Phillip Davies; Simon Millman – Lawyer, Slater & Gordon; George Irving – Barrister.

Authorized & directed by the 12 Yindjibarndi Governing Directors: Stanley Warrie, Thomas Jacobs, John Sandy, Stephen Hubert, Jimmy Horace, Clifton Mack, Tootsie Daniels, Rosemary Woodley, May Adams, Rosie Cheedy, Lyn Cheedy and Gabrielle Cheedy; and, Yindjibarndi Elders Committee: Ned Cheedy, Bruce Monadee, Shirley Woodley, Sylvia Allan, Joyce Hubert, Dora Solomon, Maudie Jerrold, Bigali Hanlon.

Yindjibarndi Native Title Business:

- ✓ *Manage all future acts by Industry and Government.*
- ✓ *Yindjibarndi 1 Native Title Claim (Seek Full Exclusive Rights Determination).*
- ✓ *Protect the rights and interest of Yindjibarndi people and to develop better Opportunities.*

Opportunity to try something different:

- ✓ *Acts and Laws: Native Title Act, Mining Act, Common Law and Constitutional Law Section 116. Religious freedom presents opportunities that have not yet been explored. Yindjibarndi have the opportunity to trial these laws. Time is a major factor for these operations.*

Business Concept:

The last thing any company expects is Yindjibarndi talking on Terms that are equal to others.

Strategy: To give Companies no excuse but to say; Yes We Can.

Your Business Is Our Business - if it's on Yindjibarndi country and generating wealth

Competition and Challenges:

Other small Yindjibarndi groups and company representatives/people.

If we are to succeed - Yindjibarndi as a community need to overcome and face these challenges as one voice.

Our advantage is sticking together no matter what and relying on Yindjibarndi family, honesty and truth. A raising tide lifts all ships.

Goals and Objectives:

- ✓ *Two-year goals:*
 - *Develop the Yindjibarndi Aboriginal Corporation by installing decision making powers to the Directors, Elders Groups and Community members.*
 - *To make our Yindjibarndi Native Title claim work for Our Big Picture.*
 - *All Yindjibarndi members are involved and part of the decision making process. (No hidden agendas)*
 - *Develop a Yindjibarndi business plan.*

Investment Plan:

Yindjibarndi Aboriginal Corporation (YAC) have committed in total to the Yindjibarndi Native Title process plan \$642, 299.64K.

Our mission for our members is to get justice, equality and benefits from developers operating in our country.

As an example FMG/RTIO shareholders and investors have committed Billions of dollars to do their Iron Ore projects.

They have one Priority - to deliver benefits to their investors and Shareholders.

Resource Requirements:

First and foremost our community requirements are the key to our mission - we as Yindjibarndi.

We must continue to adapt to the modern times, technology and use our intelligence to assist with our mission.

Yindjibarndi's leadership to financially back the mission to further strengthen our mission and take positive steps - because Yindjibarndi's actions are serious.

External exposure - Yindjibarndi media release.

Risks and Rewards:

- ✓ *Risks*
 - *Yindjibarndi members might start to undermine the process.*
- ✓ *Addressing risk*
 - *Open and transparent process (Everything is discussed in a community forum)*
- ✓ *Rewards*
 - *There is a greater benefit than MONEY - Yindjibarndi working together and growing - everyone understanding our problems and working towards fixing-up our problems.*
 - *Solution solving*

Key Issues to consider when planning for our future:

- ✓ *Immediate and Near term*
 - *The Yindjibarndi community supports the leadership and decision making process of the Yindjibarndi Board of Directors, Elders Committee and professionals.*
- ✓ *Long term*
 - *Everyone understands how development works and understands that a patient and a peaceful frame of mind is needed when planning for the future.*
 - *We never lose sight of the big picture - change takes time.*
- ✓ *Reality: Yindjibarndi only have one shot at this – let's hit our target.*

Future Negotiations:

- ✓ *RTIO – We will start our negotiations in mid-February 2010 – as part of our process.*
- *300K for Elders from PlanB West Angeles project.*
- *250K to develop a Heritage Agreement.*
- *250K for caring for country project – to further continue mapping the Yindjibarndi country.*
- ✓ *FMG – We are now going through mediation with NNTT regarding exploration tenements on the 18/12/09. At hearings in the Federal Courts regarding the Solomon mining operations - our argument is the freedom religion s116 under the Australian Constitution.*
- ✓ *Polaris is the only company that has an Heritage Agreement with Yindjibarndi that states that the company will negotiate under the terms of Reciprocity.*

Financial Statement – 08/09:Yindjibarndi Native Title Income – 634K*Operational & Administration Cost*

- ✓ Juluwarlu Admin. Cost for 10 month totaling - \$247,572.03
- ✓ Salter & Gordon principle lawyers – \$86,888.
- ✓ Barrister – \$97,075
- ✓ Adrian Murphy – \$20,201.

Total O & A cost - \$451,736.*Community Projects.*

- ✓ Yindjibarndi Mapping Projects for Hooley & Harding Dam - \$90,000.
- ✓ Jill Tucker & Sylvia Allan Millstream Tourism project - \$2000.

Total Community Project cost - \$92,000.*Community Members Assistance.*

- ✓ Charmaine Adams - \$2,000.
- ✓ Frank Smith family flights - \$1,584.36
- ✓ Jacobs family flights - \$1,116.16
- ✓ Rodney Larry family flights - \$752.18
- ✓ May Adams - \$7,000.00
- ✓ Toby family - \$1,000 + \$3,800.
- ✓ Warrie family - \$984.46

Total Community Assistance - \$18,425.

Total current assets - \$65,280.22.

This presentation generated a lot of discussion including the following:

Michael Woodley (MW) – we need to act professionally at all times and keep giving industry and government proponents a clear message that the Yindjibarndi are well organised and have demands that need to be met before they will engage.

Jill Tucker (JT) – The Yindjibarndi people should be heard and RTIO want more pipelines and water infrastructure on our land

MW – we have elected a negotiating team that was elected at the last General meeting held at the Diner

Rosemary Woodley (RW) – the pipeline that RTIO want on our country comes from Eastern Gurrama country

JT – we have some sick Yindjibarndi people and we need to have some success in our negotiations so they can be looked after – some of those people include my sister, Bruce Woodley and Bruce Monadee

MW – the job of the Yindjibarndi negotiating team is to guide the negotiations with RTIO on behalf of the people

Stanley Warrie (SW) – I just make the statement that everyone is suffering and we have suffered for a long time – right now we shouldn't argue amongst ourselves but we should work together to get good outcomes for all of us

MW – we need to look after everybody - we can achieve some of our aims if we stick together

Wendy Hubert (WH) – I am an owner of the country

MW – we want everybody to take these negotiations and the outcomes seriously

Billy King (BK) – I just want everyone to know that we should all get together as one family – we are all family and we should all work together for each other

Charmaine Adams (CA) – I think Yindjibarndi has done a lot of good work over the last year and we have done well to get where we are in our negotiations with RTIO and FMG – we haven't given them anything yet and we have given nothing away

May Adams (MA) – I would just like to thank all the Yindjibarndi people for helping me out with my operation – thank you all very much

Following the discussion and the presentation Michael Woodley asked the group if they were happy with the direction that the Yindjibarndi Aboriginal Corporation was taking. He also asked the members if they were happy with the management of the organisation by Juluwarlu Group Aboriginal Corporation and asked the members 'do you want Juluwarlu Group Aboriginal Corporation to continue to manage your affairs?'

Resolutions:

That the members of the Yindjibarndi Aboriginal Corporation agree for Juluwarlu Group Aboriginal Corporation to continue to manage the affairs of the Yindjibarndi Aboriginal Corporation on the same basis as the YAC/JGAC agreement that is already in place between the organisations and was signed by the Yindjibarndi Aboriginal Corporation Chairperson on 20/08/2008.

Moved: Charmaine Adams
Seconded: Pansy Sambo
Passed Unanimously

That the management accounts being the YAC Balance Sheet and the YAC Profit and Loss for the 2008/2009 financial year presented by Philip Davies here today be accepted by the members in the interim while the audited set of accounts and Director's report are still to be prepared by the YAC accountant and auditor. We will aim to have the final audited accounts ready for during the first half of 2010.

Moved: Bigali Hanlon
Seconded: Tootsie Daniels
Passed Unanimously

That the Yindjibarndi Aboriginal Corporation members accept the ORIC initiated CATSI compliant constitution compiled by ORIC dated 29/06/09 and adopt this document as the organisation's constitution.

Moved: Stanley Warrie
Seconded: Barry Pat
Passed Unanimously

That Tootsie Daniels, Thomas Jacobs, John Sandy, Rosemary Woodley, **Stanley Warrie**, Gabrielle Cheedy, Stephen Hubert, Lyn Cheedy, Jimmy Horace, Rosie Cheedy, Charmaine Adams and Ricky Sandy be elected as the 12 Yindjibarndi Aboriginal Corporation Directors until the next YAC Annual General Meeting.

Moved: Angus Mack
Seconded: Aileen Sandy

Passed Unanimously

That Ned Cheedy, Joyce Hubert, Bigali Hanlon, Maudie Jerrold, Sylvia Allan, Shirley Woodley, Bruce Monadee, Dora Solomon, Harry Mills, Billy King, Amy Jerrold, Berry Malcolm, Aileen Percy, Stella Hubert, Mavis Pat and Bruce Woodley make up the Yindjibarndi Elders Council and will be placed with this task for the coming year until at least the next Yindjibarndi Annual General Meeting.

Moved: Pansy Sambo
 Seconded: Rosemary Woodley
 Passed Unanimously

That the Yindjibarndi Aboriginal Corporation re-appoint Philip Davies as their ORIC Contact Officer until the next YAC Annual General Meeting.

Moved: Thomas Jacobs
 Seconded: Stanley Warrie
 Passed Unanimously

Agreement re Payment to Elders from Plan B

MW explained that Yindjibarndi has been negotiating with RTIO to bring forward all the funds in Plan B and release them to both the Yindjibarndi Aboriginal Corporation and the Ngarluma Aboriginal Corporation as soon as possible. Those present at the meeting agreed that \$300,000 of these funds would be paid to the Yindjibarndi people. The people are to decide who gets the money. MW suggested that only people over a certain age should get paid an equal portion of the money, but that it was up to the members to decide who should get the money. Those present agreed that as soon as the money is paid by RTIO to the Yindjibarndi Aboriginal Corporation then another Yindjibarndi meeting would be called and the people would decide how the funds are distributed.

3 Feb 2010 – YAC Directors Meeting with RTIO

Yindjibarndi Directors: Thomas Jacobs, John Sandy, Stanley Warrie, Jimmy Horace, Clifton Mack, Tootsie Daniels, Rosemary Woodley, Gabrielle Cheedy, Charmaine Adams, Rosie Cheedy, Lyn Cheedy, Stephen Hubert; **Yindjibarndi Elders:** Maudie Jerrold, Sylvia Allan, Dora Solomon, Joyce Hubert, Bruce Monadee, Shirley Woodley, Ned Cheedy, Billy King, Amy Jerrold, Berry Malcolm, Aileen Percy, Mavis Pat, Bruce Woodley, Aileen Sandy; **Yindjibarndi Community Members:** Barry Pat, Angus Mack, Hayden Woodley, Kingsley Woodley, Max Hubert, Johnnie King, Tom Averdee, Joyce Woodley, Pansy Sambo, Jill Tucker, Alice Guinness, Wendy Warrie, Kaye Warrie, Celia Sandy, Jean Norman, Tanya Jacobs, Jennifer Toby, Esther Pat, Vicky Wilson, Madeline Sandy, Florence Toby, Barbara Guinness, Maria Wilson, Lesley Walker, Andy King, Linda Norman, Curtis Lockyer. **YAC Executive Officer:** Michael Woodley; **Support Team:** Philip Davies (minutes), Kate Wilson and Finola Woodley (filming).

This meeting concerned the ongoing negotiations for a comprehensive agreement between RTIO and YAC. No Resolutions were passed. In the course of the discussions RTIO made a commitment to release \$475,000 from the West Angles Trust.

16 Mar 2010 – YAC and Yindjibarndi Community Meeting

Yindjibarndi Directors: Thomas Jacobs, John Sandy, Stanley Warrie, Tootsie Daniels, Rosemary Woodley, Gabrielle Cheedy, Charmaine Adams, Rosie Cheedy, Lyn Cheedy, Stephen Hubert, Ricky Sandy; **Yindjibarndi Elders:** Ned Cheedy, Bigali Hanlon, Maudie Jerrold, Sylvia Allan, Dora Solomon, Joyce Hubert, Bruce Monadee, Billy King, Amy Jerrold, Aileen Percy, Mavis Pat, Bruce Woodley, **Yindjibarndi Community Members:** Barry Pat, Angus Mack, Max Hubert, Johnnie King, Tom Averdee, Pansy Sambo, Jill Tucker, Alice Guinness, Wendy Warrie, Kaye Warrie, Jean Norman, Tanya Jacobs, Vicky Wilson, Madeline Sandy, Florence Toby, Barbara Guinness, Lesley Walker, Andy King, Linda Norman, Curtis Lockyer, Dennis Hubert, Max Hubert, Russell Sandy, Gloria Lee, Sally Walker, Marion Cheedy, Jean Cheedy, Jane Ranger, Esther Mingo, Joylene Warrie, Ken Sandy, Clifton Mack, Dwayne Toby, Lyle Wally, Fabian Cheedy, Robert Cheedy, Judith Coppin, Carol Norman, Donna Willis, Joanne Willis, Will Woodley, Wendy Hubert, Jillian Aubrey, Sharon Warrie, Julie Stevens, Aileen Percy, Shirley Walker, Sonia Wilson, Lynette Wilson, Maria Wilson, Esther Pat, Joyce Wilson, Brenda Hubert, Aileen Sandy, Ellery Sandy, Casey Cheedy, Nadine Sandy, Max Ranger, Stuart Ranger, Nooky Ranger; **YAC Executive Officer:** Michael Woodley.

Support Team: Philip Davies (minutes), Lorraine Coppin (Food), Donicka Lee (Food), Shantelle Cheedy (Food), Jan Kapetas (Food) George Irving (Barrister)

The following exchanges took place between the members at the meeting:

Esther Mingo (EM) – if people have problems with the YAC then they should talk to the CEO direct to his face – don't talk behind this man's back (the YAC CEO) to me – if you have a problem you should talk to him direct – don't come to me.

Gloria Lee (GL) – from what I have heard I reckon this is the right way to go – but I would like for other Yindjibarndi people to explain this process to all of us properly.

EM – money is evil

Rosemary Woodley (RM) – if we want to act as a nation then we must all act together

Michelle Adams (MA) – I suppose people want to hear from me about the letter from me to Stanley Warrie

MA addressed the group – I would like this minuted please – there is a way of doing this the Ngarda way and the white fella way – some people went to school and some people didn't – can anyone tell me when he (GI) walks away from here do you really understand what he said – I am an educated person and I know what is going on. – I apologise to the Chairman for overstepping my responsibility – I apologise to him as the Chairman of this organisation and also as a Ngarda. – I am clearing my name here – Pansy you told me that Miggo is building his own empire here – you need to stand up and account for your statements and actions - I am being honest and trying to clear my name – After I leave this office I don't want people to come to my house and complain about what is happening at Juluwarlu and the Yindjibarndi. – Miggo needs to apologise to Bruce Woodley – we don't want to be divided – when I rang FMG I asked for information – I am not confident to go up to Juluwarlu to get the information – it is up to others – the Directors and the CEO to give us the information – just let us know what is going on – you have the authority and decision making authority. – I say this to the Directors – you need to take care of the assets and management of the Yindjibarndi Aboriginal Corporation. – I don't want to have any more stress.

Wendy Hubert (WH) – daughter did you look at this MOU?

MA – I want the Chairperson to make an apology to me for putting my name on the meeting notice

Lyn Cheedy (LC) – we have open meetings – any questions anyone has then they only have to ask someone who knows

Charmaine Adams (CA) – we have open meetings all the time – if the members want to know anything then just ask

Margaret Read (MR) – now if you are talking about Juluwarlu then everything is audited

Ellery Sandy (ES) – we would like to know if we can see the books

Stanley Warrie (SW) – everything is here – everything is open

ES – when I come here I don't get any help

SW – listen – when you come in here (Juluwarlu) do you ask these people – do you tell them you are coming? Do you ask them and tell them what you want?

MW – decision making belong to the people – Michelle please don't go - stay here – you need to hear this – when you and Maudie were running the PBC the things were not open with the people – we have meetings within an open forum – I don't like people saying that I am stealing

CA – people sit around in the community and they run you down Miggo and we shouldn't all blame Michelle – but there are others in the room that are running you down as well and they should also say something here if they have opinions

MW – the end question is – are we moving in the right direction – at any time you can vote me out at any time – I really get upset about people running down the Directors and the Chairperson

MJ – I don't like what you are saying about me – I am a different person

MW – I am trying to get to the point – everybody is entitled to talk to everybody – but we must try and be civil to each other – we insist that these meetings are open

MA – take your words back – I can't answer back

MW – I want to apologise about what I have just said – but I don't like people accusing the Directors that they don't know what they are doing

CA – she (MA) wrote the letter to Stanley because that is what other people wanted – but they come here and don't say anything

SW – please be sensible otherwise we will call this meeting off

MW – nobody is prepared to talk about the positive things we are doing – if you don't like what I am doing then you can vote me out anytime – I need to know that you support me – we are transparent – but then I also need to be comfortable to do this job – when we talk about being educated then I am not one – I learnt from the old people – I spent time with the old people – that is where I got my education from and I stand here to properly, honestly and transparently represent all Yindjibarndi people

MW – I want to get a resolution from the group today – do you want to go ahead with the process we have – otherwise you can call a Special General Meeting and change the process – now are we on the right track

Many people calling out – yes we are on the right track

Rosie Cheedy (RC) – we got no land, we got no money, but we got to fight

MW – people are accusing me – my Uncle accused me of stealing

BW – but I didn't accuse me I was asking you – people told me that you were stealing

MW – this is a personal issue between you and me

MW – we will continue on with the process – we don't have any agreements with any companies and we haven't given anything away – but let's get back to the money business

MW – there is \$475,000 coming from RTIO and what I am asking is that \$175,000 be kept with the YAC and the other \$300,000 be divided amongst yourselves [as decided at the AGM]

LC – I just want to say something – Yindjibarndi is a nation – the old people put a lot of work into this process – why you people not satisfied with what he (MW) is doing – what is important – like he said he can go away and concentrate on his first love – Juluwarlu – the Yindjibarndi history and country – when you get embarrassed to talk to your own family in the street because they are carrying stories and gossip about this man (MW) then that is bad – I am sick of people carrying yarns about this man here – if we give our country away where are we going to go – we will have nowhere to go - if this man goes then we will just get some white fella who we don't know, who doesn't live in our community and who we can't trust

MJ – I didn't come here to argue

LC – I support MW all the way – if you put someone else in that position then the same thing will happen to them – you will carry the same yarns about them then – let this man (MW) do his job – he is doing it really well now and we need to support him – not tell stories and gossip – I support this man (MW) and the Chairman (SW) all the way

Tootsie Daniels (TD) – when I look around at our young people – look at this man he is recording our history – you know where the gossip circle is – it's the cards – I support MW all the way – we need to support our own people – this man (MW) is doing it for us – he is a young man doing this job and we should get behind him always

Pansy Sambo (PS) – we need to apologise to this man (MW) – we are getting the money – we have got a long process to the next money

ES – I want to be forgiven – and I want forgiveness from you – sometimes when you mix with the wrong people then we get into trouble – we care for our country – I paint my country

MA – I support you fellas fully – I support you all the way

MR – I just want to apologise as well – but you just can't talk and not have any evidence – Juluwarlu is a separate entity from YAC – but I apologise

EM – I just want to apologise – my attitude was very bad – and I just want to shake your hand (to MW) and Lorraine Coppin (LC)

Resolutions:

That \$300,000 be paid to the Yindjibarndi Elders — there is 14 days from today before the YAC receive the money from RTIO according to the agreement signed today - the people will decide how this will be split up in the next 14 days

Passed: Charmaine Adams

Seconded: Gabrielle Cheedy

Passed Unanimously

That the \$175,000 to be received from RTIO be left in YAC for the business of the organisation

Passed: Bigali Hanlon

Seconded: John Sandy

25 Mar 2010 – YAC Community Meeting to decide Payments to Elders

Yindjibarndi Directors: Stanley Warrie, Tootsie Daniels, Gabrielle Cheedy, Charmaine Adams, Rosie Cheedy, Jimmy Horace, Thomas Jacobs; **Yindjibarndi Elders:** Ned Cheedy, Maudie Jerrold, Bruce Woodley, Billy King, Joyce Hubert, Bigali Hanlon, Sylvia Allan, Bruce Monadee, Berry Malcolm, Billy King, Amy Jerrold, Aileen Percy, Mavis Pat.; **Yindjibarndi Community Members:** Clifton Mack, Esther Mingo, May Adams, Aileen Percy, Angus Mack, Tom Avedee, Wendy Hubert, Alice Guinness, Harry Mills

Support Team: Philip Davies (minutes), Jan Kapetas (Food)

Bigali Hanlon ran this meeting. She had compiled a list of the Yindjibarndi members who were over 55 years of age and those not able to do Yindjibarndi Heritage Surveys. It was decided that only the people who were 55 years and older and who are not able to participate in Yindjibarndi Heritage Surveys would share the \$300,000 allocated from the \$475,000 coming from the West Angeles Trust. The money would be paid to the Elders because of their contribution in giving cultural information over many years - and for being able to stand strong with their Yindjibarndi heritage, language and knowledge in the face of great poverty and hardships. The group decided that Ned Cheedy should get paid more than the other Elders because he has given a lot of information to his community for many years - and he has done this always with the best and utmost goodwill

Bigali compiled a list of 38 people who are eligible for a share of the \$300,000; and Philip Davies read out the list of people. They are:

May Adams, Jesse Alberts, Judith Alberts, Sylvia Allan, Pansy Cheedy/Sambo, Ned Cheedy, Rosie Cheedy, Tootsie Daniels, Marie Edwins, Susan Edwins, Alice Guinness, Bigali Hanlon, Marlene Harold, Joyce Hubert, Stella Hubert, Wendy Hubert, Amy Jerrold, Maudie Jerrold, Doris Lockyer, Andy King, Billy King, Clifton Mack, Berry Malcolm, Julie Malcolm/Stevens, Esther Mingo, Bruce Monadee, Jean Norman, Mavis Pat, Aileen Percy, Lynda Ryder, Aileen Sandy, Allery Sandy, Diana Smith, Dora Solomon, Mary Walker, Shirley Walker, Bruce Woodley, Shirley Woodley

The group then discussed how much should be paid to Ned Cheedy - it was suggested that Ned should be paid \$50,000 and then the \$250,000 should be shared between the rest of the Yindjibarndi people.

Discussions:

Jimmy Horace said he is a cripple and it is impossible for him to walk - He argued that he should be put onto the list because he will never do any heritage surveys again

Jimmy Horace also pointed out that Bruce Woodley, Harry Mills and Clifton Mack are too old and crippled to ever go on Yindjibarndi heritage surveys again and they should also be included in the pay out

The group agreed that Jimmy, Clifton, and Harry should be included for the pay out because they are crippled and can't do Yindjibarndi Heritage Surveys - the three of them agreed that this was the case and that they won't be part of Yindjibarndi heritage surveys again. Bruce Woodley was already included on the list by Bigali because of his illness which prevents him from participating in Yindjibarndi heritage surveys.

Further Discussion:

Esther Mingo said that we should all make a decision today on who is to be included in the payment

Bruce Woodley said that he wants a vehicle from the YAC

Wendy Hubert said that she was sick of 40 years of oppression and she wants to get into business - she also stated that her nephew Aaron Hubert wants to get into the tourism business and they need money to do this

Wendy Hubert said she wants \$40,000 from YAC

Bigali Hanlon said that \$300,000 sounds like a lot of money but if everyone gets it then it doesn't amount to much

Sylvia Allan said that the Elders should be paid the money because they had contributed a lot of their knowledge to the Yindjibarndi people for many years and it was a mark of respect for them - they had contributed to the books and documentaries for many years

Esther Mingo said she understands that and do we all get the same

Bigali Hanlon said that the only person who should get more than the others is Ned Cheedy and that we need to vote on this issue

Resolution:

That Ned Cheedy should be paid \$50,000 and the \$250,000 left over of the \$300,000 should be shared equally between the other nominated Elders.

Passed: Maudie Jerrold

Seconded: Bruce Woodley

Passed Unanimously

People at the meeting raised the fact that Doris Lokyer is on another claim and so she shouldn't get a payout from the Yindjibarndi - her name was taken from the payment list. The meeting participants decided that there were some other Yindjibarndi people who should be included on the list - they are: Thomas Avedee, Jimmy Horace, Thomas Roebourne, Kerry Warrie, Len Aubrey and Clifton Mack.

This made the total number of recipients of the YAC funds to be 43 people.

29 Apr 2010 – YAC Directors Meeting with RTIO

Yindjibarndi Directors: Thomas Jacobs, Stanley Warrie, Jimmy Horace, Tootsie Daniels, Rosemary Woodley, Rosie Cheedy, Ricky Sandy, Lyn Cheedy, Gabrielle Cheedy; **Yindjibarndi Elders:** Ned Cheedy, Harry Mills, Bruce Woodley, Bruce Monadee, Bigali Hanlon, Maudie Jerrold, Joyce Hubert, Amy Jerrold, Sylvia Allan; **Yindjibarndi Community Members:** Pansy Sambo/Cheedy, Shantelle Cheedy, Alice Guinness, Kaye Warrie, Wendy Hubert, Ken Sandy, Aileen Sandy, Jean Norman, Lesley Walker, Joylene Warrie, Russell Sandy, Barry Pat, Clifton Mack, Frank Jerrold, Casey Cheedy, Rebecca Cheedy, Rachel Samson, Barbara Guinness;

Support Team: Philip Davies (minutes), Kate Wilson and Margaret Read (filming), Jan Kapetas (assisting the Facilitator), George Irving (Barrister), Simon Millman (Solicitor, Slater & Gordon)

Facilitator (appointed by RTIO and agreed to by YAC): Kate George

Resolutions:

The Yindjibarndi people at the meeting declared that they fully understand that Yindjibarndi people have human rights which are protected by international law but are not fully protected by Australia's native title law. The Yindjibarndi people at the meeting declared they also understand RTIO promised the United Nations in the Global Compact that it will respect the human rights of Indigenous people in accordance with international law even if the local law doesn't fully respect it – therefore we will only negotiate an agreement with RTIO that protects and upholds our human rights as recognised in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the United Nations Declaration on the Rights of Indigenous Peoples (DRIP) and International Labour Organisation's Convention 169 (ILO) concerning Indigenous and Tribal peoples in independent countries.

Moved: Bigali Hanlon
 Seconded: Jimmy Horace
 Passed Unanimously

8 Jul 2010 – YAC Community Meeting re Meeting held by FMG on 6 July 2010

Yindjibarndi Directors: Thomas Jacobs, Stanley Warrie, Tootsie Daniels, Rosemary Woodley, Gabrielle Cheedy, Rosie Cheedy, Lyn Cheedy, Stephen Hubert, Ricky Sandy;
Yindjibarndi Elders: Ned Cheedy, Bigali Hanlon, Sylvia Allan, Dora Solomon, Joyce Hubert, Amy Jerrold, Aileen Percy, Mavis Pat, Bruce Woodley; **Yindjibarndi Community Members:** Angus Mack, Barry Pat, Curtis Lockyer, Harry Mills, Kevin Guinness; Wendy Warrie, Kay Warrie, Tootsie Daniel, Jane Cheedy, Lesley Walker, Lorraine Coppin, Alice Guinness, Casey Cheedy, Shantelle Cheedy, Robert Cheedy; **YAC Executive Officer:** Michael Woodley

Apologies: Thomas Jacobs, Charmaine Adams

Support Team: George Irving (YAC Lawyer); Dr. Jan Kapetas (Minutes)

Background

The Meeting was called on Wednesday 7th July by the Yindjibarndi Directors (immediately following a meeting of Yindjibarndi called by FMG representatives on Tuesday 6th July) to enable all Yindjibarndi Community Members to discuss recent developments relating to Yindjibarndi Native Title and the Fortescue Metals Group (FMG).

Minutes of Meeting:

Stanley Warrie: FMG wants to do a survey this weekend. They can then go to and destroy our country. Michael will tell you what has been happening.

Michael Woodley: We need to talk about the FMG-called meeting Tuesday. The division that's happening. It's very difficult for Yindjibarndi if people don't stay together. We want to sign a good

agreement. One that will support our people for a long time, not just a year or two. Yindjibarndi Aboriginal Corporation has a legal responsibility to everyone. We all need to do this together. It's getting a sad day for us when mining company splits us up. I said this when I came to talk to FMG after the meeting. Some of you came and told me what happened. You were worried. I came down with three law holders to talk to them. It was difficult to be calm, but I stayed calm. They said they already have senior law men signed up for surveys. I said that is not so. As your CEO and Board members, I pointed out that they were deliberately using Ngarda against Ngarda, deliberately trying to drive a wedge between us, and break our Law and Culture. I said there could be punishment for that. Afterwards, they went to the police to say I threatened them. The police spoke to me. I explained that it was not a threat. It's what happens to anyone, black or white, who break our Yindjibarndi Laws. We know it. The Marrga and the Minkala will punish us.

First I want to tell you about the Court case we had with FMG. Late on Friday 2nd July, the judgement was given. Since then our lawyers have been examining the judgement. We planned to hold a Yindjibarndi community meeting early next week (12th July). We also had a meeting planned with ACMC on Tuesday 6th in Perth. But that was cancelled by FMG on Thursday 1st July. While ACMC have no power except to recommend to Minister to protect our Yindjibarndi sites. We need to get them to speak for us. YAC have said to FMG we do no surveys unless we have a proper deal so we can look after our community and our country. They made us an offer that we did not accept. The situation is still that we can take their offer of \$1.3 for Solomon, or \$3 million for a complete deal that covers everything. All they're offering is \$300,000 now if we sign today, and then we have to wait 5 years before any further money comes through.

Barry Pat: We have our religion. We have our rights.

Michael: We need to decide if we continue to fight. Or do we not fight. We need to maintain our rights. It is a choice we Yindjibarndi have to make. But if we're divided, if some of us give in, or take work, then we feel really weak.

Stanley Warrie: We have to stay strong and do this.

Michael Woodley: What we're saying, is Heritage is very important to us. Our country and our sacred sites are everything to us. We can't let our country be destroyed and have nothing left for our children and grandchildren. We need to get a good outcome for our future and to look after our old people, our health, education; our culture and our future. Where there's a survey coming up this weekend. Robert here can tell us what's happening. He's working with FMG. He knows what's happening.

Robert Cheedy: If we don't do survey. FMG will bring outsiders to clear our country.

Michael: If wrong people do surveys, then we cannot show FMG's doing wrong thing.

Robert: FMG got wrong people doing surveys.

Michael: Yindjibarndi members said no to all surveys. If we assist them in surveys, that gets us one way closer to FMG taking power. We need to be in power. They want to give us nothing. They say they'll be fair. But we Yindjibarndi want to say what's fair. All we want is a fair deal for our people.

Robert: We can do that. I'm thinking about Yindjibarndi people too. FMG want me to go work for them. They want me to be Heritage officer. I said no. I can't do that to destroy Yindjibarndi country & sites.

Michael: They just want to use you.

Bigali Hanlon: Is there anyway we can stop them? These surveys must not happen. Or everything we fight for will be destroyed and our people get nothing.

Robert: *I can stop that.*

Jane Cheedy: *We need to stop the surveys.*

Robert: *All those people didn't talk up on Tuesday.*

Bigali: *FMG told people at that meeting on Tuesday that they have lost their Court Case, and you can't do anything. That gave people the understanding that their only hope was to do surveys now.*

Michael: *Yindjibarndi have to trust their Board. We try to do the right thing to the best of our ability. We are fighting for our Yindjibarndi rights through proper means in the courts. We can't let anyone divide us family against family. Really, we have to stay on the same horse. We can't change.*

Bigali: *How many blackfellas working at Cloudbreak? How many are they targeting? Only their two Yindjibarndi workers. They trying to use our own people against us. Robert, getting our people to do surveys that are against us. It's only possible because our people our poor. Because we been kept poor, so everyone's frightened when FMG say we lost at the court. That we'll get nothing unless we sign on.*

Michael: *If Yindjibarndi clear the land. Cashed up for one or two days. Then what. Poor again. FMG can mine. We are killing ourselves by killing our country.*

Barry Pat: *We need to get that understanding among our people.*

Kevin Guinness: *So how do we stop it? What can we do?*

Michael: *We need to develop our response to these actions by FMG.*

Miss Cheedy: *We didn't understand what was going on in the Tuesday meeting. I was there. I thought they were offering jobs for people. Put your names down here, write down everyone who might be interested in work. Now I see we were being tricked.*

Michael: *That country is too important to us. Ten years ago, I went out there with the old people, all gone now. Recording...(weeps) Cannot continue.*

Tootsie: *Sacred country too. Very sacred.*

Bigali: *FMG argue that because we don't go there, do ceremony, we got no rights, but we can't go out there most of us. It's not possible. But we know that country. We know those places. They're part of us and our heritage. It's always been and always will be.*

Michael: *We all know what our country means to us. It's our life. I go out there. A lot of us are going there. We do the ceremony for the sites. Wimiya and my grandfathers talked that country. They taught us what it means, what to do. The Law, the jawi.*

Barry: *We all together. Must be full house. Can't be divided. Our Law says that. Depends on that.*

Kevin: *Are we saying no? No surveys?*

Meeting: *We have to say no! (Everyone speaking). What will we do?*

Michael: *If we don't prevent these Heritage clearances, we're going to find ourselves always in a bad way. FMG offers \$1.5 million. With nothing coming in for 5 years while they build the mine. Then \$3 million. A house in Karratha costs a million dollars. There's no way we can improve our children's future like that – and they're going to take away our heritage, destroy our land for that?*

Bigali: *Robert, we need your support. We need to know where you stand. You're one of us, but they're using you.*

Robert: *I knocked them back. They wanted me to be their Heritage Officer. I knocked them back.*

Bigali: *You stand with us or not. The community need to know. We want you to stand with us. What happens if FMG sack him?*

Robert: *People (VTEC) coming tomorrow. Offering jobs. What does YAC feel about that?*

Michael: *We need to keep these two questions separate. It's good for young fellas to get jobs. They need to be strong though, and say don't talk to me about cultural heritage and Native Title. Talk to YAC. They're trying to put wedges between us every way. It's going to break up our people, split our families, end our Law. We've got a big struggle to stay strong. We've got to say no to surveys. We're going to Appeal to the Full Bench.*

Robert: *People are already surveying. I said to them you got the wrong people.*

Michael: *What are we going to do? We have a decision to make.*

Kevin: *I agree. We got to say no to FMG.*

Rosie Cheedy: *We got to fight to the end.*

Lyn Cheedy: *We got to tell them what they don't understand. Only YAC as prescribed body corporate can decide about our country. Not just anyone that Yindjibarndi wanting quick money.*

Rosie: *My grandmother, my mother, my aunty worked for Lang Hancock. What we got? Nothing.*

Michael: *Yindjibarndi are a tough group to work with. It's the only way. Otherwise we stand to lose everything. And we can't do that.*

Meeting (all present) said: *Keep going. Keep fighting. We want to get this right for our kids and future generations.*

Kevin: *We got to stay strong.*

Michael: *We would like those who said they would do surveys, not to do surveys. Is that the decision we need from the meeting today? Are we on track with that?*

Meeting: *Yes (chorus of voices)*

Michael: *Are we saying no to surveys?*

Meeting: *Yes (chorus of voices)*

Kevin: *What happens if those who want to do survey claims don't know their country? And they go ahead?*

Michael: *YAC as the prescribed body corporate can tell ACMC whether survey people are the right people. No-one can just put themselves down if they know nothing. We will write to ACMC today and tell them what's going on. FMG are not just doing this to us. They have a record of being mavericks.*

Jane Cheedy: *We got to keep standing strong.*

Barry Pat: *Bottom line. As Ngarda we got to stay strong.*

Michael then called for the FMG anthropologist, Michael Gallagher, to come through from his office in the Marnda Mia building. Michael Gallagher joined the Meeting at 11.55 am.

Michael W: *Good morning Michael. The reason for this Yindjibarndi Aboriginal Corporation meeting today is to look at decisions made at your FMG-organized meeting on Tuesday. The YAC directors*

are saying no to a cultural heritage clearance survey being planned for this weekend. Senior Elders are saying No. We would also like you to know that those selected to undertake clearances have no authorization or specific cultural knowledge to do so. You also need to know we will be writing to the ACMC to let them know the decisions of this meeting today.

Michael G: I can respect that. But it's not our call. FMG says it is up to the individuals who agreed to do the surveys to decide.

Michael: We are saying YAC does not want our people to do surveys.

Lyn: We ask you not to take any survey group out.

Michael G: I will need to talk to the people at the mine site. I'll come back in a minutes.

(Michael G. leaves)

Further discussion ensued about BMEC offering jobs.

The meeting said that jobs are good, but reiterated that it should never be assumed that all Yindjibarndi can do heritage clearances as there are differences in the level of knowledge held according to age, cultural learning, and knowledge of places.

Michael Gallagher returned to the meeting at 12.30.

Michael G: I have just spoken with FMG's Blair McGlew and Alexa Morecombe. They said that FMG has separated Native Title and Heritage Surveys and Clearances. FMG withdrew from the ACMC meeting because they needed to carry out ethnographic heritage surveys. They called the Tuesday 6th Yindjibarndi meeting in order to ensure heritage clearances would be carried out immediately, and because YAC were holding back and linking the carrying out of Heritage Surveys with the development of a Yindjibarndi – FMG agreement. He said 60 people came to the Tuesday 6th July meeting. That it was held to consult with traditional Elders, and that those at the meeting agreed to carry out surveys starting on 10th July. He said he realizes that this is a complicated situation, but FMG is determined to carry out the surveys as decided. He says FMG believes they have been held up for too long.

Michael W: YAC believes that FMG falsely advertised the Tuesday meeting as a Training and Employment discussion. Yindjibarndi members stated that everyone attending was promised a \$500 sitting fee, which is why so many attended. They were surprised to find the Meeting was about carrying out Heritage Surveys.

Michael G: I hear what you're saying. Plainly this is a serious dispute. All I can do is convey this to FMG, and tell you that the surveys on Saturday will be going ahead with whomever decides to come.

Michael Gallagher left the meeting at 12.40.

Michael: Here are the names that were put forward as those willing or able to do surveys. (Names read out). Those present were very surprised, particularly the Elders, but also others who had thought they were writing down young people's names for work and training opportunities on Tuesday. It was generally agreed that many of those whose names appeared had little or no knowledge of that country. Elders stated that they had not agreed to do survey, and that as they don't write, someone might have written down their names.

Michael: People will be asked on these surveys to sing jawi, tell story. How can they do that? They don't know. They don't go to Law, most of them. They are not custodians or Law men for that country. But what they say, will count – and then FMG can mine the country and kill it.

Barry: Under Yindjibarndi law, man, not woman can speak. Knowledge people only can speak for country.

Michael: Worse. There is a lot of powerful and dangerous stuff there. Old Law Grounds. Spirits. Sickness for those who don't know what they're doing. Only Law men can go there safely.

People agreed. They knew these things. They had heard them from the Old People too.

Stanley: We all agree. These are true things. There are dangers. Anyone going there got to know.

Jane: We need to send a letter to everyone put their name down for survey urging them not to go and stating this is sacred country, that there are dangers involved under our Yindjibarndi religion, knowledge and Law. They need to be aware of the dangers of going to that country with no knowledge.

The Yindjibarndi Aboriginal Corporation CEO, Chairperson & Lawyer were instructed to write to FMG and the ACMC about what has occurred.

10 Aug 2010 –NNTT Facilitated Negotiation between YAC and FMG

Yindjibarndi Directors: Thomas Jacobs, Stanley Warrie, Rosemary Woodley, Rosie Cheedy, Lyn Cheedy, Tootsie Daniels, Jimmy Horace, Stephen Hubert, Gabrielle Cheedy, Ricky Sandy; **Yindjibarndi Elders:** Ned Cheedy, Bigali Hanlon, Maudie Jerrold, Bruce Woodley, Joyce Hubert, Sylvia Allan; **Yindjibarndi Community Members:** Pansy Sambo, Jessica Allan, Kaye Warrie, Wendy Warrie, Jane Cheedy, Lesley Walker, , Angus Mack, Wendy Warrie, Robert Cheedy, Ellery Sandy, Clifton Mack, Russell Sandy, Celia Sandy, Ken Sandy, Elizabeth Coppin/Hunter, Rebecca Cheedy, Jill Tucker, Kingsley Woodley, Celia Sandy, Esther Pat, Marlene Harold, Joylene Warrie, Dora Solomon, Tenelia Lockyer, Barry Pat, Jean Norman, Davin Woodley, Casey Cheedy, Amorette Lockyer, Amy Jerrold, Gloria Lee/Aubrey, Mark Horace, Sue Edwins, Marion Cheedy, Kaylene Daniels, Delphine Kerr, Middleton Cheedy; **YAC Executive Officer:** Michael Woodley;

Support Team: Philip Davies (minutes), George Irving (Barrister), Jan Kapetas, Frank Rijavec (Filming), Hayden Woodley (Filming)

FMG Representatives: Blair McGlew, Alexa Morcombe, David Forrest, Sukphal Singh, Michael Gallagher, Michael Thompson, Beck Alston.

WA State Government Representative: Paola O'Neill

NNTT Facilitators: Graham Neate (President); Alan Toogood (Future Acts Manager)

This meeting was the last negotiation meeting between YAC and FMG. In the course of the negotiations, Blair McGlew stated that FMG had made six "Whole of Claim Land Access Agreements" with other groups in the Pilbara and that FMG had previously told Yindjibarndi that "we can't pay the Yindjibarndi any more than we pay the other Aboriginal groups". FMG's offer on the day was said to be "a mining royalty of 15 cents per tonne to a maximum of \$3 million each year"; a "VTEC' royalty of 5 cents per tonne to a maximum of \$1.5 million per year"; and, "an Elders Council royalty of 5 cents per tonne to a maximum of \$1 million per annum". The total of this package exceeded the amount that had been offered by FMG at the June 2008 negotiation meeting, by \$500,000.

YAC rejected FMG's offer. And Michael Woodley informed the FMG representatives that, in view of the increase in the price of iron ore over the previous two years, the Yindjibarndi would consent to FMG's land access request in return for an uncapped royalty of .5%; but

that YAC was prepared to negotiate downwards if FMG was prepared to negotiate upwards from its offer. FMG's response was "a couple of years ago our offer sat at \$5 million per year and now we have gone up another \$0.5 million per year - so we may be able to go up another \$0.5 million - but we will only negotiate marginally".

In the course of this meeting there were a number of exchanges which concerned relationships within the Yindjibarndi community. Most of these exchanges occurred in the absence of the non-Yindjibarndi people:

Michael Woodley (MW) - We are arguing with FMG about the offer that FMG has made to the Yindjibarndi and the NNTT is here to try and negotiate the way through for both parties. It is important for us to try and get through this day and we can't deny that there is division in the community but we should try and just listen to what FMG and the NNTT has to say and then we will have a talk about what we want to do as a group - if the people are not happy with the direction that the Yindjibarndi Aboriginal Corporation is taking then everyone can have their say - but we should do this amongst ourselves.

Robert Cheedy (RC) - who picked those applicants

Aileen Sandy (AS) - it was done in a PNTS meeting back in 2003

MW - it is a big process to go through to replace the applicants

RC - some of the family should replace the applicant who passed away

MW - well that is a fair point and we should discuss that

Ellery Sandy (ES) - if we don't agree with what you have to say then can we make our own decisions?

MW - it is not my decision - the decision belongs with the people

ES - yes but we can talk about what we want

MW - yes - we should all have a talk about what decision we want to make at the end of the day about what actions we want to take

At this point, all the non-Yindjibarndi people came back into the room.

Blair McGlew (BM) - I am happy to keep talking but we need to know if Yindjibarndi wishes to make an agreement or do they want to continue down the court road

Pansy Sambo (PS) - It is about time when you come and consult with the Yindjibarndi together - rather than just telling us what you are going to do - is it going to happen or go ahead regardless of what we say today - it looks like you have got everything organised - now when you say that we could get a 14 person negotiating committee - is that going to go through YAC - I feel you are disrespecting YAC - you have cause division in our community - money has caused people to go on surveys recently which they should not have gone on - if I get nothing then am I still be able to go onto my country - Yindjibarndi has always been one - it is not so much about religion it is about our responsibility to run our Ngurra - we have managed through poverty before - if money is used in the right way it is a useful tool - what is the purpose of why my dad is still with us at 104 years old - there is a greater purpose - it is a spiritual purpose - we have lived with nothing before and we have survived - we have faith in someone

Ellery Sandy (ES) - I am bringing up something - can the people who have been bullied put your hands up - this is not on - why are we fighting over country - it is my relationship with you people that I care about - the country will always be there - we just wanted to know what is happening - we will never get what we are asking - this white fella he will take what he wants - the white fellas always win - this is where the arguments started - how many people were sitting in that meeting - no more arguments - we don't make trouble

Yindjibarndi people started calling out.

MW - we should respect what we are all saying - finish with your Wangka

ES - this is what my letter say - we will never get anything else extra from these people - now whose country are you mining on?

Ken Sandy (KS) - hang on I have got a map here

ES - do we have a right to say anything about our country

ES - every meeting we have been having - just getting a feed back on the FMG - we never get an honest feedback - every time we ask a question we get yelled at - we are bullying each other - we are sending letters to each other - many are being bullied and we want that to stop

Bruce Woodley (BW) - I will go separate

Rose Cheedy (RC) - well who is being bullied

Ricky Sandy (RS) - well I can go out to country and look after my country - (the talking to Lorraine Coppin) - well who are you to talk to me - you are Ngarluma

MW - to Ricky Sandy - well who are you - you have no knowledge

RS - well that is my country

At this point the Yindjibarndi participants in the meeting began to argue. After the arguments settled down, the FMG's put the offer described above; and, shortly afterwards, all the non-Yindjibarndi people left the meeting so that it could be discussed:

Alum Cheedy (AC) addressed the group - I didn't feel any good about what happened this morning - those white fellas only came here for one reason - to get an agreement with FMG - they want the whole of the country for this amount of money - rather than arguing about other things we need to concentrate on what we are here for - we need to respect everyone else's wangka

Bruce Woodley (BW) - we want to go separately on our own

AC - is there any way you can come back together

BW - no we are going on our own

Tootsie Daniels (TD) - so are you going to get legal advice

BW - we will get our own advice and we have already got a book keeper

TD - no I am not going to argue

Jill Tucker (JT) - we have talked about it and thought about it

TD - do you have your Elders

BW - we have got our Elders

JT - we are going to separate from YAC

AC - do you think we should meet about this matter

JT - we have spent a lot of money in court and we want to do something - we will put out our proposals to the mining people

TD - so you have already got your organisation

BW - we have already got our native title

LC - there is a lot of hard work that has got us here today - we don't have native title in the Yindjibarndi 1 area

BW - that is it - we are going to split up

MW - we have a group of people here that have a set mind - this is very sad - we have been talking about this from day 1 - the court case is happening to protect us and our country - this money is not enough for us and our future generations

JT - that money is every year

MW - yes but the deal is only on Firetail and Solomon - but they will take all our land

JT - we are going our own way

LC - we are fighting over this claim area - we haven't got this native title yet in this area

ES - (to Lyn Cheedy) well you go back to country and live there

LC - why not fight for country

MW - country is what we are - we only exist because we have our country - if they have got our country they got it - not us

JT - OK you can fight for it but I am going to go

MW - you have every right to go but before you do I want to explain the court thing - we are fighting for full exclusive rights - there are areas in that Yindjibarndi 1 claim that we can get full exclusive rights - our determination area only gives us non-exclusive rights - but in order to get that we need to give our knowledge - the second court case is about the FMG mining tenements - as long as we go through the court case they can't get the mining tenements - we want to go all the way with the court case - that is a good position to be in because FMG want to mine more quickly than that

ES - it is not FMG who is splitting this community - we are sick of being bullied - we don't want to do anything in Solomon Mine - we don't want anything to do with Solomon - we only want to start our business at Millstream

MW - then if that is what you want you can do that - if that is all you want can we get a guarantee from you that you will not do surveys or meet with FMG secretly - we need you to guarantee that you will stay away from native title matters - if you go on your own then please stay away from native title matters - the only people who can sign off on the country that is in the Yindjibarndi 1 claim are the named applicants

BW - have we got a PBC

MW - yes - and we need to let you know that in order to protect the interests of the Yindjibarndi PBC we may need to prosecute the Yindjibarndi people doing heritage surveys - we may need to take you to court - I know that country - I have worked with the old fella - one thing the old people have always said is 'look after that country' - and we all may end up in court like George says fighting each other for knowledge of that country

Bigali Hanlon (BH) - BH - I can understand that you are frustrated - why don't you ask these people what would happen if we split - you have been here all the time over the years and you don't believe Miggo, or George or me - I feel your frustration - and that is your right if you want to split - but at the end of the day you need to know exactly why you are splitting up

MW - Blair has made an offer and we have discussed this outside with the men - I have been trying to Wangka that we don't want to split up, to form another group - we have got this mob on the run - what we need to decide on today - are we staying together - well if we say to Blair is this your bottom line - then if it is my advice to the group is that we should reject that offer once again

Barry Pat (BP) - well we should negotiate for a better deal

At this point people started calling out to “fight for a better deal”; and Michael Woodley asked for a show of hands, saying “who is for a better deal” – a large majority raised their hands.

BW - I want to wait to see what the white fella says about us going our separate way

Graham Neate was then invited into the room:

BW - to Graham Neate - if we go separate as an Yindjibarndi group what will happen

GN - so if I understand does that mean that two groups will negotiate with FMG?

GN - I can't give you legal advice - but if you are saying that one part of Yindjibarndi wants to act differently to another part - there are three parties to the arrangements - the government, the grantee (FMG) and the applicants to that native title area - the applicants are the ones who sign off for Yindjibarndi - they are the three separate parties

GN - before you reach an agreement it is for the group to work out how you want to negotiate - In terms of the native title party your applicants are the ones who sign off - it is up to you people about how you get the applicants to sign off on your behalf - they may be your chosen negotiators etc

MW - you need to make it clear to the Yindjibarndi people who are interested in making a separate group

TD - so no negotiating should start without the complainants signing first - or a survey should be started before the agreement is signed?

GN - the only way an agreement can be reached is if the applicants sign - they are the key people for an agreement to be reached with FMG in the claim area

At this Point the FMG and State representative re-entered the room:

GN - There are three parties to any agreement - the State party, the grantee party (FMG) and then the Yindjibarndi people who are represented by the named Yindjibarndi applicants - it is the applicants who sign off on behalf of the Yindjibarndi people

MW - we are prepared to negotiate with FMG - the key word being negotiate - we do not take kindly to ultimatums - I am pretty sure that FMG know that there is a break-away native title group - now that group can do activities but we have asked them to not have anything to do with native title - and especially with FMG - it is the applicants who sign off on behalf of the Yindjibarndi group. We asked the break-away group what they wanted to do and they said they wanted to start businesses etc - now my understanding is that the break-away group have agreed they will not have anything to do with native title and the negotiations with FMG - as you know we have a negotiation team - and we are happy to progress as we have done in the past - all meetings are to be held in Roebourne.

15 Dec 2010 – YAC Annual General Meeting

YAC Members: Stanley Warrie, Lorraine Coppin, Joylene Warrie, Kaye Warrie, Wendy Warrie, Renae Walker, Sharon Warrie, Michael Woodley, Angus Mack, Thomas Jacobs, Russell Sandy, Billy King, Pansy Cheedy/Sambo, Terry Pat, Dora Solomon, Debra Coppin, Curtis Lockyer, Joyce Hubert, Wayne Stevens, Hayden Woodley, Alice Guinness, Teresa Coppin, Esther Pat, Kim Whalebone, Lesley Walker, Tootsie Daniels, Jean Norman, Gabrielle Cheedy, Junior Larry, Bigali Hanlon, Middleton Cheedy, Natalie Watson, Stephen Hubert, Charlie Carr

Support: Frank Rijavec, Phillip Davies, ORIC Contact Officer for YAC (Minutes)

Discussion:

The group discussed what should be done about the Yindjibarndi people who have decided to form their own aboriginal corporation which acts in opposition to the interests of the YAC. The other corporation is called the Wirru-Murra Yindjibarndi Aboriginal Corporation and it has been set up by Yindjibarndi people in conjunction with Fortescue Metals Group (FMG), with its principle objective to: sign an agreement with FMG, conduct heritage surveys in Yindjibarndi 1, and to stop all legal action against FMG. The YAC members are opposed to this approach because the offer that has been made to the Yindjibarndi people is not enough and they feel that the illegitimate and unauthorised surveys will destroy their religious precinct.

The YAC members decided to cancel the memberships of all those people who are members of the Wirru-Murra Yindjibarndi Aboriginal Corporation and also all those people who signed a letter sent to the Honourable Brendan Grylls, Minister for Regional Development and Lands, dated 10 November 2010. Both the letter and the Wirru-Murra Yindjibarndi Aboriginal Corporation member and registration details were attached to the minutes. The YAC constitution clause relied upon to cancel the membership of the YAC members was clause 3.7, and in particular takes into account the wording of cancellation of members who 'misbehaves or his or her conduct is detrimental to the interests of the corporation'

This decision was qualified for four people who are members of the Wirru-Murra Yindjibarndi Aboriginal Corporation and signatories to the letter because they decided to sign a form stating that they wish to resign from, and want nothing to do, with the Wirru-Murra Yindjibarndi Aboriginal Corporation. The four people who signed the forms are Billy King, Russell Sandy, Dora Solomon and Steven Hubert. These resignation forms are attached to these minutes.

Resolutions:

The minutes of the previous Yindjibarndi Aboriginal Corporation Annual General Meeting were read. The motion was put that the minutes are an accurate reflection of the Yindjibarndi Aboriginal Corporation Annual General Meeting held on December the 15th 2009, by those who attended, and were passed unanimously.

Moved: Tootsie Daniels
Seconded: Thomas Jacobs

Passed: Unanimously

That the members of the Wirru-Murru Aboriginal Corporation and the signatories to the letter sent to Brendan Grylls on 10/11/10 are cancelled as members of the YAC except for Russell Sandy, Dora Solomon, Billy King and Steven Hubert. The 26 members to be cancelled from membership of the YAC are Sylvia Allan, Aileen Sandy, Stephen Adams, Clifton Mack, Marlene Harold, May Adams, Amy Jerrold, Berry Malcolm, Allery Sandy, Wendy Hubert, Bruce Woodley, Ricky Sandy, Gloria Lee, Mavis Pat, Ken Sandy, Celia Sandy, Jimmy Horace, Mark Horace, Jill Tucker, Diana Smith, Charmaine Adams, Joanne Willis, Esther Pat, John Sandy, Linda Norman and Harry Mills.

Moved: Thomas Jacobs

Seconded: Stanley Warrie

Passed: Unanimously

That Stanley Warrie, Thomas Jacobs, Pansy Cheedy/Sambo, Tootsie Daniels, Jane Cheedy, Bigali Hanlon, Joylene Warrie, Russell Sandy, Curtis Lockyer, Jean Norman, Angus Mack, Gabrielle Cheedy are the Yindjibarndi Aboriginal Corporation Directors, and the office bearers will be elected to their roles as Chairperson, Vice-Chairperson and Treasurer at the next Directors General Meeting.

Moved: Lyn Cheedy

Seconded: Michael Woodley

Passed Unanimously

That YAC appoint David Swords as the YAC examiner for the 2010/2011 financial year.

Moved: Stanley Warrie

Seconded: Thomas Jacobs

Passed: Unanimously

That Philip Davies continue as the Yindjibarndi Aboriginal Corporation ORIC Contact Person until the next Annual General Meeting.

Moved: Angus Mack

Seconded: Pansy Cheedy

Passed: Unanimously

That Ned Cheedy, Joyce Hubert, Shirley Woodley, Dora Solomon, Billy King, Bigali Hanlon, Rosie Cheedy, William Jerrold, Thomas Jacobs, Middleton Cheedy, Pansy Cheedy, Mavis Pat, Jean Norman, Tootsie Daniels, Kerry Warrie, Rosemary Woodley make up the YAC Elders Council until at least the next YAC Annual General Meeting

Moved: Angus Mack

Seconded: Michael Woodley

Passed: Unanimously

“MW-16”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following five pages is the annexure marked “**MW-16**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



Fortescue Metals Group Ltd
ACN: 002 594 872
87 Adelaide Terrace East Perth
Western Australia 6004
PO Box 6915, East Perth, Western Australia 6892

2 July 2007

Mr Michael Woodley
Juluwarlu Aboriginal Corporation
PO Box 111
Roebourne WA 6718

Dear Michael,

**Yindjibarndi/FMG Heritage Agreement for Exploration Tenements
E47/1448, E47/1333 & E47/1334**

I refer to our recent communication regarding an agreement between FMG and the Yindjibarndi People for the conduct of heritage surveys in Yindjibarndi country.

I enclose 2 copies of the Yindjibarndi/ FMG Heritage Agreement executed by FMG. Once you have signed the documents could you please return a copy to me.

I understand that Michael Ryan of PNTS will organise to have the Yindjibarndi People's objection to the grant of E47/1333 withdrawn.

FMG looks forward to conducting heritage surveys with Yindjibarndi in the near future.

Yours sincerely,
Fortescue Metals Group

Alexa Morcombe
Legal Advisor

CONTRACT FOR SERVICES IN RELATION TO EXPLORATION

This Contract for Services is made between Fortescue Metals Group Ltd ["the Grantee"] and the Yindjibarndi #1 Native Title Applicants ["the Applicants"] on the [29th] day of June 2007.

Background

- A. The Grantee has made a tenement application for the tenements listed in Schedule one to the Department of Industry and Resources of Western Australia ["the Tenements"].
- B. The Applicants may or may not have lodged an objection to the application of the expedited procedure to the Tenements with the National Native Title Tribunal.
- C. The Yindjibarndi Aboriginal Corporation represents the Applicants and is authorised to enter this contract as their agent.
- D. The parties have entered into this Contract to ensure that the grant of the tenement is not likely to interfere directly with the community life of the native title group, is not likely to interfere with areas or sites of particular significance to the Applicants, is not likely to involve major disturbance to any land or waters concerned, and that all work done pursuant to the tenements is in compliance with the provisions of the (WA) *Aboriginal Heritage Act 1972*.

It is agreed:

Application of this contract

1. This contract applies to the portion of the Tenements located within the Yindjibarndi Native Title Claim Area.

Heritage Survey to be conducted

2. The Grantee agrees to conduct such work and to incur such costs as are set out under Schedule one to this Contract ["the Heritage Survey"].

Juluwarlu to conduct Heritage Survey

3. Juluwarlu Group Aboriginal Corporation shall conduct the Heritage Survey pursuant to Schedule one to this Contract, and the Heritage Survey will include video recording of survey process and outcomes as per Schedule one to this contract.

Intellectual Property

4. (a) All information provided during the course of or in relation to the Heritage Survey ["Heritage Information"] whatsoever remains the intellectual property of the Applicants.
- (b) No Heritage Information shall be recorded or released to any person or entity whatsoever, without the express written permission of the Applicants.

Grantee not to seek Section 18 Consent

5. The Grantee will not during the life of the tenements make any application under section 18 of the *Aboriginal Heritage Act 1972* with respect to the area within the Tenements without the written consent of the Applicants.

No Work without Heritage Survey

6. (a) The Grantee will not carry out any ground disturbing work of any kind in any area of the Tenements located within the Yindjibarndi Native Title Claim Area that has not been subject to a Heritage Survey pursuant to this Contract
- (b) The grantee is entitled to carry out Low Impact Exploration on the Tenements without conducting a Heritage Survey under this agreement.
- (c) Notwithstanding clause 5(b) above, the Grantee will use its best endeavours to provide Work Programmes prior to any prospecting or exploration work on any area of the Tenements that has not been subject to a Heritage Survey pursuant to this contract.
- (d) For the purposes of this clause, "Low Impact Exploration" means non-ground disturbing activity, including activities such as aerial surveys, geological mapping, rock chip hand specimen and drainage sampling, only using hand-held tools and non-ground disturbing geophysical surveys.

Withdrawal of Objection

7. The Applicants will withdraw any extant or intended objection to the application of the expedited procedure to the grant of the Tenements.

Limit on Heritage Survey

8. Nothing contained in this Contract entitles the Grantee to information as to the significance under Aboriginal law and custom of any particular Aboriginal site nor to its precise location.

No Derogation from Native Title Rights

9. Nothing in this Contract in any way derogates from the Applicants' native title rights and interests.

Legal Professional Privilege

10. The Parties acknowledge that in the course of the Heritage Survey being conducted, the Heritage Officer may obtain or cause to be obtained, information in relation to the Applicants' application for a determination of native title and that such information is separate from the Heritage Survey, is confidential to the Applicants and is subject to legal professional privilege.

Binding on Heirs assigns and successors and Assignment

11. (a) This Contract shall be binding on the heirs, assigns and successors of the parties.
- (b) The Grantee shall not assign or transfer the Tenements or any of its rights and liabilities under this Contract unless the proposed assignee or transferee first enters into a contract with the Applicants agreeing to be bound by all the liabilities and assume all the obligations of the Grantee under this Contract. The Applicants shall not unreasonably refuse to enter into such a contract with the proposed assignee or transferee. The Grantee shall pay all the reasonable costs of the Applicants associated with such an assignment or transfer.

Costs

12. The Grantee will pay the cost of negotiating and preparing this contract and any stamp duty that is assessed on this Contract.

Monitoring

13. The Grantee will provide to PILBARA NATIVE TITLE SERVICE and Jutuwarlu Group Aboriginal Corporation a copy of each Form 5 that the Grantee is required to provide pursuant to the *Mining Act 1978* and the *Mining Regulations 1981* at the same time as that form is required to be provided to the Department of Industry and Resources.

Schedule one forms part of Contract

14. Schedule one is to be interpreted as forming a part of this Contract.

Counterparts

15. This Contract may be executed in a number of counterparts and the counterparts together form one and the same instrument.

Execution

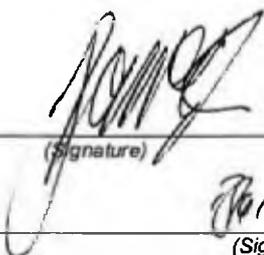
Executed by Yindjibarndi Aboriginal Corporation:

In the presence of:

(Witness signature)

(Witness name)

Signed by _____ for and on behalf of Fortescue Metals Group


(signature)

Paul McGowan - Head of Land Access
(Signatory's name and position)

In the presence of:


(Witness signature)

ALEXIA KATE MORCOMBE
(Witness name)

Schedule One (Page 1 of 2)

Grantee's Name	Fortescue Metals Group Ltd
Grantee's Address for Service	Level 2, 87 Adelaide Terrace East Perth WA 6004
Grantee's Additional Contact Details	Phone: 08 6218 8888 Fax: 08 6218 8880
Tenement Number(s)	E47/1333 E47/1334 E47/1447
Survey Type and Method	Work Program Clearance or as otherwise agreed
Survey Group	Yindjibarndi Native Title Claim Group
Juluwarlu sub-consultant	TBA
Yindjibarndi heritage specialists	Such persons nominated by the Applicants who will likely have knowledge of Aboriginal sites (as referred to in the <i>Aboriginal Heritage Act 1972 (WA)</i>) within the relevant survey area.
Timing	TBA
Reporting	

This schedule will only be deemed to be complied with (notwithstanding any cultural importance) upon certification by the Heritage Officer of the Juluwarlu Group Aboriginal Corporation.

Conditions of compliance (on the basis of the findings of the heritage survey)

I certify that this schedule has been complied with

date

Juluwarlu Heritage Officer

COSTS

Juluwarlu Group Aboriginal Corporation
Yindjibarndi Ethnographic and Archaeological Quote

For Fortescue Metals Group – June 2007

All rates quoted are exclusive of GST

50% of the agreed approximate total job cost to be paid to Juluwarlu Group Aboriginal Corporation before work commences

<u>Description</u>	<u>Daily Hire</u>	<u>Comments</u>
<u>Juluwarlu Yindjibarndi Cultural Heritage Survey Services</u> <u>Juluwarlu Daily Cost</u> This cost includes the services of : <u>Yindjibarndi Land Access Manager</u> <u>Anthropologist</u> <u>Juluwarlu Heritage Officer</u> <u>1 Senior Yindjibarndi Heritage Specialist</u> <u>4 Yindjibarndi Heritage Specialists</u> <u>Includes Juluwarlu Administration Fee</u>	<u>\$5,500</u>	<u>Per day or pro rata</u> <u>All services are in-house</u> <u>– based at Roebourne</u> <u>Service includes</u> <u>Aboriginal Sites</u> <u>Research and</u> <u>Ethnographical Report</u> <u>Writing</u>
<u>Juluwarlu Filming Team</u> <u>Juluwarlu Film Crew</u> (Director/Editor plus Camera Person with Camera plus Sound Engineer) <u>Includes Juluwarlu Administration Fee</u>	<u>\$2,000</u>	<u>Number of days filming</u> <u>to be agreed with the</u> <u>proponent before the job</u> <u>begins</u>
<u>Archaeological Services</u> <u>Archaeological Team Costs</u> (including fieldwork and reporting) (external contractors) <u>No Juluwarlu Admin Fee to be charged on this item</u>	<u>At Cost</u> <u>(No admin</u> <u>fee – agreed</u> <u>with FMG)</u>	<u>Total number of</u> <u>Archaeologists required</u> <u>per job to be agreed with</u> <u>the proponent</u>

All items quoted above include the Juluwarlu Administration Fee

All 'at cost' items quoted below (except the mileage rate), do not include the Juluwarlu Administration Fee

<u>Field Expenses</u> Any meals/accommodation expenses incurred by the members of Juluwarlu Yindjibarndi Cultural Heritage Survey Team while performing their specifically agreed task	<u>At Cost</u>	<u>If agreed as necessary</u>
<u>Archaeological Team meals/accommodation</u>	<u>At Cost</u>	<u>If agreed as necessary</u>
<u>Travel and other Incidental Expenses</u> <u>Juluwarlu Vehicle mileage</u> <u>Includes Juluwarlu Administration Fee</u>	<u>\$0.85 per</u> <u>km</u>	<u>If agreed as necessary</u>
<u>Hire Vehicle</u>	<u>At Cost plus</u> <u>fuel</u>	<u>If agreed as necessary</u>
<u>Yindjibarndi Land Access Managers Travel Costs</u>	<u>At Cost</u>	<u>If agreed as necessary</u>
<u>Airfares</u>	<u>At Cost</u>	<u>If agreed as necessary</u>
<u>Taxis</u>	<u>At Cost</u>	<u>If agreed as necessary</u>
<u>Any maps or other incidentals</u>	<u>At Cost</u>	<u>If agreed as necessary</u>
<u>Administration Fee</u> <u>Juluwarlu Administration Fee</u> (An Admin Fee charged on any 'At Cost' items above –except where otherwise agreed)	<u>25%</u>	<u>An Admin Fee will be</u> <u>charged on any 'At Cost'</u> <u>items listed above</u>

fm

“MW-17”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “MW-17” referred to in the witness statement of Michael Woodley dated 5 June 2023.



Juluwarlu Aboriginal Corporation

"Time away from our dreams is a lifetime away from our law, land & culture,
Time away from our law, land & culture is time we will never have or see again."

A.B.N 52 300 944 909

P.O. Box 111, Roebourne WA 6718

Telephone (08) 9182 1497 Fax (08) 9182 1036 E-mail juluwarlu@bigpond.com



AGREEMENT BETWEEN FMG and the YINDJIBARNDI COUNCIL

This agreement is meant to accurately reflect the discussions had at the Juluwarlu Group Aboriginal Corporation office on Thursday the 16th of August 2007, between Blair McGlew and Bruce Larsen (representing Fortescue Metals Group), and Michael Woodley, Philip Davies and Alum Cheedy (representing the Yindjibarndi Council)

Below is the essence of the agreement reached between both parties
(as described above) – there are two signed originals of this agreement

1. FMG will provide a full written apology for the recent unauthorised ground disturbing incident.
- 2.1. Juluwarlu Group Aboriginal Corporation will employ an Yindjibarndi person to audit Fortescue Metal Group's heritage and exploration protocols and processes on site at the Solomon and Firetail exploration areas. This audit will not take longer than 10 working days, and FMG will pay Juluwarlu Group Aboriginal Corporation \$10,000 (excluding GST) for this work
- 2.2. Following the audit as described in point 2 above, if the Yindjibarndi people give their consent, then Juluwarlu Group Aboriginal Corporation will employ two Yindjibarndi Advisory Ground Monitors to work with FMG. FMG and the Yindjibarndi Council will determine the roles of the two Yindjibarndi Advisory Ground Monitors. Juluwarlu Group Aboriginal Corporation will directly employ the Yindjibarndi Advisory Ground Monitors and will charge FMG \$300 per day (excluding GST) for each Monitor, plus a 15% administration fee (excluding GST).
3. FMG agrees to pay a \$25,000 penalty for any Aboriginal heritage site that has been significantly disturbed in the process of clearing land for drill lines. For the purposes of this penalty, a site is defined as:
 - Any site as per Section 5 of the Aboriginal Heritage Act) or;
 - Any site that is deemed to be significant by a Yindjibarndi heritage survey team and agreed by FMG as an area that is to remain protected during during that phase of exploration. The coordinates of this area also need to be agreed by both parties.

The penalty only applies to sites that have been identified by a heritage survey team. That is, FMG would not be responsible for this penalty if a heritage survey team did not locate a site during the initial survey.

Point 3 will be included into a newly amended Yindjibarndi Heritage Agreement, before further Yindjibarndi Survey work is to commence. The exact wording for the amendment to the YHA is still to be constructed.

These three points accurately reflect the discussions and agreement we have reached today

Dated

Blair McGlew

Michael Woodley

Philip Davies

Bruce Larsen

Alum Cheedy

The hands represent the four skin groups; Burungu, Banaga, Balyirri & Garimarra.

The colours represent the ochres; red, white, yellow & black. The blue ripples represent the water which continuously flows through our lands and teachings. The centre represents the galtharra skin system.

“MW-18”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following twelve pages is the annexure marked “MW-18” referred to in the witness statement of Michael Woodley dated 5 June 2023.

From: Phil Davies [pdavies@juluwarlu.pilbara.net]
Sent: Friday, 16 November 2007 2:53 PM
To: 'Blair McGlew'
Cc: 'juluwarlu@bigpond.com'; 'Lorraine Coppin'
Subject: Letter to Andrew Forrest - FMG - from the Yindjibarndi Working Group
Attachments: FMG - Letter to Andrew Forrest - 15-11-07.doc

16/11/07

Dear Blair,

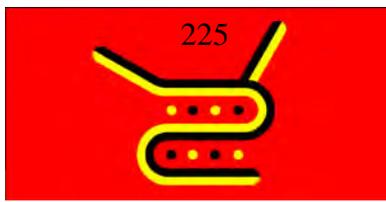
As discussed I have attached the letter from the Yindjibarndi Working Group to Andrew Forrest.

Would you please forward the letter to him.

A signed copy of the letter will be mailed shortly.

Yours sincerely

Michael Woodley
On behalf of the Yindjibarndi Working Group



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

15/11/07
Mr Andrew Forrest
Chief Executive Officer
Fortescue Metals Group
Perth

Our Reference: YAC/FMG Ng 1

Re: Commencement of Negotiations for Fortescue Metals Group Land Access Agreement on Yindjibarndi country

Dear Mr Forrest,

We the Yindjibarndi Working Group Governing Committee, on behalf of the Yindjibarndi people, have taken into account all matters associated with the developments by Fortescue Metals Group on Yindjibarndi country. Following presentations made by Fortescue Metals Group representatives for future potential mines on our country, we agree to your organisation's desire to commence negotiations on a Fortescue Metals Group Land Access Agreement.

The Yindjibarndi Working Group has directed its heritage consultant, Juluwarlu Group Aboriginal Corporation, to cease all heritage work until the negotiations have been finalised, and a Fortescue Metals Group Land Access Agreement signed.

A negotiating team has been established and endorsed by the Yindjibarndi Working Group to negotiate a Fortescue Metals Group Land Access Agreement. Our team will only negotiate any agreement that culminates from this process with you, as we recognise that you are the prime decision maker for Fortescue Metals Group. A negotiation budget will be forwarded to you once you make us aware of your timetable to commence dialogue.

All negotiations will be conducted according to the Yindjibarndi Marrga Negotiation Protocols. The protocol document is to be signed by all interested parties before the negotiation process begins.

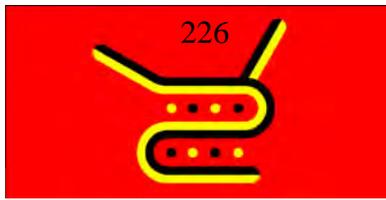
Please direct all queries or correspondence to Michael Woodley at Juluwarlu Group Aboriginal Corporation who is representing us, in the first instance, on this matter.

We look forward to hearing from you.

Signed:

Stanley Warrie (Chairperson)

Barry Pat



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

Re: Commencement of Negotiations (continued) Ref: YAC/FMG Ng 1

Ashley James

Harry Mills

Jimmy Horace

Stephen Hubert

Bridget Warrie

Dora Solomon

Aileen Sandy

Doris Lockyer

Rosemary Woodley

Charmaine Adams

The twelve signatories detailed above are the Yindjibarndi Governing Committee members that represent the Yindjibarndi Prescribed Body Corporate



Yindjibarndi Marrga Negotiation Protocols.



Prior to Negotiations

Yindjibarndi Country is a sacred part of contemporary Australia

The Yindjibarndi Aboriginal Corporation is responsible for its protection

We will only negotiate with Fortescue Metals Group (FMG) if our holy land is treated with the utmost respect, just as we – the Yindjibarndi Ngardangarli - have treasured our country for countless generations

Therefore, Mr Andrew Forrest, who is ultimately responsible for the actions of FMG, will be the only person who is privileged to enter into any negotiations with the Yindjibarndi traditional owners, on behalf of his company.



Prior to Negotiations

- When the world was soft and the land was new, the creation spirits rose from the Earth, and the Creation times began. The creation spirits are called Marrga. They are the creators of the land, of Yindjibarndi Ngarda, our language, law, songs, stories and culture. Today Yindjibarndi people walk in the footsteps of the Marrga, protecting, overseeing and managing the diversity of all Yindjibarndi Country. Yindjibarndi's survival is a tribute to the dedication, intelligence and spirit of our people.

We are the Ngurra-ras – the rightful owners for our country.

- Before negotiations regarding any Heritage or Land Access 'Agreement' and related compensatory provisions proceed, all parties will sign off on the Yindjibarndi ***Marrga Negotiation Principles***.

Yindjibarndi is the past, Yindjibarndi is the present, and Yindjibarndi's rights are the future



Yindjibarndi Native Title

- The Australian Government's Yindjibarndi Native Title Determination set down by The Honourable Justice Nicholson on Monday the 02nd of May, 2005, describes how Yindjibarndi people are defined, and verifies their inalienable connection to designated Yindjibarndi territory, which grants Yindjibarndi people the lawful right to access, protect, care for, engage with, and utilise their traditional lands.
- The Yindjibarndi Native Title Determination area, combined with the Yindjibarndi Native Title Claim Number 1, cover approximately 13,100 square kilometres, and are the Indigenous spiritual and cultural heart centred on ***Jirndawurrunha***.



Statement of Protocols Outlining Mutual Understandings Regarding the Process of Negotiation with the Fortescue Metals Group (FMG) and the West Australian Government

1. All parties should understand that Yindjibarndi hold an in principle opposition to the disturbance and irrevocable damage of any part of Yindjibarndi Country and therefore are totally against mining of any materials on any Yindjibarndi country
1. However, once Fortescue Metals Group is 100% sure that they wish to disturb Yindjibarndi country for the mining tenements E47/1333, E47/1334, and E47/1447, then, and only then, will the Yindjibarndi Council enter into negotiations on each tenement. Before signing off on any Land Access or Compensation 'Agreement', FMG will need to provide to the Yindjibarndi Council, information regarding: the size of the area to be mined; the estimated life of the mine; number of tonnes of ore expected to be extracted; the value of this tonnage in today's terms; indication of other impacts resulting from the mining operation, such as transportation corridors, social impact, environmental impact, etc.



Statement of Protocols Outlining Mutual Understandings Regarding the Process of Negotiation with the Fortescue Metals Group and the West Australian Government

3. The Yindjibarndi Council retain the right to simultaneously negotiate with the Fortescue Metals Group and also the West Australian State Government regarding the said mining tenements in regard to safeguards, compensation, etc., so as to deliver the best outcome for the Yindjibarndi people.
4. All negotiations with Yindjibarndi, concerning exploration, mining, development of any kind, etc., are only to be conducted through the Yindjibarndi Council.



Statement of Protocols Outlining Mutual Understandings Regarding the Process of Negotiation with the Fortescue Metals Group and the West Australian Government

5. That in approaching negotiations, the negotiating parties recognise the economic, political and social disadvantage faced by the Yindjibarndi people and respect their fundamental human right to civil, political and cultural self-determination – these rights are enshrined within the ‘United Nations Universal Declaration of Human Rights’, which was adopted by the General Assembly on 10 December, 1948, and specifically found within: The International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); and International Convention on the Elimination of all forms of Racial Discrimination (ICERD).
6. All parties are to approach negotiations with a respect for and a commitment to understand and abide by the Protocols laid down here by the Yindjibarndi Council.



Statement of Protocols Outlining Mutual Understandings Regarding the Process of Negotiation with the Fortescue Metals Group and the West Australian Government

7. On behalf of all Yindjibarndi Traditional Owners, the Yindjibarndi Council will negotiate with the Fortescue Metals Group and the West Australian State Government in good faith, demonstrating a positive spirit and professional manner. Further, the Yindjibarndi Council pledges to uphold the negotiation Protocols laid out here and to respect those parties wishing to negotiate on outcomes with the Yindjibarndi people.
8. Fortescue Metals Group and the West Australian Government will submit in writing to the Yindjibarndi Council their interpretation of point five, thereby setting out how they intend to apply the principles of the 'United Nations Universal Declaration of Human Rights' in their dealings with Yindjibarndi Traditional Owners.



Pursuant to Sign Off on Yindjibarndi Marrga Negotiation Protocols:

1. Conclusion of a final Yindjibarndi Heritage Agreement between Fortescue Metals Group and the Yindjibarndi Council, which allows for FMG's mining operations to commence, subject to agreement being reached on Points 2 and 3 listed below.
2. Conclusion of Land Access Agreement between Fortescue Metals Group and the Yindjibarndi Council.
3. Conclusion of Compensation Agreement between the Western Australian State Government and the Yindjibarndi Council.

“MW-19”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked “**MW-19**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



Fortescue Metals Group Ltd

ACN: 002 594 872

87 Adelaide Terrace East Perth

Western Australia 6004

PO Box 6915, East Perth, Western Australia 6892

Telephone: + 61 8 6218 8888

Facsimile: + 61 8 6218 8880

Website: www.fmgl.com.au

10 January 2008

Yindjibarndi People

C/o Mr Michael Woodley
 Juluwarlu Aboriginal Corporation
 PO Box 111
 Roebourne WA 6718

Dear Michael

Negotiations for a Land Access Agreement

Thankyou for your letter dated 15 November 2007 and your desire to commence negotiations regarding a Land Access Agreement.

Heritage Surveys

Whilst it is reassuring to hear that the Yindjibarndi People are committed to negotiating towards a Land Access Agreement, it is extremely disappointing that Yindjibarndi will not carry out heritage surveys in the way in which we previously agreed.

Fortescue attended several meetings with the Yindjibarndi People in which the heritage agreements for exploration tenements E47/1333, E47/1334 and E47/1447 were discussed and agreed upon.

At those meetings Fortescue explained to the Yindjibarndi People that while a whole of claim Land Access Agreement was our ultimate aim, it is critical that Fortescue be able to commence its drilling programme in a timely manner.

Fortescue was supportive of the Yindjibarndi People's desire to conduct their heritage business independent of the Pilbara Native Title Service (PNTS). Fortescue agreed to change the previous heritage agreements negotiated by the PNTS on Yindjibarndi People's behalf to enable the Juluwarlu Corporation to undertake surveys for Yindjibarndi. Fortescue agreed to this even though it meant paying increased fees for heritage surveys.

Fortescue has conducted several heritage surveys with Yindjibarndi People under that agreement.

There are currently 8 outstanding requests for heritage surveys by the Yindjibarndi People over Fortescue's exploration tenements. These requests were sent to Juluwarlu from as early as 15 June 2007.

Listed below are the survey requests, which tenements they relate to, and the date on which they were sent.

EXP_YIN_007	Solomon Drilling	1333, 1447	2007/06/15
EXP_YIN_008	Solomon East Priority 2 Drilling	1333, 1447	2007/06/15
EXP_YIN_009	Solomon Drilling Outside DIA Sites	1333	2007/07/26
EXP_YIN_010	Solomon Drilling Inside DIA Sites	1334	2007/07/26
EXP_YIN_011	Exploration Access Tracks and associated works	1334	2007/09/19
EXP_YIN_012	200m infill lines Solomon East	1334	2007/10/10
EXP_YIN_013	Firetail Exploration works	1447	2007/10/19
EXP_YIN_014	Solomon Drill Line Extensions	M47/1409	2007/11/12

Your refusal has the potential to impact upon Fortescue's exploration program and ultimately the development of a project in Yindjibarndi country. Timely progress drives the success of the company, and in turn, its ability to pay fair compensation to those affected by its projects.

In signing the agreement with Fortescue, Yindjibarndi People have committed to carry out surveys in accordance with the agreement. Fortescue considers a refusal to undertake surveys as an act of bad faith by the Yindjibarndi People.

Notwithstanding this, Fortescue would be prepared to enter into expeditious negotiations with the Yindjibarndi people.

Negotiations

If the Yindjibarndi People recommence Heritage Surveys for Fortescue immediately upon the opening of Juluwarlu's office in January 2008, then Andrew Forrest will commit to the negotiation process personally. Where he is unable to attend meetings due to travel and other urgent business, his brother David will attend personally on his behalf.

However, as the prime decision maker in Fortescue, he will only negotiate directly with your Chairperson, Stanley Warrie, who is the prime decision maker for your organisation. If Stanley or the Yindjibarndi group delegates this task to the negotiation team, then Andrew will similarly delegate his role.

Fortescue will also need to consider your negotiation protocol prior to committing to a formal negotiation process. Please forward it to me at your earliest convenience.

Heritage Agreement

As a party to the Heritage Agreement the Yindjibarndi People are obliged to do certain things. An implied term of the two Agreements you have signed with Fortescue is that you will participate in Heritage Surveys.

Your letter is a clear repudiation of the Heritage Agreement.

If Yindjibarndi fail to re-commence Heritage Surveys immediately upon the opening of Juluwarlu's office in January, Fortescue reserves the right to accept your termination of the Agreement, terminate that Agreement and pursue other avenues. As we have stated on many occasions, Fortescue will exercise its legal rights if required to progress its projects.

Legal Representation

Could you also please advise who is legally representing the Yindjibarndi People? If you are not yet represented, I would urge you to engage representation, so that you are fully apprised of your legal rights and obligations and the negotiation process can proceed expeditiously.

Yours sincerely

Fortescue Metals Group Ltd



Blair McGlew

Head of Land Access and Community Development

“MW-20”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

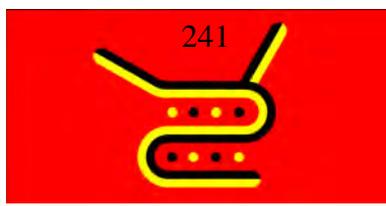
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “**MW-20**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI
PROSCRIBED BODY CORPORATE

14/1/08
Blair McGlew
Head Of Land Access and Community Development.
Fortescue Metals Group.

Dear Blair,

Re: Negotiations for Land Access Agreement & Heritage Surveys

Thank you for letter dated 10th of January 2008, however we do find it surprising and disappointing to say the least that you have delayed a reply to our letter for almost 2 months.

In response to your letter and specifically in regard to Fortescue Metals Group (FMG) concerns about heritage survey's, we would respectfully suggest that had you addressed our concerns directly, we would have expected to have signed off on a LAA by now and be moving ahead with the heritage surveys at issue - on a firm footing and within an appropriate long-term framework for our relationship.

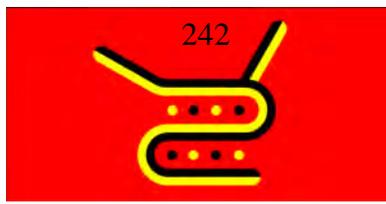
We understand clearly the implications of our action to suspend heritage surveys for the time being. This intermission was intended to be brief, however your slow response and inclination to skirt the central issue of our letter now brings us to a time wasting exchange of correspondence. This is not the way we would prefer to conduct business. We recommend that if you seek a timely outcome that FMG move promptly to the matter of the LAA - our intention to settle the terms of this over determining matter is non negotiable.

As you will appreciate, it is not in the interest of Yindjibarndi Traditional Owners to conclude heritage surveys until we appreciate the scope of the terms upon which FMG intends to settle a LAA. We certainly did not imply in the Yindjibarndi Heritage Agreement that we would conclude these surveys unconditionally, we simply set out parameters for good process. You should also consider that Yindjibarndi and Juluwarlu have not yet come to any signed agreement with FMG on heritage survey's as there are still matters in our negotiations over the YHA that need to be resolved.

On a positive note the first Archaeological report on heritage work conducted by Yindjibarndi on the Firetail (E47/1447) and Solomon Prospects (E47/1334) has been successfully completed. We should jointly celebrate our collaboration on this score and acknowledge that the production of this work for FMG has been the result of the good faith shown by Yindjibarndi and Juluwarlu.

We should be clear that our rights to negotiate have been triggered by FMG's desire to enter into an LAA and not the Yindjibarndi's. It is FMG that has signalled their intention to proceed with an LAA pursuant to the possibility of a mine being opened up in our country. This possibility significantly changes the nature of our relationship, and we suggest that we now cut to the chase and proceed with negotiating an LAA ASAP.

You will appreciate that your intended exploitation of minerals in our country and the consequent destruction of the cultural values of that part of our heritage is a sacrifice not just for current generations, but for our people *for all time*. The minerals cannot be mined twice. The deal cannot be done again. We hope the LAA we promptly conclude with FMG will be an example of world's best practice, and will carefully consider and respect the irrevocable consequence of the action of mining and how seriously this bears on Yindjibarndi now and well into the future. We hope it will be something we can both be proud of.



YINDJIBARNDI
PROSCRIBED BODY CORPORATE

We would also like to point out that we/Yindjibarndi have sought to be co-operative and responsive in all matters associated with heritage for FMG and we are determined to expedite all business in a manner that properly respects and seriously considers our culture, heritage and future generations – and your intentions to conduct your business according to best practice principals.

In regard to who negotiates with who: there should be no misunderstanding that the prime decision makers are the Yindjibarndi members and it is the members who have given the final decision and their full support to the negotiating team that has been nominated (which I am a member of) to proceed with negotiations.

We have but one desire: to negotiate this Land Access Agreement with FMG's CEO Mr. Andrew Forrest.

If you need further information or have special requests etc, please call or email Michael Woodley at the numbers/email given below.

Yours sincerely,

Stanley Warrie
Chairperson
Yindjibarndi Proscribed Body Corporate.
08 91821497 Phone/0419 097130 Mobile
08 91821035 Fax/juluwarlu@bigpond.com

“MW-21”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-21” referred to in the witness statement of Michael Woodley dated 5 June 2023.


Fortescue Metals Group Ltd

ACN: 002 594 872

87 Adelaide Terrace East Perth

Western Australia 6004

PO Box 6915, East Perth, Western Australia 6892

Telephone: + 61 8 6218 8888

Facsimile: +61 8 6218 8880

Website: www.fmgl.com.au

15 January 2008

Yindjibarndi People

Michael Woodley
 Juluwarlu Aboriginal Corporation
 PO Box 111
 Roebourne WA 6718

Dear Michael

NEGOTIATIONS FOR A LAND ACCESS AGREEMENT

Thank you for your letter dated 14 January 2008.

We look forward to meeting with you on 22 January 2008 in Roebourne where we can discuss these matters in greater detail. However, I would like you to consider the following:

- If the Yindjibarndi people recommence heritage surveys within the next seven (7) days, then Andrew (or his brother, David, if he is unavailable) will personally negotiate with the Yindjibarndi People.
- I am pleased that you are keen to continue the process that we started last year to negotiate a Land Access Agreement (LAA), and suggest that we meet next week with the Working Group next week.
- Your letter dated 15 November 2007 precedes a time of the year when it is my understanding that law business is conducted in Aboriginal communities, members of negotiating teams are not available, and your office is closed. Concluding a LAA is sometimes a lengthy process and the period you refer to is not sufficient time to conclude a LAA - particularly during Law and holiday Time.
- I am unaware as to what your last sentence in paragraph 3 relates to - ie "our intention to settle the terms of this over determining matter is non negotiable". Are you maintaining your position that you will not conduct heritage surveys until a LAA is concluded? If so, I would suggest you obtain urgent legal advice as to where this places the Yindjibarndi People in terms of legal liability should our project be delayed.

- The signing of the Heritage Agreement signifies entering into a legally binding process – not simply setting out good process. In any event, I note that the failure to conduct surveys whatsoever is not an example of good process.
- Although Juluwarlu now represents the Yindjibarndi People this does not remove liability from the Yindjibarndi people from an agreement they entered into when represented by PNTS.

I look forward to our meeting on 22 January 2008 where I hope we can move closer towards a LAA and the resumption of heritage surveys.

Yours sincerely



Blair McGlew
Head of Land Access and Community Development
Fortescue Metals Group Ltd

“MW-22”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked “**MW-22**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



Fortescue Metals Group Ltd
ACN: 002 594 872
87 Adelaide Terrace East Perth
Western Australia 6004
PO Box 6915, East Perth, Western Australia 6892

Telephone: + 61 8 6218 8888
Facsimile: + 61 8 6218 8880
Website: www.fmg1.com.au

7 February 2008

ATTENTION: MICHAEL WOODLEY

Yindjibarndi People
C/O – Juluwarlu Aboriginal Corporation
PO BOX 111
ROEBOURNE WA 6718

By facsimile and email (08)9182 1035
admin@juluwarlu.pilbara.net

ATTENTION: JUSTIN EDWARDS

Pilbara Native Title Service
Unit 1 / 24 De Grey Place
KARRATHA WA 6714

By facsimile and email (08) 9144 2795
jedwards@yamatji.org.au

ATTENTION: STANLEY WARRIE

Yindjibarndi Aboriginal Corporation

By facsimile and email (08) 9182 1035
juluwarlu@bigpond.com

Dear Sirs

RE: PROPOSED MINERAL EXPLORATION ACTIVITIES

On 4 May 2007 Fortescue Metals Group ("Fortescue") and the Pilbara Native Title Service (on behalf of the Yindjibarndi People) entered into an agreement titled, "Contract for Services in relation to Exploration" ("**The first heritage agreement**"). This agreement relates to the conduct of heritage surveys by the Yindjibarndi People on Fortescue's exploration tenements E47/1334 and E47/1447.

On 7 June 2007 Fortescue attended a meeting of the Yindjibarndi Governing Committee (nominated representatives of the Yindjibarndi Native Title Claim WAD6005/03) convened at Roebourne. At that meeting it was resolved by the Yindjibarndi Governing Committee that a heritage agreement covering tenement E47/1333 would be entered into and further that management of future heritage surveys regarding tenements held by Fortescue would be coordinated by Michael Woodley and Juluwarlu Aboriginal Corporation ("**Juluwarlu**") and that all notices seeking Aboriginal Heritage Surveys would be forwarded to Mr Michael Woodley and Juluwarlu.

On 29 June 2007 Fortescue executed an amended version of the above agreement ("**The second heritage agreement**") which incorporated an additional tenement E47/1333, the appointment of Juluwarlu as the heritage consultants of the Yindjibarndi People and a new cost structure for heritage surveys. Yindjibarndi People withdrew their objection in the National Native

The New Force in Iron Ore

Title Tribunal (NNTT) to the tenement attracting the expedited procedure and the tenement (E47/1333) was granted to Fortescue.

On the following dates, Fortescue gave notice to Juluwarlu and Michael Woodley of its intention to undertake various exploration works ("**Works**") on portions of E47/1333, E47/1334 and E47/447 ("**Work Area**") and requested that an Aboriginal Heritage Clearance Survey to be undertaken in respect of the Work Area ("**Proposed Survey**") in anticipation of the Works.

Survey Request Number	Survey request date
EXP_YIN_007	14 June 2007
EXP_YIN_009	26 July 2007
EXP_YIN_010	19 September 2007
EXP_YIN_012	10 October 2007
EXP_YIN_013	19 October 2007

On 6 July 2007 and 17 July 2007 Fortescue and the Yindjibarndi People carried out an archaeological and anthropological survey pursuant to the second heritage agreement.

Fortescue made numerous inquiries with Michael Woodley of Juluwarlu as to when a further survey could occur in accordance with the above requests. Michael Woodley advised that he would notify Fortescue of the timing for a survey once a meeting of the Yindjibarndi Governing Committee had taken place.

On 15 November 2007, the Yindjibarndi Governing Committee wrote to Fortescue to advise that the Yindjibarndi Governing Committee had directed Juluwarlu to cease all heritage work until the negotiations (between Fortescue and Yindjibarndi for an agreement about mining) have been finalised.

Since that time there has been an exchange of correspondence and a meeting between representatives of Yindjibarndi Governing Committee and Fortescue. Unfortunately Yindjibarndi People have chosen not to conduct the Proposed Survey.

Fortescue is now concerned that by reason of the failure of the Yindjibarndi People and Juluwarlu to undertake the Proposed Survey it will suffer loss.

Fortescue hereby:

- gives you notice of its intention to proceed with the Works after 10 February 2008;
- invites the Yindjibarndi People and Juluwarlu Aboriginal Corporation to advise Fortescue of any Aboriginal sites within the Work Area; and
- again invites the Yindjibarndi People to participate in the Proposed Survey which will commence on 10 February 2008.

In relation to the Proposed Survey, if there are any particulars which may require clarification, or any other matters which require attention, please do not hesitate to contact me.

Please note that Fortescue regards both Yindjibarndi People and Juluwarlu as having a contractual obligation to use all reasonable endeavours to assist Fortescue to conduct the Proposed Survey. Failure to assist Fortescue in this regard will constitute a breach of that contractual obligation and may expose both Yindjibarndi People and Juluwarlu to a claim by Fortescue.

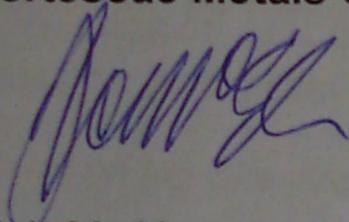
For your assistance, please find accompanying this letter:

1. Scope of Works for the Proposed Survey, and
2. Detailed maps showing the Work Area.

Should you have any questions in relation to the above, please contact me on 08 6218 8820 (office) or 0407 082 282 (mobile).

Yours sincerely,

Fortescue Metals Group



Blair McGlew
Head of Land Access

“MW-23”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

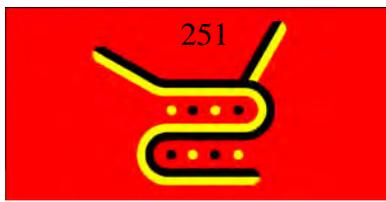
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 4 pages is the annexure marked “MW-23” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

08/02/08
Blair McGlew
Head of Land Access
Fortescue Metals Group
87 Adelaide Terrace
East Perth, WA
6892
Fax: 08 62188880

CC: Andrew Forrest

YAC/FMG Ng 2

Re: Proposed Mineral Exploration Activities on Yindjibarndi country

Dear Blair,

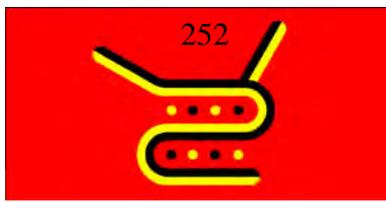
Accompanied by Michael Woodley and Philip Davies, I attended your office yesterday in Perth at 1pm for a meeting with you, Andrew Forrest and another woman who is a Fortescue Metals Group (FMG) employee, but I didn't catch her name.

In the meeting we discussed the fact that the Yindjibarndi people want to negotiate a Land Access Agreement with FMG before we recommence Yindjibarndi heritage surveys for you in the various requested exploration areas within the tenements E47/1333, E47/1334 and E47/447.

As you are aware, the Yindjibarndi Aboriginal Corporation, via its heritage consultants, Juluwarlu Group Aboriginal Corporation, have organised and carried out extensive heritage surveys on your behalf in and through these said tenements; the result of which is contained within the report titled – "Report on the Results of an Archaeological Work Program Clearance Survey of Nominated Drill Lines, Access Tracks and Camp Areas located within the Firetail (E47/1447) and Solomon Prospects (E47/1334), Central Pilbara, Western Australia – October 2007".

The Yindjibarndi people formally indicated their intentions of their action to suspend further heritage surveys in a letter sent to Mr Andrew Forrest reference YAC/FMG Ng 1 and dated 15/11/07. Below I directly quote the letter:

We the Yindjibarndi Working Group Governing Committee, on behalf of the Yindjibarndi people, have taken into account all matters associated with the developments by Fortescue Metals Group on Yindjibarndi country. Following presentations made by Fortescue Metals Group representatives for future potential mines on our country, we agree to your organisation's desire to commence negotiations on a Fortescue Metals Group Land Access Agreement.



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

The Yindjibarndi Working Group has directed its heritage consultant, Juluwarlu Group Aboriginal Corporation, to cease all heritage work until the negotiations have been finalised, and a Fortescue Metals Group Land Access Agreement signed.

A negotiating team has been established and endorsed by the Yindjibarndi Working Group to negotiate a Fortescue Metals Group Land Access Agreement. Our team will only negotiate any agreement that culminates from this process with you, as we recognise that you are the prime decision maker for Fortescue Metals Group. A negotiation budget will be forwarded to you once you make us aware of your timetable to commence dialogue.

All negotiations will be conducted according to the Yindjibarndi Marrga Negotiation Protocols. The protocol document is to be signed by all interested parties before the negotiation process begins.

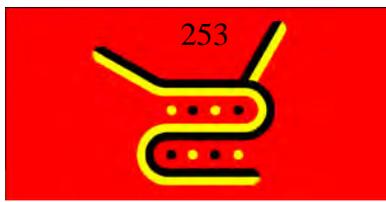
You attended a meeting with representatives of the Directors of the Yindjibarndi Aboriginal Corporation at Juluwarlu Group Aboriginal Corporation in Roebourne on 22/01/08 where you reiterated that FMG wants to recommence exploration surveys on Yindjibarndi country as soon as possible. We don't understand why it took you so long before you responded to our letter, if you were so keen to recommence heritage surveys to facilitate your exploration. At the meeting we reiterated that we wished to negotiate a Land Access Agreement (LAA) with FMG before recommencing heritage surveys – once the LAA is finalised then we will do whatever you require of us to fulfil all heritage work as quickly and capably as possible.

It seems strange to me that you have not asked us the nature of the LAA we desire – it seems that you and your organisation are placing barriers in the way of a quick and reasonably easy outcome to an LAA negotiation. We don't anticipate that negotiations will be a drawn out affair – we know what we want – all you need to do is ask us.

Following the meeting held at Juluwarlu Group Aboriginal Corporation on 22/01/08 you invited us down to your office to meet with Mr Andrew Forrest, to which we agreed, and it resulted in the meeting we held yesterday on the 07/02/08.

During the meeting in the FMG offices we again reiterated our previous position, and Mr Forrest reiterated that he would negotiate an LAA only if we recommenced heritage surveys on Yindjibarndi country. This is how the matter still stands. However, you handed us a pre-prepared letter while we were being guided out of the FMG offices, signed by you, which states that you will commence heritage surveys on the 10/02/08 without Yindjibarndi people being present if the Yindjibarndi people don't agree to Mr Forrest's request.

On behalf of the Yindjibarndi people, I find it insulting that Mr Forrest and the public, international company he represents would even consider disturbing Yindjibarndi country without our guidance and advice.



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

We also advise you, Mr Forrest and any other FMG employees or associates, that decisions relating to all Yindjibarndi affairs must be sanctioned by the Yindjibarndi Aboriginal Corporation (YAC) Directors. Activities such as Yindjibarndi heritage surveys can and will only be authorised by the YAC Directors on behalf of all Yindjibarndi people. Any activities that are not sanctioned by the YAC Directors will be regarded as invalid and in breach of the YAC protocols.

We bring to your attention that the “Contract for Services in relation to Exploration” (“**The first heritage agreement**”), mentioned in your letter to the Yindjibarndi people dated 07/02/08 is invalid, unauthorised and illegal. The Yindjibarndi did not sanction this contract to be signed on their behalf by the Pilbara Native Title Service (PNTS). For your information the PNTS were formally dismissed as their heritage advisers by the Yindjibarndi Working Group in a meeting with Mr Robin Stevens (PNTS representative) held in Roebourne, on the same day the aforementioned unauthorised heritage agreement was signed by the PNTS Executive Director Mr Simon Hawkins.

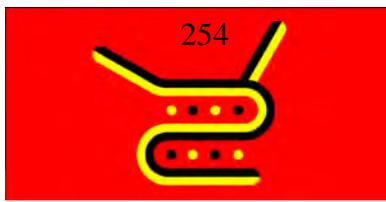
“**The second heritage agreement**” which has been authorised by the Directors of the YAC is a working document that has not yet been signed because it is still being developed. This is in part due to the unauthorised incursions made by FMG when they bulldozed a significant Aboriginal site at Drill Line 151 which had been surveyed by the Yindjibarndi heritage team who had directed FMG not to disturb the site. This occurrence has been acknowledged by Mr Andrew Forrest in the letter of apology titled “Disturbance to Yindjibarndi area of significance” he sent to the Yindjibarndi people dated the 22/08/07.

In all cases it is our belief that we the Yindjibarndi people have acted with the utmost good faith, transparency, honesty and with open lines of communication.

If FMG carry out unauthorised heritage surveys as you have described in your letter dated the 07/02/08, we will take every action within our power to inform others of your illegal actions. We do not agree with your intended approach. We strongly urge you to enter into Land Access Agreement negotiations that were requested by FMG so they are able to be concluded quickly, therefore facilitating authorised heritage surveys that can be carried out by the Yindjibarndi people on your behalf.

As I understand the situation now – as of 4.35pm Friday the 08/02/08 – you have contacted Michael Woodley, Operations Manager for Juluwarlu Group Aboriginal Corporation, questioning my authority to deliver the message that I delivered to you yesterday at your offices in Perth. You have requested for an Yindjibarndi Community meeting to be held. This meeting has now been organised by Mr Woodley to be held next Tuesday the 12/02/08 at 10am at the Roebourne Basketball Courts. Apparently, you have requested the Yindjibarndi community meeting because you doubt my position in the Yindjibarndi community, and think there may be other Yindjibarndi who disagree with our position.

I am delighted that you have agreed not to carry out your planned unauthorised disturbance to Yindjibarndi country described by you in your letter dated 07/02/08 as



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

“the intention to proceed with the Works” which you had scheduled to commence on 10/02/08. As I understand it you agreed with Michael Woodley in today’s phone conversation not to carry out this action because of the impending Yindjibarndi community meeting to be held next Tuesday.

I hope you never carry out unauthorised heritage surveys on my country. I am sure that we can come to a suitable long term Land Access Agreement that will benefit all parties long into the future. I am surprised that you are prepared to risk your reputation and put your shareholders future in jeopardy, simply because you are wishing to proceed without our involvement as equal partners in your project.

I will see you next Tuesday.

Please be aware that this letter will be signed and faxed to your office.

Yours sincerely

Signed

Stanley Warrie
Chairperson – Yindjibarndi Aboriginal Corporation

“MW-23A”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

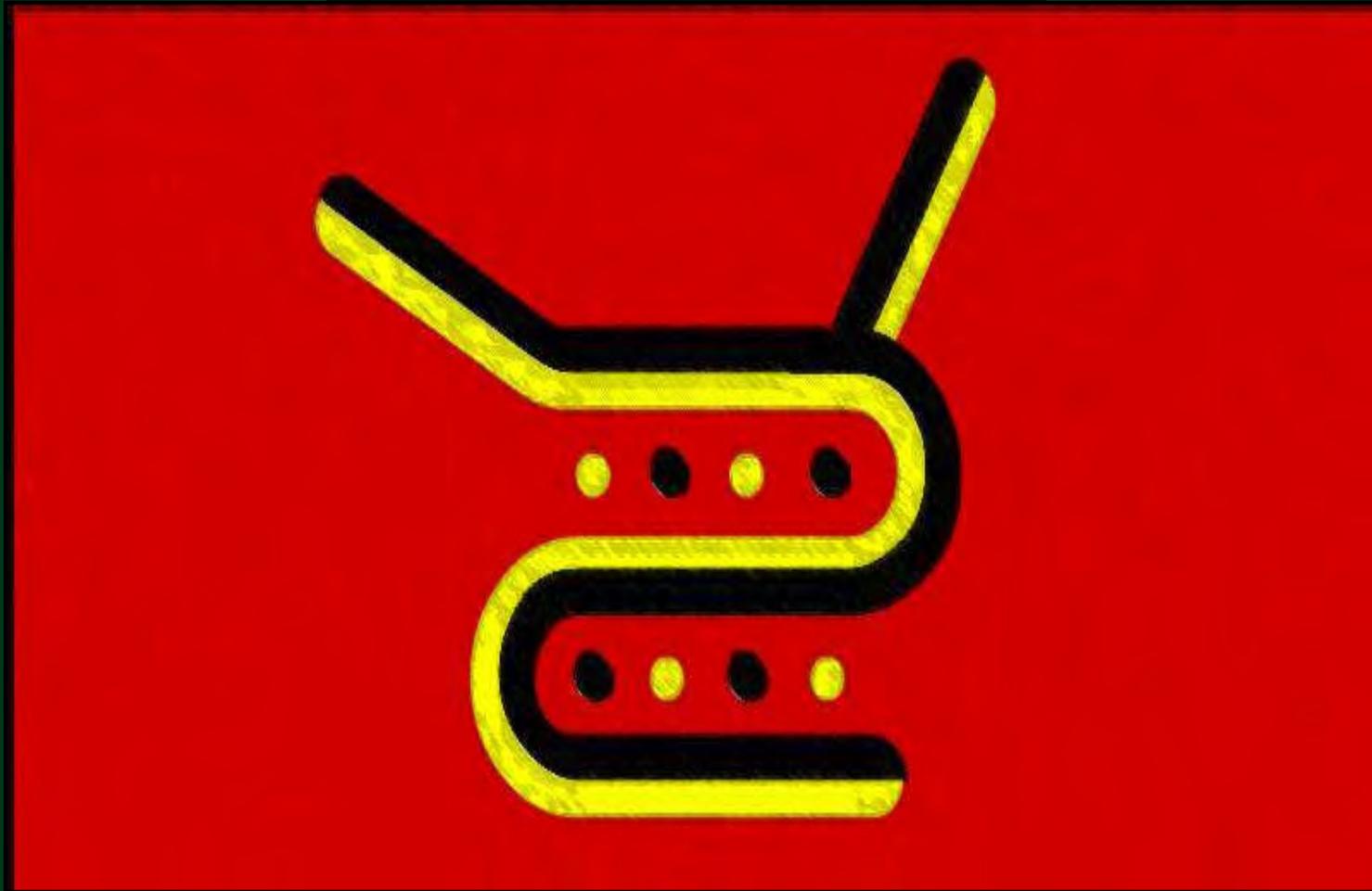
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 16 pages is the annexure marked “MW-23A” referred to in the witness statement of Michael Woodley dated 5 June 2023.



Yindjibarndi Aboriginal Corporation



Yindjibarndi Legal Argument

- The Yindjibarndi are arguing freedom of religion via section 116 of the Australian constitution
- Fully endorse and accept the United Nations Declaration of the Rights of Indigenous Peoples (D.R.I.P.) which was endorsed by the Australian government in 2007.
- Welcomes the United Nations Indigenous Peoples partnership (U.N.I.P.P.) – “it is an important step in the efforts of indigenous peoples everywhere to fully realize their human rights”.



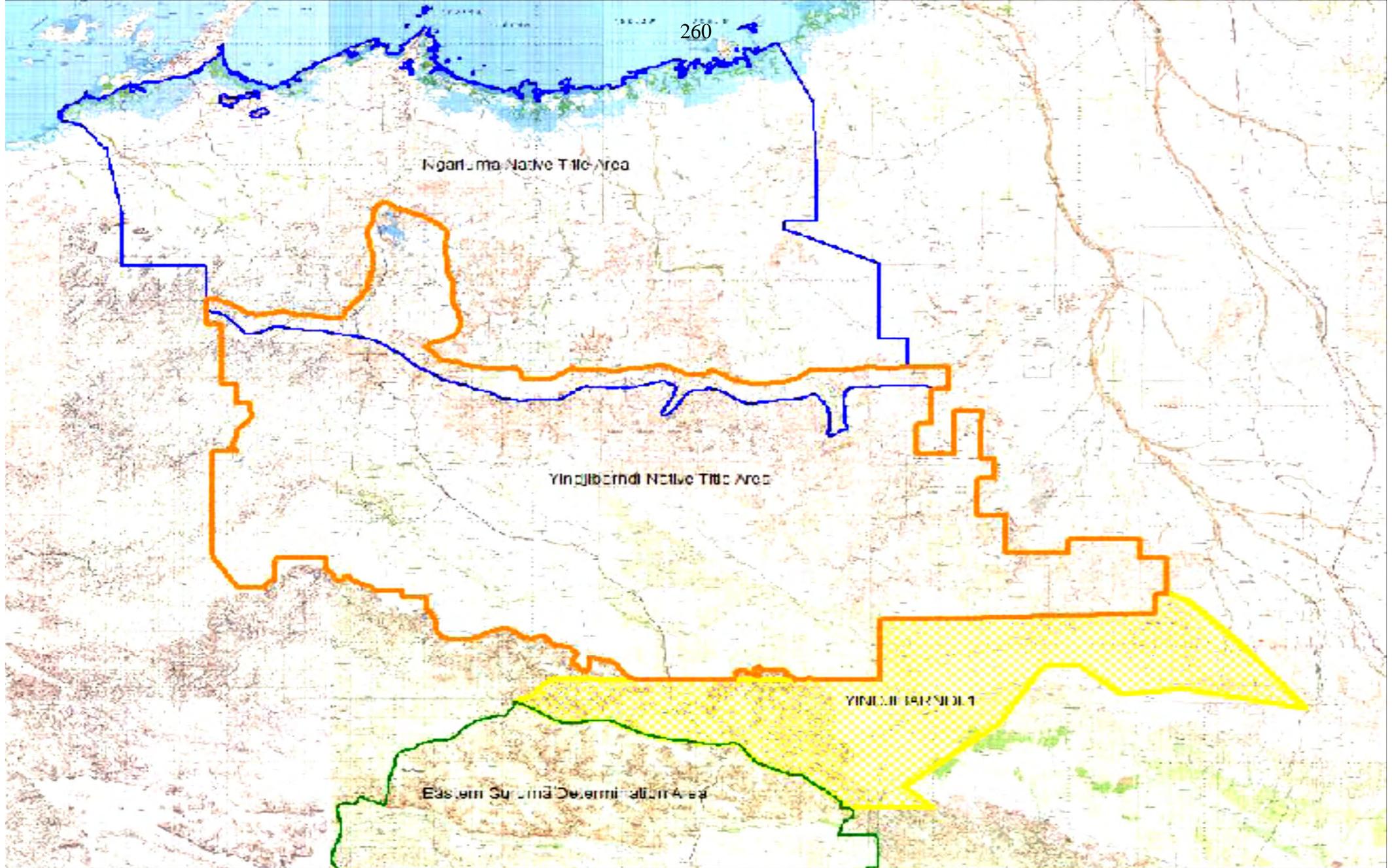
Yindjibarndi Aboriginal Corporation (YAC) – Prescribed Body Corporate

- YAC – prescribed by the Federal Court from the Ngarluma/Yindjibarndi Native Title Determination – May 2005
- The court prescribed two corporations – the Ngarluma Aboriginal Corporation (NAC) and the Yindjibarndi Aboriginal Corporation (YAC)
- The YAC represents and holds in perpetuity the native title rights and interests of the Yindjibarndi people
- YAC – also has a Native Title Claim – this was registered with the National Native Title Tribunal in 2003 – this is termed the Yindjibarndi 1 Claim



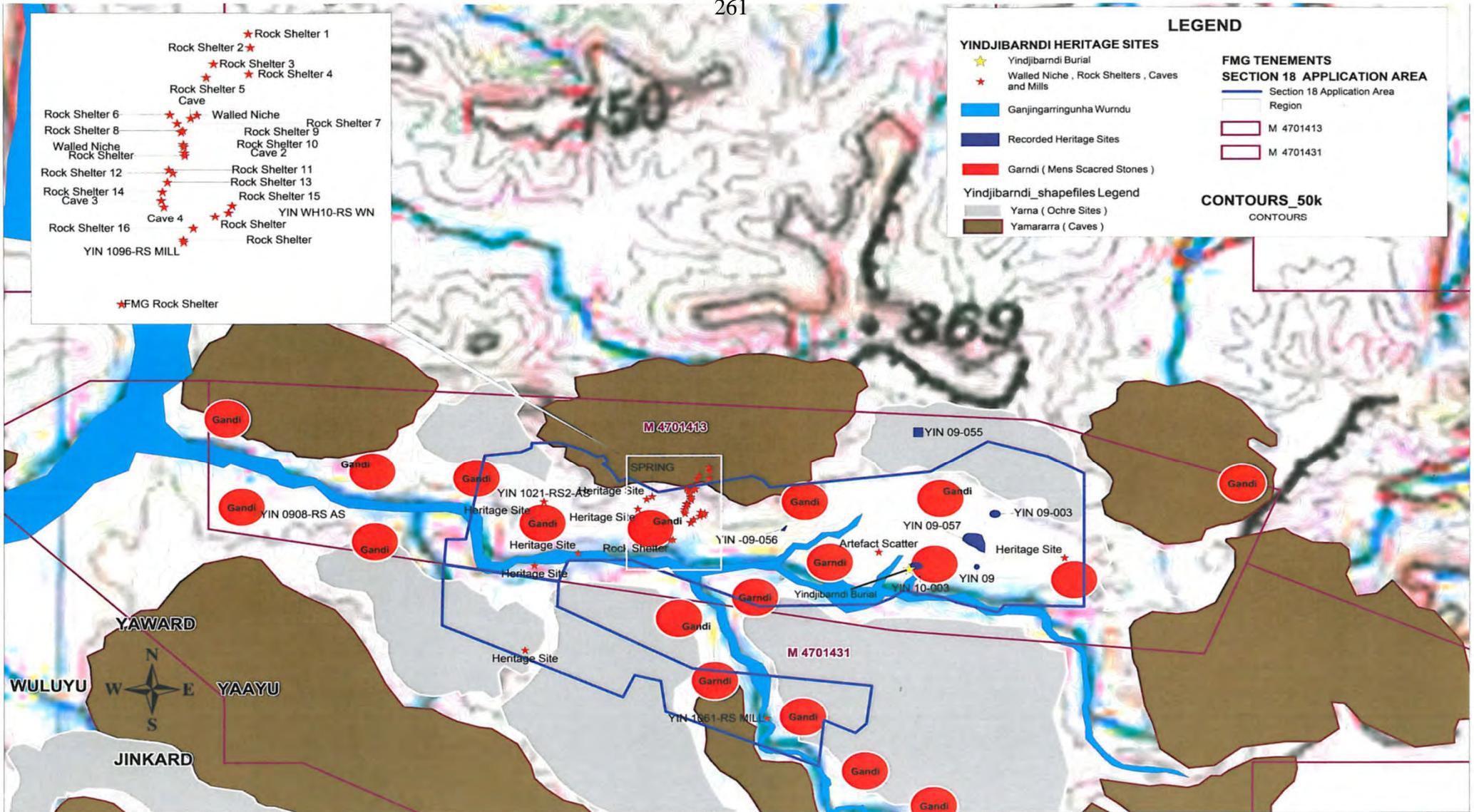
YAC Executive

- ✔ YAC Chairperson - Stanley Warrie
- ✔ 12 Directors (including the Chairman)
- ✔ 170 Yindjibarndi members (estimate 1500 in the community)
- ✔ Michael Woodley - Chief Executive Officer (CEO).
- ✔ Philip Davies – Administration Manager / Anthropologist.
- ✔ Chris Prast – leads the Slater & Gordon team
- ✔ George Irving – Barrister.
- ✔ Dr. Frank Rijavec – Social Media and Communications



Map of the Yindjibarndi and Claim Area

6 June 2023



YINDJIBARNDI HERITAGE REPORT
 WAD6005/03 YINDJIBANDI 1 CLAIM (WC03/3)
 YINDJIBARNDI HERITAGE SITES
 S18 APPLICATION FIRETAIL PRIORITY MINING
 AND INFRASTRUCTURE AREA
 FMG TENEMENTS



Map of the Firetail Area



Fortescue Metals Group (FMG) ‘Solomon’ Mine lies in a religious precinct

- The Mine falls within the Yindjibarndi 1 Claim Area
- In an area known to the Yindjibarndi as *Ganyjingarringunha*
- The Yindjibarndi people regard this place as a religious precinct
- The features of the area include caves, rock shelters, burial sites, ceremony grounds, Thalu sites, birth places, Gandi, water sources, ochre, scar trees, evidence of occupation, artefacts, spiritual beings, song cycles, fauna and flora, ancient walk trail etc



7 8 2008



7 8 2008











YAC negotiations with FMG

- ✔ The Yindjibarndi began negotiating with FMG in 2007
- ✔ In March 2008 Andrew Forrest came to Roebourne to discuss the project with the Yindjibarndi people in a community meeting
- ✔ On behalf of the Yindjibarndi the YAC at that time put a proposal to FMG to pay an uncapped FOB royalty compensation
- ✔ From June 10th to June 12th 2008 the Yindjibarndi held a three day negotiation meeting with FMG with a view to reaching an agreement
- ✔ At that negotiation FMG made an offer - which was not an uncapped FOB royalty
- ✔ At that meeting the FMG representatives told the YAC that FMG “would use any means necessary, including litigation, to get the licences needed if YAC did not agree with their offer”
- ✔ The Yindjibarndi unanimously rejected the FMG offer and respectfully asked FMG to leave them and their community alone
- ✔ Almost all meetings have been filmed



Encounters and Attacks

- ✔ Since June 2008 the YAC and FMG have not been able to agree on terms
- ✔ YAC have objected and opposed all FMG's attempts to gain licences for the Solomon mine
- ✔ Good Faith Hearing
- ✔ NNTT hearing
- ✔ Federal Court Appeal by YAC
- ✔ Federal Court Appeal to the Full Bench – currently waiting for the judgment
- ✔ YAC have opposed the FMG Miscellaneous Licence applications in the Warden's Court – currently waiting for the judgment
- ✔ YAC have opposed FMG's section 18 application which would allow them to destroy Yindjibarndi Aboriginal sites in the Solomon hub project area



Yindjibarndi Position

- ✔ YAC are prepared to go to Australia's High Court to argue our case
- ✔ YAC will not sign the proposed agreement currently offered by FMG
- ✔ YAC will continue to object and oppose all of FMG's mining, exploration and miscellaneous licence applications
- ✔ YAC are now focused on succeeding with exclusive native title rights on the Yindjibarndi 1 claim which means YAC can and will sue for compensation for any loss of procedural and legal rights
- ✔ YAC will continue to advocate our injustices via social media
- ✔ YAC will be seeking support from the United Nations Council for the abuse Yindjibarndi's human rights

“MW-24”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 6 pages is the annexure marked “MW-24” referred to in the witness statement of Michael Woodley dated 5 June 2023.

**Minutes for the
Yindjibarndi Community Meeting
Meeting Called by the Fortescue Metals Group (FMG)
Meeting at Roebourne Basketball Courts
Tuesday the 12th of February 2008**

Meeting Started 10.25am

Present

Yindjibarndi Community

Lorna Walker, Angus Mack, Stanley Warrie, Thomas Jacobs, Barry Pat, Warrick Sambo, Alec Tucker, Michael Woodley, Lorraine Coppin, Dora Solomon, Jimmy Horace, Clifton Mack, Marion Cheedy, Jane Cheedy, Ashley James, Aileen Sandy, Ellery Sandy, Hayden Woodley, Lesley Walker, Rosemary Woodley, Maudie Jerrold, Bridget Warrie, Joyce Hubert, Allum Cheedy, Harry Mills, Shane Cheedy, Jimmy Albert, Kaye Warrie, Tamara Edgar, Maisie Inje, Sharon Warrie, Susan Samson, Dot Moses, Stephen Hubert, Dwayne Toby, Bruce James, Joylene Warrie, Marlene Harold, May Adams, Diana Smith, Celia Sandy, Amy Jerrold, Shirley Walker, Mavis Pat, Judy Albert, Tanya Jacob, Terry Pat, Billy King, Mark Horace, Kylie Mowarin, Kerry Warrie, Amorette Lockyer, Desmond Whalebone, Jean Norman, Deborah Coppin, Dawn Dale, Fabian Cheedy, Jill Tucker, Barbara Guinness, Lorraine Jacob, Harry Mills, Caroline Faseldine, Tootsie Daniels, Tom Ferguson, Donna Willis, Wendy Warrie, Tenellia Lockyer, Kaylene Daniels, Judith Coppin, Elizabeth Coppin, Esther Pat, Janice Warrie, Wendy Hubert

FMG Representatives

Blair McGlew and Alexa Morcombe joined the meeting at 11.45am

Others

Support Team

Philip Davies – took the minutes of the meeting

Film Crew

Alan Thompson of Juluwarlu Group Aboriginal Corporation filmed the meeting

Michael Woodley (MW) addressed the meeting – The YAC has a Constitution that has rules – the Yindjibarndi Directors need to be respected – that all Yindjibarndi people are respected and they have a right to have a say on their affairs – we are all to work together

Stanley Warrie (SW) asked people why the meeting was held at 5 Mile last Thursday (07/02/08)

SW and MW said they would like to have the meeting filmed so that all issues are transparent

Pansy Sambo (PS) addressed the group – I've only got 15 minutes before I have to go – PS wants to say that yes they had a meeting at the 5 Mile – I had a talk with MW on Saturday following the 5 Mile meeting – we had the meeting at the 5 Mile because I had heard rumours which I wasn't happy about - but I made a mistake – It took me this meeting at 5 Mile to understand that I had listened to rumours and that is not the Christian way – I want to be and act like a Christian – But now we are sorry that we had that meeting because I was misinformed – I need to come to more Yindjibarndi meetings if I want to know about Yindjibarndi issues, but I am restricted by my work – As a Christian I understand that our affairs need to be discussed together and not in separate meetings – I am going to support MW and SW – and the Yindjibarndi Aboriginal Corporation and the Juluwarlu Group Aboriginal Corporation

Ellery Sandy (ES) – The reason that I was involved in the 5 Mile Meeting because I trust Marshall Smith who is my spiritual leader – I am a Christian and there was nothing wrong with the 5 Mile meeting because we wanted to discuss these issues – we were not going against MW or SW – sometimes we need to discuss things where we want to go

MW replied – was concerned that at the 5 Mile Meeting people were discussing me in a bad way

ES – does anybody want to question me about the 5 Mile meeting

Yes – was George Ranger (GR) at the meeting

ES – yes GR was there

Rosemary Woodley (RW) – asked why GR was there because this was an Yindjibarndi issue

ES – I listen to Pastor Marshall Smith (MS) – I don't listen to others

MW – I talked to MS and he told me this – People were raising concerns about MW and the way you were running things – I told them to go and talk to you (MW) about their concerns

MW – the meeting at 5 Mile was wrong – we need to stick to the process

Alum Cheedy (AC) – I went to the 5 Mile meeting to talk about the Yindjibarndi PBC issues – that is the only reason that I was there

Maudie Jerrold (MJ) – I do my own thing – I don't go around talking about Yindjibarndi issues in the community – I don't have any concerns with anything – you wanted to start this corporation

MW – you were the Chairperson of this corporation

MJ – what is this corporation – is this the same corporation that I was Chairperson for last year?

MW – yes this is the same corporation that you were the Chairperson of

MJ – is the Yindjibarndi Aboriginal Corporation registered?

MW – Don't you know this – you should know this

MJ – you (MW) should ask other people to talk - I don't want to talk about this

Marion Cheedy (MJ) – I went to the 5 Mile too – I am a Christian person and my loyalty lies with the Lord and to my family – Pansy wanted us to go with her to support her as a family member – we were confused about these issues – we can't just keep fighting – we can't walk away from a meeting feeling bad – we need to understand what is happening in the meeting and to understand the issues – but we have talked to MW and have put our issues behind us – we are comfortable with MW and the work he is doing for the Yindjibarndi

Rosemary Woodley (RW) – I have been hurt because people are talking behind my back

Alec Tucker (AT) – people should talk one at a time

RW – we need to stick together – don't rubbish Michael – he will lead us and he is trying to do the right thing

SW – that is why I have asked people to come to Juluwarlu Group Aboriginal Corporation to find out what is happening with Yindjibarndi affairs

Lyn Cheedy (LC) – I was one of the people at the 5 Mile Meeting – I support the process that is happening – and we support the Directors of the Yindjibarndi Aboriginal Corporation – If you have something to say then people should say it

MW – the 5 Mile meeting happened outside the process – it does not help the Yindjibarndi in the long run – people need to support the process

MJ – I have no concerns with the process as it stands at the moment

AT – gave a long talk to all those present about the need for Yindjibarndi to stick together, about Yindjibarndi country, about language and about respecting the old people and each other

Barry Pat – the people need to take responsibility for themselves – we have to take care of our own affairs and to control it

MW – talked to the group about why FMG have called this meeting – the Yindjibarndi are in a good position – we have something that they want – that is why we are in a good position – we went to Perth to meet with Andrew Forrest – he doesn't want to come to Roebourne because we, in his words, 'are holding a gun to his head'. – If you are not happy with me handling Yindjibarndi affairs then I will step down – Is everybody happy with the stand we are taking?

MJ – well have you signed anything yet?

Thomas Jacobs (TJ) – you should stop nagging all the time – you come with the same argument all the time

SW – you should come to Juluwarlu Group Aboriginal Corporation if you want to know anything and everything

MJ – I am not going up there – I did not select anybody for this job

MW – you selected these Directors

MJ – no I did not

MW – to MJ – why are you saying it is wrong to have a community meeting

MW – the members have a decision to make – are you going to not do surveys until FMG agree to a Land Access Agreement – or are you going to do surveys and negotiate at the same time?

Jimmy Horace (JH) – addressed the group –

MW – again put the resolution to the group – are we to hold our position

Those present at the meeting decide on the following motion

Resolution 1 at 11.35am

That the Yindjibarndi people continue to hold their position with the Fortescue Metals Group (FMG) – that is that we will continue to suspend and not perform Yindjibarndi heritage surveys for FMG until the Yindjibarndi people, via their representatives, reach a signed Land Access Agreement with FMG on their three tenements - E47/1333, E47/1334 and E47/447.

Moved: Billy King

Seconded: Marion Cheedy

Passed Unanimously

11.45am - Blair McGlew (BM) and Alexa Morcombe (AM) were invited by the Yindjibarndi to join and address the meeting

BM – asked the people at the meeting if there were the ‘right’ people at the meeting who can speak for the country

AM distributed maps to those present

BM – said that FMG need to complete heritage surveys – we need more surveys to go on – FMG want to make sure that everyone here is aware of the areas that need to be drilled by the company – we need to make sure that all Yindjibarndi people are comfortable with the decision not to perform heritage surveys for FMG – FMG is concerned that we may not be able to protect the Yindjibarndi heritage sites if Yindjibarndi people are not on country advising FMG where they can and can’t go

We think we have about 50 to 100 days of heritage surveys left to do on the tenements – we pay \$500 per day – we would like Yindjibarndi people on site because we need to know where the important sites are so we do not disturb significant sites

FMG are in a difficult position – generally we have about 8 people on surveys and those people get paid \$500 per day – we have an agreement with the Yindjibarndi to do surveys and we want more surveys done so we can commence drilling again

Question – do you pay up front for surveys?

BM – usually we will pay about half up front and then pay the rest at the end of the surveys

MW – the only ones who are holding surveys back are FMG – we want to negotiate a LAA as soon as possible.

BM – If I understand that this is the Yindjibarndi decision – I suspect you are doing this to try and bargain a better position

We have four agreements in place with others – we will pay Yindjibarndi the same as the others – we think that is fair

FC – we are Yindjibarndi people – we are not the same as others – we are different – we don’t want to be the same as everyone else

BM – we won’t make any agreements that are not fair – I can’t turn around to all the other groups

FC – you don’t need to tell other groups what the Yindjibarndi agreement is

BM – when I got told the Yindjibarndi have stopped surveys – I told Andrew Forrest (AF) – he said that is not fair – Yindjibarndi told me they want to only deal with AF – In FMG’s opinion the Yindjibarndi position is not fair – AF will come and negotiate with you people if you recommence heritage surveys – heritage surveys pay very well

AM – just because you do heritage surveys it doesn't mean we don't need to come back to talk to you about anything else - doing heritage surveys doesn't mean you are giving anything away – it just means that we can move forward with our business

BM – I'm not sure you are doing the right thing – you may miss out on a good agreement if you don't do surveys – you will be paid for your work on heritage surveys and if you commence heritage then AF will come and begin negotiations.

MC – we have decided the MW is handling our affairs – he is the one to talk to – does AF know that?

BM – yes we do know MW – the LAA is about jobs, employment, money

BM – at the moment FMG doesn't have any money – we just have a big debt

BM – we would like to negotiate a good agreement which has money and other things in it – if you do the surveys then we will commence negotiation

MW – you are gong on about a legal agreement but that is something we don't have – we have our resolution and our position and we hope that FMG respect that

Meeting Closed 12.15pm

“MW-25”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 6 pages is the annexure marked “**MW-25**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

*Minutes for the
Yindjibarndi Community Meeting with Fortescue Metals Group (FMG)
Meeting at the Roebourne Community Hall
Monday the 10th of March 2008*

Meeting Started 10.15am

Present

Yindjibarndi Community Members

Stanley Warrie, Barry Pat, Bruce Woodley, Thomas Jacobs, Angus Mack, Jimmy Horace, Wendy Hubert, Lorraine Coppin, Dora Solomon, Janice Guinness, Maisie Ingie, Joyce Hubert, Maudi Jerrold, Jill Tucker, May Adams, Judith Coppin, Maisie Pat, Jeffery Adams, Lorna Walker, Aileen Sandy, Trish Pat, Jean Norman, Clifton Mack, Billy King, Michelle Adams, Dennis Hubert, Esther Pat, Cindy Meek, Barbara Guinness, Michael Woodley, Alice Guinness, Mark Horace, Dwayne Toby, Marion Cheedy, Lyn Cheedy, Jane Cheedy, Pansy Sambo, Rosie Cheedy, Vince Adams, Sylvia Allan, Rodney Adams, Harry Mills, Bridgette Warrie, Wendy Hubert, Charmaine Adams, Renee Wally, Tootsie Daniels, Alum Cheedy, Rachel Wally, Amy Jerrold, Wendy Warrie, Sonia Churnside, Dot Moses, Kylie Mowarin

Fortescue Metals Group Representatives

Andrew Forrest, Blair McGlew

Support Team

Philip Davies, Alan Thompson, Fernando Hincapie

General Business

Michael Woodley (MW) - FMG have got three tenements in the Solomon area

MW - presented the document that was sent to FMG on Saturday 08/03/08 headed The Yindjibarndi Heritage Agreement (Draft)

10.30am – Andrew Forrest (AF) addressed the group – if you don't own something then you don't have the sense of responsibility – we want to help people to help themselves

We set up a vocational training and educational centre in the goldfields – through the vocational training and education centre people are paid while they train and then they are guaranteed to get a job – it was great to see you clean the hall – we got stuck into it too

AF - Just by giving out money does no do anything – we want to develop a training and education centre here – don't be afraid about the training – most of the people get through the training – a fishing rod costs a lot more than a fish – but we are better off giving out fishing rods rather than fish – we want to help you catch your own fish

AF – we would also like to help you fund your own dreams and visions – the idea we have is to provide as much money as we can in capital

AF

There are three steps in my plan:

1. setting up a training and employment program
2. paying your community money to assist with your vision and dreams by getting businesses going
3. put money into this community via trusts which assists old people and others who can't work

I want to help people become fine people – no grog no gunja

Bruce Woodley (BW) asked whether AF could help with a vehicle for his community

AF mentioned he has a charity which may be able to assist with Ngurawaana – he told BW to get in touch with Blair McGlew (BM) regarding the charity

An emergency vehicle may be able to be included early

AF – we have other packages which have been offered to others – these people are very happy with those agreements – and we would be happy to offer those same agreements to you fellas

AF – I propose to get MW and BM to work together on getting an agreement

MW – the Yindjibarndi have a different way to conducting business than others – we have an issue with some heritage stuff – we have committed to doing heritage – to move forward – we need FMG to take our position seriously – the position we put to FMG in the document that we sent on Saturday

AF – we can't agree to the Yindjibarndi Heritage Agreement – it is completely contrary to our current funding arrangements with our bankers and our investors – but it is a start – we want to be friends with you for generations – every day pushes us towards the Native Title Tribunal – we are happy to give some money up front – and we are happy to enter into a royalty agreement but it has to have a cap on it – BM and MW can discuss the cap – maybe BM will start at 1 Million and MW may start at 4 Million – we will be just as fair with your group as we have been with other groups

MW – we are major stakeholders in this – we want to reach an agreement where Yindjibarndi will develop far and beyond – we have our own plans which we would like to develop – FMG's responsibility is to look after your company – our responsibility lies with ourselves - we want to share the benefits

AF – I want a relationship with the Yindjibarndi people – not just give you a big bag of money

MW – we can have a relationship – we have our own big picture – we want to develop our own core business

AF – it sits with you whether you get any money – I can't do that agreement – it would destroy the company

MW – 5% is not negotiable

AF – I was swimming with my kids at Pretty Pool – Native Title is not property rights – it goes to a Native Title Tribunal – the people who hold out for a bag full of money will get nothing

Jill Tucker (JT) – what type of relationship do you want

AF – we will pay you some money up front – in my heart I want a portion of that money to go to jobs – and if that doesn't work then money would go into – if we agreed with the YHA then the banks would say we are being irresponsible and they may sack us - we can't break the mould

Blair McGlew (BM) – we were sent a document called the YHA – this document is asking for hundreds of millions of dollars per year – and we can't agree to it

Stanley Warrie (SW) – what about Gina Reinhart and Lang Hancock – how can they get money when it is not even their land that their deals are done on – and you are telling us we can't do the same thing

AF – no I am saying we can do a deal but it can't be like it is here

SW – we own that land – we have the right to get something out of it along the same lines as Gina Reinhart and Lang Hancock

BM – the deals that are being done today companies are trying to pay for the bad deals of the past – FMG are a young company – we can't pay for the past

SW – it doesn't matter what people have done in the past

AF – we have employed a heap of people, we have paid out money – we can sort it out themselves – what MW will get out of BM in their negotiations will be the best that FMG can do

SW – we are living in poverty – we don't want to live on government handouts

Vince Adams (VA) – we are losing something that is dear to us – we are losing our land – you are going to build mines on our country – we are losing our history – you are talking about your losses – but we are making a huge contribution

AF – what we can't do is tell you we can do something which we can't

VA – we want to establish here today that establishes ourselves – our kids may want to be lawyers etc – we may not want to be haul pack drivers – we don't want to be treated as second class citizens

AF – if your people want to be lawyers we can help with that – we have a huge obligation to return that land to as it was

VA – nothing has been done to clean up other sites – this is the thing – they don't give us this power – you are telling us what you can do for us – but we don't want that – we want to do this ourselves – we want to empower ourselves – you are going to make money out of that and we want a share of that wealth – you guys need to understand that this is what we want to do – this is our deal that we have presented to you

AF – do you do that through education and training or do you do it via a bag of money

VA – we have education and we have jobs – but we need the resources to empower ourselves

Michelle Adams (MA) – I want to give AF a view of how far Yindjibarndi people have come – we have our native title determination – FMG must not forget that those rights are important – we have seen your profile rise over the years and we the Yindjibarndi have come a long way – FMG has taken a lot of risks – but you still have investors – FMG can guarantee jobs but we should be respected – we thank you for coming – we know you are a very busy man – government doesn't really do anything – government is too slow – we have had an apology – we share his views – you are in a unique position to set the benchmark with Yindjibarndi – how deep are your pockets – we know that the price of iron ore has gone through the roof – what you have given to other language groups – you will struggle to give us what you have given others – we want to set the benchmark too

Barry Pat (BP) – we are not taking the money and running

AF – there may be another apology coming – from my generation and others – the genocide that has been unleashed on people by companies – other companies have simply handed out money – but when they give out money all you get is grog, gunja and violence – you have done a great thing by closing the pub in Roebourne – you can't fix things by chucking money – Halls Creek people threatened to beat the women up when they tried to close the pub – what I want to give is a substantial amount of money and employment

Charmaine Adams (CA) – we have never had any money – don't tell us we have had money chucked at us

AF – that is good – that is why this is a good community

JT – my old people they lived on rations – they was working very hard – this is different times – we used to work for tobacco and sugar – I want to save our history – I want to go and live in my country

BP – he can't look after our country

AF – the reason why I don't come here often is because I don't want to take the bucket for all the things that have happened in the past – I really respect you – by not accepting charity you will be strong

MW – we are in a position to make our own decisions – we are here to succeed – we want a hand up – we can walk and chew gum at the same time – we want to manage our own affairs – I want to get back to the seven points

MA – we want to do a good agreement – silly things like percentages in agreements that we don't understand is stupid

AF – yes it should be a set figure

AF – Lang Hancock and Gina Reinhart are good examples of how people have sold out early simply for the money – but FMG is not like that – my philosophy is to stick around – I don't want to sell – I am keeping you fellas alive – I want to provide the people in this community and other communities with help

MW – I want to get back to the seven points

At 11.35 AF and BM left the room so they could speak together and the Yindjibarndi could also speak together

At 1150am AF and BM came back into the room

AF – I have had a serious think about these points that have been put to us – let's work with the seven points that you have here

AF - I would like to start with Point 8 – the land will go back to be fully rehabilitated

BM - Also Point 9 – do an agreement which covers the whole of Yindjibarndi country

AF – Number 7, 6, 5 are agreed to in our opinion

AF – Number 3 – agree to the land swap arrangements – if you think if I can be of any use to you then I am happy to help

AF – Number 2 I can't agree to – as a response if the Yindjibarndi agree to sign an agreement then a payment of \$325,000 will go to the Yindjibarndi

AF – the terms of 1 and 4 – we can agree a couple of things – what I am suggesting is a couple of things – we need a period of time to get into operations – we require a three year term which is a royalty free period – you can earn a cash amount which will have a cap to it – this will be \$1.2 million per annum which will be set aside for employment and training and if it doesn't go to you then it will be paid in cash to you

AF – over and on top of that – we would go for an additional payment of \$3 million or \$3.4 million per annum to the Yindjibarndi – that is a very substantial royalty

MW – we will have a different offer to put back to you – we want to go with the proposal here – we are only interested in agreeing on a 'decision to mine' basis

AF – I will react to that – 4 is a piece of infrastructure – it puts the Yindjibarndi in a position of government and I have a problem with that

AF – decision to mine is a pretty scary part of a miner's life and I don't think I can approve that amount at point 2

AF and BM left the building at 12.15pm – AF will now catch a plane to Hedland and BM is prepared to come back and meet with the Yindjibarndi this afternoon

A summary of what AF offered is

1. 3 year royalty free period
 - a. \$1.2 million for training and employment per annum (if this money is not spent on the training and employment then the unspent cash is paid to Yindjibarndi)
 - b. \$2.8 million per annum based on mining and rail access
2. Up front payment on signing of this agreement equaling \$325,000
3. AF will help with the land swap arrangements
4. Agree with the Yindjibarndi not objecting to the mine, rail and tenements
5. The land that is mined will be completely rehabilitated following mining
6. FMG wants a Land Access Agreement over all Yindjibarndi country

The Yindjibarndi group talked about the offer made by FMG and rejected the FMG offer

The Yindjibarndi group agreed they should put together a negotiating team of approximately 6 people to negotiate with FMG

The Yindjibarndi also agreed that they should now start negotiating simultaneously with Pilbara Iron on their tenement

The Yindjibarndi heritage team will be Angus Mack, Chet Woodley, Simon Lockyer, Dennis Hubert, Jeff Gilbey

Meeting closed 12.55pm

“MW-26”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 8 pages is the annexure marked “**MW-26**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

**Minutes for the
Yindjibarndi Community Meeting
Meeting at the Roebourne Community Hall
Monday the 19th of March 2008**

Meeting Started 10.15am

Present

Yindjibarndi Community Members

Stanley Warrie, Barry Pat, Thomas Jacobs, Angus Mack, Jimmy Horace, Lorraine Coppin, Joyce Hubert, Maudi Jerrold, Jill Tucker, Jean Norman, Clifton Mack, Michelle Adams, Michael Woodley, Sylvia Allan, Rodney Adams, Harry Mills, Wendy Warrie, Kaye Warrie, Rosemary Woodley, Glen Toby, Mark Horace, Paul Duggan, Lesley Walker, Sharona Walker, Dora Solomon, Bridget Warrie, Antonia Hicks, Howard Lockyer, Lorna Walker, Renee Walker, Wendy Hubert, Gabrielle Cheedy, Aileen Sandy, Charmaine Adams, Vince Adams, Lyn Cheedy, Tootsie Daniels, Esther Mungo, Stephen Hubert, Jeff Gilbey, Tamara Edgar, Rosie Cheedy, Aaron Hubert, Stephen Hubert, Max Ranger, Joylene Warrie, Thomas Hubert, Travis Hubert, Shane Chubbie, Amalyn Smith, Tiffany Lockyer, Estelle Daniels, Renee Wally, Doris Lockyer, Casey Cheedy, Alice Guinness, Jane Cheedy, Maisie Ingie, Sarah Hicks, Jessica Allan, Lyle Wally

Support Team

Philip Davies, Alan Thompson

Minutes of the previous minutes

The minutes of the meeting held on 10/03/08 between the Yindjibarndi and FMG were read and accepted as accurate

Moved: Barry Pat

Seconded: Charmaine Adams

Passed Unanimously

General Business

1. Negotiations

Michael Woodley (MW) opened the meeting and said that the Yindjibarndi people are moving towards an agreement with two major resource companies – FMG and Rio Tinto

MW - FMG are trying to get an LAA over all Yindjibarndi country

MW - FMG says that they are prepared to go through the right to negotiate process set down by the National Native Title Tribunal – but I don't think they will want to go through the whole process because they want an LAA over the whole country, whereas the tribunal will probably only allow an agreement over the mine – I don't think the tribunal would be prepared to give away all the Yindjibarndi country – so I don't think FMG would be happy with the final result if they have to go to the Tribunal – therefore we can force them to go right

through to the bitter end if we need to – because that is not what FMG want – we can only give our country away once

2. Roles and Responsibilities for the Yindjibarndi Aboriginal Corporation

MW said that the YAC is just like any other corporation – Directors are elected at an AGM – and they are responsible for the Yindjibarndi interests – but they represent all members – if we are happy with the process then we should say – if they are not happy then all people are entitled to have a say

Wendy Hubert (WH) said that we are sitting on Ngarluma land and we need to stick together with the Ngarluma people and try and fix this housing situation up

Stanley Warrie (SW) – said that we are struggling for money to make these negotiations happen – we won't have Christmas money or sitting fees – we want to negotiate on the big one to get a good deal – we may need to sacrifice stuff now to fight the mining companies – and then hopefully we will do a good deal which will set us up

Maudi Jerrold – if it was up to me I would have signed an agreement that helped all the Yindjibarndi people – I don't want to be sitting around here for years – I want an agreement now – we can be strong too – we are not getting anywhere at the moment

Charmaine Adams (CA) – What MW is saying that we want to stick together so we can get a good deal – we want to stick to the 7 points we put up on the board – that will be a good agreement if we stick to it – but we need to stick to the plan

Thomas Jacobs (TJ) – we are the future – we can read and write – we need to set our own agenda

SW – the money that FMG is offering is peanuts – that is not enough money to go around – the lack of money would simply cause heaps of arguments between us because it is not enough

MW – we need to use our rights to the fullest – other groups can sign agreements but we don't have to agree to what others have signed – we have the seven points which we can work on – we have asked for 5% and FMG say this is too much – FMG don't want to pay that much

MJ – you are the directors you sort it out

SW – no, we are here to talk to our members because everyone's views are important – we are telling you what is going on

MJ – are FMG mining yet?

MW – no they have not started mining yet – they are drilling – we have held up their drilling for 5 months

MJ – one more thing – what is going to happen today – who can give us some sort of advice on how we are going to deal with these fellas

SW – if you want to be updated on what is happening you can just ask – you can go to the Juluwarlu office or anywhere else

MJ – is there a conflict of interest if you are representing the YAC and being up at Juluwarlu?

CA – We don't have any money to rent or buy an office – we got nothing – why would we set up another office for the YAC

MW – how is there a conflict between the YAC and Juluwarlu/NYFL

MJ – why did you take this role on in the first place?

MW – my role in this thing – Juluwarlu is an organization is dedicated to recording the history and culture of the Yindjibarndi people – I have never charged Yindjibarndi for one cent for all this work

MJ – I am not against Juluwarlu – but I need an open account of what is happening with the Yindjibarndi money

MW – the Yindjibarndi money is set aside to run our negotiations and to do the Yindjibarndi 1 Native Title Claim

SW – we are fighting for the same thing

At 11.45am – Tony Godley rang from FMG saying that he was going to send out an email to everyone in FMG directing them to keep away from all of the water course that Drill Line 151 intersects – he spoke with Angus Mack on the phone regarding this matter to get it exactly clear what Angus wanted to happen with this area (Angus has just completed a heritage survey in the area) – Angus and Tony spoke on the phone – Tony said he was clear on Angus' instructions and will go ahead with his email – he will CC Phil Davies in the email – Phil thanked Tony for the call and left the issue at that

MW – we got nothing to give nobody at the moment

MW – is everybody happy with the current process

Everybody – said yes they are happy to go on with the process as it stands

3. Update on the Murujuga Aboriginal Corporation – delivered by Michelle Adams and Howard Lockyer

MA said that this presentation is to keep all the Yindjibarndi people informed on what is happening with the Murujuga Aboriginal Corporation – Howard and I are the Yindjibarndi representatives on the Murujuga Aboriginal Corporation (MAC)

- They have no policies
- They have no structure
- They have nothing in the way of education policies
- MAC have missed out on blocks of land under the BMIEA
- The government sold the land without talking to MAC
- They sent \$1 million to MAC for the sale of land
- This money was sent back to the government because the government had not acted properly
- MAC is currently in negotiations with the State Government on what the government will do to recompense MAC for their sale of land
- MAC has \$4 million in a trust from which they earn interest – the interest is used to pay all the operating costs of MAC
- MAC has come up with a draft plan on how to spend the money – this is still in draft form which can still accept input from the Yindjibarndi people – the board is proposing to put \$1 million aside for law and culture, education and sporting activities, relocation and relocation and housing support, business development, poverty relief and Elders, capital investment, plus white goods
- However, MAC is still at the beginning of setting up the organization to distribute the funds to the members
- The policies need to be easy to understand and follow
- MAC need to operate within its own funds
- Needs to have clear and defined rules

The major things that MAC is considering is to set up good policies that are easily understood, communicated and followed by the administration – they will also set up a business development unit so that companies help us to have joint ventures up and running

Pilbara Joblink have developed a pack for members and they are concentrating on setting up employment for members – they are doing a skills audit and they are currently having bar-b-q's in Roebourne every Tuesday fortnight to inform and sign up members, and to do their skills audit – Stephanie Soda and Jenny McVeigh are running the program for Pilbara Joblink

MA read out a list of the registered MAC members and encouraged people who were not on that list to join

MA and Howard Lockyer (HL) then answered questions from the floor

4. Yindjibarndi 1 Native Title Claim and objection to Cazaly Iron application for tenement

MW – we are in the process with the State Government to get this determined – the State Government should recognize that the Yindjibarndi people are the same people that were recognized by the Federal Court in the Ngarluma and Yindjibarndi native Title Determination

National Native Title Tribunal – Charmaine Adams (CA), Thomas Jacobs (TJ), Maudi Jerrold (MJ), Michael Woodley (MW) and Stanley Warrie (SW) all traveled to Perth to give evidence on the objection to the Cazaly Iron application for a tenement

5. Negotiations with FMG and Rio Tinto

MW – we have asked FMG for the following:

SCHEDULE ONE: 'IN-PRINCIPLE AGREEMENT BETWEEN THE PARTIES'

Clause:

1. The Grantee agrees to pay the Applicants ongoing Royalty payments equivalent to 5% of the FOB AUD income derived from all sales that are generated from the Grantee's activities and operations which lie within the Yindjibarndi #1 Native Title Claim area WC03/3 situated within the perimeter of the tenements that are the subject of this Contract
2. The Grantee agrees to pay the Applicants \$5,000,000.00 AUD within 30 days of their decision to mine (DTM) on the first mine that is developed on that portion of the tenements which lie within the Yindjibarndi #1 Native Title Claim area WC03/3 situated within the perimeter of the tenements that are the subject of this Contract
3. The Grantee agrees to positively assist the Applicants and/or their authorised representatives to negotiate with the WA State Government a land swap arrangement which compensates the Applicants for the total area of land that is consumed by mining and rail activities and operations within the perimeter of the tenements that are the subject of this Contract
4. The Grantee will pay the Applicants \$0.25 AUD per tonne, annually indexed for CPI, for all 'for-sale' products that are transported via the railway known currently as the Kennedy Rail Spur Line which the Grantee proposes to pass through the Yindjibarndi #1 Native Title Claim area.
5. The Applicants will lift all and any objection that may obstruct the development of the Kennedy Rail Spur Line, subject to the heritage arrangements already specified within this Contract.
6. The Applicants will not object to the Grantee's development of, and the activities and operation associated with, any mine/s that is/are developed on that portion of the tenements which lie within the Yindjibarndi #1 Native Title Claim area WC03/3 that are situated within the perimeter of the tenements that are the subject of this Contract, subject to the heritage arrangements already specified within this Contract.
7. The Applicants will conduct an Ethnographic/Anthropological survey which covers the total of the approximate 204 square kilometre area of the three tenements which lie within the Yindjibarndi #1 Native Title Claim area WC03/3 that are the subject of this Contract, in order to identify all areas of ethnographic significance. Once sites of ethnographic significance are revealed and mapped for the tenements, future heritage surveys within the Yindjibarndi sectors of the tenements will only require archaeological investigation.

MW went through the offer that FMG have now sent to the Yindjibarndi people - FMG have come back with their offer but it is not acceptable to us

MW explained that Rio Tinto also want to come and talk to the Yindjibarndi – What I am asking the people at this meeting is to start negotiating with Rio Tinto the same way as we are with FMG – but we will be harder on Rio Tinto than FMG because Rio should pay Yindjibarndi for their sins of the past – they have been railroading millions of tonnes through our country and have been doing so for over forty years and they haven't paid us anything for that service.

We want to engage with both FMG and Rio Tinto at the same time

Resolution 1

The Yindjibarndi people at the meeting agree to continue their negotiations with FMG according to the seven points put to them at the last meeting, and they agree to start negotiating with Rio Tinto along the lines that Michael Woodley has just laid out to the people at this meeting.

Mover: Stanley Warrie

Seconded by: Charmaine Adams

Passed Unanimously

Lyn Cheedy (LC) asked whether the boy living with her now could be regarded as Yindjibarndi.

The group decided that the boy living with Lyn should have to demonstrate that he has Yindjibarndi ancestry

6. Yindjibarndi Membership

Resolution 2

The Yindjibarndi people agree that Jean Norman and her family are once again accepted into the Yindjibarndi group and that she and her family be regarded as Yindjibarndi people from now on.

Mover: Jill Tucker

Seconded by: Stanley Warrie

Passed Unanimously

The people agreed that Jean Norman should write a letter to the Wongatoo to terminate her membership with that group

7. The Yindjibarndi Negotiating Team

MW asked for nominations for the negotiating team – the suggestion is for 6 Elders to oversee the 6 people who will make up the negotiating team

Nominations for Elders are as follows:

- a. Ned Cheedy
- b. Alec Ned
- c. Bridget Warrie
- d. Dora Solomon
- e. Joyce Hubert
- f. Sylvia Allan

The people at the meeting agreed that the 6 Elders named above will make up the Elders negotiating team

Nominations for the Yindjibarndi Negotiation Team are as follows:

- a. Stanley Warrie
- b. Thomas Jacobs
- c. Howard Lockyer
- d. Charmaine Adams
- e. Vince Adams
- f. Esther Pat
- g. Jeff Gilbey

- h. Stephen Hubert
- i. Lyn Cheedy
- j. Maudi Jerrold
- k. Rosemary Woodley
- l. Jill Tucker
- m. Tootsie Daniels
- n. Michelle Adams

- o. Kaye Warrie (declined)
- p. Michelle Adams (declined)
- q. Angus Mack (declined)

Michelle Adams, Kaye Warrie and Angus Mack declined to be on the negotiating team

The Yindjibarndi people decided that they would form two negotiating committees – one for FMG and one for Rio Tinto – they are made up as follows:

The Negotiating Committees will be comprised as follows:

Yindjibarndi FMG Negotiating Team

- I. Stanley Warrie
- II. Thomas Jacobs
- III. Jill Tucker
- IV. Charmaine Adams
- V. Vince Adams
- VI. Esther Pat
- VII. Jimmy Horace

Yindjibarndi Rio Tinto Negotiating Team

- I. Stephen Hubert
- II. Lyn Cheedy
- III. Maudi Jerrold
- IV. Rosemary Woodley
- V. Howard Lockyer
- VI. Tootsie Daniels
- VII. Michelle Adams

Resolution 3

The Yindjibarndi people agree that the two negotiating teams will represent the Yindjibarndi in their negotiations with FMG and Rio Tinto – the meeting also agree that Michael Woodley and Phil Davies of Juluwarlu Group Aboriginal Corporation will act as consultants for the Yindjibarndi negotiating teams, and the people also agree to engage a commercial lawyer to oversee the writing of the final agreements with FMG and Rio Tinto.

Moved: Angus Mack

Seconded by: Rosemary Woodley

Passed Unanimously

Meeting Closed 3.10pm

“MW-27”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 5 pages is the annexure marked “MW-27” referred to in the witness statement of Michael Woodley dated 5 June 2023.

**Minutes for the
Yindjibarndi Directors Meeting
Meeting at the Juluwarlu Group Aboriginal Corporation Office
Wednesday the 23rd of April 2008**

Meeting Started 11 am

Present

Yindjibarndi Directors

Bridget Warrie, Barry Pat, Stanley Warrie, Dora Solomon, Aileen Sandy, Rosemary Woodley, Harry Mills, Ashley James, Jimmy Horace, Charmaine Adams

Yindjibarndi Community Members

Alec Ned, Thomas Jacobs, Michael Woodley, Lorraine Coppin, Angus Mack, Joyce Hubert, Jean Norman

Support Team

Philip Davies (minutes), Glen Toby (filming), Jo Pritchard (food)

Fortescue Metals Group

Blair McGlew, Briony McGinty, Eamon Sullivan, Michael Thompson, David Forrest

Apologies

No apologies were delivered

Opening of the meeting

A minute's silence was observed for the recent tragic passing of a young Roebourne man – Tootsie's son

Michael Woodley (MW) apologised for the late notice of this meeting – the late notice was because it was difficult to decide if this meeting should be held because of the recent tragedy

MW opened the meeting and invited FMG to address the meeting

Blair McGlew (BM) addressed the meeting and on behalf of the company expressed his condolences for the sad and tragic loss on the weekend - and introduced the FMG team

David Forrest (DF) addressed the meeting and introduced himself

Michael Thompson (MT) introduced himself

Eamon Sullivan (ES) introduced himself – he is an exploration geologist – worked all over the world – Africa, Mongolia, and enjoys being back in Australia

Briony McGinty (B McGinty) introduced herself

ES – drew a map on the whiteboard – said that FMG has definitely found iron ore in Yindjibarndi country, and it is good enough to mine in Yindjibarndi country

There are a few of types of iron ore – some of it is in the rocks – bands or layers which are full of iron – these layers are same as Newman, Tom Price, West Angeles

There is also Channel Iron Deposit – Mesa J and Yandi mines

We have found both types of iron ore in your country

We have found Brockman iron ore at Firetail

We have found large deposits of iron ore at Solomon – we have already found 1.75 billion tonnes and we will probably prove up 2.5 billion tonnes

BM – this is similar to the amount of iron ore at Cloud Break

ES did another drawing of Solomon on the whiteboard – the drawing of Solomon represented about 5 kilometres of the Solomon area

Found about 100 million tonnes of high-grade iron ore in the valleys of Solomon – but we would like to prove that there are at another 100 million tonnes in the hills

We would like to get our drill rigs into the hills – we need to cut some new roads so our drill rigs can get into the hills

FMG need to get the permission of the Yindjibarndi people to excavate the hills for drilling

ES – my job is to find more iron ore and I think there are further resources of iron ore in the hills

BM – I think this extra drilling in the hills is new for Western Australia – FMG acts and thinks like a small company – we like to think we are different and we can prove a resource that other companies wouldn't worry about

ES – There is definitely enough good iron ore out there to mine

DF – so that is Brockman iron ore out there is it?

ES – yes this is Brockman – the thing about Firetail is this is the biggest one we have found so far in a 5 kilometre straight line – it is this part of the world that we would like to develop first – because this mine will fit in with our other infrastructure (especially our railway to Port Hedland)

B McGinty – the engineers have looked at cut and fill rather than blasting

ES – I can't rule out blasting

MW – pointed out that the FMG letter stated there are three different areas where FMG would like to take out extra tonnage (over and above the 1000 tonnes permitted by the mining act)

B McGinty – we have to apply to the Minister to get more than a 1000 tonnes out of the area – the Minister has told us we have to get the permission of the Yindjibarndi

SW – how big is this mine? – will the creek bed still be there?

ES – the creek bed you may be talking about is this one (showed Stanley on the whiteboard)

SW – what happens if you hit water after digging

ES – water is a major issue with this site – we are only starting to get our heads around the water issues – there will be a lot of water here that we will have to deal with - yes this area is part of the Millstream water catchment area

MW – this iron ore business may excite you but it doesn't excite us – we are worried that this may ruin the water sources in this country

ES – you know what – this is very special country – we respect your country – we love being outdoors

MW – well that is a bit hard for us to swallow because we know your role is to find the iron ore and then a mine might destroy the country and our heritage

ES – I love being in Australia because the heritage processes we have to go through offer some heritage protection – Australia's heritage processes are far ahead of other places in the world that I have worked in

MW – well we can give you many sad stories about things that have happened in this country – however for us today we need to be able to understand what FMG wants to do so that we can make an informed decision

B McGinty – the letter is not exactly correct now because things have changed slightly

MW – OK – well then just write us a letter back with those changes and we will concentrate on Firetail in this meeting

MW – one of the issues that has been raised is they will strike water – FMG will need to get back to us and this water issue is something we will need to investigate ourselves

At 12.15pm FMG people were asked to leave the room so that Yindjibarndi could discuss the application made by FMG to the Yindjibarndi people

At 12.30pm the FMG representatives were invited back into the room to discuss the proposal

The meeting re-commenced

MW – we have reviewed the proposal – one of the suggestions from the group is to take some of the Elders out there and have a look at the area in question and also go to Cloud Break

BM – that's a great suggestion - when can we do that? – we can put on a bus

There was discussion and the people decided that FMG would organise a bus for people to go out and have a look at the Solomon site in question and also go to Cloud Break – this may be a couple of weeks away because the sorry business starts today

BM – we will wait for Yindjibarndi response and in the mean time we will organise the trip – I think this is a really positive step

BM – last year we talked about the railway investigation licence – we want to put a railway line across to our other railway line (to Port Hedland) – south of Mt Florance homestead and north of Mulga Downs station homestead – back in August last year we talked about this idea of a railway line – if we are going to do this we have to go out and test the ground – we need to look for water – without water we can't do anything – need to dig holes every couple of kilometres – we need to get your approval to do this work

BM – if we can build the railway line we will come back to you again – there are two stages – the first is to see if the railway is possible and then we need to build it – at both stages we need to have your approval

BM put another map onto the whiteboard regarding the proposed FMG railway which FMG would like to build to Solomon

BM – we need to get a response from you on the construction of the railway line – firstly we need to test the proposed route for the railway line, and then we need to do the heritage work for the proposed railway

BM – at the moment the government is waiting for a response from the Yindjibarndi regarding the railway line

ES – we have strong obligations to maintain the environment when we construct our railway line – we need to do all the test work so that the flow of water is not impeded and altered

BM – we are trying to get your approval to get this railway line happening

BM – we (me and Briony) met with the WA State Government yesterday – we have said to the State government what are you going to put in? – we have said to the State Government and we are going to ask on your behalf – you will have FMG backing you on anything you ask for from the state government – the State Government gets about 9% of all royalties from FMG – FMG would like to go hand in hand to the State Government with Yindjibarndi to get a better deal for the Yindjibarndi people

MW – we have made our intentions clear with the seven points that we have made to FMG – these points make the process easy for FMG with regard to the whole development of your mining intentions

MW – we will be able to discuss our wants and needs outside of the seven points at a later date – but we have made our wants and needs to FMG clear – we want you to take those seven points seriously – if you agree with the seven points then the hurdles you need to jump so that you mine our country will be overcome far more easily.

At 12.50pm FMG finished their presentation and the group adjourned for lunch

At 1.15pm the meeting re-commenced

The meeting decided that the 10 directors present would be paid \$500 each. Two other Elders would stand in as proxies for Doris Lockyer and Stephen Hubert – Therefore the group decided to pay Alec Ned and Joyce Hubert \$500 each for today.

MW – said that there are couple more things to discuss - the thing that FMG doesn't seem to recognise the seven points that the Yindjibarndi have given them regarding negotiation for the mine.

The group discussed Marnda Mia CNC and the fact that Yindjibarndi still no longer want to be involved with that organisation

Resolution 1

The Yindjibarndi Directors of the Yindjibarndi Aboriginal Corporation once again reiterate that the Yindjibarndi community, whom they represent in total, are not a member of, nor do we wish to hold a shareholding in, nor do we intend to be any part of, or represented by, the Marnda Mia CNC. The Yindjibarndi people, via the Yindjibarndi Aboriginal Corporation, resolve to continue to represent themselves in all native title negotiations and affairs. All parties interested in engaging with the Yindjibarndi people must deal directly with the Yindjibarndi Aboriginal Corporation via the protocols they have set down.

Moved: Jimmy Horace

Seconded: Charmaine Adams

Passed unanimously

Meeting Closed 1.45pm

“MW-28”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 21 pages is the annexure marked “**MW-28**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

**Minutes for the
Yindjibarndi Aboriginal Corporation 3 Day Negotiation Meeting with Fortescue
Metals Group (FMG)
Meeting at the Roebourne Community Hall
Three days 10th, 11th and 12th of June 2008**

First Day – Tuesday 10th of June 2008

Meeting Started 11.00am

Present

Yindjibarndi Negotiating Team

Stanley Warrie	Chairperson – Yindjibarndi Aboriginal Corporation
Thomas Jacobs	Yindjibarndi Elder
Maudi Jerrold	Yindjibarndi Elder
Rosemary Woodley	Yindjibarndi Elder
Charmaine Adams	Yindjibarndi community member
Howard Lockyer	Yindjibarndi community member
Lyn Cheedy	Yindjibarndi community member
Michael Woodley	Executive Officer – Yindjibarndi Aboriginal Corporation
Philip Davies	Administration - Juluwarlu Group Aboriginal Corporation
Adrian Murphy	Social Licence (arrived to Tuesday meeting at 1.15pm)
Simon Millman	Slater & Gordon (arrived to Tuesday meeting at 1.15pm)
George Irving	Barrister (arrived to Tuesday meeting at 1.15pm)

Yindjibarndi Community Members who attended over the three days

Ned Cheedy, Joyce Hubert, Sylvia Allan, Maudie Jerrold, Jill Tucker, Dora Solomon, Bridget Warrie, Tootsie Daniels, Doris Lockyer, Dot Moses, Wendy Warrie, Kaye Warrie, Esther Pat, Aileen Sandy, Maisie Ingie, Clifton Mack, Anne Jacobs, Kaileen Daniels, Regina Daniels, Barry Pat, Jean Norman, Judith Coppin, Bruce James, Amy Jerrold, Bruce Woodley, Stephen Hubert, Max Hubert, Stephen Hubert (2), Ashley James, Bruce Monadee, Jennifer Toby, Jimmy Horace, Dennis Hubert, Sue Edwards, Jessica Allan, Harry Mills, Angus Mack, Marion Cheedy, May Adams, Rebecca Cheedy, Vince Adams, Wendy Hubert, Sharona Walker, Renae Walker, Charlene Ranger, Len Aubrey

Other Community Members

Alec Tucker

Support Team

Philip Davies (minutes), Lyle Wally (filming), Glen Toby (filming), Maria Rodner (filming), Lorraine Coppin (Food), Jo Pritchard (Food), Sharona Walker (Food), Renae Walker (Food), Fernando Hincapie, Charlene Ranger (Food)

General Business

The group viewed the Yindjibarndi 1 DVD prepared by Juluwarlu for the Office of Native Title (ONT) and viewed the map showing the Yindjibarndi boundaries for the determined and claim areas, as well as overlapping Yindjibarndi country with other claim groups. They also discussed the proposed agenda for today's discussions

12.15pm the group broke for lunch

1.15pm – the meeting recommenced after Adrian, Simon and George arrived

Michael Woodley (MW) introduced Adrian Murphy (AM), Simon Millman (SM) and George Irving (GI).

AM introduced himself to the group – use to work with PNTS up until 2006 – then worked as a consultant in his own business – worked with the Marnda Mia CNC until about August 2007 – primarily works with the WA State Government principally with Alannah McTiernan regarding land developments – AM offered his support and assistance to the Yindjibarndi in assisting them setting up with the native title process – very happy to be here and hoping he can add value to the process

SM – solicitor with Slater and Gordon – haven't done a lot of work with native title so is very keen to get into it especially with the Yindjibarndi

GI – barrister – worked with the Kimberley Land Council as a solicitor for eight years from 1992 – became a barrister in WA – has had experience with other native title groups and has worked on many agreements – looking forward to working with the Yindjibarndi

MW – introduced the Yindjibarndi Elders to AM, SM and GI and also the Yindjibarndi Aboriginal Corporation (YAC) Directors, and the Yindjibarndi Negotiating team.

MW – the Yindjibarndi want to get a different outcome than what has been offered by FMG – we have told FMG what we want – this is set out in the YHA given to FMG (Andrew Forrest and Bair McGlew) on the 10/03/08 – if FMG don't want to give us what we have asked for then we are prepared to stand strong for what we want

GI – would like to clarify where Yindjibarndi sit within the process – particularly in regard to what FMG have applied for – and where matters are within the native title processes

Discussion around where we are at – led by GI

E47/1333, E47/1334, and E47/1447 – GI - when were the applications lodged and where they sit – PNTS signed a Regional Standard Heritage Agreement (RSHA) on the Yindjibarndi's behalf for E47/1334 and E47/1447 and lifted Yindjibarndi's objection to these tenements – then FMG have signed another alternative Yindjibarndi Heritage Agreement (YHA) on 29/06/07 after being presented this document by the Yindjibarndi in a meeting held with FMG on 07/06/07. The Yindjibarndi have not yet signed this alternative agreement.

Following FMG signing the YHA then the Yindjibarndi lifted their objection to the three tenements

GI – FMG are looking/wanting a global agreement with the Yindjibarndi

My opinion at the moment is for the Yindjibarndi to sign the YHA that was presented to FMG because it offers you better protection than what you have now

GI asked for discussion on this issue

Philip Davies (PD) – doesn't agree with signing the YHA at the moment because he doubts the validity of the lifting of the objection to the three tenements

MW – no we agreed to lift the objections to the tenements once FMG had agreed to and signed the YHA

MW – doesn't want to be tied to the YHA by signing the YHA now because the Yindjibarndi may be bound to something that may not be good for Yindjibarndi in the long run

GI – is concerned that if the Yindjibarndi do not sign the YHA then they may not be protected

GI – has the right to negotiate process started?

MW – we are still trying to figure out where the documentation is on these issues

AM – presented that the mining leases were applied for by FMG 03/10/07, 16/11/07 and 14/12/07 – notification were made of these leases on the 19/12/07, 17/01/08 and the 23/04/08

GI – the Yindjibarndi should be making applications regarding these mining leases to DOIR – within the next few days – when did the six months start – has their been an invitation by DOIR to make applications in regard to these mining leases – After the six month period is over there isn't a window for compensation – there is a likelihood that if Yindjibarndi go all the way without reaching an agreement then the Yindjibarndi may not get anything out of the National Native Title Tribunal – any compensation granted by the NNTT is very limited (by the legislation)

GI – there is an application to the Minister to take extra tonnage from the three tenements – is this a future act? This will affect our position

GI – is the YHA you talk about similar to the global agreement that FMG wants

MW – yes

SM – the original YHA was a two page document whereas the YHA presented to FMG on the 10/03/08 a five page document

GI – yes I have got that

GI – has a formal application been made to the Minister for the excess tonnage? I need to think about this

GI – has an application been made to the DPI regarding the railway network?

GI - there are some new applications for tenements which FMG have not requested an expedited procedure – they seem to have gone straight through to the Right to Negotiate process – the Yindjibarndi are in a better position because of this process, rather than the expedited procedure process with regard to these tenements

MW – so we have gone through some of these issues – we are trying to develop a one stop shop and would like to get them to sign an agreement that suits the Yindjibarndi

GI – in terms of a negotiating strategy we are better to listen to what they want and then to discuss the issues amongst ourselves

Maudi Jerrold (MJ) – I think we are better to take that approach and this seems confusing

MW – we need to understand the process first – previously Ngarda have been forced into a bad position and we need to get these people into the best position for us – and us alone

GI – I have worked on FMG issues before and FMG’s modus operandi is to ‘crash through or crash’

Tootsie Daniels (TD) – can you explain about the global agreement

GI – I am concerned that if FMG have Yindjibarndi focused on the global agreements and Yindjibarndi are not focused on the processes which are time limited – the Yindjibarndi need to be concerned about all the issues – not just the global agreement

MW – if we can build a strong enough case then the Native Title Tribunal may have to look at the Yindjibarndi approach to all matters

GI – negotiation in good faith – have the Yindjibarndi been negotiating in good faith? – this is something I would like to examine

SM – spoke to the group about the global agreement – what is people’s sense on a global agreement – GI raised an issue on the signing of a YHA

MW – what I understand a global agreement is that everything is thrown in – country, compensation, heritage etc

AM – made a presentation to the group and said the Yindjibarndi should never give up and stand for what they want - what is proposed and what that means in dollar terms

3.30pm - The group broke up for afternoon tea

3.50pm – the group reconvened

GI – I do recommend that the Yindjibarndi sign their RSHA that was signed by FMG on 29/06/07 because there is a clause in their that says FMG cannot apply for any section 18 clearances unless they have Yindjibarndi consent – however I do not recommend that people find sites for the sake of finding sites because you have to maintain some sort of relationship with the industrial proponent in the long term

MW – we have some rights here under the RSHA that was signed – that is a good thing – however should we go for the new YHA

GI – compensation for land use and/or land access may come into a different agreement than the RSHA – in a sense they have got what they wanted – they have got their exploration licences – they don't need to get your agreement now – use the RSHA to your advantage – I don't think this RSHA is connected to the Land Access Agreement – this provides a veto for FMG to apply for section 18's clearances

MW – what is the difference between exclusive possession and non-exclusive permission

GI – if you have exclusive possession people have to ask for the right to enter your land – if you have non-exclusive then people don't have to ask for permission

The group discussed various scenarios until the close of the meeting

Meeting Closed on the first day 10/06/08 at 5pm

Second Day – Wednesday 11th of June 2008

Meeting Started 1pm

Fortescue Metals Group representatives

Blair McGlew, David Forrest, Bruce Larson, Briony McGinty

The start of the meeting today was delayed because a local person passed away last night (Long Tom's daughter)

MW opened the meeting and asked for a minute's silence

MW introduced the Negotiating team to the group (listed on page one of these minutes) – Due to the sad loss in Tom Jacobs family he did not attend – however the group decided that he would still be paid his \$500 for being part of the negotiation team – Due to the sad loss Maudi Jerrold could not attend as part of the negotiation team – the group decided that Vince Adams would take her place

The Yindjibarndi asked the FMG representatives to leave the room so they could be addressed by George Irving (GI)

GI presented to the group the agenda for this afternoons meeting – this document is headed **080611 Agenda Items Yindjibarndi_FMG**

There was robust discussion between the group regarding the approach to the afternoon's negotiations

At 2.20pm the FMG representatives were invited back into the meeting

David Forrest (DF) made a presentation to the Yindjibarndi group – he grew up in the area – whatever happens this has got to be positive for you guys – you guys want it to work – I hope everyone gets what they want – I like to get here as much as I can – Once again I am so sorry about what has happened – anyway good to see you all

Blair McGlew (BM) – I would like to express my sadness on what has happened – I would like to thank you for keeping the meeting going – I know that you met yesterday and I don't know what has happened – we do have a relationship with the Yindjibarndi people that has occurred over the last two years approximately

BM put a power point presentation up regarding FMG – we have had a number of meetings since then – back in March Andrew Forrest (AF) came along and put his personal point of view - AF asks me to negotiate the native title agreements

Yindjibarndi Aboriginal Corporation Negotiation 3 day Meeting with FMG minutes
commencing 10-06-08 Page 7 of 21

BM – we understand what you want out of FMG because you have presented your views to us

To build a project we have had to get a lot of thing right – 9 million hours of ‘man time’ – over 200 approvals – 180 Aboriginal people working on the project

BM would like to get an agreement for all of Yindjibarndi country – he said we had talked about that – MW said that FMG had talked about that but that Yindjibarndi had only ever talked about an agreement for three tenements – E47/1333, E47/1334 and E47/1447

BM - There is a large value for FMG if we can have an overall agreement

MW – we have our Yindjibarndi decision makers here every time

MW – we are serious to make an agreement with you over two days

MW – to Blair McGlew do you have the authorization to sign off on an agreement with the Yindjibarndi people

BM – yes I have the authority to make an agreement with the Yindjibarndi people

MW – what we are giving you has absolute value – we still live and breathe our country – unfortunately this country does not recognise Yindjibarndi as equal as title holders

MW – we have dreams and aspirations as well – people are going to be made rich from our country - we want to have that as well

MW – we have rejected your counter offer following the offer we made to you at the meeting held here on 10/03/08

MW – the Yindjibarndi offer made on the 10/03/08 is the one we want to discuss

BM – we need to get access to do our work – there is a process we need to go down if we are to proceed to mine – if Yindjibarndi objects to what FMG want to do then we will respond to the situations as they stand

BM – do we have two different things to negotiate over or is it just one – is it a whole of claim agreement or is it just the three tenements

MW – what is it you want to discuss – excess tonnage/rail corridor/other stuff hasn’t been brought to our attention – do you want to bring that to our attentions – that is up to you – we are basing our position on your requests

GI – the preference of FMG is to reach an agreement – but you are prepared to go down a legal path

BM – there are different processes for different wants and needs

GI – so where are things at with the legal process

BM – some time at the end of this year the NNTT will make a decision regarding the granting of the mining tenements – we have had lots of time to think about this – we have plenty of time before the NNTT has to make a decision regarding the granting of mining tenements

BM – can I make a suggestion there are two different proposals – can we reach an agreement on what we know now – mining leases/excess tonnage/railway corridors – we believe we have heritage agreements with the Yindjibarndi

GI – what are the mining leases and exploration tenements that FMG want

The FMG representatives were asked to leave the room at 3.30pm

The Yindjibarndi discussed the issues between themselves

The FMG representatives returned to the room at 3.40pm

GI – the two options – one is to make an agreement and the other is to go down the legal pathway – what exactly are you asking the government for

BM – we are asking for:

1. exploration approvals – there might be ten or there might be 20 – on three exploration tenements we have granted and we are looking for ‘excess tonnage’ on these – we want to get approval from Yindjibarndi – FMG don’t want to pay for exploration – exploration is a cost and it sets up the possibility that we can all benefit – that we will do heritage surveys, and at exploration stage we will not apply for section 18 applications – we won’t disturb heritage sites during exploration – we had an agreement with the Yindjibarndi for heritage but those surveys are not happening – we are looking for your agreement to go up into the hills – we have applied for exploration tenements and they have been objected too – they are all in the RTN process because we don’t have a heritage agreement on these -

MW – you are starting to confuse us

PD to himself – they are saying they want an exploration licence on the three tenements but that is what they already have – are they trying to pull the wool over our eyes and get us to sign the heritage agreement

BM

2. we are seeking approval for a railway corridor – I don't agree with paying you for that railway corridor – we would like a heritage agreement on this corridor – the heritage team will have to walk the entire line
3. we are seeking 3 mining leases – 1409/1411/1413 – FMG agree that it is right to compensate the Yindjibarndi for these mining leases – the thing we are asking for is a period of three years where we don't ask to pay a mining royalty – then we will pay a 5% royalty up to \$1,000,000 per year – then we will pay \$1,000,000 per year for VTEC – GI do you get subsidized by the government for that – yes we do get some subsidies – but any member of the claim groups can get a job with FMG – as long as they can get the minimum requirements – **PD – to himself - so effectively the claim groups are paying for their own jobs** – this is different to what we have offered - GI – is this compensation based on all three mining leases? BM – yes? GI – if you don't reach an agreement on all three mining leases then the offer will be less

MW – are you sure your investors get the same information that we are getting today

BM – yes this is the same information

Bruce Larson (BL) – the exploration phase is so vital because we need to find out what is there

BM – I am offering these figures because we are confident

GI – wouldn't there be a feasibility study on these mining leases

BM – no there is no feasibility study – we can't afford feasibility studies - we go ahead with no information

BM – there is a feasibility study which has just started – we hope to have started building the mine about the middle of 2010

GI – with the 5% FOB royalty – what is the royalty paid to the government – BL - it is about 3.75% paid to the government – is there any logic to the cap you have placed on the Yindjibarndi

BM – it is not entirely productive to go into the whys and the where fors

GI – the life of the mine may be 20 – 40 years – FMG do not have a cap on what they take out of the ground so why is there a cap on the Yindjibarndi?

BM – we have made agreements with other groups and they have agreed to these sorts of arrangements

GI – is it just a case of what has been accepted by other groups and one cap fits all – there has to be a logical basis for the cap – is it simply that other groups have agreed to these arrangements in the past

BM – there is a value that FMG put on this process and there is a value that Yindjibarndi

Charmaine Adams (CA) – you are saying that we are not the government and we are not in a market – we are just black fellas that mean shit

CA – we don't care about the money – why don't you come to terms with our agreement – you are simply telling us you come with a set price and that is it

BM – I don't come with a set price

BM – we don't have a choice to negotiate with the government – it is important to consider what is on the table – I don't mean to insult you

CA – what you have offered is rubbish

BM – this is a starting position

4.30pm - The FMG representatives were asked to leave the room at

5pm - The FMG representatives were invited back into the room

GI – can we please get the exploration and mining leases that FMG have applied for and where they are at within the process and also if we could get information on the extra tonnage – and also the exploration licences – can I just add that if there is a rational or commercial concern then let us know what it is – however it seems that this cap you've offered is simply offered because you have been able to offer this in the past and get it accepted – It doesn't seem logical to me that simply because you have got this in the past you should impose this on the Yindjibarndi

MW wrapped up the meeting

Meeting closed 5.10pm

Third Day – Thursday 12th of June 2008

The FMG representatives for today are Blair McGlew, Briony McGinty and David Forrest

Meeting Started 10.25am

MW started the meeting – asked the Yindjibarndi negotiators to come forward

At 10.30am MW asked the FMG representatives to leave the meeting

Maudi Jerrold (MJ) – they are not giving us a straight answer – we are just asking for a fair deal – I don't know what there problem is – he is saying he is entitled to all this – but they are not prepared to offer us anything

MW – they are greedy – the law protects them (FMG)

MJ – how can they mine in our land – we are responsible for that land – why do they think they can do what they like

MW – we don't live in a perfect world – we need to make sure that we have enough leverage to get what we want – George is confident that if we go down the track of the tribunal we do have rights and tactics that we can use

GI – we heard FMG say the if the Yindjibarndi don't accept the FMG offer then they will get what they want anyway – I believe we can delay FMG long enough so that it becomes very painful for them – they need to get it through their head is that they will have to pay Yindjibarndi for their land

GI – one of the things that worries me is that FMG haven't given you all the information necessary for you guys to make an informed decision

GI – we need to be a little bit careful here – they have come here with an idea in their mind of what they need to offer – rather than dealing in good faith and being prepared to accept that the Yindjibarndi may have a different point of view

Marion Cheedy (MC) – what is this offer they made regarding exploration

GI – well they have made an offer and it is unacceptable to the Yindjibarndi – they are using your country to make their money – why can't they pay you a percentage for the use of that land

Vince Adams (VA) – my opinion is that if we concentrate on the three mining leases then the other factors will shake out

GI – precisely – we would like to concentrate on what we want and they may start to get a bit panicky about what they want and start thinking they may need to deal on some of the issues

Wendy Hubert – what about the global agreement

GI – FMG still haven't told us exactly what they want and need in relation to the global agreement – for you to make an informed decision you need to know what they are asking for

At 10.50am the FMG representatives were asked back into the room

MW – At the end of yesterday the Yindjibarndi rejected the offer you put to them

BM – thank you – good morning – Bruce Larson is not here today – and David Forrest is currently outside on the phone – he will be here soon – I am just confirming that we do have the authority to come to an agreement today

BM – put up on the screen – the Yindjibarndi offer – Blair went through what the Yindjibarndi had offered to FMG – and then what FMG had responded with

GI – I am just trying to get clear – the Yindjibarndi offer made to FMG on 10/03/08 only related to the three mining tenements applied for

BM – yes that's right

BM – so this is the offer that we are prepared to do – we will pay \$50,000 for each of the three mining tenements, we will keep the VTEC offer at \$1,000,000 per year, and we will make the capped royalty up to \$1,500,000 per year

VA – is this for each of the three mines?

BM – no this offer is for all three mining leases in total

BM – I would also like to offer business support from FMG for Aboriginal business – what I can tell you is we are determined to see these things happen (business support) – I would encourage you to talk to your Aboriginal neighbors – we got the Garriyudda people 140 housing lots for free – they were pretty happy with that

BM – one of the questions I got yesterday is why is there a cap – one of the reasons is to ensure that there are equal agreements between native title groups – the other is that FMG would like to be the lowest cost iron ore producer in the business – we don't want to be

bought out by another big iron ore producer – if we remain the lowest cost producer then we won't be bought out

PD – to himself – anyone can be bought out – if the company is well run the price simply goes up

BM – now I would like to go to our second offer – this is the global agreement – whole of claim agreement – I want to put this up because I would like you to think about it

GI – are you talking about the whole of Yindjibarndi country or the Yindjibarndi 1 Claim area

BM – I am talking about the Yindjibarndi 1 Claim area

BM – this agreement is worth a lot more to the Yindjibarndi people – I am talking about all the approvals we need – all the things we need for our project (in Yindjibarndi 1)

BM – this is the offer – we will offer a signing payment of \$250,000, a VTEC royalty of 8 cents per tonne up to \$2,000,000 annually, and 5% FOB royalty up to \$3,000,000 annually, we will scrap the 3 years royalty free period – all this is indexed to the inflation rate

PD – to himself - this is a worse offer than what he offered on just the three leases

GI – is this still the case that the RTN process

BM – we don't intend to commence the RTN process at the moment

VA – what are the figures you have just put up based on?

BM – the value of the work we put into employment programs, what feels fair, its not like petrol where we can pick and choose from the bowsers

BM – the VTEC is based on cents per tonne

VA – why do you put the offer at 8cents per tonne and then they are capped – why is that? – how do you arrive at the cap – if you cap it then the cents per tonne is meaningless – you are gambling on how many tonnes are in the country – we are giving you our country – we are being fair – we are giving you something – we are losing a hell of a lot more – what is your formula

BM – sorry I got the question wrong – I understand the question

BM – 5% FOB of any income that FMG makes – I can guarantee that this is not in any other native title claim – this is extortionally high – what is the reason behind asking for that

VA – we want to take control of our own affairs – we need that sort of funds to do our own business, to learn and practice our culture

BM – money won't give you that – I am telling you that if we give you that money you will blow it because you don't have the skills to do it – if we give you a lot of cash then you will not know how to handle it

VA – we can handle our own money – we can do our own business – we can develop our own community alongside FMG

BM – if anyone has a business proposal today then I will commit to helping you with that proposal – if you want to develop stuff then FMG is here to help

VA – the formula you have up there doesn't compute with the Yindjibarndi people

GI – can you tell me what in percentage terms the value of what you have offered - this isn't really a 5% royalty – how much does this royalty offer you have made actually work out to be in royalty terms – what is the percentage that the \$3 million works out to be

AM – have you worked this out

BM – it may be better for you to work it out

AM – so you don't know what the 5% is worth that the Yindjibarndi have offered

BM – I don't know

BM – let's work it out – 20 million tonnes @\$70 per tonnes over 20 years about \$28 million per year

AM stood up and began to work it out on the whiteboard using BM's figures

GI – well if 5% is about \$28,000,000 then the \$3,000,000 you have offered is about what – 0.5%

BM – you need to think seriously about these options

GI – The ball is in FMG's court – You said yesterday that if the Yindjibarndi wouldn't come to an agreement then FMG are prepared to go through the courts – Let me tell you that the Yindjibarndi would welcome the opportunity to go through all legal options

GI to BM – can the Yindjibarndi negotiate on an uncapped agreement within these negotiations

MW – our position is that we want 5% uncapped

GI – if you have the authority to negotiate an uncapped royalty then that is what we want to talk about

GI – well what is the government royalty – I think you said yesterday that it is about 4.7%

GI – a royalty that is capped is an illusion – we want an uncapped royalty

BM – I have come back with two proposals – I think it is reasonable – a negotiation depends on the two parties to negotiate – this number here - my offer to you that I have made is a lot to offer

CA – our country is priceless – you can't put a figure on that

BM – your point is right

GI – a royalty by definition is a percentage figure based on income – there are two ways of looking at this – a rent is what you have offered – you have offered an up to figure so there is no minimum

GI – the government gets 4.7% on revenue on which there is no cap

GI – it seems that you have offered a rent

MW – we are negotiating

BM – is there another way we can express this

CA – take the cap off

GI – if we are going to have a discussion about the royalty then do you have the authority to have this discussion about an uncapped royalty

MW – we are only here to negotiate for three mining leases – if we are to give them these mining leases then our position is that we want 5% FOB for those mining leases

BM – so what do we do from here

MW – we are not going to agree to a cap on the royalty

GI – is it open to FMG to discuss an uncapped royalty – what you have offered is not a royalty – is there scope to discuss a royalty (without a cap)

BM – I will need to think about this uncapped royalty business – there is an accusation here that FMG is not considering your offer – I am responding to your offer

MW – we don't need to think about this – we have put an offer of 5% royalty – we reject your offer – we want to talk about the royalty – it is probably good to have a break

The meeting took a break at 12 noon

Blair McGlew left the room, and Briony provided the details of FMG's tenement applications before she left for the meeting break which she had on her laptop which was then projected onto the screen via the LCD projector

During the break GI addressed the Yindjibarndi people

He went through the following figures

Assumptions:

If a mine produced 30,000,000 tonnes per annum and the sale price of iron ore is \$70 per tonne, then;

The project revenue per annum is \$2.1 billion

State Royalty Revenue @4.7% FOB = \$98,000,000 per annum

Exploration Licence Holder @ farm out JV - the going rate @2.5% FOB = \$52,000,000 per annum

Yindjibarndi royalty @5% = \$104,000,000 per annum

FMG's offer to Yindjibarndi is \$3,000,000 per annum – which equals 0.14%

Pilbara Standard FOB @0.5% = \$10,500,000 per annum

The meeting recommenced at 1.15pm

MW – introduced again and recommenced the meeting

GI – went through the figures on the whiteboard – the Yindjibarndi have asked for a royalty being a percentage of revenue – the Yindjibarndi would like to know if FMG are prepared to deal on an uncapped royalty

BM – before we go any further there are a few things I would like to talk about: they are:

1. the conduct of heritage surveys – I would like to know if the Yindjibarndi would like to do heritage surveys with FMG – FMG will always do its best to meet its obligations under the State heritage act – FMG has a bonus scheme – a large part of that bonus will not be paid if one heritage site is impacted illegally – about 70% of employee bonus' is linked to the legal protection of heritage
2. Railway licence – what I haven't heard is the group prepared to allow FMG to go ahead with the railway corridor – I would like to know the group's opinion on this issue
3. Excess Tonnage – I would like to know what you are thinking on this issue – what is your response to this – the State government have asked us to discuss this with Yindjibarndi to see what they think about this issue

GI – well with respect – you say you don't think you know where things are at – we would like to know if FMG will discuss a royalty rate

BM – I have provided two offers to the group

GI – Can I assume then that your response to royalty will be influenced by the answer the Yindjibarndi give

BM – No I would like to know your response

MW – well clearly you have our offer by the document presented on 10/03/08

BM – will Yindjibarndi do heritage surveys?

MW – the heritage agreement we have developed includes what we will do for you – it includes the compensation payment

GI – there are two processes in place here – one is the three mining leases that are in place – there is a negotiation period in play – at the end of that six months FMG can apply for determination on that tenement – the negotiations that are conducted on that must be conducted in good faith – one option is to negotiate on the three mining leases, and one is to negotiate on a whole of Yindjibarndi country approach – these surveys, the excess tonnage, the railway corridor all relate to other issues – there needs to be two aspects that are approached

BM – what does that mean?

GI – they would prefer to deal with the discussions that we had this morning

BM – we want to have heritage surveys – FMG have been suffering financially because Yindjibarndi will not do heritage surveys – I appreciate that the RTN matters are pressing but I need to know what is happening with the heritage procedures

Maudi Jerrold (MJ) – does anyone else remember which meeting was had at the Roebourne basketball courts

BM – at that meeting I asked if this was a properly constituted meeting

GI – we will answer the question

BM – are you refusing to answer

MW – we are here to discuss the issue of royalties

BM – the answer is there is no answer

GI – you will get an answer at a later date

BM – as soon as I answer the question that I was asked before lunch will I will get an answer on the three issues I have put on the board

BM – well what is the question - when we went to lunch I was a bit confused – I am not entirely clear on what the problem is

GI – let me say it clearly – the question Yindjibarndi has asked FMG is will FMG consider paying the Yindjibarndi an uncapped royalty – the Yindjibarndi don't accept a capped royalty – will FMG negotiate on an uncapped royalty percentage figure – that is the kind of negotiation that Yindjibarndi would like to enter into

BM – I still need to think about this issue – I am still perplexed – the royalty is still a royalty if it is capped – I don't know – I talked about a maximum figure – we don't know how many tonnes will be mined on Yindjibarndi country – is this the only position on which the talks can progress

VA – it doesn't matter how much ore you take out – we are asking for a percentage of the revenue on whatever goes out

BM – I can't predict what tonnage – we need to do more work on this issue – I need to go away and think about this – the question being asked of me is to hard to answer today

GI – that is not what Yindjibarndi is asking – they are asking for an answer on whether FMG is prepared to go into a percentage relationship with Yindjibarndi

BM – I am not going to come up with a number on the run

GI – but this is not a problem

BM – I can't give you an answer today

MW – we gave you this information three months ago – this is our proposal – we requested that in the offer given to FMG on 10/03/08 – you have ignored the document we gave you – you are not acting in good faith – you made the date for this meeting, not us - you had the time to do your homework – and yet still you can't give us an answer today – at every meeting we have brought our decision makers so that we can reach an agreement, but you cannot make a decision on what we have asked for even after all the time you have had our offer

BM – this is a really important part of this meeting – I have put this on the board – I have made an offer – that is a royalty payment with a maximum figure

BM – I have tried to make sure we had the best offer we could put on the table – this is a fair and reasonable response to your offer

MW – my recollection of that meeting was that we gave you our offer and you came back with a response which we rejected

BM – I cannot give you a response on the uncapped royalty

GI – to be fair – if you go ahead with the project then you will be paying a royalty to the State government

MW – what is wrong with our proposal

BM – I am not sure what your proposal is

MW – our proposal is to get a 5% uncapped royalty on the sales

GI – Yindjibarndi want an uncapped royalty – is FMG prepared to negotiate a royalty figure?

BM – we will negotiate an uncapped royalty with the Yindjibarndi – I can't get the answer today

MW – so you will negotiate an uncapped royalty payment to the Yindjibarndi

BM – yes – absolutely

1.55pm the meeting went into a break period

2.10pm the meeting between the Yindjibarndi recommenced

The FMG representatives have left the room so the Yindjibarndi can talk amongst themselves

MW – Simon is going to get up and go through the meeting where to from here

GI – just quickly – in my opinion, because of that admission by BM, we can argue that negotiations in good faith have only just started

SM – because they applied for the right to negotiate we have very little time left – my opinion is to only now reach an agreement on a heritage agreement, as long as FMG give us an extension on the Right to Negotiate

MW – all the time we are trying to maintain our position on this – and it is great that we have the whole of the community in this and at this meeting and every other meeting

MW – we need to always negotiate in good faith – we just want a win win

At 2.30pm the FMG representatives were invited back into the room

GI – the Yindjibarndi have asked me to thank you for entering into negotiations in good faith – the Yindjibarndi would like to have a twelve month extension on the right to negotiate and for that the Yindjibarndi will sign the heritage agreement so they are on country doing heritage surveys

BM – thanks for at least thinking about these issues – I should probably just make a few comments about our project – the reason we are trying to secure mining leases is that when we go to the market we want to have a lot of issues in play – I can't agree to not leave tribunal applications for twelve months – I can't agree to these terms

GI – I thought you said you could agree to an extension of time

BM – no I said in relation to exploration leases we would agree to an extension of time

BM – so your argument is that when we lodge a section 35 - FMG has a stronger position – it generally takes about 8 months away from lodging a section 35 application anyway

GI – so why not give Yindjibarndi at least some time to negotiate in good faith

BM – but we've got 8 months

GI – but what you are doing is denying the Yindjibarndi the time to negotiate in good faith – because the time will run against the Yindjibarndi

BM – are you suggesting that FMG is not negotiating in good faith

GI – I am suggesting that the Yindjibarndi need time to negotiate in good faith – the Yindjibarndi would be free to negotiate then without the worry of the ticking clock

BM – we have had to suffer financial loss because of Yindjibarndi refusing heritage surveys and now you are asking for a period of time where FMG shows Yindjibarndi more grace

BM – I would like in writing why Yindjibarndi would like an extension of time – and I will go and do my homework on the royalty payment

GI – so we are clear – we are asking for a period of time so that we don't have to prepare litigation

BM – so you are suggesting that FMG has not been negotiating in good faith because that is the basis of an objection to a section 35

Yindjibarndi Aboriginal Corporation Negotiation 3 day Meeting with FMG minutes
commencing 10-06-08 Page 21 of 21

GI – no – there are two reasons for objecting to a section 35 application – I thought you wanted people participating in heritage surveys – that is why we have put this offer to you

BM – so we are probably done here – after withholding heritage surveys for so long and now I am being asked to consider the Yindjibarndi position

GI – why not leave the section 35 applications to at least the last date which is October 8

BM – the pressure within FMG is on to get these mining leases in place – that is to do with raising money, not actually ‘doing’ the mine

David Forrest (DF) – I really hope that the Yindjibarndi can get some reasonable deal out of the development that will happen on your country – I want to see these fellas here retire on a very good and comfortable note – Mines exist down there – but you exist down here – anyway I hope something comes out of this soon

MW – well that’s it

Meeting Closed 2.50pm

“MW-29”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 7 pages is the annexure marked “MW-29” referred to in the witness statement of Michael Woodley dated 5 June 2023.

**Minutes for the
Yindjibarndi Aboriginal Corporation Directors Meeting with De Beers, API
Management and Aquila
Meeting at the Juluwarlu Group Aboriginal Corporation Office
Thursday the 19th of June 2008**

Meeting Started 10.35am

Present

Yindjibarndi Aboriginal Corporation Directors

Barry Pat, Stanley Warrie (Chairperson), Aileen Sandy, Ashley James, Doris Lockyer, Charmaine Adams, Jimmy Horace, Dora Solomon, Rosemary Woodley, Bridget Warrie

Yindjibarndi Elders

Ned Cheedy, Joyce Hubert, Sylvia Allan, Rosie Cheedy, Maudie Jerrold, Jill Tucker, Alec Ned, Shirley Woodley, Marie Edwins

Yindjibarndi Aboriginal Corporation Executive Officer

Michael Woodley

Yindjibarndi Community Members

Thomas Jacobs, Lorraine Coppin, Angus Mack, Lyn Cheedy, Jean Norman, Sharon Togo, Sharona Walker, Glen Toby, Lyle Wally, Wendy Hubert, Lesley Walker

Other Community Members

Josie Samson

Support Team

Philip Davies (Minutes), Glen Toby (Filming), Lyle Wally (filming), Sharona Walker (Food), Sharon Togo (Food), Lorraine Coppin (Food), Fernando Hincapie, Vicki Webb, Jo Pritchard

De Beers, API Management and Aquila

Peter Winter - Land Manager Australian Premium Iron (API Management), Stuart Tuckey (API Management), Mark Mitchell (De Beers), Brent Green (Aquila)

Apologies

No apologies were delivered

Opening of the meeting

Michael Woodley (MW) started the meeting – told the Yindjibarndi people who they were meeting with today – one of the benefits of these meetings is for us to understand who these people are what they want – we are prepared to work with proponents if they respect the Yindjibarndi people and their land

At 10.45am MW invited the proponents into the meeting

MW asked for a minute's silence which the group observed

MW introduced the Yindjibarndi Directors and Elders to the proponents

Peter Winter (PW) began his presentation to the Yindjibarndi group

There has been a previous agreement between API and the Yindjibarndi over some granted tenements in the Millstream area

Peter went through the tenements being applied for in this instance – there are a total of ten tenements currently being applied for

De Beers are the company that has applied for the tenements

In 2006 API did a deal with De Beers over the iron ore within the tenements (retaining an interest) De Beers hold the rights to diamonds within the tenements and Aquila hold the interest in all other minerals within the tenements

API is essentially a joint venture with its focus on developing iron ore in the Pilbara

Aquila is an ASX listed company

AMCI is an unlisted company controlled from the United States

API has been in existence for about three years

API are wanting to be a miner and exporter – they have a resource of about ½ a billion tonnes of iron ore in the West Pilbara which is now to undergo a full feasibility study regarding its viability

Stuart Tuckey (ST) began his presentation for API on its exploration activities – the Hamersley Ranges are very prospective for iron ore – we are looking to explore in your country – exploration is pretty straightforward – helicopter surveys, four wheel drives, surface sampling, rock chip samples, no ground disturbing, if things seem promising we will need to undertake heritage surveys with the Yindjibarndi people

Brent Green (BG) began his presentation for Aquila Resources – concentrating on coal, iron ore and manganese, coal goes with iron ore to make steel, as well as other minerals – we have retained the rights to other minerals (other than iron ore and diamonds) within the De Beers held tenements – head office is in Perth – smaller offices in Brisbane and Johannesburg – Aquila actively encourage API to look for iron ore within the tenements

Aquila is targeting manganese, base metals and gold for the northern Hamersley Basin – geologically we think there are prospects for these minerals

We use satellites, remote sensing techniques, analyse samples from the partners within the tenements etc – we do have a gold target and copper and zinc target within the tenements that have already been granted

Within the tenements that we are applying for there is likely to be manganese which is generally situated in the valleys associated with dolerite

Stanley Warrie (SW) asked whether uranium might be there – BG said that we are not focused on uranium because we are not allowed to mine it at the moment but it is prospective for uranium

Mark Mitchell (MM) for De Beers made his presentation – we produce about 40% of the world's diamonds by value

Diamonds are very hard to find – there is really only one diamond mine which is worthwhile which is Rio's Argyle Diamonds

We are looking for rock at least 24 billion years old – we came through the West Pilbara in the 1970's – we have been operating in Australia for about 40 years

The chance of finding diamonds and making it into a mine is about 3 in 10,000

Diamonds are used in lasers, industry and mainly gems for the jewelry business

MW – why are you in the Pilbara and that particular area

MM – the land is very old and we have found some diamonds on the Fortescue at a place called the Black Top Hills but the carats were very low and not feasible for mining – we signed an agreement with the Yindjibarndi in 2002 when you were represented by the PNTS – we've got to get the tenements granted and I have to compete with the rest of De Beers exploration budget to get the funding to do the exploration

The proponents finished their presentations

MW asked that Peter speak about the granted tenements and then the tenements being applied for

PW – De Beers own the tenements

MW – we understand that the tenements are owned by De Beers – does the agreement that De Beers have with the Yindjibarndi reflect the business arrangements that API and Aquila have with De Beers

PW – the mining act allows for multiple companies to explore for minerals within the tenements

MW – how much activity has been undertaken within the tenements that are already owned by De Beers

PW – no heritage surveys have been undertaken in the tenements that have been granted

PW – API will manage the tenements for De Beers in all tenements held by De Beers (including those that have been granted and those that have been applied for)

MW – we don't agree with the notion of 'low impact' – we regard all impact as high impact

MW – the ten tenements that you are applying for – how much are in Yindjibarndi country

PW – used the table from the power point presentation to show how much is in Yindjibarndi country

MW used the powerpoint presentation to illustrate to the people where the proponents

Philip Davies (PD) asked whether the proponents would be willing to include the three tenements that have already been granted with the ten tenements that have been applied for, to all be included within an updated heritage agreement.

PW – said in principle he didn't think there would be a problem with that

MW said the Yindjibarndi would discuss this over lunch and invited the proponents back in an hour

At 12.15 pm the proponents left for lunch

At 1pm the meeting reconvened without the industrial proponents in the room

MW went through the heritage agreement that was signed with De Beers by PNTS – everyone agreed that no-one from Yindjibarndi was consulted in 2002 when PNTS signed this heritage agreement on their behalf but the Yindjibarndi may be stuck with it – unless the proponents are willing to include the tenements that are the subject of signed PNTS agreement with a new heritage agreement – which is the YHA

MW – while we are waiting for the proponents to join us again in the meeting - what did you fellas think about the three day negotiation meeting with FMG?

Stanley Warrie (SW) – the three day meeting was good – it is the only way to go – we stuck together and told them what we want – they are meeting with the Yindjibarndi who have got their act together

MW – and nobody else goes and talks on our behalf – we are the decision makers – we will have the decision makers at the meetings all the time

At 1.33pm the proponents returned and joined the meeting

MW thank you for rejoining us – we thank you for coming – we think what you are doing is a remarkable step by meeting the people and joining in a partnership

MW gave the proponents the Yindjibarndi Heritage Agreement (YHA) – we didn't know about the previous heritage agreement that was signed on our behalf from PNTS

The proponents, SW, MW went outside to take a photo handing over the YHA with Vicki as the photographer

MW thanked the proponents for coming

PW – if I could just add to what Michael has been saying – we thank you very much for making your time available – and it is great to actually know the people from both aspects - yours and mine – I am hoping that our hopes and expectations are balanced

MW – this is all about negotiations and our YHA is all subject to you finding something in our country – if you find something then we will benefit in the same way your companies do

1.45pm - The proponents left the meeting at 1.45pm

The Yindjibarndi discussed their own business from that point

Jill Tucker (JT) said she would like to start her own business and would like to get funds from the Yindjibarndi to assist her

Maudie Jerrold (MJ) said she would like assistance quickly and wants to come to an agreement with FMG

SW – said that we have to hang tough

MW – said that these negotiations may take time – hopefully if we do a good enough deal then we can assist our own people with our own Yindjibarndi money

MJ – is it alright if I set up a roadhouse, a workshop in Millstream and I have a heap of other ideas

MW – your ideas are good – but this is too early – we just need to negotiate a good deal and we can spend our own money on what we want

MJ – you haven't looked at my proposal – can you back us up

MW – the Yindjibarndi will back you up

Barry Pat – that's what we want – we want a good deal so we can do our own business

JT – we have a new camp at Millstream – it would be great to see some of our own Yindjibarndi out there doing our own stuff – we can go joint ventures with the CALM – and then when we have a good hold we can go it alone

MW – the Yindjibarndi Aboriginal Corporation (YAC) is the only committee that governs all Yindjibarndi business – this committee is the peak body – later in the year there will be an Annual General Meeting where the Directors are elected in an open honest transparent manner – we feel your pain but the YAC is aiming to get the best deal

Yindjibarndi Aboriginal Corporation Process

Resolution 1

That the Yindjibarndi Aboriginal Corporation (YAC) is the only entity that governs all Yindjibarndi affairs – Yindjibarndi members are not to go outside the Yindjibarndi Aboriginal Corporation process.

Moved: Charmaine Adams

Seconded: Stanley Warrie

Passed Unanimously

Yindjibarndi Legal Representation

Resolution 2

That the Yindjibarndi Aboriginal Corporation (YAC) invite Simon Millman (Slater and Gordon), George Irving (Barrister) and Adrian Murphy (Social Licence) to represent the YAC in all other matters from this point in time onwards until they are told otherwise.

Moved: Charmaine Adams

Seconded: Jimmy Horace

Passed Unanimously

National Native Title Tribunal

MW said that the National Native Title Tribunal (NNTT) is giving an information day in Roebourne at the Community Hall on 02/07/08 – all Yindjibarndi are invited

Rio Tinto

MW said that Rio Tinto have asked to see the Yindjibarndi people again following their meeting with the Yindjibarndi on the 06/05/08 – they have requested a meeting for the 10/07/08 but the Yindjibarndi want to have their legal team at that meeting with Rio so

the meeting will be delayed until they are available – MW will talk to Rio (Bill Hart) about reaching a suitable date

Also Rio have disturbed a registered Yindjibarndi site under the Fortescue Bridge on the Pannawonica road – we have complained to the DIA and they have written a very stern letter to Rio – we are waiting for Rio to get back to us

Dismissing Michael Rynne as the Yindjibarndi Barrister for the Yindjibarndi 1 Native Title Claim

Resolution 3

That the Yindjibarndi Aboriginal Corporation (YAC) dismiss Michael Rynne as their Barrister representing them in the Yindjibarndi 1 native title claim – a letter will be sent to Michael Rynne telling him of this decision asking him to send a final account to the Yindjibarndi Aboriginal Corporation for any work completed on the Yindjibarndi claimant’s behalf.

Moved: Aileen Sandy

Seconded: Charmaine Adams

Passed Unanimously

Appointing George Irving as the Yindjibarndi Barrister for the Yindjibarndi 1 Native Title Claim

Resolution 4

That the Yindjibarndi Aboriginal Corporation (YAC) write to Simon Millman of Slater and Gordon to invite George Irving to act as their Barrister representing them in the Yindjibarndi 1 native title claim.

Moved: Jimmy Horace

Seconded: Dora Solomon

Passed Unanimously

Eastern Gurrama issues

The letter has gone to the Eastern Gurrama people with a map of the correct native title boundaries, as well as a DVD made for the Yindjibarndi 1 Native Title claim – we are waiting to hear back from the Eastern Gurrama people.

FMG and Cazaly

MW raised the recent deal done between FMG and Cazaly whereby FMG will pay Cazaly 1% uncapped for their Rhodes Ridge tenement if they can get it off Rio – MW contrasted this with what FMG are offering the Yindjibarndi – they are not worrying about VTEC or trusts etc – it is straight business – this is what the Yindjibarndi want – none of the other rubbish.

Meeting closed 2.50pm

“MW-30”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 6 pages is the annexure marked “**MW-30**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

Minutes for the
Yindjibarndi Aboriginal Corporation (YAC)
Annual General Meeting
Meeting at the Roebourne Community Hall
Wednesday the 17th of December 2008

Meeting Started 11.45 am

Yindjibarndi Aboriginal Corporation Chairperson – Stanley Warrie

Agenda Items

1. Attendance

Yindjibarndi Aboriginal Corporation (YAC) Directors

Barry Pat, Stanley Warrie, Rosemary Woodley, Dora Solomon, Harry Mills, Doris Lockyer, Aileen Sandy, Jimmy Horace, Stephen Hubert

Yindjibarndi Elders Committee Members

Ned Cheedy, Joyce Hubert, Sylvia Allan, Maudie Jerrold, Shirley Woodley, Rosie Cheedy

Yindjibarndi Aboriginal Corporation Executive Officer

Michael Woodley

Yindjibarndi Aboriginal Corporation Members

Lorraine Coppin, Angus Mack, Ricky Sandy, Lyn Cheedy, Clifton Mack, Michelle Adams, Gabrielle Cheedy, Lesley Walker, Judy Albert, May Adams, Roxanne Adams, Stephen Adams, Jessica Allan, Alum Cheedy, Fabian Cheedy, Kasey Cheedy, Rebecca Cheedy, Robert Cheedy, Shantelle Cheedy, Tiffany Churnside, Tootsie Daniels, Susan Edwins, Kevin Guinness, Alice Guinness, Bigali Hanlon, Tony Harrold, Kaysha Hicks, Sarah Hicks, Thomas Jacobs, Jennifer Toby, Amy Jerrold, John King, Curtis Lockyer, Howard Lockyer, Bruce Monadee, Jean Norman, Esther Pat, Celia Sandy, John Sandy, Ken Sandy, Russell Sandy, Diana Smith, Karen Toby, Sharon Togo, Jill Tucker, Renea Walker, Janice Warrie, Joylene Warrie, Kaye Warrie, Sharon Warrie, Wendy Warrie, Rebecca Williams, Finola Woodley, Hayden Woodley, Preston Woodley

Yindjibarndi Support Team

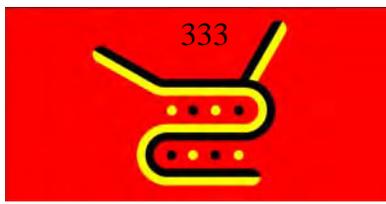
Philip Davies (Juluwarlu - minutes), Inge Olmheim (Juluwarlu - Filming), George Irving (Barrister for the Yindjibarndi Aboriginal Corporation), Jo Pritchard (Juluwarlu), Simon Millman (Lawyer for the Yindjibarndi Aboriginal Corporation – Slater and Gordon - Simon arrived at the meeting at approximately 1.50pm after flying up from Perth), Fernando Hincapie (Juluwarlu)

2. Apologies

Charmaine Adams

3. Confirm the minutes of the previous Yindjibarndi Aboriginal Corporation (YAC) Annual General Meeting held Thursday 08/11/07 at the Roebourne Community Hall

Philip Davies read the minutes of the previous YAC Annual General Meeting held 08/11/07. The minutes were accepted as being an accurate reflection of the discussions and decisions made within the meeting.



YINDJIBARNDI ABORIGINAL CORPORATION

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A resolution was passed by the YAC members that the minutes be accepted as read with no amendments:

Moved: Michelle Adams

Seconded: Aileen Sandy

Passed Unanimously

4. Any business arising from the minutes

There was no business arising from the minutes

5. YAC Chairperson's Report

Stanley Warrie, Chairperson of the Yindjibarndi Aboriginal Corporation thanked the people for electing and supporting him as their Chairperson for the past year and a bit. Stanley said he has had a lot of things he wanted to do for the Yindjibarndi people and he is particularly pleased that the YAC has Juluwarlu managing the affairs of the YAC on a daily basis, and that there is a legal team in place that can fight some of the battles that the Yindjibarndi people have been so frustrated about for so long. He is very happy that now companies who wish to make money out of Yindjibarndi land have to come and see the people before they can do any development.

Stanley said he has seen a lot of suffering for a long time and he knows that if we stay strong as a group we may finally be able to get some social and economic justice from Australian Governments and the companies who become rich from our land while giving us nothing – he said they just give the Yindjibarndi rubbish, peanuts compared to what they are making – while we continue to live in poverty.

He concluded by saying that we have a big fight on our hands to achieve justice, but he is confident we have the right team together, and he hopes the Yindjibarndi people give him the chance to complete the job we have started by re-electing him as a Director, and hopefully as Chairperson.

6. Yindjibarndi Business and Activities – presentation by YAC Executive Officer Michael Woodley

After working on the Yindjibarndi history and culture for 8 years at Juluwarlu Group Aboriginal Corporation I feel that we may finally be able to succeed by bringing companies to account for their discrimination against us. The legal and management team that we have put together have developed some great arguments that we want to run.

I want to thank the Yindjibarndi community and Directors for supporting the Yindjibarndi vision in an open, honest and transparent manner. All decisions that we make are made in these types of meetings where all Yindjibarndi people have a voice. If you have an opinion on something then you can give it. We are given a clear direction by you – the Yindjibarndi people – so that we can act in our own interests. And we are using our resources to the best of our ability to try and get justice for the Yindjibarndi people. We have been ignored and discriminated against for so long.

All our meetings are open for all Yindjibarndi people, they are all held in Roebourne where the companies have to come to meet us, they are all filmed and good minutes are taken, and all Yindjibarndi are welcome to come for the information at any time.

Juluwarlu has just finished its fifth book – this one on the Wurumbarri area – these are all great documents for us now and into the future – because we are documenting our culture so that it remains strong into the future

We are in the best position possible and what has put us in this position is that you people have made the commitment to invest in arguments that will support our cases in our negotiations and in the courts – we all know that costs money but we are hoping that it will pay us big dividends in the future



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7. Presentation of Yindjibarndi Native Title Matters by YAC Barrister – George Irving

George spoke for over an hour on the various native title matters and the arguments that he has developed in conjunction with Juluwarlu, Slater and Gordon, Adrian Murphy and the Yindjibarndi people.

He explained the two major legislative areas in which the Yindjibarndi are arguing. One is under the jurisdiction of the Mining Act and the other is in the jurisdiction of the Native Title Act.

He put the following information on the whiteboard comparing the rights of a Private land owner compared to the rights of Native Title Holders:

Left Hand Side of Whiteboard:

Rights of Private Land Owners

Under Mining Act

1. No mining on pre-1899 freehold
2. No entry without permit from court
3. Must give notice to land owner of application
4. Land Owner can object
5. Must give land owner notice of any further applications – eg Exploration licence, mining licence etc
6. Must pay compensation to land owner before starting any mining
7. Compensation includes: loss of use, social disruption
8. If there is no agreement on compensation – then the warden decides

Right Hand Side of Whiteboard:

Rights of Native Title Holders (or Owners)

Under Native Title Act

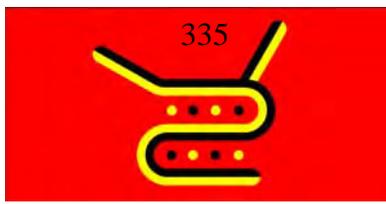
1. No requirement for mining company to apply for permit to enter (to mark out the tenement)
2. Expedited procedure notice by government removes right to negotiate on exploration licence
3. Right to negotiate about mining leases +
 - a. Right to talk to mining company for 6 months about getting some form of compensation – eg royalty – but no right to veto
 - b. Mining company not required to pay royalty for S35 determination because mining lease can be granted without any compensation - NNTT makes the determination
4. Native Title Holders can apply for compensation but compensation is any to be paid is after a determination and is limited to unimproved freehold value

George told the people that the legal team had now lodged 71 objections to various applications and are pursuing and developing plausible arguments for the Yindjibarndi that may win in the various jurisdictions offered by the legislature throughout Australia, however they may prove costly, many have not been run before (“although in most case I don’t know why not”), and we have no guarantee of success

George said he is fully committed to the Yindjibarndi people, their pursuit of justice and he will do everything possible to achieve that aim.

8. Present the YAC Management Accounts

Phil Davies presented the management accounts, being the YAC Balance Sheet and the Profit and Loss, for the 2007/2008 financial year for the YAC – they are attached to these minutes – Philip explained that these figures are not the audited accounts. The management accounts have gone to the YAC’s accountant – Gary Slee who will prepare them for the YAC auditor – Ric West & Associates – however Philip does not anticipate that the audited accounts will materially be any different to the management accounts presented here today except that the Auditor will also



YINDJIBARNDI ABORIGINAL CORPORATION

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A.B.N. Number 97 456 543 455

produce the Director's Report. Philip suggested that these figures be accepted by the members as an interim measure, while the audited accounts are still being prepared, and we will aim to have the final audited accounts for 2007/2008 presented to the YAC members at the YAC Special General Meeting to be held in February 2009.

The following resolution was put to the members:

Resolution One – Agenda Item 8

That the management accounts being the YAC Balance Sheet and the YAC Profit and Loss for the 2007/2008 financial year presented by Philip Davies here today be accepted by the members in the interim while the audited set of accounts and Director's report are still to be prepared by the YAC auditor. We will aim to have the final audited accounts ready for the YAC Special General Meeting which is scheduled to be held in February 2009.

Moved: Barry Pat

Seconded: Harry Mills

Passed Unanimously

9. Discuss the requirements for incorporating the Australian Government's Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI) into the Yindjibarndi Aboriginal Corporation Constitution

Philip Davies presented to the members the need for the YAC to incorporate the new CATSI reporting requirements into the YAC Constitution. Philip suggested that we aim to have the amendments ready by the YAC Special General Meeting scheduled for February 2009. If we do this then we can liaise closely with ORIC and also George Irving our Barrister has offered to look over and advise us on the suitability/compliance of the revised document.

Following discussion the members made the following resolution:

Resolution Two – Agenda Item 9

That we aim to have the ORIC CATSI compliance requirements ready to be implemented into the YAC Constitution for the YAC Special General Meeting which is scheduled to be held in February 2009.

Moved: Stanley Warrie

Seconded: Bigali Hanlon

Passed Unanimously

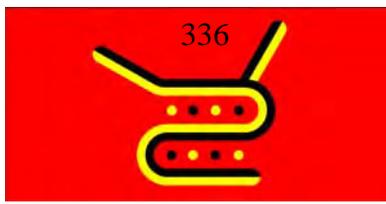
10. Declare all Yindjibarndi Directors positions vacant and elect 12 new Directors

On behalf of the Yindjibarndi members Philip Davies thanked the YAC Directors that had been elected at the 2007 Annual General Meeting for their hard work, dedication and vision.

The members decided to elect 8 members to the Yindjibarndi Elders Council – the members realise that this committee only acts in an advisory capacity for the YAC Directors and bears no statutory authority. In light of this the members still decided that the Elders Council is a vital part of Yindjibarndi decision making process and that they should be elected at this point in the meeting.

The members agreed that the Yindjibarndi Elders Council would be made up of the following 8 people:

1. Ned Cheedy
2. Joyce Hubert
3. Bigali Hanlon
4. Maudie Jerrold
5. Sylvia Allan
6. Shirley Woodley
7. Bruce Monadee
8. Diana Smith



YINDJIBARNDI ABORIGINAL CORPORATION

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With regard to the Yindjibarndi Elders Council the YAC members made the following resolution:

Resolution Three – Agenda Item 10

That the 8 people mentioned above make up the Yindjibarndi Elders Council and will be placed with this task for the coming year until at least the next Yindjibarndi Annual General Meeting.

Moved: John Sandy

Seconded: Thomas Jacobs

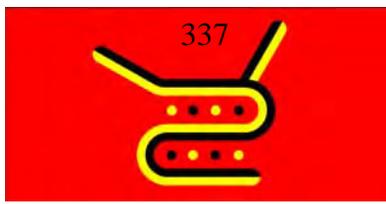
Passed Unanimously

At this point in the meeting the Chairperson vacated the Chair and on behalf of the Yindjibarndi Aboriginal Corporation members Philip Davies declared the YAC Directors positions vacant and asked for nominations for 12 new YAC Directors.

The following nominations for YAC Directors were received:

1. Tootsie Daniels Nominated by Jill Tucker
Tootsie accepted the nomination
2. Thomas Jacobs Nominated by John Sandy
Thomas accepted the nomination
3. John Sandy Nominated by Thomas Jacobs
John accepted the nomination
4. Rosemary Woodley Nominated by Lorraine Coppin
Rosemary accepted the nomination
5. Stanley Warrie Nominated by Lorraine Coppin
Stanley accepted the nomination
6. Gabrielle Cheedy Nominated by May Adams
Gabrielle accepted the nomination
7. Stephen Hubert Nominated by Maudie Jerrold
Stephen accepted the nomination
8. Lyn Cheedy Nominated by Rosie Cheedy
Lyn accepted the nomination
9. May Adams Nominated by Rosie Cheedy
May accepted the nomination
10. Jimmy Horace Nominated by Rosie Cheedy
Jimmy accepted the nomination
11. Clifton Mack Nominated by Maudie Jerrold
Clifton accepted the nomination
12. Rosie Cheedy Nominated by Lorraine Coppin
Rosie accepted the nomination

There being 12 nominations for the 12 Director positions the members made the following resolution:



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

Resolution Four – Agenda Item 10

That the 12 people nominated for the 12 vacant YAC Director's positions be appointed as Directors for the Yindjibarndi Aboriginal Corporation until the next YAC Annual General Meeting.

Moved: Angus Mack

Seconded: Aileen Sandy

Passed Unanimously

11. Appointment of Yindjibarndi Aboriginal Corporation Examiner

The members made the following resolution

Resolution Five – Agenda Item 11

That the YAC re-appoint Ric West & Associates as their corporation's auditors for the Yindjibarndi Aboriginal Corporation for the 2008/2009 financial year.

Moved: Thomas Jacobs

Seconded: Bigali Hanlon

Passed Unanimously

12. Appoint Yindjibarndi Aboriginal Corporation ORIC Contact person

The members made the following resolution

Resolution Six – Agenda Item 12

That the YAC re-appoint Philip Davies as their Public Officer until the next YAC Annual General Meeting. It is our intention for Philip to also act as the YAC Contact Officer after the new CATSI regulatory requirements are incorporated into the YAC Constitution, if as expected, they are incorporated into the Constitution before the next YAC AGM.

Moved: Tootsie Daniels

Seconded: Rosemary Cheedy

Passed Unanimously

13. General Business

There was no further General Business

14. Presentation by Simon Millman – Slater and Gordon

Simon Millman – who is the acting for the YAC as our solicitor based at Slater and Gordon presented to the group some of the legal arguments and strategies undertaken on behalf of the group. In his opinion the Yindjibarndi are a very sound group to work for because the Yindjibarndi are very united with a very strong, vibrant and cohesive culture that governs your actions, priorities and directions.

Simon stated that Slater and Gordon is very comfortable and confident that together we can develop some very strong arguments for the Yindjibarndi that have the potential to bring better social and economic outcomes for the Yindjibarndi people.

Meeting Closed 3.37pm

“MW-31”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

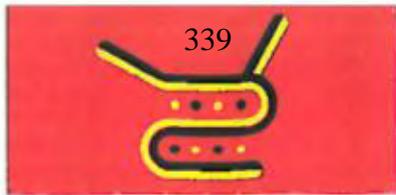
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-31” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

16/04/09

Jane Pemberton

Heritage Approvals Coordinator

Fortescue Metals Group

Level 2

87 Adelaide Terrace

Perth, WA

6004

Main: 08 6218 8710

Mobile: 0448 975154

Fax: 08 6218 8880

E-mail: jpemberton@fmgl.com.au

Web: www.fmgl.com.au

CC: Blair McGlew FMG
CC: Stuart Robinson FMG
CC: Simon Millman Slater & Gordon

Re: Yindjibarndi/FMG Firetail Heritage Survey Request to commence 27/04/09

Dear Jane,

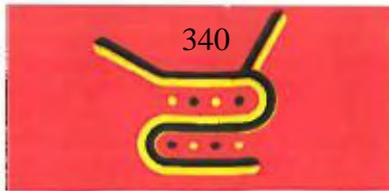
Thank you for your emails to Philip Davies dated 06/04/09 and 16/04/09, and your phone message left on my mobile phone on Tuesday 14/04/09. The Yindjibarndi also received FMG's revised draft Land Access and Mineral Exploration Agreement via email from Sukhpal Singh on 15/04/09.

Subsequently Phil and I have spoken to you briefly today.

The Yindjibarndi are willing to commit to FMG's request for a further 10 day heritage survey commencing Monday 27/04/09. As we understand it, and in the absence of any other documentation received by the Yindjibarndi to this point, this heritage survey will be a continuation of FMG's survey requests YIN 23(B) and 26 which was emailed to Philip Davies and me by you on 01/04/09. The attachment to the email contained a map and an FMG memorandum from Nicholas Nitschke (CC: Stuart Robinson) to Heritage (FMG) outlining the heritage work to be completed at Firetail.

Just to reconfirm previous discussions on site, the Yindjibarndi survey team will not conduct any 'block' ethnographic or archaeological heritage surveys, but will complete a work program that inspects proposed FMG drill holes. The inspection result will either sanction or cancel the proposed drill hole depending on the its potential interference with a culturally significant feature.

During the recent survey held at Firetail by the Yindjibarndi from the 03/04/09 to 09/04/09 it came to our attention that FMG have been conducting surveys in Yindjibarndi country without the Yindjibarndi being present. We reiterate that we



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

strongly oppose this behaviour – we are the only people who speak for our country, and the only people who should conduct Yindjibarndi heritage surveys on our country are those people authorised to do so by the Yindjibarndi Aboriginal Corporation (YAC).

In the meeting held on 08/04/09 which commenced at 5.30pm at the FMG Solomon camp between Stuart Robinson (FMG), Tiny Godley (FMG), Andrew Munro (FMG), Wayne Glendenning (Western Heritage Research), Jim Dawson (Western Heritage Research) and the Yindjibarndi representatives, the Yindjibarndi requested copies of all previous heritage surveys that were undertaken by FMG without YAC authorised heritage participants. Stuart said he would provide these reports to us; would you please send these as soon as possible.

Philip Davies is currently working on the ethnographic report for the Yindjibarndi heritage survey completed last week (03/04/09 to 09/04/09). The ethnographic report will not be a 'block' ethnographic heritage report – it will mirror the work performed by the Yindjibarndi heritage team which inspected and cleared or rejected proposed FMG drill holes. The report will also include the recommendations made by the Yindjibarndi participants during the survey. The ethnographic report will be completed and sent to you by the close of business on Monday 20/04/09, along with the accompanying invoice from Juluwarlu Group Aboriginal Corporation.

We look forward to working with you over the coming weeks

Yours sincerely

Michael Woodley
Executive Officer
Yindjibarndi Aboriginal Corporation
Phone: 08 91821497
Mobile: 0419 097130
Email: mwoodley@juluwarlu.pilbara.net

“MW-32”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “MW-32” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

20/04/09
Blair McGlew
Fortescue Metals Group
Level 2, 87 Adelaide Terrace
Perth, WA, 6004
Main: 08 6218 8710
Fax: 08 6218 8880
CC: Sukhpal Singh FMG
CC: Simon Millman Slater & Gordon

**Re: Yindjibarndi/Fortescue Metals Group (FMG) Land Access and Mineral
Exploration Agreement**

Dear Blair,

The Yindjibarndi Aboriginal Corporation (YAC) acknowledges receipt of the amended Land Access & Mineral Exploration Agreement, emailed to Simon Millman (Slater and Gordon), and Philip Davies and myself at Juluwarlu Group Aboriginal Corporation, by Sukhpal Singh (FMG), which we received 15/04/09.

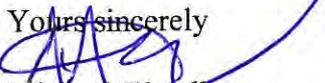
Sukhpal's email was in response to the unamended YAC/FMG Land Access & Mineral Exploration Agreement emailed to you by Philip Davies on 26/03/09 on behalf of the YAC.

After giving the matter our fullest consideration, we do not believe it is appropriate to negotiate one agreement to cover both the exploration licences already held by FMG (E47/1333, E47/1334 and E47/1447) and those for which FMG has applied (E47/1398 and E47/1399).

In respect of E47/1333, E47/1334 and E47/1447, the Yindjibarndi are already conducting Heritage surveys.

In respect of FMG's new applications (for E47/1398 and E47/1399) the position of the Yindjibarndi Aboriginal Corporation is that the Land Access & Mineral Exploration Agreement, in its unamended form, sets out the minimum terms upon which YAC will consent to the grant of those tenements. Please advise if FMG wishes to progress the grant of those tenements on that basis.

Yours sincerely


Michael Woodley
Executive Officer

Yindjibarndi Aboriginal Corporation

Phone: 08 91821497

Mobile: 0419 097130

Email: mwoodley@juluwarlu.pilbara.net

“MW-33”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 14 pages is the annexure marked “MW-33” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI
PROSCRIBED BODY CORPORATE

17th of June 2009.
Blair McGlew
Fortescue Metals Group

RE: Meeting with Yindjibarndi

Dear Blair,

I am writing in response to the message you left on my phone yesterday asking to meet with me today about moving forward.

As you are aware, Yindjibarndi met with Mr. Sukhpal Singh on the 24 March 09, to discuss Heritage Surveys at Firetail. During that meeting Mr Singh advised us that “FMG needed to come back and walk through that door again to reach a land access agreement with Yindjibarndi”. The Yindjibarndi took this to mean that FMG was serious about re-engaging with Yindjibarndi to negotiate a Land Access Agreement. Accordingly, Yindjibarndi agreed to conduct a ten-day heritage survey. In doing so, the Yindjibarndi trusted that, in return for conducting the requested heritage surveys, FMG would honour its commitment and recommence negotiations with Yindjibarndi. However, this did not eventuate.

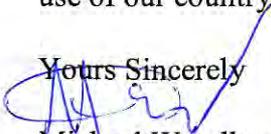
In the result, it is now very clear to us that FMG’s only intention was to obtain Heritage clearances so that FMG could continue its exploration activities on Yindjibarndi country. It is also very clear that FMG has no intention of treating the Yindjibarndi with the respect due to us as the Traditional Owners of the country which FMG seeks to mine.

We have attached for your information two documents. The first, is a recent publication by the Australian Human Rights Commission concerning the Australian mining and resource sector and human rights; the second, is a copy of the United Nations Declaration on the Rights of Indigenous Peoples.

Yindjibarndi remains committed to negotiating a Land Access Agreement with FMG which secures, for FMG, the free prior and informed consent of the Yindjibarndi to the use of our country, by FMG, for mining purposes. However, in order to achieve this FMG must be genuinely committed to securing the same end.

Please be advised: Yindjibarndi will not be meeting with you or any members of FMG’s team, either now or in the future, unless and until there is a clear commitment by FMG to obtaining the free prior and informed consent of the Yindjibarndi to the use of our country, by FMG, for mining purposes.

Yours Sincerely


Michael Woodley
Executive Officer
Yindjibarndi Aboriginal Corporation



2009

Good practice,
good business

Fact Sheet No. 3

The Australian mining and resource sector and human rights

The impact of mining and exploration activities on the human rights of employees and surrounding communities is well understood. So is the importance of ensuring a strong social licence to operate in those communities.

Integrating human rights considerations into core business practice in the extractive sector is vital for managing business risks and creating opportunities. It is also a corporate responsibility. In 2008, the United Nations Human Rights Council recognised that, while the primary duty to *protect* and *promote* human rights lies with national governments, corporations also have distinct responsibility to *respect* human rights.

Increasing numbers of Australian companies, including mining and resource companies, refer to human rights in their annual reports or sustainability reports and incorporate human rights into their policies. However, it is not always clear what it takes to make human rights part of core business practices.

This fact sheet provides some basic guidance and resources for Australian extractive companies on how to incorporate human rights into everyday business practices.

How are human rights relevant to extractive companies?

While the extractive industry impacts on almost all human rights, there are unique human rights challenges and concerns for oil, natural gas and mining companies. The following are some of the more common areas where human rights can create business risks and opportunities for the industry.

Labour practices and human rights

Extractive companies, like all other employers, have a responsibility to make sure that employees enjoy fundamental labour rights like a safe workplace, a living wage, non-discriminatory work practices and collective bargaining.

- Does your company have a Disability Action Plan and Reconciliation Action Plan for Australian operations?
- What is your worker safety policy? Does it apply throughout your supply chain?



Environmental issues and human rights

Environmental practices of mining, processing and exploration operations have the potential to impact on a variety of fundamental rights including the rights to life, health and an adequate standard of living (which includes access to basic food, clothing, water, housing and sanitation). They can also have an impact on climate change.

- Has your company examined the impact of your project on the water needs and livelihood of the local community?

Rights of Indigenous peoples and other communities

Nearly all extractive industry operations require the purchase of land or the rights to use land. Sometimes land is already being used by others, and other times it is part of a community's customary or traditional resources. Sometimes using the land involves the resettlement of communities. In Australia the land may be native title. Failure to address resettlement, native title and customary land use issues will almost always cause resentment and opposition towards a project and its operators.

- Has your company consulted with the local community to secure the free prior and informed consent of the community to use their land or other natural resources?

Security issues and human rights

Oil, mining and gas companies often find themselves in conflict-prone environments. This often means that a company will hire its own security staff, or rely on law enforcement in the relevant country to protect assets and employees. Sometimes those security staff become engaged in local violence. A mining company could be complicit in human rights abuses committed by a security provider. Some forms of complicity attract legal penalties. However, stakeholder expectations often go well beyond minimum legal standards.

- Does your company conduct human rights training for staff operating in conflict zones?
 - Does your company screen and monitor security forces used throughout your supply chain?

No one denies that the activities of business help provide the enabling environment needed for the enjoyment of human rights. At the same time, it is clear that a company's operations can have serious negative impacts on the protection of human rights when not carried out in a responsible manner.

Mary Robinson, Chair,
Realizing Rights

What should extractive companies do to ensure they respect human rights?

The due diligence process should consider the political and social context of the countries where the company operates, the potential and actual human rights impacts of the company's activities and the relationships connected to those activities.

Practicing due diligence with respect to human rights includes the following five steps.

1. Assess the human rights impacts of your company's operations.

- Do you understand the scope and scale of the human rights risks facing the business?
- Have you consulted with stakeholders such as community groups, indigenous communities, NGOs, industry bodies and unions to find out how their human rights might be affected?
- Have you conducted a human rights impact assessment?

2. Adopt, implement and integrate a human rights policy throughout your company's operations and your supply chain.

- Does your human rights policy explicitly invoke the Universal Declaration of Human Rights and the International Labour Organisation Declaration on Fundamental Principles and Rights at Work?
- Are there clear roles and responsibilities for implementing your human rights policy throughout your business?
- Do your staff understand what it takes to comply with the human rights policy?
- Are there enough resources to support compliance with your human rights policy?
- Does the policy apply to the company's business partners including state-owned enterprises, suppliers, contractors and other relevant stakeholders?
- Is the policy publicly available?
- What are the consequences for failing to comply with the policy?

3. Ensure compliance with all local laws and adopt relevant codes of practice relating to human rights.

Have you considered committing to relevant international principles and voluntary codes or joining international initiatives relevant to the extractive sector? For example:

- Global Reporting Initiative (www.globalreporting.org/Home)
- UN Global Compact (www.unglobalcompact.org)
- Voluntary Principles on Security and Human Rights (www.voluntaryprinciples.org)
- International Finance Corporation Performance Standards on Social and Environmental Sustainability (www.ifc.org/ifcext/sustainability.nsf/Content/EnvSocStandards)
- International Council on Mining and Minerals Sustainable Development Framework (www.icmm.com/our-work/sustainable-development-framework/10-principles)
- Kimberley Process Certification Scheme (www.kimberleyprocess.com)
- Extractive Industries Transparency Initiative (<http://eitransparency.org>)

4. Implement a credible and transparent system of internal and independent monitoring and reporting on your human rights policy.

- Does senior management have clear responsibility for monitoring compliance with the policy and addressing problems?
- What do you do to ensure that subsidiaries, contractors, subcontractors and suppliers comply with the policy?
- Is your reporting process public and transparent?

5. Develop partnerships with relevant stakeholders

- Do you work on an ongoing basis with community groups, indigenous communities, NGOs, industry bodies, other companies and unions to address the human rights challenges identified?
- Do you have appropriate grievance mechanisms in place?

Corporations have a responsibility to respect human rights – they must not only ensure compliance with national laws, but also manage risks of human rights harms with a view to avoiding them.

John Ruggie, UN Special Representative on Business and Human Rights

Need help getting started?

The following are a sample of practical tools for integrating human rights into your business operations and conducting a human rights impact assessment:

- *Good practice, good business - eliminating discrimination and harassment in the workplace*, Australian Human Rights Commission
www.humanrights.gov.au/info_for_employers/index.html
- *Development and Indigenous Land: A Human Rights Approach*, Australian Human Rights Commission.
www.humanrights.gov.au/social_justice/publications/corporateresponsibility/development.html
- *Human Rights Compliance Assessment, Quick Check*, Danish Institute for Human Rights
www.humanrightsbusiness.org/Updates12.04/QuickCheck_august_2006.pdf
- *A guide to integrating human rights into business management*, Business Leaders Initiative on Human Rights
www.blihr.org/Reports/GIHRBM.pdf
- *Embedding Human Rights in Business Practice*, UN Global Compact and Office of the UN High Commissioner for Human Rights
www.unglobalcompact.org/docs/news_events/8.1/EHRBPII_Final.pdf
- *Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones*, OECD
www.oecd.org/dataoecd/26/21/36885821.pdf

For more information, tools and case studies from more than 4000 companies see the Business and Human Rights Resource Centre - www.business-humanrights.org/Home

See *Good practice, good business* Fact Sheet 1 for more about human rights and the business case. See Fact Sheets 2 and 4 on human rights for the Finance and Retail and Manufacturing sectors, respectively. You can find these on the Australian Human Rights Commission website (see below).

Sign up to our **Employers mailing list**: www.humanrights.gov.au/about/mailing_lists

Contact us: T: 1300 369 711 or +61 2 9284 9600

E: paffairs@humanrights.gov.au

W: www.humanrights.gov.au/human_rights/corporate_social_responsibility

The corporate responsibility to respect human rights is a matter of due diligence. Due diligence describes the steps a company must take to become aware of, prevent and address adverse human rights impacts.

John Ruggie, UN Special Representative on Business and Human Rights



**Australian
Human Rights
Commission**

everyone. everywhere. everyday



United Nations Declaration on the Rights of Indigenous Peoples

Adopted by General Assembly Resolution 61/295 on 13 September 2007

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands,

territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights (2) and the International Covenant on Civil and Political Rights,² as well as the Vienna Declaration and Programme of Action,⁽³⁾ affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights(4) and international human rights law.

Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6

Every indigenous individual has the right to a nationality.

Article 7

1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
 - (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;
 - (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;
 - (c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
 - (d) Any form of forced assimilation or integration;
 - (e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their

lands or territories for military activities.

Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.
3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

- (2) See resolution 2200 A (XXI), annex.
- (3) A/CONF.157/24 (Part I), chap. III.
- (4) Resolution 217 A (III).

“MW-34”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “MW-34” referred to in the witness statement of Michael Woodley dated 5 June 2023.


Fortescue Metals Group Ltd

ACN: 002 594 872

87 Adelaide Terrace, East Perth

Western Australia 6004

PO Box 6915, East Perth, Western Australia 6892

Telephone: +61 8 6218 8888

Facsimile: +61 8 6218 8999

Website: www.fmgl.com.au

Your Ref:

25 June 2009

Mr Michael Woodley
 Executive Officer
 Yindjibarndi Aboriginal Corporation
 PO BOX 111
 ROEBOURNE WA 6718

Dear Michael

RE: MEETING WITH YINDJIBARNDI

I have now received your letter responding to my request for a meeting between Yindjibarndi and Fortescue.

Contrary to your belief that Fortescue has no intention of treating Yindjibarndi with the respect due you as the Traditional Owners of the country, we are and have at all times been entirely respectful of Yindjibarndi people, their culture and their connection to country.

Several years ago, I approached the Yindjibarndi people well in advance of any operations on your country with a view to securing your consent and endorsement. The relationship we have since established is a solid base on which we must continue to build.

It would be wrong to commit Fortescue to a position that would prevent any future mining activities without the "free prior and informed consent of the Yindjibarndi". However, I remain optimistic that we can reach an agreement that would ensure that Fortescue's operations can continue with Yindjibarndi's consent.

Please confirm that you are willing to meet with me next Tuesday, 30 June to continue the momentum towards this outcome.

Yours sincerely

FORTESCUE METALS GROUP LTD

BLAIR MCGLEW
 Head of Land Access

“MW-35”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

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Fortescue Metals Group Ltd

ACN: 002 594 872

87 Adelaide Terrace, East Perth

Western Australia 6004

PO Box 6915, East Perth, Western Australia 6892

Telephone: + 61 8 6218 8888

Facsimile: +61 8 6218 8999

Website: www.fmgl.com.au

Our Ref: LS - 100 - I-0263

28 July 2009

30 JUL 2009

Slater & Gordon
 Level 2, Council House
 27 - 29 St Georges Terrace
 PERTH WA 6000

ATTENTION: SIMON MILLMAN

Dear Sir

**RE: FMG - YINDJIBARNDI PEOPLE LAND ACCESS AGREEMENT:
 COMMERCIAL OFFER**

Fortescue Metals Group (FMG) refers to the above matter and writes to advise the Yindjibarndi People as follows.

Fortescue's Land Access Agreement Offer : June 2008

Fortescue sees value in a claim-wide Land Access Agreement (LAA) with the Yindjibarndi People to protect each party's rights and obligations as we proceed to mining operations. The Yindjibarndi People will recall that Fortescue and Yindjibarndi People last discussed commercial offers at a 2-day negotiation meeting in June 2008. During the June 2008 negotiations, Fortescue's commercial offer for a claim-wide LAA comprised the following key elements:

- Mining Royalty: 5% FOB to a maximum of \$3 million per annum;
- VTEC Royalty: 8 cents per tonne to a maximum of \$2 million per annum;
- Signature Payment: \$350,000.

Fortescue's Re-offer: Changed Financial Environment

Fortescue's commercial terms to settle a claim-wide LAA with the Yindjibarndi People have been impacted upon by the global financial downturn which commenced in September 2008. Specifically:

The current global financial downturn has adversely affected our business; and

We expect iron ore prices to be reduced by up to 40% compared to previous levels.

In view of the above developments, Fortescue's commercial offer to settle the claim-wide LAA with the Yindjibarndi People is reduced by 30%, as follows:

- Mining Royalty: A maximum of \$2.1 million per annum*;

The New Force in Iron Ore

- VTEC Royalty: A maximum of \$1.4 million per annum**;
- Signature Payment: \$245,000.

*% FOB subject to finalisation between the parties.

**cents per tonne subject to finalisation between the parties.

Timing of FMG Offer

The Yindjibarndi People are advised that the above offer to settle the claim-wide LAA is effective for 30 days from the date of this letter.

Recent Discussions

Mr McGlew has recently been in discussions with Mr Woodley, which I understand have focused on other economic opportunities that may arise out of the Land Access Agreement negotiations.

Fortescue remains optimistic that a negotiated outcome that benefits both parties can still be achieved.

Yours sincerely

FORTESCUE METALS GROUP LTD



SUKHPAL SINGH
Land Access Lawyer
0408 096 846

“MW-36”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following two pages is the annexure marked “**MW-36**” referred to in the witness statement of Michael Woodley dated 5 June 2023.


Fortescue Metals Group Ltd

ACN: 002 594 872
 87 Adelaide Terrace, East Perth
 Western Australia 6004
 PO Box 6915, East Perth, Western Australia 6892

Telephone: +61 8 6218 8888
 Facsimile: +61 8 6218 8999
 Website: www.fmg.com.au

Our Ref: LS-100-I-0333

Your Ref: SAM

13 November 2009

Mr George Irving
 Barrister

c/o Simon Millman
 Slater & Gordon Lawyers
 Level 2, Council House
 27 - 29 St Georges Terrace
 PERTH WA 6000

Dear Mr Irving

RE: LAND ACCESS AGREEMENT NEGOTIATIONS WITH YINDJIBARNDI

As you are aware, Fortescue Metals Group Ltd has been negotiating with the Yindjibarndi people (Yindjibarndi) for several years now in an effort to secure a whole-of-claim Land Access Agreement (LAA).

These negotiations have never progressed because of the considerable difference between the positions of each party regarding financial compensation.

Yindjibarndi has sought a royalty equivalent to at least 2.5% of all income from the sale of applicable iron ore (equivalent to approximately \$35 million per annum), while Fortescue's most recent (reduced) offer, including the VTEC component, was capped at \$3.5 million per annum.

In 2008, Yindjibarndi rejected unilaterally an offer that was capped at \$5 million per annum. Over a 20 year mine life, this agreement would have been worth to Yindjibarndi up to \$100 million in today's terms.

In your recent discussion with Sukhpal Singh, you stated the desire of Yindjibarndi to secure adequate financial compensation to build and grow their cultural institutions. I am of the view that \$100 million would have more than adequately delivered this objective.

Fortescue remains convinced that a Land Access Agreement is in the best interests of all parties. Not only does it guarantee tens of millions of dollars to the Yindjibarndi people into the future, it creates a partnership between Fortescue and Yindjibarndi that can leverage a host of other real opportunities that will be beneficial to Yindjibarndi, including jobs and business development.

Although Michael Woodley's stated position is that "Yindjibarndi people do not want jobs with Fortescue", the reality is that many Yindjibarndi are already part of our Cloudbreak mining workforce, having graduated through our VTEC program. I am convinced that many other Yindjibarndi will avail themselves of the employment opportunities that Fortescue provides as we expand Cloudbreak and develop new mining areas within Yindjibarndi country and other areas in the Pilbara.

Michael has also stated repeatedly that Yindjibarndi people are prepared to forego an agreement with Fortescue and sacrifice any financial benefit from the proposed mining on Yindjibarndi country rather than signing up to an agreement that they consider unreasonable. I suggest that an objective assessment would conclude that \$70 million over 20 years is not unreasonable as compensation for the agreement.

I believe now is the time for Fortescue and Yindjibarndi to determine the future direction of our relationship. With this in mind, I recently requested Michael Woodley (verbally and by email) to arrange a time when Fortescue could meet with Yindjibarndi. Michael suggested that unless Fortescue was willing to meet the terms proposed by Yindjibarndi (or something very similar), then there was no point in having another meeting.

Therefore, I wish to advise that at 5pm on 13 December 2009 (30 days from today's date), the current financial offer from Fortescue will be withdrawn in full.

Should you wish to conduct one final negotiation meeting in the interim, please let me know as a matter of urgency.

Fortescue will continue to negotiate in good faith on all tenements that we seek within Yindjibarndi country.

I am available to discuss this matter with you at any time and can be contacted on mobile: 0407 082 282.

Yours sincerely

FORTESCUE METALS GROUP LTD



BLAIR MCGLEW
Head of Land Access

“MW-37”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

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Western Australia 6004
PO Box 6915, East Perth, Western Australia 6892

Telephone: + 61 8 6218 8888

Facsimile: + 61 8 6218 8999

Website: www.fmgl.com.au

Our Ref: LS-100-I-0357

Your Ref: SAM

15 December 2009

Mr George Irving
Barrister

c/o Simon Millman
Slater & Gordon Lawyers
Level 2, Council House
27 - 29 St Georges Terrace
PERTH WA 6000

Dear Mr Irving

RE: LAND ACCESS AGREEMENT NEGOTIATIONS WITH YINDJIBARNDI

On 13 November 2009, I advised you that in view of Yindjibarndi's position regarding the proposed Land Access Agreement with Fortescue Metals Group Ltd, the current financial offer from Fortescue would be withdrawn in full at 5pm on 13 December 2009 (30 days from the date of the attached letter).

In that correspondence, I also offered you the opportunity to conduct one final negotiation meeting in the interim.

I have received no response to the offers contained in this letter.

The previous financial offers made by Fortescue to Yindjibarndi for a Land Access Agreement are now withdrawn in full.

Yours sincerely

FORTESCUE METALS GROUP LTD

BLAIR MCGLEW
Head of Land Access

cc: Mr Michael Woodley, Juluwarlu Aboriginal Corporation

“MW-38”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

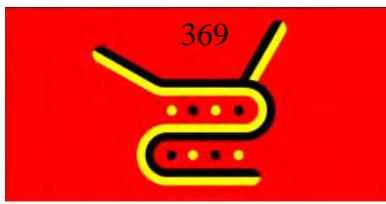
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 22 pages is the annexure marked “MW-38” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

Minutes for the
Yindjibarndi Aboriginal Corporation (YAC)
Annual General Meeting
Held at the Juluwarlu Group Aboriginal Corporation Office
Sholl Street, Roebourne, WA, 6718
Tuesday the 15th of December 2009

Meeting Started 11.15 am

Yindjibarndi Aboriginal Corporation Chairperson – Stanley Warrie

Agenda Items

1. Attendance

Yindjibarndi Aboriginal Corporation (YAC) Directors

Tootsie Daniels, Thomas Jacobs, John Sandy, Rosemary Woodley, Stanley Warrie, Gabrielle Cheedy, Stephen Hubert, May Adams, Jimmy Horace, Clifton Mack, Rosie Cheedy

Yindjibarndi Elders Committee Members

Joyce Hubert, Bigali Hanlon, Maudie Jerrold, Sylvia Allan, Shirley Woodley, Bruce Monadee, Dora Solomon

Yindjibarndi Aboriginal Corporation Executive Officer

Michael Woodley

Yindjibarndi Aboriginal Corporation Members

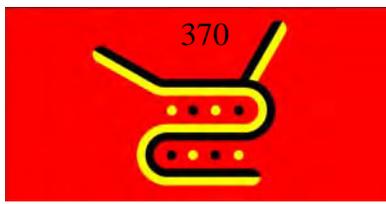
Charmaine Adams, Lorraine Coppin, Angus Mack, Ricky Sandy, Michelle Adams, Lesley Walker, Stephen Adams, Jessica Allan, Kevin Guinness, Alice Guinness, Amy Jerrold, John King, Curtis Lockyer, Howard Lockyer, Jean Norman, Esther Pat, Celia Sandy, Russell Sandy, Diana Smith, Karen Toby, Sharon Togo, Jill Tucker, Renea Walker, Janice Warrie, Joylene Warrie, Kaye Warrie, Sharon Warrie, Wendy Warrie, Rebecca Williams, Finola Woodley, Hayden Woodley, Wendy Hubert, Bruce Woodley, Jimmy Alberts, Nathaniel Moody, Dinah Ingie, Jennifer Williams, Ruth Williams, Linda Norman, Sonya Wilson, Eileen Percy, Lynette Wilson, Kiniesh Thorne, Joyce Wilson, Vicky Wilson, Max Hubert, Andy King, Dennis Hubert, Billy King, Christine Toby, Stephen Hubert, Brenda Hubert, Terrance Pat, Glen Toby, Carol Norman, Stella Hubert, Daniel True, Mervin Warrie, Kerry Warrie, Terrance Warrie, Aaron Wilson, Gillian Aubrey, Maria Wilson, Travis Hubert, Barbara Guinness, Janice Guinness

Yindjibarndi Support Team

Philip Davies (Juluwarlu - minutes)

2. Apologies

Lyn Cheedy, Lorraine Allen, Leanne Allen, Michelle Broun, David Woodley, Lisa Allen, Jessica Allen, Alison Woodley, Mark Horace, Ned Cheedy, Middleton Cheedy, Fabian Cheedy, Simon Zuuich



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

3. Confirm the minutes of the previous Yindjibarndi Aboriginal Corporation (YAC) Annual General Meeting held Wednesday 17/12/08 at the Roebourne Community Hall

Philip Davies read the minutes of the previous YAC Annual General Meeting held 17/12/08. The minutes were accepted as being an accurate reflection of the discussions and decisions made within the meeting.

A resolution was passed by the YAC members that the minutes be accepted as read with no amendments:

Moved: Bigali Hanlon

Seconded: Tootsie Daniels

Passed Unanimously

4. Any business arising from the minutes

- Michelle Adams raised a point on the Yindjibarndi Aboriginal Corporation (YAC) constitution – regarding if it can be reviewed by members and workshopped in 2010 if the members found that to be necessary. Philip Davie replied that the YAC constitution can be workshopped at any time if agreed to by a resolution of the YAC members. Then if the YAC members agreed to changes to the constitution at a Special General or Annual General Meeting the constitution can be altered to better reflect the organisation's aims and activities.

5. YAC Chairperson's Report

Stanley Warrie, Chairperson of the Yindjibarndi Aboriginal Corporation, thanked the members for retaining him as Chairperson during 2009. He stated that all the Yindjibarndi are one family and that there is still a lot of work to do to achieve justice. He said the Yindjibarndi have to stick together if we are to get any sort of benefits out of the mining companies or the government coming onto Yindjibarndi land.

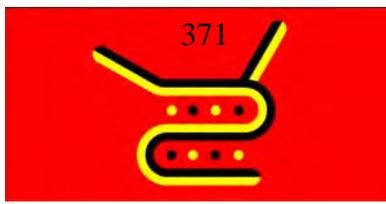
6. Yindjibarndi Business and Activities – presentation by YAC Executive Officer Michael Woodley

Michael Woodley made a powerpoint presentation to the members present titled 'Yindjibarndi Ngurra; Nhantharriyarndu Marni - Direction Plan'.

A copy of this powerpoint presentation is attached to these minutes.

This presentation was very comprehensive and there was a lot of discussion from the floor during the presentation between the members. Some of the comments included:

- Michael Woodley (MW) – we need to act professionally at all times and keep giving industry and government proponents a clear message that the Yindjibarndi are well organised and have demands that need to be met before they will engage
- Jill Tucker (JT) – The Yindjibarndi people should be heard and RTIO want more pipelines and water infrastructure on our land
- MW – we have elected a negotiating team that was elected at the last General meeting held at the Diner
- Rosemary Woodley (RW) – the pipeline that RTIO want on our country comes from Eastern Gurrama country
- JT – we have some sick Yindjibarndi people and we need to have some success in our negotiations so they can be looked after – some of those people include my sister, Bruce Woodley and Bruce Monadee
- MW – the job of the Yindjibarndi negotiating team is to guide the negotiations with RTIO on behalf of the people



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

- g) Stanley Warrie (SW) – I just make the statement that everyone is suffering and we have suffered for a long time – right now we shouldn't argue amongst ourselves but we should work together to get good outcomes for all of us
- h) MW – we need to look after everybody - we can achieve some of our aims if we stick together
- i) Wendy Hubert (WH) – I am an owner of the country
- j) MW – we want everybody to take these negotiations and the outcomes seriously
- k) Billy King (BK) – I just want everyone to know that we should all get together as one family – we are all family and we should all work together for each other
- l) Charmaine Adams (CA) – I think Yindjibarndi has done a lot of good work over the last year and we have done well to get where we are in our negotiations with RTIO and FMG – we haven't given them anything yet and we have given nothing away
- m) May Adams (MA) – I would just like to thank all the Yindjibarndi people for helping me out with my operation – thank you all very much

Following the discussion and the presentation Michael Woodley asked the group if they were happy with the direction that the Yindjibarndi Aboriginal Corporation was taking. He also asked the members if they were happy with the management of the organisation by Juluwarlu Group Aboriginal Corporation and asked the members 'do you want Juluwarlu Group Aboriginal Corporation to continue to manage your affairs?'.

In answer to this the people made the following resolution.

The following resolution was put for the members:

Resolution One – Agenda Item 6

That the members of the Yindjibarndi Aboriginal Corporation agree for Juluwarlu Group Aboriginal Corporation to continue to manage the affairs of the Yindjibarndi Aboriginal Corporation on the same basis as the YAC/JGAC agreement that is already in place between the organisations and was signed by the Yindjibarndi Aboriginal Corporation Chairperson on 20/08/2008.

Moved: Charmaine Adams

Seconded: Pansy Sambo

Passed Unanimously

7. Present the YAC Management Accounts

A copy of the Yindjibarndi Aboriginal Corporation accounts presented by Philip Davies to the meeting is attached to these minutes.

Philip Davies presented the management accounts, being the YAC Balance Sheet and the Profit and Loss, for the 2008/2009 financial year for the YAC – Philip explained that these figures are not the audited accounts. The management accounts haven't gone to the YAC's accountant, Gary Slee yet, but they will in the next month or so. However Philip does not anticipate that the audited accounts will materially be very different to the management accounts except for perhaps any accounting procedures that the accountant may wish to include. Philip suggested that these figures be accepted by the members as an interim measure, while the audited accounts are still being prepared, and we will aim to have the final audited accounts for 2008/2009 presented to the YAC members in 2010.

The following resolution was put to the members:

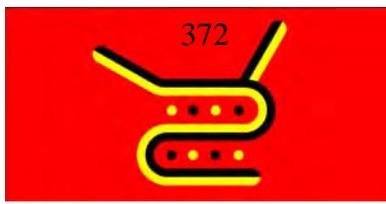
Resolution Two – Agenda Item 7

That the management accounts being the YAC Balance Sheet and the YAC Profit and Loss for the 2008/2009 financial year presented by Philip Davies here today be accepted by the members in the interim while the audited set of accounts and Director's report are still to be prepared by the YAC accountant and auditor. We will aim to have the final audited accounts ready for during the first half of 2010.

Moved: Bigali Hanlon

Seconded: Tootsie Daniels

Passed Unanimously



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

8. Accept the new Yindjibarndi Aboriginal Corporation constitution prepared by the Office of the Registrar of Indigenous Corporation (ORIC)

Philip Davies told the members that the Office of the Registrar of Indigenous Corporations (ORIC) had initiated a rule book dated the 29/06/2009 for the Yindjibarndi Aboriginal Corporation which is compliant with the new Australian Government's Corporations (Aboriginal and Torres Strait Islander) Act 2006 (CATSI). Philip asked the members to assess the constitution over time and as explained earlier in the meeting at agenda item 4, if members had concerns or changes they wished to make these could be reviewed and voted upon if the members wished to make alterations to the constitution. A copy of this constitution is attached to these minutes.

Following discussion the members made the following resolution:

Resolution Three – Agenda Item 8

That the Yindjibarndi Aboriginal Corporation members accept the ORIC initiated CATSI compliant constitution compiled by ORIC dated 29/06/09 and adopt this document as the organisation's constitution.

Moved: Stanley Warrie

Seconded: Barry Pat

Passed Unanimously

9. Election of Yindjibarndi Aboriginal Corporation Directors

On behalf of the Yindjibarndi members Philip Davies thanked the YAC Directors that had been elected at the 2008 Annual General Meeting for their hard work, dedication and vision.

After much discussion the Yindjibarndi Aboriginal Corporation members decided to keep the same Directors as last year except for the following two people who wished to stand down.

May Adams said she would like to stand down as a Director

Clifton Mack said he would like to stand down as a Director

In their places the members decided to elect Charmaine Adams and Ricky Sandy as Yindjibarndi Aboriginal Corporation Directors.

Therefore the following people make up the 12 Yindjibarndi Aboriginal Corporation Directors:

1. Tootsie Daniels
2. Thomas Jacobs
3. John Sandy
4. Rosemary Woodley
5. Stanley Warrie
6. Gabrielle Cheedy
7. Stephen Hubert
8. Lyn Cheedy
9. Jimmy Horace
10. Rosie Cheedy
11. Charmaine Adams
12. Ricky Sandy

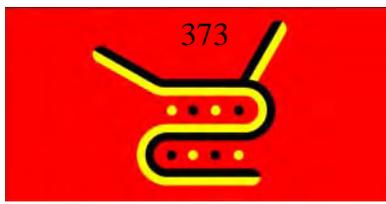
Resolution Four – Agenda Item 9

That the 12 people mentioned above be elected as the 12 Yindjibarndi Aboriginal Corporation Directors until the next YAC Annual General Meeting.

Moved: Angus Mack

Seconded: Aileen Sandy

Passed Unanimously



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

10. Election of Yindjibarndi Aboriginal Elders Council

The members decided to keep the current 8 members and to add another 8 members to the Yindjibarndi Aboriginal Corporation Elders Committee,

Therefore the Elders Committee comprises the following members:

1. Ned Cheedy
2. Joyce Hubert
3. Bigali Hanlon
4. Maudie Jerrold
5. Sylvia Allan
6. Shirley Woodley
7. Bruce Monadee
8. Dora Solomon
9. Harry Mills
10. Billy King
11. Amy Jerrold
12. Berry Malcolm
13. Aileen Percy
14. Stella Hubert
15. Mavis Pat
16. Bruce Woodley

Resolution Five – Agenda Item 10

That the 16 people mentioned above make up the Yindjibarndi Elders Council and will be placed with this task for the coming year until at least the next Yindjibarndi Annual General Meeting.

Moved: Pansy Sambo

Seconded: Rosemary Woodley

Passed Unanimously

11. Appointment of Yindjibarndi Aboriginal Corporation Examiner

Philip Davies told the members the YAC previous auditor had resigned as an auditor and was now working for the Central Desert Native Title Service. Philip said that Gary Slee had recommended Stephen Byers from Abbott Solutions in Perth to be the Yindjibarndi Aboriginal Corporation auditors.

After discussion several members recommended not to use Abbott Solutions because of their previous experiences with that firm.

Therefore the members asked Philip Davies to keep looking for another alternative auditor. It was agreed that Philip Davies would bring further alternatives for an auditor to the next general meeting.

12. Appoint Yindjibarndi Aboriginal Corporation ORIC Contact person

The members made the following resolution

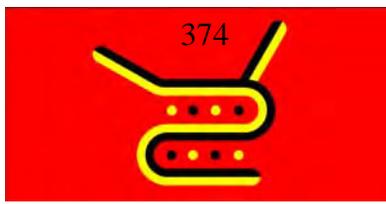
Resolution Six – Agenda Item 12

That the Yindjibarndi Aboriginal Corporation re-appoint Philip Davies as their ORIC Contact Officer until the next YAC Annual General Meeting.

Moved: Thomas Jacobs

Seconded: Stanley Warrie

Passed Unanimously



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

13. General Business

1) Millstream National Park

There was discussion over negotiations with the Department of Environment and Conservation (DEC) – which was previously called CALM. The Yindjibarndi Aboriginal Corporation has been working with DEC over the development of a long term management plan termed the ‘MOU Millstream-Chichester NP’. In the draft document put back to the DEC, on behalf of the Yindjibarndi people, Juluwarlu have asked for the national park to be vested in the Yindjibarndi Aboriginal Corporation as well as several other concepts and ideas which attach real ownership and outcomes.

This draft document is included with these minutes.

2) Rehabilitation of Gurrwaying Yinda (Bridge 11)

MW explained that RTIO wants to rehabilitate the area around Gurrwaying Yinda which they ripped up illegally in 2009 and which was the subject of a court case by the YAC against RTIO in 2009. The members agreed to assist in the rehabilitation and elected 10 Yindjibarndi women to be involved in that project in 2010. The Yindjibarndi women elected are:

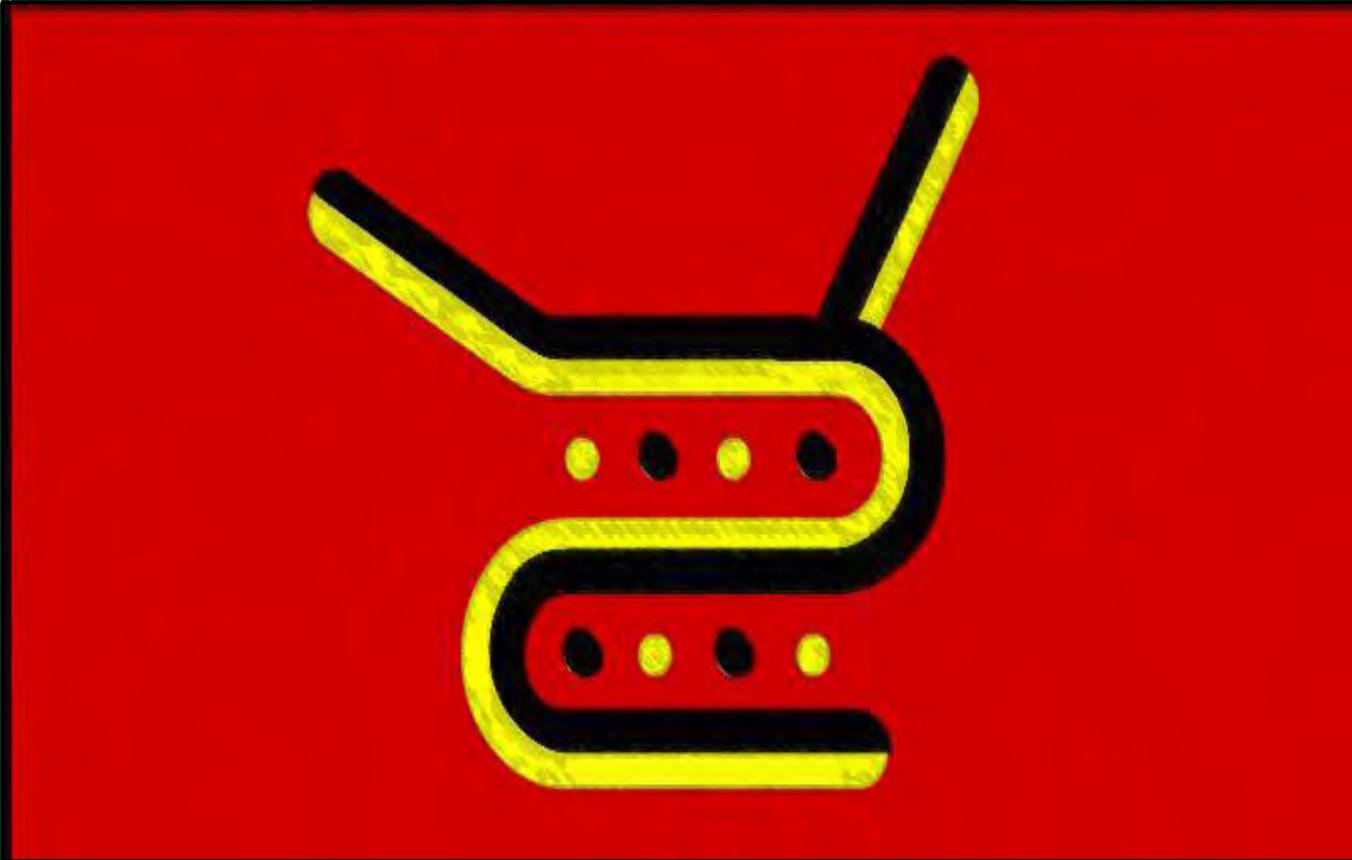
- i. Joylene Warrie
- ii. Rebecca Cheedy
- iii. Sonya Wilson
- iv. Florence Toby
- v. Lorraine Coppin
- vi. Linda Norman
- vii. Diane Ingie
- viii. Dawn Dale
- ix. Alison Woodley
- x. Lisa Allen

3) Elders Payment from Plan B

MW explained that Yindjibarndi has been negotiating with RTIO to bring forward all the funds in Plan B and release them to both the Yindjibarndi Aboriginal Corporation and the Ngarluma Aboriginal Corporation as soon as possible. Those present at the meeting agreed that \$300,000 of these funds would be paid to the Yindjibarndi people. The people are to decide who gets the money. MW suggested that only people over a certain age should get paid an equal portion of the money, but that it was up to the members to decide who should get the money.

Those present agreed that as soon as the money is paid by RTIO to the Yindjibarndi Aboriginal Corporation then another Yindjibarndi meeting would be called and the people would decide how the funds are distributed.

Meeting Closed 2.45 pm



Yindjibarndi Ngurra

Nhantharriyarndu Marni

Direction Plan



Yindjibarndiyarndu Wangka Mission Statement

- To restore Yindjibarndi access and connection to our country so that every generation will enjoy their religious freedom, happiness, and wellbeing that comes from practicing our culture, keeping our Law, speaking our language, and caring for our country in the ways that Yindjibarndi were commissioned and taught to survive these past 75 thousand years.
- And by the hands of Marrga restore to us our fundamental birthrights as landowners of Yindjibarndi country so that all will benefit from our resources and from our entitlement we have the rights to develop, modify and sustain Yindjibarndi future.



Yindjibarndi Team

In the past 18 months

Stanley Warrie – Chairperson Yindjibarndi
Aboriginal Corporation (YAC)

Michael Woodley - Acting Chief Executive Officer
(CEO).

Phillip Davies – Administration Manager /
Anthropologist.

Simon Millman – Principle legal Officer / Lawyer
Slater & Gordon.

George Irving – Barrister.



Yindjibarndi Directors and Elder Group

Authorized & directed by the 12 Yindjibarndi Governing Directors.

Stanley Warrie, Thomas Jacobs, John Sandy, Stephen Hubert, Jimmy Horace, Clifton Mack, Tootsie Daniels, Rosemary Woodley, May Adams, Rosie Cheedy, Lyn Cheedy and Gabrielle Cheedy.

Yindjibarndi Elders Committee.

Ned Cheedy, Bruce Monadee, Shirley Woodley, Sylvia Allan, Joyce Hubert, Dora Solomon, Maudie Jerrold, Bigali Hanlon.



Yindjibarndi Native Title Business

- ✔ Manage all future acts by Industry and Government.
- ✔ Yindjibarndi 1 Native Title Claim (Seek Full Exclusive Rights Determination).
- ✔ Protect the rights and interest of Yindjibarndi people and to develop better Opportunities.



Opportunity to try something different.

▼ Acts and Laws:

Native Title Act

Mining Act

Common Law

Constitutional Law Section 116 under religious freedom acts are opportunities that have not yet been explored. Yindjibarndi have the opportunity to trial these laws.

Time is an major factor for theses operations.



Business Concept

Yindjibarndi Business Group.

The last thing any company expects is
Yindjibarndi talking on Terms that are
equal to others.

Strategy: To give Companies no excuse but to
say; Yes We Can.

Your Business Is Our Business - if it's on
Yindjibarndi country and generating wealth.



Competition & Challenges

Other small Yindjibarndi groups and company representatives/people.

If we are to succeed - Yindjibarndi as a community need to overcome and face these challenges as one voice.

Our advantage is sticking together no matter what and relying on Yindjibarndi family, honesty and truth.

A raising tide lifts all ships.



Goals & Objectives

▼ Two-year goals

- Develop the Yindjibarndi Aboriginal Corporation by installing decision making powers to the Directors, Elders Groups and Community members.
- To make our Yindjibarndi Native Title claim work for Our Big Picture.
- All Yindjibarndi members are involved and part of the decision making process. (No hidden agendas)
- Develop a Yindjibarndi business plan.



Investment Plan

Yindjibarndi Aboriginal Corporation (YAC) have committed in total to the Yindjibarndi Native Title process plan \$642, 299.64K.

Our mission for our members is to get justice, equality and benefits from developers operating in our country.

As an example FMG/RTIO shareholders and investors have committed Billions of dollars to do their Iron Ore projects.

They have one Priority - to deliver benefits to their investors and Shareholders.



Resource Requirements

First and foremost our community requirements are the key to our mission - we as Yindjibarndi.

We must continue to adapt to the modern times, technology and use our intelligence to assist with our mission.

Yindjibarndi's leadership to financially back the mission to further strengthen our mission and take positive steps - because Yindjibarndi's actions are serious.

External exposure - Yindjibarndi media release.



Risks & Rewards

✓ Risks

- Yindjibarndi members might start to undermine the process.

✓ Addressing risk

- Open and transparent process (Everything is discussed in a community forum)

✓ Rewards

- There is a greater benefit than MONEY - Yindjibarndi working together and growing - everyone understanding our problems and working towards fixing-up our problems.
- Solution solving.



Key issues to consider when planning for our future

- ✔ Immediate and Near term
 - The Yindjibarndi community supports the leadership and decision making process of the Yindjibarndi Board of Directors, Elders Committee and professionals.
- ✔ Long term
 - Everyone understands how development works and understands that a patient and a peaceful frame of mind is needed when planning for the future.
 - We never lose sight of the big picture - change takes time.
- ✔ Reality: Yindjibarndi only have one shot at this – lets hit our target.



Future Negotiations

- ✓ RTIO – We will start our negotiations in mid-February 2010 – as part of our process.
 - 300K for Elders from PlanB West Angelas project.
 - 250K to develop a Heritage Agreement.
 - 250K for caring for country project – to further continue mapping the Yindjibarndi country.
- ✓ FMG – We are now going through mediation with NNTT regarding exploration tenements on the 18/12/09. At hearings in the Federal Courts regarding the Solomon mining operations - our argument is the freedom religion s116 under the Australian Constitution.
- ✓ Polaris is the only company that has an Heritage Agreement with Yindjibarndi that states that the company will negotiate under the terms of Reciprocity.



Financial Statement – 08/09

Yindjibarndi Native Title Income – 634K

Operational & Administration Cost

- ✔ Juluwarlu Admin. Cost for 10 month totaling - \$247,572.03
- ✔ Salter & Gordon principle lawyers – \$86,888.
- ✔ Barrister – \$97,075
- ✔ Adrian Murphy – \$20,201.

Total O & A cost - \$451,736.

Community Projects.

- ✔ Yindjibarndi Mapping Projects for Hooley & Harding Dam - \$90,000.
- ✔ Jill Tucker & Sylvia Allan Millstream Tourism project - \$2000.

Total Community Project cost - \$92,000.

Community Members Assistance.

- ✔ Charmaine Adams - \$2,000.
- ✔ Frank Smith family flights - \$1,584.36
- ✔ Jacobs family flights - \$1,116.16
- ✔ Rodney Larry family flights - \$752.18
- ✔ May Adams - \$7,000.00
- ✔ Toby family - \$1,000 + \$3,800.
- ✔ Warrie family - \$984,46.

Total Community Assistance - \$18,425.



Financial Statement – 08/09

Balance Sheet

Yindjibarndi Native Title Income – 634K

Operational & Administration Cost

Juluwarlu Admin. Cost for 10 month totaling - \$247,572.03 – No more Cost.

Salter & Gordon principle lawyers – \$86,888.

- ✓ FMG - \$10,000.
- ✓ General Files - \$10,000.
- ✓ Millstream Link - \$5,000
- ✓ Platina Resources - \$10,000.
- ✓ Polaris/Ochre Resources \$10,000.
- ✓ RTIO \$10,280.22.
- ✓ Yindjibarndi 1 Claim \$10,000.

Total current assets - \$65,280.22.

Yindjibarndi Barrister – \$97,075 – On going cost.

Community Projects. - No more Cost

Community Members Assistance - No more Cost

“MW-39”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-39” referred to in the witness statement of Michael Woodley dated 5 June 2023.

To Stanley Warrie

Chairperson

Yindjibarndi Aboriginal Corporation

PO Box 111

Roebourne WA 6718

8th March 2010

Dear Stanley

I write to you expressing my concern regarding a number of individuals who are members of the Yindjibarndi Prescribed Corporate and a number of issues having been brought to my attention on behalf of people who in the past and still today have concerns surrounding the general administration and care of Yindjibarndi peoples assets.

I would also need to stipulate that for over a period time at least for a year and a half there has been little or no information under an agreed communication strategy (for which there appears to be none) that would enable administration staff of the Yindjibarndi Aboriginal Corporation to keep our members up to date on developments and negotiations which occur from to time.

I understand fully the statutory role of the Board of Directors and the duty they have on making decisions under their authority as Directors but also as Elders. In saying this I sincerely support and hope that when matters are considered and decisions need to be made then they are based fully on the facts on information provided to them. In the past there has been considerable friction through malicious rumour mongering from many quarters regarding the alleged mishandling and abuse of Yindjibarndi people's asset. It appears that these are still just rumours unless they can be talked through with our members in a peaceful and respectful manner and be proven to be just that, rumours and be laid to rest once and for all

As you would be aware your authority as Chairman extends to being knowledgeable on the processes regarding meetings, recording of proper minutes and effective management of all financial accounts which receive and hold income and assets that is managed and controlled by the Board of Directors. The Board has overall responsibility for the decision on income paid into and out of the organisation and must be accountable for their actions and decisions, to do less would otherwise could possibly jeopardise the future operations and management of the Yindjibarndi Prescribed Body Corporate which was so hardly fought for and won by many Elders whom I stood beside during our fight for recognition many years ago, sadly, so many of them are no longer here.

I personally take full responsibility for the confusion and distress in regards to clearly overstepping your authority as Chairman of the Board but also your authority as a Yindjibarndi elder. The Executive Officer has a responsibility and a legal duty to provide a written and verbal report to the

Board of Directors on all business matters currently before it and if necessary provide a brief outline of development and achievements to date, this must also include all financial report outlining the current financial position of the Yindjibarndi Aboriginal Corporation.

I was made aware recently that Yindjibarndi currently have a matter in the Federal Court of Australia of which Fortescue Metals Group (FMG) is a respondent. Further to this I would add that this information came to me third hand. I took the liberty of calling Blair McClugh to specifically come to Roebourne to make available a "fact sheet" on all negotiations to date, however, I do take offence to being accused of holding a "secret" meeting with FMG on Monday evening in Roebourne at the Ieramugadu Inn. Present at the meeting were a number of people, you were there also. This was hardly a secret meeting when in attendance also was Phillip Davies and Angus Mack, both of them employees of Yindjibarndi Aboriginal Corporation. This matter is not going to be dealt with an appropriate manner and it appears that accusations and threats made against members will not be left without recourse. I am more than disappointed that less than 24 hours a notice can be delivered into the hands of people in Roebourne requiring their attendance to discuss matters; at the top of the agenda is my name along with two other individuals accused of being complicit in this matter.

It is my belief that you have been misled into making this decision to make available a public notice for such a meeting, should you have followed due process it would have been better to engage our members and then proceed to ask the Executive Officer to provide all updates regarding the current litigation regarding Fortescue Metals Group and all other matters as you have stated.

I will not be attending this meeting or any other meeting unless legally obliged to and I believe that my character is being tarnished to feed to the negativity and untruthfulness and incorrect information being generated amongst the membership. I will not be bullied into attending such a meeting to give somebody the right to accuse me of something which is entirely baseless.

I commend you in your duties as Chairman thus far and hope that now and in the near future Yindjibarndi Aboriginal Corporation achieves its aspirations for all involved.

Yours Sincerely



Ms Michelle Adams

“MW-40”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked “**MW-40**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Justin Edwards

From: Phil Davies <pdavies@yindjibarndi.org.au>
Sent: Saturday, 20 May 2023 1:52 PM
To: Justin Edwards
Cc: Michael Woodley
Subject: FW: YAC
Attachments: Meeting YIN-FMG flyer for Surveys .doc

Letter to Duncan Ord and Brian Wilkinson - DIA from MW

-----Original Message-----

From: Michael Woodley <mwoodley@juluwarlu.pilbara.net>
Sent: Tuesday, 27 July 2010 3:45 PM
To: Brian Wilkinson <Brian.Wilkinson@dia.wa.gov.au>; Duncan Ord <Duncan.Ord@dia.wa.gov.au>
Cc: Phil Davies <pdavies@juluwarlu.pilbara.net>
Subject: Re: YAC

Dear Duncan and Brian,

On behalf of Yindjibarndi the chair, directors and elders we would appreciate any and all assistance that you can give us in helping us stop this slaughter of heritage clearances that is taking place at the self called FMG solomon tenement.

As I have indicated to Brian earlier today that FMG have again ignored the Elders wishes to stop clearing sacred ground at the site by manipulating vulnerable Yindjibarndi unauthorised members to clear land.

I have attached for your information a flyer we have distributed last week Friday as we were told by other concern Yindjibarndi members that a heritage survey was to take place yesterday Monday the 26th of July 2010.

The message on the flyer is a disparate plea from the Chairperson of YAC Mr. Stanley Warrie and YAC Elder Mr. Ned Cheedy. Ned being 104 years of age is the last living Elder who has the knowledge of that area and now he very worried that sites are being destroyed by Young Yindjibarndi people who don't know the country and all its wisdom.

And as the main signature applicant of the Yindjibarndi #1 claim he responsible in making sure that Yindjibarndi's rights and interest are being protected, Yindjibarndi's culture and heritage are being protected Mr. Ned Cheedy is the key representative that leads the rest of his follow registered applicants being namely; Ms Mavis Pat, Ms Aileen Sandy, Ms Edie Whalebone, Mr. Thomas Jacob, Ms Sylvia Allen, Mr. Alum Cheedy, Mr. Michael Woodley.

FMG have not consulted with the above applicants in regards to heritage matters that started yesterday.

He has asked me to ask you to help us.

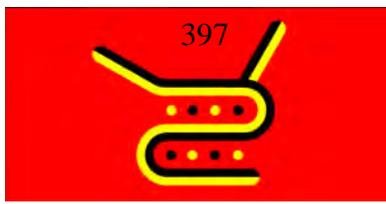
Yindjibarndi would very appreciate the opportunity to meet with the Minister on matters regarding disrespectful and inappropriate heritage clearances being undertaken by FMG.

Please call me if you would like to discuss this matter further.

Regards,
 Michael.
 0419 097 130.

On 27/07/10 10:30 AM, "Brian Wilkinson" <Brian.Wilkinson@dia.wa.gov.au> wrote:

> Hi Duncan,
>
> Just spoke with Michael. He advised that FMG are still through their
> aboriginal employees - conducting Heritage matters without
> discussing/negotiating through YAC.
>
> When you or we meet with FMG we need to communicate this is still
> occurring and causing serious internal relationship issues with the Yinjibarndi people.
>
> At time when the community is uniting - this approach by FMG is
> derailing my efforts in unifying the community.
>
> In addition there are relationship issues between Michael Gallagher
> FMG and YAC CEO and members.
>
> I do know one person within FMG that I have confidence in forming
> good relationships with aboriginal persons and could assist with
> developing relationships. His name is Glen Dewhurst - Glen worked a
> long time in the Kimberley and Halls Creek and was excellent in
> working with different communities.
>
> YAC is requesting DIAs assistance in meeting with the minister. Does
> DIA do this or should YAC make a formal written request?
>
> Don't hesitate to call if you want to discuss further or need assistance.
>
> Brian Wilkinson
> Chief Operating Officer
> AACC
> 0428643919
>
> Sent from my iPhone
> The information contained in this email, including any attachments,
> may contain confidential information. If you are not the intended
> recipient, any use, disclosure or copying of this information is
> unauthorised. If you have received this email in error, please notify
> the sender immediately by return email, and then delete it from your system.
>
> Internal Virus Database is out of date.
> Checked by AVG -
> <https://aus01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.aug.com%2F&data=05%7C01%7CJedwards%40francisburt.com.au%7C34168bb3691640d0ac8c08db58f650b0%7C3746514dacbb4fefa153d78da5f77c18%7C0%7C0%7C638201588232462933%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikk1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=AjsnabL02zsLZFNarvWinCXCBllFd89KidT6u65EX4w%3D&reserved=0>
> Version: 8.0.237 / Virus Database: 270.10.19/1943 - Release Date:
> 02/10/09
> 07:20:00



YINDJIBARNDI

PROSCRIBED BODY CORPORATE

THE YINDJIBARNDI ABORIGINAL CORPORATION

Stanley Warrie.

It has been brought to my attention that there is an Yindjibarndi Heritage survey scheduled for next week Monday the 26th of July 2010.

The YAC Board, Elders committee and concerned members are very disappointed with the current actions that a small group of unauthorised YAC people who have been going around and supporting FMG on site heritage clearances, which are not supported by the Yindjibarndi's Elders who speak for that country and who have the KNOWLEDGE.

My Elder, one of my last fathers I have left has asked me, to bring to you Yindjibarndi people who are being misled.

This is his message.

I am Ned Cheedy I am the last living elder of Yindjibarndi country I am a Law man who knows that country like the back-of-my-hand; all the hills names, all the rivers names and all the songs and stories I know, all taught to me by my old people, where teaching of knowledge has taken me years to learn

I am now very worried that these Yindjibarndi people who are going out there will give FMG the rights to destroy sacred Yindjibarndi sites because you don't know the country and the sacred sites that belongs there. These sites are very important to us Yindjibarndi people, long time ago when I was a young man all my grandfathers took all around that place and said to me whatever happens you must look after and take care of this country because this is our home, the home for all Yindjibarndi today, tomorrow and years to come.

I want every Yindjibarndi to know that I am the only one that can speak for that country this is my responsibility given to me by my grandfathers and fathers the rightful way through Yindjibarndi LAW not through easy money.

Mirda nyiyu jajamagayi
Please don't rubbish me

Ned Cheedy
The last Yindjibarndi Elder
23rd of July 2010.

“MW-41”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “**MW-41**” referred to in the witness statement of Michael Woodley dated 5 June 2023.


Fortescue Metals Group Ltd

ACN: 002 594 872

87 Adelaide Terrace, East Perth

Western Australia 6004

PO Box 6915, East Perth, Western Australia 6892

Telephone: +61 8 6218 8888

Facsimile: +61 8 6218 8999

Website: www.fmg.com.au
URGENT – BY EMAIL

Our Ref: LS-100-I-0371

4 February 2010

Slater & Gordon
 Level 2, Council House
 27 - 29 St Georges Terrace
 PERTH WA 6000

ATTENTION: SIMON MILLMAN & GEORGE IRVING

Dear Sirs

RE: FMG – YINDJIBARNDI NEGOTIATIONS

Fortescue Metals Group (Fortescue) refers to the above matter and to repeated phone calls by Fortescue's Mr Blair McGlew to Yindjibarndi's lead negotiator Mr Michael Woodley concerning the above.

Mr McGlew has repeatedly attempted to speak to Mr Woodley about organising a Yindjibarndi community meeting with Fortescue to progress these negotiations. Mr Woodley has refused to respond to Mr McGlew's phone calls.

As lead negotiator for Yindjibarndi, Mr Woodley's refusal to respond to repeated phone calls works against any potential agreement and is frustrating Fortescue's goodwill in the negotiations. Mr Woodley has repeatedly refused to organise a community meeting to progress our negotiations and yet he cites Fortescue's behaviour as being inflexible.

In view of Mr Woodley's position, please be advised that Fortescue now formally writes requesting a community meeting be organised between Yindjibarndi People and Fortescue.

Given Fortescue's repeated requests for a community meeting, you are advised that if Fortescue receives no response to this written request within three (3) working days of the date of this letter, Fortescue will organise such a meeting ourselves.

Yours sincerely

FORTESCUE METALS GROUP LTD
SUKHPAL SINGH

Land Access Lawyer

0408 096 846

“MW-42”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-42” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

9/2/2010.

Blair McGlew
Head of Land Access
Fortescue Metals Group LTD

Dear Blair,

RE: FMG – Yindjibarndi Negotiations

I write in response to a letter dated 4 of February 2010 sent by Fortescue Metals Group (FMG) Land Access Lawyer Sukhpal Singh, which accuses me of not returning your repeated phone calls regarding your willingness to meet with the Yindjibarndi to further negotiate, which I have, in your opinion refused.

I want to firstly express my disappointment with your untruthful allegations about me and the way I have conducted my position and commitments as lead negotiator in the process of trying to reach an agreement – in all of your phone calls and messages you have never mentioned that FMG are wanting to renegotiate.

As I remember from our last conversation on this matter, it was you who ended this process by stating that FMG is not prepared or willing to change it's position on negotiating with Yindjibarndi. Although your comments were disappointing to Yindjibarndi we still believe that a deal can be reached and I have always said that the invitation to progress further with our negotiations is always open.

You later confirmed FMG's position in a letter sent to Yindjibarndi's Barrister Mr Irving dated the 15th of December 09. As the last paragraph states, "The previous financial offers made by Fortescue to Yindjibarndi for a Land Access Agreement are now withdrawn in full".

By this confirmation the Yindjibarndi accepted as true that all discussions between Yindjibarndi and FMG were over - to clear up any misinterpretation and misunderstandings, the choice to abandon the negotiating process wasn't mine nor Yindjibarndi's.

I also find your statement that you will organise your own Yindjibarndi community meeting in Roebourne to be disrespectful and I would strongly like for you to rethink through this approach clearly before attempting such an irresponsible exercise – we are not unintelligent and these are not the days where such behaviour will be accepted. Yindjibarndi has a process that we would like for you to please respect.



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

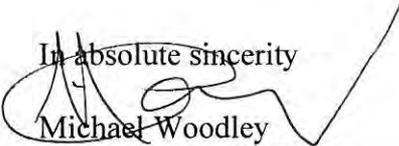
The Yindjibarndi have not ruled out any attempts for both parties to recommence negotiations, but as we have always stated our goals have always been to develop a proactive relationship that is built both on strength and equality so our communities can be sustainable now and well into the future.

Blair we will accept your offer to meet with FMG, will you accept our request to progress this process in a manner that is respectful of our integrity, honour and with visions of change and leadership – I can honestly and proudly say that this is what we, the Yindjibarndi have demonstrated over time we've spent negotiating.

Subject to all arrangements being met we can progress with this process immediately.

Please continue to communicate with Simon; on this matter if you choose to commit further. Phil Davies is also available to answer any queries you may have, as I am still involved with Law business.

In absolute sincerity



Michael Woodley

Chief Executive Officer

Yindjibarndi Aboriginal Corporation

And, Lead Negotiator for all Land Access Agreements.

“MW-43”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-43” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Justin Edwards

From: Blair McGlew <bmcglew@fmgl.com.au>
Sent: Tuesday, 16 February 2010 11:36 AM
To: Phil Davies
Cc: 'Michael Woodley'; 'Simon Millman'; Sukhpal Singh
Subject: RE: Message from Simon Millman
Attachments: _AVG certification_.txt

Phil

In response to my letter requesting a Yindjibarndi community meeting, Michael Woodley's letter of 9 February 2010 advised me to "continue to communicate with Simon on this matter if you choose to commit further."

I spoke with Simon Millman on Thursday, 10 February and he advised that he would work with Yindjibarndi Aboriginal Corporation to establish a meeting time. Although my original deadline of establishing a meeting time by last Tuesday had not been complied with, the letter from Michael provided positive momentum on the matter. Therefore, I advised Simon that he had until close of business today, Tuesday 16 February, to liaise with YAC and advise when the meeting would be held. I made it clear that if this deadline was not met, Fortescue would proceed to organise a community meeting itself. I presume that message has been communicated to you.

To avoid any doubt, if I am not advised by COB today of a date and time (in the immediate future) for a Yindjibarndi community meeting, then Fortescue will set about this task itself.

I look forward to your response and cooperation.

Regards

Blair

From: Phil Davies [mailto:pdavies@juluwarlu.pilbara.net]
Sent: Friday, 12 February 2010 4:38 PM
To: Blair McGlew
Cc: 'Michael Woodley'; 'Simon Millman'
Subject: Message from Simon Millman

12/02/10

Dear Blair,

Simon let us know that he has spoken with you and we understand that FMG wish to have a community meeting with the Yindjibarndi.

I will send you the correspondence next week regarding the Yindjibarndi meeting process

Yours sincerely

Philip Davies
Administration/Anthropologist
Juluwarlu Group Aboriginal Corporation
For and on behalf of the Yindjibarndi Aboriginal Corporation
08 91821497 Phone
0429 110451 Mobile (Phil)
0419 097130 Mobile (Michael)
08 91821035 Fax
www.juluwarlu.pilbara.net

On behalf of the Chairperson, Directors, members and employees of the Juluwarlu Group Aboriginal Corporation

The Juluwarlu Vision - 'To enable Ngarda to sustain a cultural life in contemporary society'

“MW-44”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-44” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Conversation between Blair McGlew and Michael Woodley from 11.53am on 22/02/10 – the conversation was concluded at 12.28 pm on 22/02/10

Michael Woodley (MW) – I would like to recap on where we are between YAC and FMG

B McGlew (BM) – what is happening with the YAC – I had to meet with the FMG board – the board has asked me if the Yindjibarndi know that FMG has withdrawn the offer – we want to make sure that the Yindjibarndi know that we have taken the offer off the table - so we want to have a proper meeting with the Yindjibarndi – I just want to make sure that we have gone through that process and everyone is aware of the situation – we want to know that the Yindjibarndi are agreed on the position that the Yindjibarndi people has put

MW – I am just wanting to clarify what you want the meeting about

BM – we want to talk about the FMG position and whether the Yindjibarndi people are happy that they don't want to accept the FMG offer – then the railway investigation licence and also the other tenements

MW – like you – I have been talking to my board as well as you talking to your board – the door is not closed – we are happy to negotiate on terms if FMG's position has changed – however if FMG's position in terms of a meeting is to remain with the status quo then we don't seem to have anything to talk to you about

BM – if the Governing Committee don't want to meet with us the that is fine – we will organise our own community meeting – are you now saying no to meet with us – the time to negotiate on money is gone – our offer has lapsed

MW – your offer has lapsed because you put to us an ultimatum – that is the reason why it lapsed – this is what you did – you made an offer and then you took it off the table – it goes back to our initial discussion depending on our relationship

BM – the tribunal found that we negotiated in good faith – as far as I am concerned we made an offer you guys said forget it – my time of coming to you has gone – we want to negotiate with you on other mining leases – but that other time is gone – I have told the board that we have offered a substantial sum of compensation – I want to make sure that the Yindjibarndi people are happy with their position – when we are mining out there in another year or so if people ask us why the Yindjibarndi people why they are not getting royalties – then we need to be clear why they are not getting that

MW – I want to warn you not to have a community meeting

BM – I now want to close the chapter on the negotiations – I want to make sure people are clear

MW – we told you what our position is years ago – unless you want to negotiate on something else

BM – if you have something else then please put it forward

MW – what I can guarantee – we will never meet again with you – if your attitude is that the last chapter is closed and you want to move on to another chapter – then there is no point meeting – I want to strongly advise you not to meet the Yindjibarndi people – you need to respect what the Yindjibarndi people

BM – you sound worried – I do not take kindly to threats

MW - if you are taking this as a threat then so be it – we put forward to you a meeting process – we are talking about a company that will be taking millions of dollars out of our country – to save this thing blowing up in 10 or 20 years time you are better off doing these things properly – if you want to meet on that footing then that is what should happen – you have to respect the process – you can't just say

BM – Right now the board of directors have said that if the tenements are granted then there will be no financial payment or compensation paid to Yindjibarndi – we are respecting your right to reject our offer – you are right then this is a commercial negotiation – as far as we are concerned the negotiations on the three tenements are finished

MW – if your board has made a decision to not pay us then that is fine with us

BM – I didn't say that – they have made a decision to pay you compensation

MW – you have given us an ultimatum – you said take it or leave it

BM – I am not trying to convince you to take a deal

MW – I am saying that other groups have negotiated with us

BM – the native title act makes it very clear that we don't need to make any offer at all

MW – this is the problem – you are relying on a dodgy system to not pay any compensation – we have a choice – we want people to talk to us like human beings – if you are making money out of our country then we also need

BM – you talk well – as far as I'm concerned – if you want to put another offer on the table then we will consider it – go for it by all means – if you don't want to organise the meeting then put it in writing – what we are offering is a huge amount of money – we are giving a lot of jobs – income employment that sort of stuff – we are not going to give you ridiculous amounts of money

MW – I got your position – we will respond to you in writing – I am disappointed in your attitude to me – whatever your decision you guys make you will have to live with that decision – my letter will be simple – I want to strongly urge you not to have a community meeting – obviously we are on two different paths – don't call me again

BM – in your letter can you please address the issue of who holds the native title rights and I want to make sure they are clear on your decision

“MW-45”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

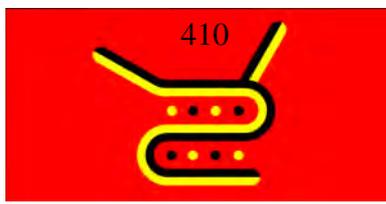
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked “**MW-45**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

23rd of February 2010.

Andrew Forrest
Chief Executive Officer - CEO
Fortescue Metals Group Ltd
Level 2 / 87 Adelaide Terrace / East Perth / W.A. 6004.

Dear Andrew,

RE: Yindjibarndi Position regarding negotiations with Fortescue Metals Group (FMG).

I am writing in response to my phone conversation on the 22nd of February 2010, with your Head of Land Access FMG employer Blair McGlew regarding Yindjibarndi Aboriginal Corporation (YAC) and Fortescue Metals Groups (FMG) current position to all negotiations surrounding reaching a Land Access Agreement (LAA).

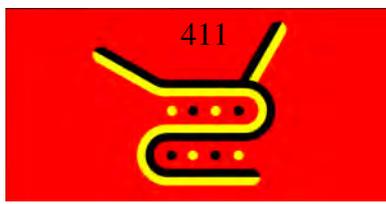
As lead negotiator, the Yindjibarndi Governing committee and members of YAC have given me instructions to make contact with Mr. McGlew before responding to his correspondence dated the 18th of February 2010, regarding a Yindjibarndi community meeting, my brief was to seek common grounds of restarting the dialogues between us that may assist with our indifferences and one that will hopefully lead towards a reasonable diplomacy that could also assist in salvaging our departing ways.

From our conversation it was made clear to me by Mr. McGlew that his position and instructions are as follows:

- The FMG are not willing to renegotiate with Yindjibarndi on previous tenements namely; Firetail (E47/1447 and Solomon (E47/1334) and that any and all compensation in our first deal to the Yindjibarndi are off the table and are no longer discussable – although I have indicated that this is a crucial factor to our negotiations and these tenements are part and parcel of our discussions as we move towards the building of our relationship.
- FMG's only reasons for a Yindjibarndi community meeting is to only discuss further the future Tenements and Rail Line licences that FMG have applied for and as apart of the Native Title process.
- He also mentioned that these instructions are the directions and decisions of the Fortescue Metals Group Board of Directors in conclusion to his presentation to them of our negotiating process, which failed to deliver an LAA.

What is also noted in our discussion on the day are Mr. McGlew's observations surrounding key elements to our negotiations, which may or may not have contributed to this failed process.

1. His views, understandings and opinion of the Native Title Act (NTA) were he has stated that under this Act FMG is not obligated to pay any compensation.



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

2. His attitude to my intelligence and articulated views to our discussions of reaching a fair and equitable agreement is somewhat unnecessary as this process is a given in allowing mining companies the right of way regardless of my well manned tongue.
3. His opinion and prejudging of our court case decision will go in favour of FMG where they will end up with the mining licences at the end of the day.
4. And the findings of the National Native Title Tribunal (NNTT) in the Right to Negotiate process awarding in favour of FMG as to FMG's fair process in negotiations with Yindjibarndi is also a reason why the Yindjibarndi should concede to FMG's offer.

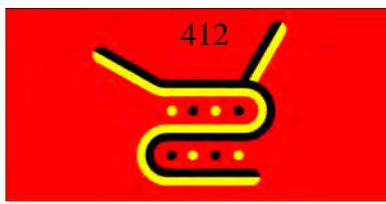
Yindjibarndi are obviously disappointed by these assertions made by your Head negotiator in what is believed, intended to be a good well conversation which ended up being an unwilling, unprofessional poor display by Mr. McGlew.

Yindjibarndi take seriously the process of the NNTT, which will continue to be a major concern to us, as to the fairness surrounding good faith negotiations and of its interpretation. We know now these action taking by FMG is a deliberate attempts to follow suit with previous decisions being in favour of FMG as good faith negotiations. Yindjibarndi strongly believes that this path successfully transpires under the radar of being personally discriminating and those who encourages it are no better then the system that enforces it. As difficult enough that Indigenous group are forced to participant in a discriminating process, the Government demands of us to comply without any real resources or assistance.

Yindjibarndi believes that this system of discrimination can only be won by visionary leaders who have the courage to change with the hearts and minds to embrace it, and, as helplessly we may be don't sideline us to become spectators in witnessing another lose generation.

Yindjibarndi must have faith in our legal system our struggles for equality in life has been seriously injected with educating society that we the Indigenous people of this country deserve to be un-poviated by our own admission and not be denied these fundamental rights because there is a difference between race or gender, which is so discerning. Mr McGlew make these assertions that the legal system is on the side of FMG and matter how intelligent an Indigenous person may be there is no room for diplomacy.

Yindjibarndi have to its best abilities have tried to imitate best practice in all of our engagements with FMG, as like the rest of the free world we have embraced the art and principles of diplomacy, in our humble opinion it should be the first and final act of any negotiations between opposite sides, the foundations of our Democracy is primarily based on this notion, we store as much faith in this ancient art of war as we do in our legal system, but we believe first and foremost that we must exhort and encourage ourselves that we have explored all avenues of diplomacy before one takes up the opposite of Democracy – we have only dictated the terms of which we would like to live our lives with the choices to succeed in creating a better future for Yindjibarndi.



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

Yindjibarndi believes by ignoring and disrespecting the Yindjibarndi people, the FMG Board of Directors is only choosing to focus on its primarily objective of destroying our country without the free and prior consent of the Yindjibarndi, this action will no doubt have major consequences, in disproving the Yindjibarndi people of our rights, freedom and equalities to a better life is depriving the United Nations symbol piece, honouring and protecting of the Declaration on The Rights of Indigenous Peoples – in which our Nation have endorsed.

Yindjibarndi believes after my discussions with Mr. McGlew and his blunt picture of FMG's intervention it is now disappointingly clear to us that the FMG's Board of Directors have made their decision to ignore the Yindjibarndi, by the evidence of history this ignorance will not go undetected as affect it will result in catastrophic ending where it will only be remembered by the bodies it has laid to rest.

Yindjibarndi will have no regrets in our decision to walk away and cut off all communications with Fortescue Metals Group (FMG), but as I've always stated in my conversations with Mr. McGlew the door is always open to discuss a win-win agreement if the FMG's Board of Directors still chooses to do so.

Yours Sincerely

Michael Woodley
Chief Executive Officer – CEO.
And Lead Negotiator to all Land Access Agreement.
Yindjibarndi Aboriginal Corporation.

“MW-46”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “**MW-46**” referred to in the witness statement of Michael Woodley dated 5 June 2023.


Fortescue Metals Group Ltd

ACN: 002 594 872
 87 Adelaide Terrace, East Perth
 Western Australia 6004
 PO Box 6915, East Perth, Western Australia 6892

Telephone: + 61 8 6218 8888

Facsimile: + 61 8 6218 8999

 Website: www.fmgl.com.au

Our Ref: LS-100-I-0381

26 February 2010

Simon Millman
 Practice Group Leader
 Slater and Gordon
 GPO Box 2257
 PERTH WA 6831

BY EMAIL: smillman@slatertgordon.com.au

Dear Simon

RE: YINDJIBARNDI COMMUNITY MEETING

On 18 February 2010, I wrote to you to confirm a Yindjibarndi community meeting on 15 March 2010.

On Monday, 22 February, Michael Woodley from the Yindjibarndi Aboriginal Corporation contacted me by telephone and advised that the meeting would not proceed. Although he indicated that this decision would be communicated to me in writing, I have received nothing to date.

As I have made clear to both you and Mr Woodley in the past, your refusal to organise the meeting has left Fortescue no option than to organise a meeting itself with members of the Yindjibarndi community.

During our conversation on Monday, Mr Woodley advised me not to organise a Yindjibarndi community meeting "for my own safety". I regard this as a threat and would ask that you advise your client of the potential legal ramifications of making or carrying out such a threat.

I also reiterate my request of 18 February for you to provide the names of each member of the Yindjibarndi Aboriginal Corporation Governing Committee.

Yours sincerely

FORTESCUE METALS GROUP LTD

BLAIR MCGLEW
 Head of Land Access

“MW-47”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following three pages is the annexure marked “MW-47” referred to in the witness statement of Michael Woodley dated 5 June 2023.

From: [Simon Millman](#)
To: [Phil Davies](#); mwoodley@juluwarlu.pilbara.net; [George M Irving](#)
Subject: FW: Monday
Date: Thursday, 11 March 2010 8:19:24 AM
Attachments: [_AVG certification .txt](#)

I think we should have an urgent phone hook up to discuss.

The only time I am unavailable is between 2pm and 4pm this afternoon

thanks

Simon

From: Blair McGlew [mailto:bmcglew@fmgl.com.au]
Sent: Wednesday, 10 March 2010 05:23 PM
To: mwoodley@juluwarlu.pilbara.net
Cc: George Irving; Simon Millman; Sukhpal Singh; Damien Ardagh; Alexa Morcombe; Michael Gallagher
Subject: Monday

Michael

For your information, I visited Roebourne on Monday to speak to a few Yindjibarndi people regarding the relationship between Fortescue and Yindjibarndi.

When I arrived, I was confronted by a few people including Stanley Warrie, who were trying to stop me talking to the people who were there. Phil Davies was with Stanley.

I advised them that as far as I was aware, this was not a formal meeting of Yindjibarndi people. It was simply a request to Fortescue to explain the situation from our point of view.

There was a view expressed by many people who were there at the diner, that they did not have a good understanding of what had happened with the negotiations between Yindjibarndi and Fortescue over the past three years. I simply stated my view about the history and progress of the relationship between the parties, as depicted in the information document attached.

I handed out some documents on Monday night, which are attached:

- "Yindjibarndi – Fortescue Information Paper";
- Letter to George Irving dated 16 December 2009; and
- Letter to George Irving dated 13 November 2009.

Since the 'meeting' at the diner, I have become increasingly concerned that individual Yindjibarndi people who attended the meeting have been personally targeted. There have been allegations that you have assaulted and threatened people who were at the diner. You have also repeatedly asked me to confirm who invited Fortescue to Roebourne to discuss these matters.

And I have since been given a document (attached) purporting to come from Stanley Warrie, advising of a Yindjibarndi meeting that was to be held yesterday. One of the agenda items on the document was "the secret meeting held by Michelle Adam, Jill Tucker and Maudie Jerrold with FMG at the Roebourne diner yesterday". It is important to note that the meeting was not secret, as evidenced by the attendance of Stanley and others.

The only inference I can draw from this document is that Stanley has taken a prejudicial view of the 'meeting' with the intention of individually targeting these people for their involvement. It is highly concerning that people who are only seeking out information about critical matters relating to their native title claim and negotiations with Fortescue may be victimised as a result.

Considering that I felt verbally threatened by you in recent weeks during discussions about the organisation of a Yindjibarndi meeting, I feel my concerns are well founded.

Therefore, I seek your urgent assurance that the safety of people who were at the 'meeting' will not be put at risk by you or any Yindjibarndi office bearers.

I would also ask that you confirm a meeting with the Yindjibarndi community next Monday, 15 March at which Fortescue can ensure that all Yindjibarndi people are given a full account of negotiations to date.

Regards

Blair

Blair McGlew

Fortescue Metals Group Ltd

Fortescue House

Level 2 / 87 Adelaide Terrace / East Perth / W.A. 6004

PO Box 6915 / East Perth / W.A. 6892

Main: +61 8 6218 8888 / Direct: +61 8 6218 8820

Mob: +61 0407 082 282 / Fax: +61 8 6218 8880

Email: bmcglew@fmgl.com.au

Web: <http://www.fmgl.com.au>

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“MW-48”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 10 pages is the annexure marked “MW-48” referred to in the witness statement of Michael Woodley dated 5 June 2023.

**Minutes for the
Yindjibarndi Aboriginal Corporation Community Meeting
Meeting at the Juluwarlu Group Aboriginal Corporation
Tuesday the 16th of March 2010**

Meeting Started 10.15 am

Present

Yindjibarndi Directors

Thomas Jacobs, John Sandy, Stanley Warrie, Tootsie Daniels, Rosemary Woodley, Gabrielle Cheedy, Charmaine Adams, Rosie Cheedy, Lyn Cheedy, Stephen Hubert, Ricky Sandy

Yindjibarndi Elders

Ned Cheedy, Bigali Hanlon, Maudie Jerrold, Sylvia Allan, Dora Solomon, Joyce Hubert, Bruce Monadee, Billy King, Amy Jerrold, Aileen Percy, Mavis Pat, Bruce Woodley,

Yindjibarndi Community Members

Barry Pat, Angus Mack, Max Hubert, Johnnie King, Tom Averdee, Pansy Sambo, Jill Tucker, Alice Guinness, Wendy Warrie, Kaye Warrie, Jean Norman, Tanya Jacobs, Vicky Wilson, Madeline Sandy, Florence Toby, Barbara Guinness, Lesley Walker, Andy King, Linda Norman, Curtis Lockyer, Dennis Hubert, Max Hubert, Russell Sandy, Gloria Lee, Sally Walker, Marion Cheedy, Jean Cheedy, Jane Ranger, Esther Mingo, Joylene Warrie, Ken Sandy, Clifton Mack, Dwayne Toby, Lyle Wally, Fabian Cheedy, Robert Cheedy, Judith Coppin, Carol Norman, Donna Willis, Joanne Willis, Will Woodley, Wendy Hubert, Jillian Aubrey, Sharon Warrie, Julie Stevens, Aileen Percy, Shirley Walker, Sonia Wilson, Lynette Wilson, Maria Wilson, Esther Pat, Joyce Wilson, Brenda Hubert, Aileen Sandy, Ellery Sandy, Casey Cheedy, Nadine Sandy, Max Ranger, Stuart Ranger, Nooky Ranger

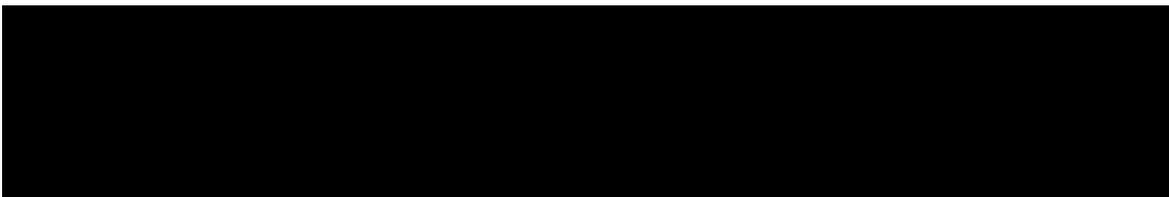
Yindjibarndi Aboriginal Corporation Executive Officer

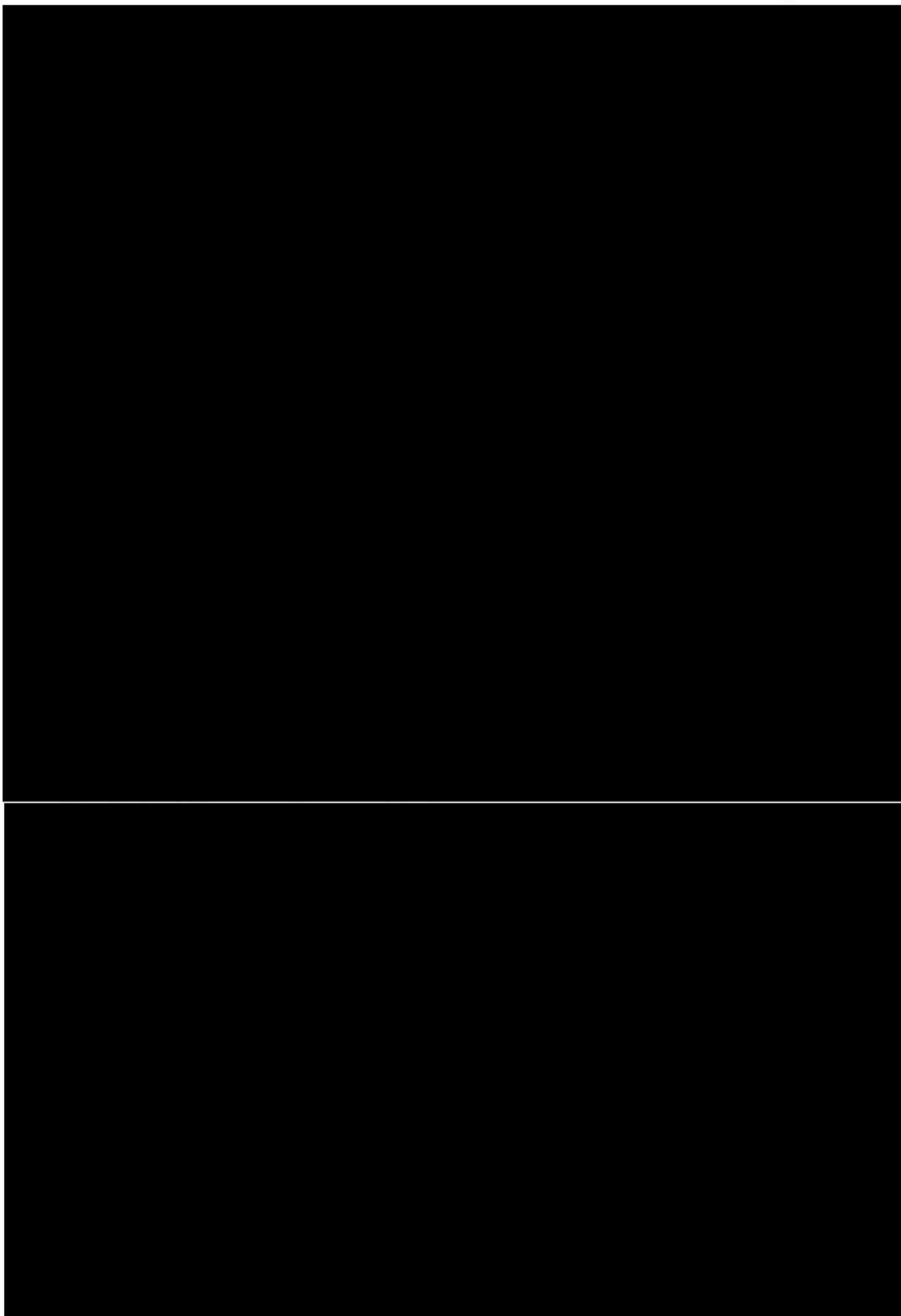
Michael Woodley

Support Team

Philip Davies (minutes), Lorraine Coppin (Food), Donicka Lee (Food), Shantelle Cheedy (Food), Jan Kapetas (Food)

Stanley Warrie (SW) thanked the people for coming and opened the meeting and handed over to Michael Woodley (MW) – Michael said that George would be speaking first and handed over to him



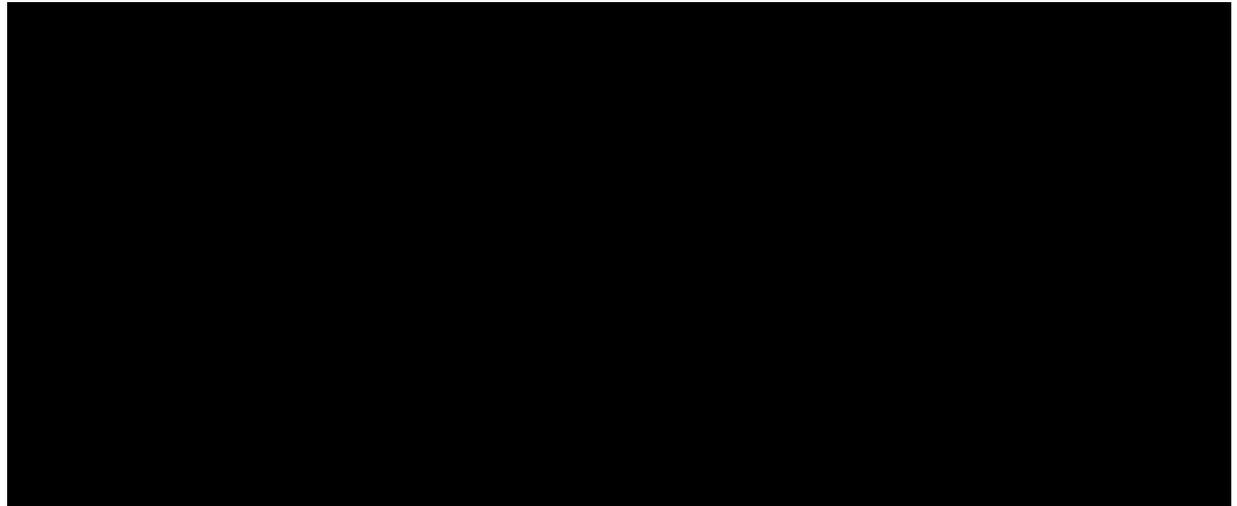
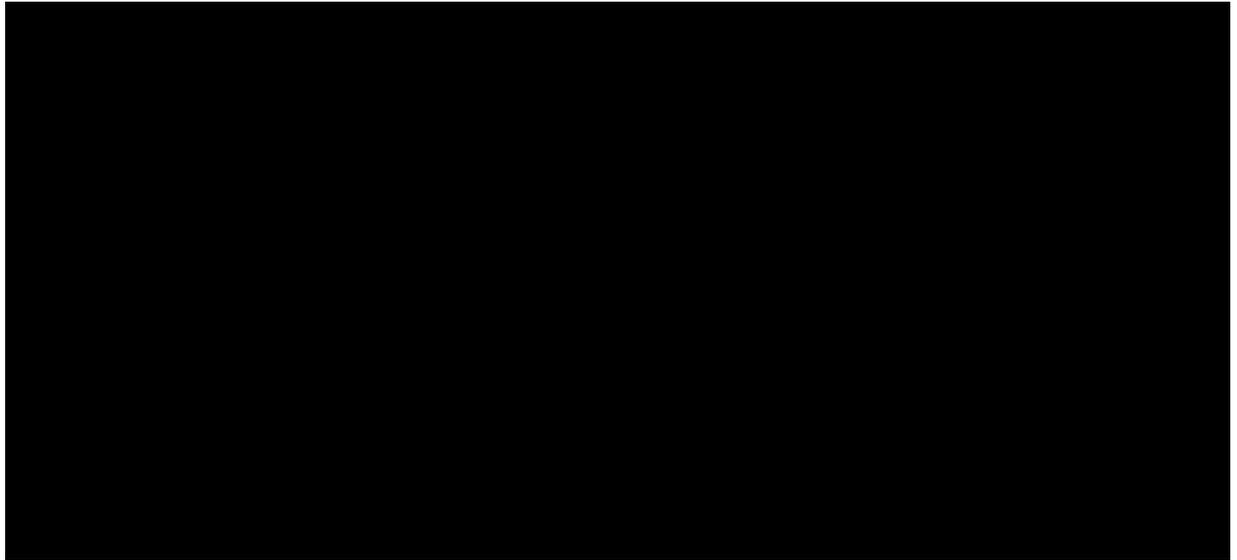
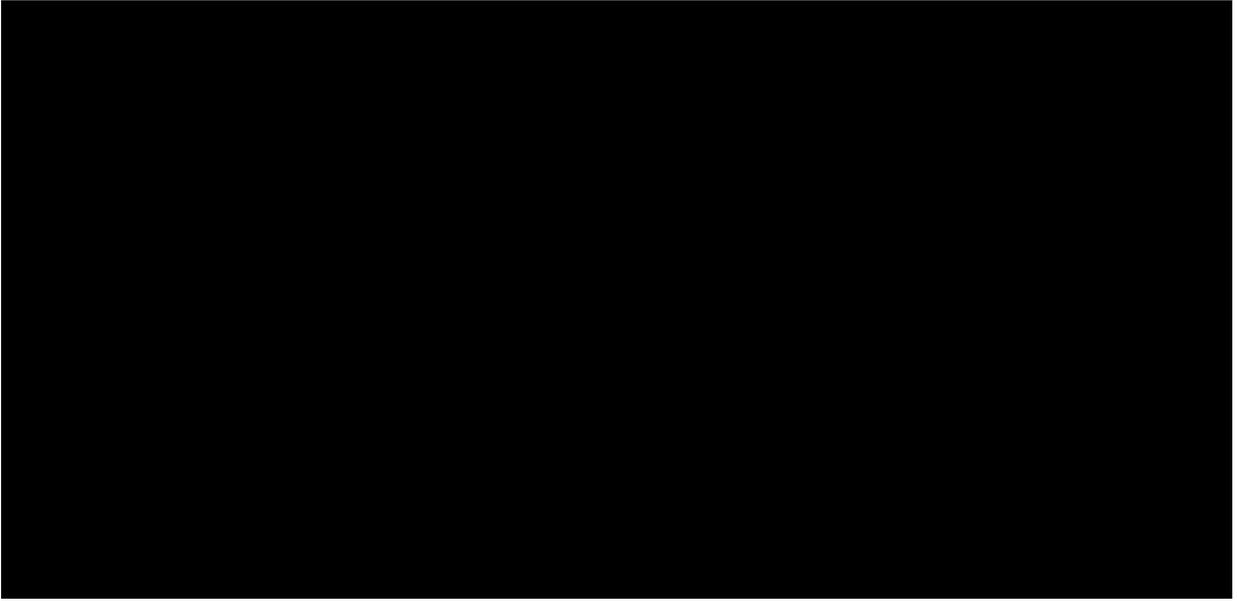


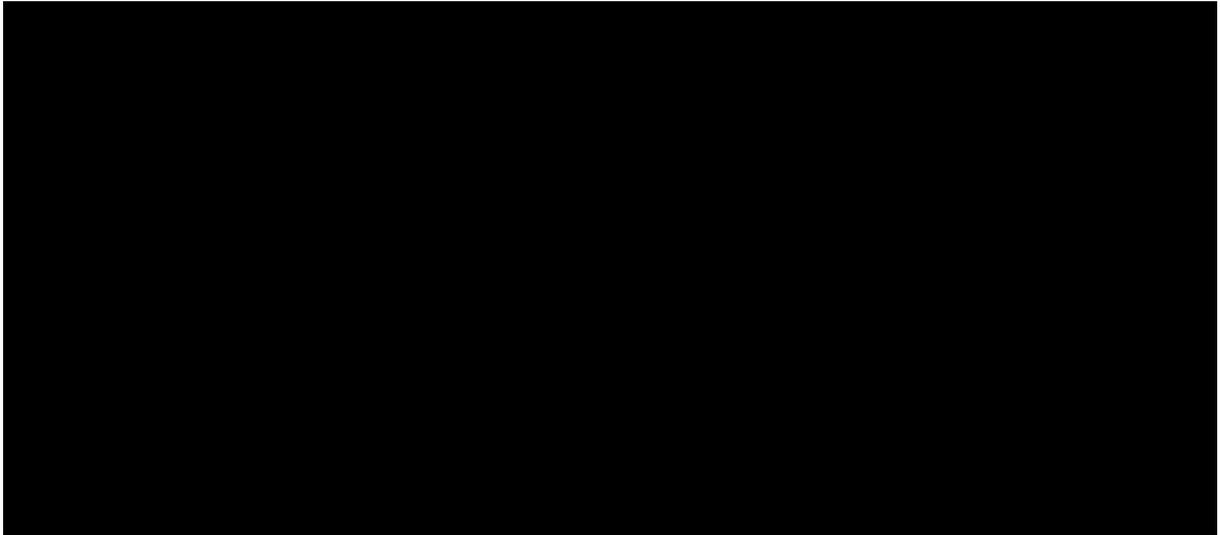
[Redacted]

[Redacted]

[Redacted]

[Redacted]





Michelle Adams (MA) – I suppose people want to hear from me about the letter from me to Stanley Warrie

MA addressed the group – I would like this minuted please – there is a way of doing this the Ngarda way and the white fella way – some people went to school and some people didn't – can anyone tell me when he (GI) walks away from here do you really understand what he said – I am an educated person and I know what is going on

MA – I apologise to the Chairman for overstepping my responsibility – I apologise to him as the Chairman of this organisation and also as a Ngarda

MA – I am clearing my name here – Pansy you told me that Miggo is building his own empire here – you need to stand up and account for your statements and actions - I am being honest and trying to clear my name – After I leave this office I don't want people to come to my house and complain about what is happening at Juluwarlu and the Yindjibarndi

MA – Miggo needs to apologise to Bruce Woodley – we don't want to be divided – when I rang FMG I asked for information – I am not confident to go up to Juluwarlu to get the information – it is up to others – the Directors and the CEO to give us the information – just let us know what is going on – you have the authority and decision making authority

MA – I say this to the Directors – you need to take care of the assets and management of the Yindjibarndi Aboriginal Corporation

MA – I don't want to have any more stress

Wendy Hubert (WH) – daughter did you look at this MOU?

MA – I want the Chairperson to make an apology to me for putting my name on the meeting notice

Lyn Cheedy (LC) – we have open meetings – any questions anyone has then they only have to ask someone who knows

Charmaine Adams (CA) – we have open meetings all the time – if the members want to know anything then just ask

Margaret Read (MR) – now if you are talking about Juluwarlu then everything is audited

Ellery Sandy (ES) – we would like to know if we can see the books

Stanley Warrie (SW) – everything is here – everything is open

ES – when I come here I don't get any help

SW – listen – when you come in here (Juluwarlu) do you ask these people – do you tell them you are coming? Do you ask them and tell them what you want?

MW – decision making belong to the people – Michelle please don't go - stay here – you need to hear this – when you and Maudie were running the PBC the things were not open with the people – we have meetings within an open forum – I don't like people saying that I am stealing

11.42am Everybody – lots of yelling

CA – people sit around in the community and they run you down Miggo and we shouldn't all blame Michelle – but there are others in the room that are running you down as well and they should also say something here if they have opinions

11.45am – lots of yelling

MW – the end question is – are we moving in the right direction – at any time you can vote me out at any time – I really get upset about people running down the Directors and the Chairperson

MJ – I don't like what you are saying about me – I am a different person

MW – I am trying to get to the point – everybody is entitled to talk to everybody – but we must try and be civil to each other – we insist that these meetings are open

MA – take your words back – I can't answer back

11.50am – lots of yelling

MW – I want to apologise about what I have just said – but I don't like people accusing the Directors that they don't know what they are doing

CA – she (MA) wrote the letter to Stanley because that is what other people wanted – but they come here and don't say anything

SW – please be sensible otherwise we will call this meeting off

11.55am – lots more yelling

MW – nobody is prepared to talk about the positive things we are doing – if you don't like what I am doing then you can vote me out anytime – I need to know that you support me – we are transparent – but then I also need to be comfortable to do this job – when we talk about being educated then I am not one – I learnt from the old people – I spent time with the old people – that is where I got my education from and I stand here to properly, honestly and transparently represent all Yindjibarndi people

MW – I want to get a resolution from the group today – do you want to go ahead with the process we have – otherwise you can call a Special General Meeting and change the process – now are we on the right track

Many people calling out – yes we are on the right track

Rosie Cheedy (RC) – we got no land, we got no money, but we got to fight

MW – people are accusing me – my Uncle accused me of stealing

BW – but I didn't accuse me I was asking you – people told me that you were stealing

MW – this is a personal issue between you and me

BW – yes that right

MW – you and me are finished

BW – that's alright with me – I have always been a loner

MW – yep we're finished

MW – now we are on a path

MW – I don't blame people for meeting with FMG – same as George – lets leave that behind – I haven't put this before the board but I propose that \$300,000 of this \$475,000 from RTIO is set aside for the Elders and that \$175,000 is kept with the YAC for the fight we have on our hands – then the \$300,000 is distributed between the Elders that

want that money but then they don't interfere with the process and path that YAC is going down

12.04 pm – Robin Sermon and Gavin Martin from RTIO entered the meeting

MW – when RTIO bulldozed Gurrwaying Yinda we told RTIO that we didn't want to have anything to do with them from then on – we told RTIO that if you want to deal with us anymore you will have to bring the Yindjibarndi West Angeles funds forward

12.08 pm – Michael signed the letter from RTIO

Phil Davies (PD) photocopied the signed agreement and scanned it into the system – PD told Robin that he has scanned the document and we would email the scanned document to Robin and Gavin – PD also said that the YAC would also send an invoice to Robin and Gavin today

12.13pm – Robin Sermon and Gavin Martin left the meeting

MW – we will continue on with the process – we don't have any agreements with any companies and we haven't given anything away – but let's get back to the money business

MW – there is \$475,000 coming from RTIO and what I am asking is that \$175,000 be kept with the YAC and the other \$300,000 be divided amongst yourselves

LC – I just want to say something – Yindjibarndi is a nation – the old people put a lot of work into this process – why you people not satisfied with what he (MW) is doing – what is important – like he said he can go away and concentrate on his first love – Juluwarlu – the Yindjibarndi history and country – when you get embarrassed to talk to your own family in the street because they are carrying stories and gossip about this man (MW) then that is bad – I am sick of people carrying yarns about this man here – if we give our country away where are we going to go – we will have nowhere to go - if this man goes then we will just get some white fella who we don't know, who doesn't live in our community and who we can't trust

MJ – I didn't come here to argue

LC – I support MW all the way – if you put someone else in that position then the same thing will happen to them – you will carry the same yarns about them then – let this man (MW) do his job – he is doing it really well now and we need to support him – not tell stories and gossip – I support this man (MW) and the Chairman (SW) all the way

Tootsie Daniels (TD) – when I look around at our young people – look at this man he is recording our history – you know where the gossip circle is – it's the cards – I support MW all the way – we need to support our own people – this man (MW) is doing it for us – he is a young man doing this job and we should get behind him always

CA – while we are all here has everyone seen the front page of today's West Australian?

Pansy Sambo (PS) – we need to apologise to this man (MW) – we are getting the money – we have got a long process to the next money

Sally Walker (SW) – what about my generation – I don't know anything – I only know half of my culture – I want to go with my old people too – I want to go to country – I never been anywhere

ES – I want to be forgiven – and I want forgiveness from you – sometimes when you mix with the wrong people then we get into trouble – we care for our country – I paint my country

MA – I support you fellas fully – I support you all the way

MR – I just want to apologise as well – but you just can't talk and not have any evidence – Juluwarlu is a separate entity from YAC – but I apologise

EM – I just want to apologise – my attitude was very bad – and I just want to shake your hand (to MW) and Lorraine Coppin (LC)

MA, ES, EM, PS all go and speak with MW, LC and SW and apologise for their actions

MW - Just before we go we have got three resolutions we want to make

First Resolution – passed at 12.38pm

That \$300,000 be paid to the Yindjibarndi Elders — there is 14 days from today before the YAC receive the money from RTIO according to the agreement signed today - the people will decide how this will be split up in the next 14 days

Passed: Charmaine Adams

Seconded: Gabrielle Cheedy

Passed Unanimously

Second Resolution

That the \$175,000 to be received from RTIO be left in YAC for the business of the organisation

Passed: Bigali Hanlon

Seconded: John Sandy

Passed Unanimously

Third Resolution

The YAC legal team (George Irving and Simon Millman) take their instructions from the Yindjibarndi 1 named applicants for the Yindjibarndi 1 Claim area as authorised by all members of the claim group and the YAC Directors for the Yindjibarndi determination area as authorised by the members and from the

Yindjibarndi cultural leaders for Yindjibarndi cultural information as authorised via the Birdarra Law**Moved: Stanley Warrie****Seconded: Thomas Jacobs****Passed Unanimously**

GI – (projecting a document onto the whiteboard) – this is what the United Nations would like to see from Indigenous nations around the world – what this requires is for the group of Indigenous people to declare themselves a nation – (George put the words up on the board regarding what may be the statement for an Yindjibarndi declaration as a nation) – for the right to govern themselves – you have got country, you have got your own law – the court have recognised that you have native title – this is not a gift – it is recognition that you are a first nation that has its own law and country – this will be up to you if you wish to make this declaration

MJ – when we talk about our cultural rights – we have people coming from all over – Yindjibarndi got the culture

GI – all I am saying to you is that the government is supposed to inform and assist the Indigenous inhabitants of this nation to understand they have rights via the international conventions they have signed on behalf of the Australian people.

MW – it is up to you about how you split up the \$300,000 – you people have got 14 days before the money is paid by RTIO to YAC so use that time to decide how you want to split the money – then get back to us on how you want to divide the \$300,000

MW – another thing I just want to say – don't worry what the membership list for the Yindjibarndi Aboriginal Corporation says – if you an Yindjibarndi person but you aren't on that list don't worry – that is only a white man's paper for his laws and customs – if you are Yindjibarndi then we know who you are and where you come from – if you are an Yindjibarndi then you are entitled the same way as all other Yindjibarndi people – but remember we are all working for a big picture here – and you need to support us workers – as an Yindjibarndi person you need to support and work towards the common goal of fighting for our rights – for what is just and fair so that we don't get ripped off by some mining company who simply wants our land for the money and who is supported by some white man's law – if you are Yindjibarndi then you are part of this organisation and part of our group – it doesn't matter if you are named on the membership list or not – you will always be Yindjibarndi

Meeting Closed 1.02 pm

“MW-49”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “**MW-49**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



National
Native Title
Tribunal



25 May 2010

Western Australia Registry
East Point Plaza
Level 11, 233 Adelaide Terrace
Perth WA 6000
GPO Box 9973
Perth WA 6848
Telephone (08) 9268 9700
Facsimile (08) 9221 7158

<p>George Irving Michael Woodley On behalf of the Yindjibarndi Aboriginal Corporation</p> <p>gmirving@tpg.com.au mwoodley@juluwarlu.pilbara.net</p>	<p>Blair McGlew Michael Gallagher Sukhpal Singh FMG Pilbara Pty Ltd</p> <p>bmcglew@fmgl.com.au mgallagher@fmgl.com.au ssingh@fmgl.com.au</p>	<p>Paola O'Neill Scott Montgomery Department of Mines and Petroleum</p> <p>paola.oneill@dmp.wa.gov.au scott.montgomery@dmp.wa.gov.au</p>
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Dear Parties

WM09/82 Yindjibarndi Aboriginal Corporation (WC03/3) and FMG Pilbara Pty Ltd (E47/1398, E47/1399)

WM10/13 Yindjibarndi Aboriginal Corporation (WC03/3) and FMG Pilbara Pty Ltd (E47/1319)

Thank you for your attendance at the mediation conference which was held in Perth on Tuesday 25 May 2010. The conference commenced at 1.00 pm (WST) and concluded at approximately 2:15 pm (WST).

In attendance were:

Mr Graeme Neate

Mr Alan Toogood

Ms Stephanie Culver

Ms Dianne McCambridge

Mr George Irving

Mr Michael Woodley

Mr Blair McGlew

Mr Michael Gallagher

Mr Sukhpal Singh

Ms Paola O'Neill

Mr Scott Montgomery

NNTT President and Mediator (by telephone)

NNTT Senior Case Manager

NNTT Case Manager

NNTT Case Officer

on behalf of Yindjibarndi Aboriginal Corporation (by telephone)

Acting CEO and Lead Negotiator of Yindjibarndi Aboriginal Corporation (by telephone)

on behalf of FMG Pilbara Pty Ltd

on behalf of FMG Pilbara Pty Ltd (by telephone)

on behalf of FMG Pilbara Pty Ltd

Department of Mines and Petroleum

Department of Mines and Petroleum

Synopsis:

Mr Toogood introduced the mediation conference and President Neate addressed the parties regarding the mediation conference's agenda and overview. The parties agreed to the draft agenda distributed to the parties by the Tribunal on the day prior to the conference.

After President Neate discussed the number and area of the proposed tenements with the parties, he requested the parties to indicate what sort of agreement they aimed to achieve. Each party indicated that they saw a whole of claim agreement as possibly the most effective agreement for the purposes of the parties. Mr McGlew also indicated that he thought that Aboriginal heritage should be dealt with in any agreement reached. Each of the other parties indicated that they agreed with this view.

The parties then discussed the principles upon which negotiations should proceed. There was some disagreement between the grantee party and the native title party as to what principles should apply. The native title party advised that it requires the 'minimum standards' of the United Nations Declaration on the Rights of Indigenous Peoples. There was some discussion as to what those 'minimum standards' are. Mr Irving agreed to write to Mr McGlew to clarify which standards the native title party refers to and their application to a possible outcome of the negotiations with the grantee party. Mr McGlew agreed to respond to Mr Irving's letter once he had received and considered it.

The parties then discussed how future meetings should proceed. Mr Woodley indicated his view that the parties would need to attend a community meeting (or meetings) in Roebourne, before any other negotiation process (e.g. by representatives) might take place. All parties agreed. Parties also agreed that a further mediation teleconference would need to be convened by the Tribunal before considering a community meeting in Roebourne.

Outcomes:

The Tribunal notes the following outcomes from the mediation conference:

- Mr Irving is to write to Mr McGlew by Tuesday 1 June 2010 and clarify what minimum standards of the United Nations Declaration of the Rights of Indigenous Peoples the native title party wishes to apply to the negotiations and how those standards could be reflected in any agreement. Mr Irving is also to send a copy of that letter to the Tribunal and to the State.
- Upon receipt of Mr Irving's letter, Mr McGlew is to provide a written response to Mr Irving by 8 June 2010. Mr McGlew is also to send a copy of that response to the Tribunal and the State.

The next mediation conference will be reconvened at the National Native Title Tribunal, Level 11, East Point Plaza, 233 Adelaide Terrace on **Tuesday 15 June 2010 at 11.00 am (WST)**.

If any party has any concerns regarding the above outcomes, please contact me.

Yours sincerely



Stephanie Culver

Case Manager

Telephone: (08) 9268 7467

Fax: (08) 9221 7158

Email: stephanie.culver@nntt.gov.au

“MW-50”

No: WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 5 pages is the annexure marked “**MW-50**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Ref: LS-100-I-0458



6 July 2010

Michael Woodley
Yindjibarndi Aboriginal Corporation
C/o Juluwarlu Aboriginal Corporation
PO Box 111
Roebourne WA 6718

BY EMAIL

Dear Michael

RE: YOUR THREATENING BEHAVIOUR

I write to express my outrage and shock at your behavior towards my colleagues, Alexa Morcombe and Michael Gallagher, this afternoon in Roebourne.

They have advised me that you (accompanied by Stanley Warrie and two younger men) verbally threatened them at FMG's Roebourne office this afternoon by saying that you would punish them through "tribal law" and that they could "take this as a threat".

This is not the first time that you have behaved in this manner.

In February and March of this year, I wrote to you and your lawyers (copies attached) expressing my concern at threats made by you to me and (allegedly) by you to other Yindjibarndi community members.

Indeed, I sought your assurance that people's safety would not be at risk. I now issue the same request in light of your statements today.

Fortescue will continue to work with any Yindjibarndi people who wish to work with us and assist us to understand the cultural heritage values of the areas that we are proposing to mine. It is unlawful for you to threaten people against such activity.

Yours sincerely

FORTESCUE METALS GROUP LTD

BLAIR MCGLEW

Group Manager, Land Access

CC George Irving, Barrister
CC Simon Millman, Solicitor, Slater and Gordon
CC Graeme Neate, President, National Native Title Tribunal

Sukhpal Singh

From: Blair McGlew
Sent: Wednesday, 10 March 2010 5:23 PM
To: mwoodley@juluwarlu.pilbara.net
Cc: George Irving; 'Simon Millman'; Sukhpal Singh; Damien Ardagh; Alexa Morcombe; Michael Gallagher
Subject: Monday
Attachments: 100308 Yindjibarndi - Fortescue Information Paper.pdf; 091216 - Ltr to Irving re Yindj offer withdrawal.pdf; 091113 - Ltr to Irving re Yindjibarndi.pdf; [Untitled].pdf

Michael

For your information, I visited Roebourne on Monday to speak to a few Yindjibarndi people regarding the relationship between Fortescue and Yindjibarndi.

When I arrived, I was confronted by a few people including Stanley Warrie, who were trying to stop me talking to the people who were there. Phil Davies was with Stanley.

I advised them that as far as I was aware, this was not a formal meeting of Yindjibarndi people. It was simply a request to Fortescue to explain the situation from our point of view.

There was a view expressed by many people who were there at the diner, that they did not have a good understanding of what had happened with the negotiations between Yindjibarndi and Fortescue over the past three years. I simply stated my view about the history and progress of the relationship between the parties, as depicted in the information document attached.

I handed out some documents on Monday night, which are attached:

- "Yindjibarndi – Fortescue Information Paper";
- Letter to George Irving dated 16 December 2009; and
- Letter to George Irving dated 13 November 2009.

Since the 'meeting' at the diner, I have become increasingly concerned that individual Yindjibarndi people who attended the meeting have been personally targeted. There have been allegations that you have assaulted and threatened people who were at the diner. You have also repeatedly asked me to confirm who invited Fortescue to Roebourne to discuss these matters.

And I have since been given a document (attached) purporting to come from Stanley Warrie, advising of a Yindjibarndi meeting that was to be held yesterday. One of the agenda items on the document was "the secret meeting held by Michelle Adam, Jill Tucker and Maudie Jerrold with FMG at the Roebourne diner yesterday". It is important to note that the meeting was not secret, as evidenced by the attendance of Stanley and others.

The only inference I can draw from this document is that Stanley has taken a prejudicial view of the 'meeting' with the intention of individually targeting these people for their involvement. It is highly concerning that people who are only seeking out information about critical matters relating to their native title claim and negotiations with Fortescue may be victimised as a result.

Considering that I felt verbally threatened by you in recent weeks during discussions about the organisation of a Yindjibarndi meeting, I feel my concerns are well founded.



Fortescue Metals Group Ltd

ACN: 002 594 872

87 Adelaide Terrace, East Perth

Western Australia 6004

PO Box 6915, East Perth, Western Australia 6892

Telephone: + 61 8 6218 8888

Facsimile: + 61 8 6218 8999

Website: www.fmg.com.au

Our Ref: LS-100-I-0381

26 February 2010

Simon Millman
Practice Group Leader
Slater and Gordon
GPO Box 2257
PERTH WA 6831

BY EMAIL: smillman@slatergordon.com.au

Dear Simon

RE: YINDJIBARNDI COMMUNITY MEETING

On 18 February 2010, I wrote to you to confirm a Yindjibarndi community meeting on 15 March 2010.

On Monday, 22 February, Michael Woodley from the Yindjibarndi Aboriginal Corporation contacted me by telephone and advised that the meeting would not proceed. Although he indicated that this decision would be communicated to me in writing, I have received nothing to date.

As I have made clear to both you and Mr Woodley in the past, your refusal to organise the meeting has left Fortescue no option than to organise a meeting itself with members of the Yindjibarndi community.

During our conversation on Monday, Mr Woodley advised me not to organise a Yindjibarndi community meeting "for my own safety". I regard this as a threat and would ask that you advise your client of the potential legal ramifications of making or carrying out such a threat.

I also reiterate my request of 18 February for you to provide the names of each member of the Yindjibarndi Aboriginal Corporation Governing Committee.

Yours sincerely
FORTESCUE METALS GROUP LTD

BLAIR MCGLEW
Head of Land Access

File note**22 February 2010****Michael Woodley**

I rang Michael to return a call he made to me on Friday 19 February. The conversation involved the following key points.

- Michael said his call was about trying to explore the idea that we should have a meeting and how it might be beneficial to both parties. He said that he was keen to try to move forward with the negotiations and suggested we revisit progress to date as a way of exploring how to best use the meeting.
- I stated my view about how the negotiations had progressed, i.e. that we had negotiated in good faith for a long time, we offered several millions of dollars for every year of production, Yindjibarndi had refused this and had instead wanted a much more significant amount of compensation / royalty, in the absence of an agreement FMG invoked S35 of the NTA for a determination about the Mining Lease, the NNTT ruled that FMG had negotiated in good faith, Yindjibarndi appealed that decision and the courts would hear the case in the next month and finally that Fortescue had removed its offer of financial compensation as part of a Land Access Agreement in about November last year, when Yindjibarndi did not agree to those terms.
- Michael then questioned FMG's attitude to negotiations to which I responded that the negotiations were over when FMG withdrew its financial offer. I then suggested that the point of the meeting that FMG was seeking was not to reopen the negotiation process, but to satisfy ourselves that the Yindjibarndi Native Title Claim Party had indeed voted to reject our most recent financial offer. While I was not rejecting Michael's assertion that Yindjibarndi had rejected the offer, FMG needed to explain to the group what had happened as part of the negotiations to ensure they made a fully informed decision. This was driven both by a need to satisfy our own internal governance processes but also in response to the claim made by a number of Yindjibarndi people we have spoken to, that they were unaware of the status of the negotiations and that they were risking the opportunity to secure a significant financial compensation package.
- Michael's manner then became more abrupt and he advised me that the Yindjibarndi had indeed rejected our offer and that he had made sure they were all informed of the status of the negotiations. He advised that if FMG were "withdrawing from the negotiations" or were "adopting a take-it-or-leave-it" approach to the negotiations, then the meeting would not proceed.
- I advised Michael that because I needed some reassurance about the Yindjibarndi decision, that a meeting was necessary and that if he was not prepared to organise one, then FMG would organise a meeting itself and invite the Yindjibarndi community to attend.

- Michael then stated, and repeated twice more during the remainder of the conversation, that “I advise you not to organise a meeting yourself, for your own safety”.
- I told Michael that I did not take kindly to threats and that I hoped he wasn’t suggesting that. He simply repeated the statement.
- The conversation ended in a stalemate:
 - He was saying that unless FMG came back the negotiation table with the right attitude, that the process was a waste of time and that he would not organise a meeting.
 - I was saying that FMG had offered a fair and reasonable package and the negotiations were over. However, if Yindjibarndi wanted to put an offer to FMG to consider that we would look at it but I would make no commitments as to what the response might be. However, I stated that it would not appear to be in the interests of the company to now pay millions of dollars compensation for a tenement that would now hopefully be granted to us without the need to pay such a royalty.
 - I also stated that if he cancelled the meeting that we had previously agreed upon in correspondence, that FMG would make up its own mind whether to hold a community meeting itself.



Blair McGlew

“MW-51”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 13 pages is the annexure marked **“MW-51”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

Minutes for the Yindjibarndi Aboriginal Corporation Community Meeting

Held at the Marnda Mia Meeting Room,
Roe Street,
Roebourne
Thursday 8th July, 2010

Meeting Opened at: 10.40 am

Present

Yindjibarndi Directors

Thomas Jacobs, Stanley Warrie, Tootsie Daniels, Rosemary Woodley, Gabrielle Cheedy, Rosie Cheedy, Lyn Cheedy,
Stephen Hubert, Ricky Sandy

Apologies Thomas Jacobs, Charmaine Adams

Yindjibarndi Elders

Ned Cheedy, Bigali Hanlon, Sylvia Allan, Dora Solomon, Joyce Hubert, BAmy Jerrold, Aileen Percy, Mavis Pat, Bruce Woodley

Yindjibarndi Community Members

Angus Mack, Barry Pat, Curtis Lockyer, Harry Mills, Kevin Guinness

Wendy Warrie, Kay Warrie, Tootsie Daniel, Jane Cheedy, Lesley Walker,
Lorraine Coppin, Alice Guinness, Casey Cheedy, Shantelle Cheedy,

Lorraine to add to this (I counted 40 - people present)

Yindjibarndi Aboriginal Corporation Executive Officer

Michael Woodley

Support Team

George Irving (YAC Lawyer)
Dr. Jan Kapetas (Minute Secretary)

Background

The Meeting was called on Wednesday 7th July by the Yindjibarndi Directors (immediately following an unrepresentative meeting of Yindjibarndi called by FMG representatives on Tuesday 6th July) to enable all Yindjibarndi Community Members to discuss recent developments relating to Yindjibarndi Native Title and the Fortescue Metals Group (FMG). The Agenda and invitation were distributed to all family groups on the morning of July 7th.

The Yindjibarndi Aboriginal Corporation, as the prescribed body corporate, is the only legal body representing Yindjibarndi Native Title and Land Rights. Yindjibarndi Aboriginal Corporation Directors, Elders and Members are concerned that FMG has actively sought to cause conflict within the Yindjibarndi community with the aim of weakening our resolve to achieve full

and reasonable recompense for all of our community members and future generations for the likely destruction of important Yindjibarndi Cultural Heritage, sacred sites, and country on the Firetail and Solomon mining leases FMG has taken out on Yindjibarndi country. Those attending the FMG organized meeting were promised \$500 sitting fee. Further promises made by FMG representatives induced up to 25 Yindjibarndi to sign up to undertake immediate Heritage Clearance Surveys for FMG, despite FMG refusing to develop a legally binding Heritage Management Agreement with the Yindjibarndi Aboriginal Corporation. Their decision to undertake Heritage Clearances contravenes the democratically decided wishes of the majority of members, YAC Directors and Elders.

Following the FMG arranged meeting, the Directors of YAC responded immediately to the expressed concerns of Elders and members who had attended the Tuesday meeting believing it was convened to discuss employment opportunities, but found themselves compromised by FMG's real objectives which were to initiate immediate Heritage Clearances on the Solomon and Firetail leases without developing an appropriate legally binding Heritage Management Agreement with Yindjibarndi's prescribed body Corporate.

Accordingly, the following Agenda was distributed.

Agenda

At issue are:

1. Outcomes of YAC's court case
2. The activities of FMG representatives, Michael Gallagher and Alexa Morcombe who organized secret meeting with Yindjibarndi and non-Yindjibarndi on Tuesday 6th July 2010 with the aim of organizing heritage clearance surveys at their Firetail and Solomon leases on Yindjibarndi country beginning on the 10th July 2010, despite FMG having, and refusing to enter into a Heritage Agreement with YAC, the prescribed body corporate.
3. No notice of the Meeting was provided to the Yindjibarndi Aboriginal Corporation prescribed body corporate, the Chairperson, or the Chief Executive Officer.
4. Notice of this meeting was not advertised according to YAC protocols. The majority of YAC directors and members were not informed. Nor was a Meeting Agenda provided prior to the Meeting.
5. At the Meeting, FMG stated that Robert Cheedy and Ken Sandy, who are both FMG employees, are the rightful members and senior lawmen to speak for that country (the country containing FMG's Firetail and Solomon leases)
6. FMG's section 18 applications will involve destruction of Yindjibarndi heritage, secret sites, and country in the Solomon and Firetail lease areas.

7. It has been reported that FMG encouraged the involvement of George Ranger, a Kuruma Marduthunera person, at the meeting that caused conflict in Yindjibarndi matters.

Minutes of Meeting

Stanley: FMG wants to do a survey this weekend. They can then go to and destroy our country. Michael will tell you what has been happening.

Michael: We need to talk about the FMG-called meeting Tuesday. The division that's happening. It's very difficult for yindjibarndi if people don't stay together. We want to sign a good agreement. One that will support our people for a long time, not just a year or two.

Yindjibarndi Aboriginal Corporation has a legal responsibility to everyone. We all need to do this together. It's getting a sad day for us when mining company splits us up.

I said this when I came to talk to FMG after the meeting. Some of you came and told me what happened. You were worried. I came down with three law holders to talk to tem. It was difficult to be calm, but I stayed calm.

They said they already have senior law men signed up for surveys. I said that is not so. As your CEO and Board members, I pointed out that they were deliberately using Ngarda against Ngarda, deliberately trying to drive a wedge between us, and break our Law and Culture. I said there could be punishment for that.

Afterwards, they went to the police to say I threatened them. The police spoke to me. I explained that it was not a threat. It's what happens to anyone, black or white, who break our Yindjibarndi Laws. We know it. The Marrga and the Minkala will punish us.

First I want to tell you about the Court case we had with FMG. Late on Friday 2nd July, the judgement was given. Since then our lawyers have been examining the judgement. We planned to hold a Yindjibarndi community meeting early next week (12th July). We also had a meeting planned with ACMC on Tuesday 6th in Perth. But that was cancelled by FMG on Thursday 1st July. While ACMC have no power except to recommend to Minister to protect our Yindjibarndi sites. We need to get them to speak for us. YAC have said to FMG we do no surveys unless we have a proper deal so we can look after our community and our country.

They made us an offer that we did not accept. The situation is still that we can take their offer of \$1.3 for Solomon, or \$3 million for a complete deal that covers everything. All they're offering is \$300,000 now if we sign today, and then we have to wait 5 years before any further money comes through.

Barry Pat: We have our religion. We have our rights.

Michael: We need to decide if we continue to fight. Or do we not fight. We need to maintain our rights. It is a choice we Yindjibarndi have to make. But if we're divided, if some of us give in, or take work, then we feel really weak.

Stanley: We have to stay strong and do this.

Michael: George Ranger is trying to divide us. Some years ago, he left, and said he's not Yindjibarndi anymore yet he's still trying to divide us. And now Maudie Jerrold is starting yet another Corporation. What we're saying, is Heritage is very important to us. Our country and our sacred sites are everything to us. We can't let our country be destroyed and have nothing left for our children and grandchildren. We need to get a good outcome for our future and to look after our old people, our health, education; our culture and our future.

(Robert Cheedy came in.)

Michael : Where there's a survey coming up this weekend. Robert here can tell us what's happening. He's working with FMG. He knows what's happening.

Robert: If we don't do survey. FMG will bring outsiders to clear our country.

Michael: If wrong people do surveys, then we cannot show FMG's doing wrong thing.

Robert: FMG got wrong people doing surveys.

Michael: Yinjibarndi members said no to all surveys. If we assist them in surveys, that gets us one way closer to FMG taking power. We need to be in power. They want to give us nothing. They say they'll be fair. But we Yindjibarndi want to say what's fair. All we want is a fair deal for our people.

Robert: We can do that. I'm thinking about Yindjibarndi people too. FMG want me to go work for them. They want me to be Heritage officer. I said no. I can't do that to destroy Yindjibarndi country & sites.

Michael: They just want to use you.

Bigali: Is there anyway we can stop them? These surveys must not happen. Or everything we fight for will be destroyed and our people get nothing.

Robert: I can stop that.

Jane: We need to stop the surveys.

George: If the FMG heritage Surveys go ahead, ACMC won't listen if YAC argue that FMG don't know about ethnographic sites. That's why FMG asked

the ACMC to put off the meeting till they know the ethnographic sites. That's why they want Yindjibarndi out there now.

If FMG move Robert over here just to change the process, the tribunal will not agree to that. FMG knows that they have to talk with the Native Title Applicants. No-one else under law, has the right to talk/or the authority to clear your yindjibarndi sites.

Robert: All those people didn't talk up on Tuesday.

Bigali: FMG told people at that meeting on Tuesday that they have lost their Court Case, and you can't do anything. That gave people the understanding that their only hope was to do surveys now.

Michael: Yindjibarndi have to trust their Board. We try to do the right thing to the best of our ability. We are fighting for our Yindjibarndi rights through proper means in the courts. We can't let anyone divide us family against family. Really, we have to stay on the same horse. We can't change.

George: Yindjibarndi can sack Michael and the Board anytime. But if you want to keep them, and fight for your rights, then you got to stay together. You got to stay with your applicants. I hear FMG offered money (\$500) to everyone that would come to the meeting. FMG paying sitting fees, that's a bribe. Saying we lost the case: that's a lie. The Courts have not looked after Aboriginal rights properly. The judge said what he said, but we can appeal it. But we can take it to the Federal Court - 3 judges. Then to the High Court – 7 judges. What FMG are doing is completely wrong. We know that. You know too.

Bigali: How many blackfellas working at Cloudbreak? How many are they targeting? Only their two Yindjibarndi workers. They trying to use our own people against us. Robert, getting our people to do surveys that are against us. It's only possible because our people our poor. Because we been kept poor, so everyone's frightened when FMG say we lost at the court. That we'll get nothing unless we sign on.

Michael: If Yindjibarndi clear the land. Cashed up for one or two days. Then what. Poor again. FMG can mine. We are killing ourselves by killing our country.

George: Rights of Indigenous People says that we have the right for proper wellbeing from the resources extracted from our country. FMG is trying to get in quick before this comes in as Law. If they can get an agreement today, there'll be nothing coming in in the future.

Barry: We need to get that understanding among our people.

George: What they do is trying to bribe us. They have three teams of lawyers trying to break the Y. It might take 5 or 10 years to get a proper agreement, but we'll get a better outcome for our children & Grandchildren.

Kevin: So how do we stop it? What can we do?

George: If Yindjibarndi do the survey, that's all FMG needs to destroy the sites and mine the country. They've already told the Stock exchange market, they're going to take 80,000 tonnes from each lease. APMC says they can't do that without Heritage Clearance so then FMG start bribing Yindjibarndi to go out and do the surveys. They do it in an under-hand way. They should have called the named applicants. They should have invited the prescribed body corporate, the Chair, the Directors and CEO, and they didn't do that. They deliberately went about hiding the Meeting from them and saying the Meeting (Tuesday 6th) was about training and employment.

Kevin: Then what can we do.

Michael: We need to develop our response to these actions by FMG.

Miss Cheedy: We didn't understand what was going on in the Tuesday meeting. I was there. I thought they were offering jobs for people. Put your names down here, write down everyone who might be interested in work. Now I see we were being tricked.

Michael: That country is too important to us. Ten years ago, I went out there with the old people, all gone now. Recording...(weeps) Cannot continue.

George: That piece of country is the only land left for Yindjibarndi. Everywhere else is gone, excluded from Native Title, or just hunting and fishing rights.

Tootsie: Sacred country too. Very sacred.

George: That is the only area of Yindjibarndi country we can get full rights back.

Bigali: FMG argue that because we don't go there, do ceremony, we got no rights, but we can't go out there most of us. It's not possible. But we know that country. We know those places. They're part of us and our heritage. It's always been and always will be.

Michael: We all know what our country means to us. It's our life. I go out there. A lot of us are going there. We do the ceremony for the sites.

George: And it's not without precedent, that the Courts grant full Native Title to places where most people can no longer go. (He spoke of the **Murrajong Illawong ??? case.**) Yindjibarndi are strong in culture. You have your language. I've never met any group more transparent; where everyone is heard; everyone decides together. What FMG is doing is trying to divide us and break us.

Michael: Wimiya and my grandfathers talked that country. They taught us what it means, what to do. The Law, the jawi.

Barry: We all together. Must be full house. Can't be divided. Our Law says that. Depends on that.

George: My advice to you is clear. APMC said don't come to us FMG unless you have done Heritage Surveys with the claimants. A proper ethnographic report must be done with the right people.

Kevin: Are we saying no? No surveys?

Meeting: We have to say no! (Everyone speaking).

Stanley stood up and showed the map. He pointed out how much of Yindjibarndi country is pegged under mining leases. (Everything.) He showed again where FMG wants to mine.

Question from Meeting: What will we do?

Michael: If we don't prevent these Heritage clearances, we're going to find ourselves always in a bad way. FMG offers \$1.5 million. With nothing coming in for 5 years while they build the mine. Then \$3 million. A house in Karratha costs a million dollars. There's no way we can improve our children's future like that – and they're going to take away our heritage, destroy our land for that?

George: For example, NYFL gets \$1.5 million a year from Woodside for Roebourne. What difference has that made? Nothing. Because the money comes to nothing when its spread out for everyone. But that's all FMG is offering. What FMG is offering is not going to make a difference. Same with Rio tinto. They're trying not to give anything. All companies try to do this. Their objectives are profit for shareholders, not Native Title holders. What will make a difference is a real amount of money. But we will have to stand together. If FMG want to move forward, mine your country – they should deal properly with YAC.

Bigali: Robert, we need your support. We need to know where you stand. You're one of us, but they're using you.

Robert: I knocked them back. They wanted me to be their Heritage Officer. I knocked them back.

Bigali: You stand with us or not. The community need to know. We want you to stand with us. (Robert looked concerned.)

Bigali: what happens if FMG sack him?

George: Under Industrial Law they can't sack him.

Lyn: Will we give Robert legal support?

George: Slater & Gordon (law firm) will support him fully.

Robert: People (BTEC) coming tomorrow. Offering jobs. What does YAC feel about that?

Michael: We need to keep these two questions separate. It's good for young fellas to get jobs. They need to be strong though, and say don't talk to me about cultural heritage and Native Title. Talk to YAC. They're trying to put wedges between us every way. It's going to break up our people, split our families, end our Law. We've got a big struggle to stay strong. We've got to say no to surveys. We're going to Appeal to the Full Bench.

Robert: People are already surveying.

George: But not Yindjibarndi people.

Robert: I said to them you got the wrong people.

George: They're trying to undermine Native Title.

Michael: What are we going to do? We have a decision to make.

Kevin: I agree. We got to say no to FMG.

Rosie: We got to fight to the end.

Lyn: We got to tell them what they don't understand. Only YAC as prescribed body corporate can decide about our country. Not just anyone that Yindjibarndi wanting quick money.

Rosie: My grandmother, my mother, my auty worked for Lang Hancock. What we got? Nothing.

Michael: Yindjibarndi are a tough group to work with. It's the only way. Otherwise we stand to lose everything. And we can't do that.

George: So if we appeal last Friday's decision to the Federal Court, that takes 6 months. And if we lose that, we appeal to the High Court. That takes 12 months. Do you want to go with that?

Meeting (all present) said: Keep going. Keep fighting. We want to get this right for our kids and future generations.

George: I know it's hard. I know people are poor. But the \$1.5 million being offered is nothing. The United Nations says you have a right to reasonable compensation for resources taken from your country. Everyone know (miners/Govt.) that the Australian Law is inequitable as it stands and will have to change. Our atguments are strong. The Federal Court has already stated Yindjibarndi people are people with strong Law, culture and language.

Kevin: We got to stay strong.

Michael: We would like those who said they would do surveys, not to do surveys. Is that the decision we need from the meeting today? Are we on track with that?

Meeting: Yes (chorus of voices)

Michael: Are we saying no to surveys?

Meeting: Yes (chorus of voices)

George: If FMG can't get clearance from ACMC, then they can't mine 300 square kilometres of Yindjibarndi land. They can't go ahead until they develop a compensation agreement with us. That's only fair. And I suspect that if we hold out until October, FMG will come back to us with a good agreement – one that recognizes our Native Title rights, responsibilities, Laws and the importance of our Heritage sites under our Laws and religious obligations.

Kevin: What happens if those who want to do survey claims don't know their country? And they go ahead?

George: Really, the claimants are the only ones who can talk about or clear country.

Michael: YAC as the prescribed body corporate can tell ACMC whether survey people are the right people. No-one can just put themselves down if they know nothing. We will write to ACMC today and tell them what's going on. FMG are not just doing this to us. They have a record of being mavericks.

George: Legally, FMG will be in trouble with the Stock exchange if they don't get our Heritage Clearances because they told the market they already have them. They got their licences without Yindjibarndi consent when PNT signed off on them.

Jane C: We got to keep standing strong.

George: FMG has a license to explore, yet they have said they're the owners of the land, not Yindjibarndi. A lease does not mean owner.

Barry: Bottom line. As Ngarda we got to stay strong.

Michael then called for the FMG anthropologist, Michael Gallagher, to come through from his office in the Marnda Mia building.

Michael Gallagher joined the Meeting at 11.55 am.

Michael: Good morning Michael. The reason for this Yindjibarndi Aboriginal Corporation meeting today is to look at decisions made at your FMG-organized meeting on Tuesday. The YAC directors are saying no to a cultural heritage clearance survey being planned for this weekend. Senior Elders are saying No. We would also like you to know that those selected to undertake

clearances have no authorization or specific cultural knowledge to do so. You also need to know we will be writing to the ACMC to let them know the decisions of this meeting today.

Michael G: I can respect that. But it's not our call. FMG says it is up to the individuals who agreed to do the surveys to decide.

Michael: We are saying YAC does not want our people to do surveys.

Lyn: We ask you not to take any survey group out.

Michael G: I will need to talk to the people at the mine site. I'll come back in a minutes.

(Michael G. leaves)

George: We have made a formal request to FMG not to do the surveys; stated that these are not the right Yindjibarndi, that compared with the claimants, they have no knowledge for these placse, and that we are making a formal complaint to the ACMC.

Discussion followed relating to the question of George Ranger participating in important Yindjibarndi meetings such as the FMG called meeting. YAC agreed that a formal letter would be sent, and that anyone seeing George would remind him that Yindjibarndi business is not his business as he has formally stated that he is not a Yindjibarndi man, and is not registered as a Yindjibarndi person with YAC.

Questions arose about Yindjibarndi options if our appeals to the High Court are unsuccessful. People stated that they absolutely did not want to see our country ruined, mined and destroyed, and that YAC must fight to the end.

George: Even if we lose – we still have the right to every court battle – and compensation for the destruction of Yindjibarndi country should mining go ahead.

Further discussion ensued about BMEC offering jobs. The meeting said that jobs are good, but reiterated that it should never be assumed that all Yindjibarndi can do heritage clearances as there are differences in the level of knowledge held according to age, cultural learning, and knowledge of places. George noted that FMG might further attempt to divide the Yindjibarndi by saying that they cannot offer jobs because the Yindjibarndi have been holding up the start of mining at Solomon.

Michael Gallagher returned to the meeting at 12.30.

Michael G: I have just spoken with FMG's Blair McGlew and Alexa Morecombe. They said that FMG has separated Native Title and Heritage Surveys and Clearances. FMG withdrew from the ACMC meeting because they needed to carry out ethnographic heritage surveys. They called the

Tuesday 6th Yindjibarndi meeting in order to ensure heritage clearances would be carried out immediately, and because YAC were holding back and linking the carrying out of Heritage Surveys with the development of a Yindjibarndi – FMG agreement.

He said 60 people came to the Tuesday 6th July meeting. That it was held to consult with traditional Elders, and that those at the meeting agreed to carry out surveys starting on 10th July.

He said he realizes that this is a complicated situation, but FMG is determined to carry out the surveys as decided. He says FMG believes they have been held up for too long.

Michael: YAC believes that FMG falsely advertised the Tuesday meeting as a Training and Employment discussion. Yindjibarndi members stated that everyone attending was promised a \$500 sitting fee, which is why so many attended. They were surprised to find the Meeting was about carrying out Heritage Surveys.

George: While 60 people attended, it is very surprising that no invitation was issued to the Native Title claimants for the Solomon/Firetail area, and none to the Chairperson and CEO of YAC, the prescribed body corporate. These key custodians and members were neither informed or invited to the meeting. The issue is that this appears to be a deliberate attempt to deny key Yindjibarndi people a chance to speak about YAC's agreed approach to reaching an agreement with FMG.

Michael G: I hear what you're saying. Plainly this is a serious dispute. All I can do is convey this to FMG, and tell you that the surveys on Saturday will be going ahead with whomever decides to come.

George: There will be no senior law people there. We will alert ACMC.

Michael Gallagher left the meeting at 12.40.

Michael: Here are the names that were put forward as those willing or able to do surveys. (Names read out). *Those present were very surprised, particularly the Elders, but also others who had thought they were writing down young people's names for work and training opportunities on Tuesday. It was generally agreed that many of those whose names appeared had little or no knowledge of that country. Elders stated that they had not agreed to do survey, and that as they don't write, someone might have written down their names.*

Michael: People will be asked on these surveys to sing jawi, tell story. How can they do that? They don't know. They don't go to Law, most of them. They are not custodians or Law men for that country. But what they say, will count – and then FMG can mine the country and kill it.

Barry: Under Yindjibarndi law, man, not woman can speak. Knowledge people only can speak for country.

Michael: Worse. There is a lot of powerful and dangerous stuff there. Old Law Grounds. Spirits. Sickness for those who don't know what they're doing. Only Law men can go there safely. (He tells several stories of recent incidents where young Yindjibarndi went there and suffered illness, like dying, like finished). People agreed. They knew these things. They had heard them from the Old People too.

Stanley: We all agree. These are true things. There are dangers. Anyone going there got to know.

George: What's really rotten about the FMG organized meeting was that there was no one who could inform people of what was going on. The Claimants and Law holders were not invited. The Chairperson and YAC Board were not formally invited. All information offered was from FMG. YAC had no chance to inform people. What it means is that consent to Heritage surveys was in no way fully informed consent. Many of you are poor. You needed the generous sitting fee.

Meeting: We're not poor. We got our language, our culture, our country. Money doesn't take that away. We didn't understand what FMG was up to. They never made that clear. We don't want that country cleared by people who don't know the Law. Who don't know the country. We can't let them give away our children's future for a few dollars survey work.

Jane: We need to send a letter to everyone put their name down for survey urging them not to go and stating this is sacred country, that there are dangers involved under our Yindjibarndi religion, knowledge and Law. They need to be aware of the dangers of going to that country with no knowledge.

Meeting: Yes. If they go, the Law of the Marrga will harm them. We need to make them clear.

Discussion continued as everyone considered the import of FMG's underhand approach to clearing Yindjibarndi culture. The Yindjibarndi Aboriginal Corporation CEO, Chairperson & Lawyer were instructed to write to FMG and the ACMC about what has occurred.

Meeting Closed at 1.30 pm.

“MW-52”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 5 pages is the annexure marked “MW-52” referred to in the witness statement of Michael Woodley dated 5 June 2023.

George M Irving
Barrister



PO Box 4031
 Swan View
 PERTH WA 6056
 Telephone: (08) 9255 2891
 Facsimile: (08) 9255 2892

14 July 2010

Dear President Neate,

Proposed Mediation - FMG and Yindjibarndi

I refer to my previous correspondence and to the last mediation conference, during which it was agreed I would provide the parties and the Tribunal with a set of recitals or a framework setting out how, from the perspective of the native title party, the minimum standards established by the United Nations, in the *Declaration on the Rights of Indigenous Peoples*, might be incorporated into a set of negotiation principles and/or a benefits package.

Proposed Framework for an Agreement between FMG and the Yindjibarndi People

The native title party is of the view that the standards of the Declaration could be met through a framework agreement that is directed towards assisting the Yindjibarndi to establish culturally appropriate business structures; and, arrangements through which the Yindjibarndi may acquire by their collective industry a fair share of the resources or income that will flow from the extraction and sale of the natural resources of Yindjibarndi country. The agreement could include for example the provision of low or no interest loans to establish such structures; and, contracts with those structures to operate one or more of FMG's proposed mines in Yindjibarndi Country and to build and operate an accommodation village for mine employees.

The Yindjibarndi are deeply distressed by the fact that, unlike the owner of a freehold title granted prior to 1 January 1899, their exclusive ownership of Yindjibarndi country for thousands of years prior to 1899, does not attract the right, under Division 3 Part III of the Mining Act 1978 (WA), to exercise a first option to extract any minerals discovered in their country; or, in the alternative, the right to receive 90% of any royalties, collected by the State, for minerals that are extracted from their country.

An agreement which delivers the opportunity to acquire a fair share of the resources or income derived from Yindjibarndi country would, in accordance with *Article 1* of the *Declaration*, provide a means for financing the development of effective institutions for self-determination, and autonomy or self-government, in matters relating to the internal and local affairs of the Yindjibarndi People, and thus a means by which the Yindjibarndi may gain control over the social problems that have afflicted their community since the advent of colonisation.

In this regard it is notable that the literature of development in North American Indigenous communities, and in the Sami and Inuit communities of Scandinavia and Greenland and elsewhere, demonstrates, on the one hand, an irrefutable correlation between the absence of self-determination, and autonomy or self-government over internal and local affairs, and the prevalence of such negative social indicators as alcohol and drug dependence, domestic and community violence, high rates of

incarceration and recidivism, truancy, low literacy levels and youth suicide; and, on the other hand, a converse irrefutable correlation between self-determination, autonomy and self-government over internal and local affairs, and the absence of such negative social indicators.

The proposed agreement should include annual payments of compensation; however, in the native title party's opinion, it is totally unrealistic to expect that relatively small annual payments of between \$1.5m - \$3m (drawn from the billions that will flow from the sale of the natural resources of Yindjibarndi country) will do more than merely scratch the surface of the documented negative social indicators in the Yindjibarndi community. Moreover, while it is not doubted that some Yindjibarndi people might take up FMG's previous offer of training, for employment in FMG's mines, the paramount concern of the native title party is that, absent the development of effective institutions for self-determination, which reflect the cultural values of the Yindjibarndi People such training and employment will lead to a degradation of Yindjibarndi culture and the further deterioration of social indicators, as has been demonstrated in communities where, in the past, such "development" approaches have been employed.

In their effort to reach for the minimum standards of the *Declaration*, the Yindjibarndi are, in short, asking FMG for a "leg-up". The events of the past week however suggest that FMG is more focussed on destroying the social cohesion of the Yindjibarndi community, than on establishing a positive and enduring relationship of mutual benefit.

Another "Maverick" Meeting

The native title party has asked me to bring to your attention a meeting, between FMG's representatives, Alexa Morecombe and Michael Gallagher, and members of the Yindjibarndi People, which occurred in Roebourne last Tuesday, 6 July 2010. The circumstances surrounding that meeting are fully set out in the attached Newsletter, which was circulated throughout the Yindjibarndi community by Mr Woodley in the afternoon of Friday 9 July 2010.

In summary, it appears this meeting was orchestrated through a false pretence: selectively inviting members of the Yindjibarndi community to attend a VTEC employment and training workshop; and offering a payment of \$500 to each Yindjibarndi person who attended. Having thus secured the attendance of 60 Yindjibarndi members, Alexa Morecombe apparently introduced herself as a "lawyer now employed by FMG to take care of heritage issues". Ms Morecombe and Mr Gallagher, FMG's anthropologist, then proceeded to give the group legal and anthropological advice, to the effect that:

- the Yindjibarndi People had lost their court case against the grant of the three mining leases to FMG;
- the Yindjibarndi People are not occupying the country where FMG wants its Solomon project and therefore the Yindjibarndi People would most likely fail to secure exclusive possession native title rights over that country;
- the Yindjibarndi needed to do a heritage survey on the weekend, 10 and 11 July, over areas of immediate concern to FMG or it would be too late to protect any ethnographic sites situated within those areas.

Michael Woodley, Stanley Warrie and the other senior lawmen, who have had carriage of the negotiations with FMG and who are responsible, under Yindjibarndi Law, for the areas of country that would be affected by FMG's proposed project, were not invited to attend the meeting, nor informed of its purpose - notwithstanding that FMG has previously been informed that its representatives should contact Mr Woodley to arrange any meetings it wishes to conduct with the native title applicant or any members of the Yindjibarndi People. Mr Woodley was informed, immediately after the meeting concluded, that a number of the Yindjibarndi members who had been present at the meeting had agreed to participate in a two-day heritage survey, on 10 and 11 of July, for which they would be paid \$500 per day.

The Yindjibarndi Community Meeting held on 8 July 2010

A second, community meeting was hastily arranged, by Mr Woodley and scheduled for Thursday 8 July 2010. However as a result of the limited time, in which it could be advertised, it was attended by only 40 or so members of the Yindjibarndi People. I attended that meeting, and Michael Gallagher also attended for a short time. According to Mr Gallagher, FMG was of the view that it was entitled to arrange and conduct the meeting on the Tuesday, without informing Michael Woodley, because the purpose of the meeting concerned "heritage issues, rather than native title issues". The native title party refutes the legitimacy of such a view, for the following reasons:

- FMG knows the native title applicant holds registered rights to protect sacred sites and areas of significance to the Yindjibarndi People, in accordance with their traditional laws and customs;
- FMG is aware of the authority given to the members of the applicant jointly by all members of the Yindjibarndi #1 Native Title Claim Group, to make the native title application and to deal with all matters arising under the *Native Title Act* 1993 in relation to the application; and,
- FMG is currently engaged, at its request, in the mediation processes of the Tribunal with a view to reaching an agreement with the native title applicant to resolve all the native title and heritage issues associated with FMG's applications for various mining tenements and permits that affect the area of land and waters covered by the native title claim.

In the course of the meeting last Thursday, Michael Woodley informed Mr Gallagher that the senior Yindjibarndi lawmen who have the right and the authority to speak for the areas where FMG proposed to undertake its heritage survey were all present at the meeting and that the people who had agreed to participate in the proposed heritage survey had no such authority and would be ignorant of the location of sites of particular religious significance, since they had not advanced far enough in the Law to know their whereabouts. Mr Woodley pointed out to Mr Gallagher that if the heritage survey went ahead on the proposed basis, it would cause a severe disruption within the Yindjibarndi community, and give rise to a serious possibility of violence; and, further, that by participating in the survey, in the absence of the senior lawmen and against their expressed wishes, the Yindjibarndi participants would be breaking Yindjibarndi Law and thus be liable to punishment. Accordingly, Mr Woodley pleaded with Mr Gallagher to convey to FMG a request by the senior lawmen to call off the heritage survey. Mr Gallagher did so, but subsequently informed the meeting that the survey would go ahead on the weekend as planned.

The Unauthorised Heritage Survey conducted by FMG 9-11 July 2010

I am instructed that the survey commenced on the morning of Friday 9 July, before Mr Woodley could circulate his Newsletter - which ended with a plea for all Yindjibarndi members to refuse to cooperate with FMG in the proposed heritage survey. The survey was apparently conducted by way of helicopter flights with four Yindjibarndi participants: Jimmy Horace, Francis Phillips, Rodney Adams and Glen Tobey.

Yindjibarndi Ngurra and the Structure of Authority in the Yindjibarndi Community

As I understand my instructions, Yindjibarndi Country is, according to Yindjibarndi Law, comprised of 13 distinct *Ngurra* (home areas). Each *Ngurra* is centred on a particular *Wurndu* (a river or watercourse) from which the *Ngurra* takes its name. Each *Ngurra* comprises four parts (the names for which reflect the four sections of the *Galharra* [the Yindjibarndi kinship system]: *Banaga* and *Burungu*, on one side of the *Wurndu*; *Garimarra* and *Balyirri*, on the other) and is the “home” of *Ngurrarangerli* (the human beings who emanate from and belong to the *Ngurra*, and whose spiritual essences return to the *Ngurra* after their physical forms have passed away). In addition to fairly obvious ethnographic sites situated within each *Ngurra* (such as water holes, rivers and creeks, camping grounds and hunting grounds) there are also sacred sites, sacred artefacts and sacred resources (including particular ochre sites, particular stones, and particular trees) which, in accordance with Yindjibarndi Law, must be collected and used each year for particular religious observances. The locations of these sacred sites, artefacts and resources, and the religious significance of each, are matters known only to the senior Yindjibarndi lawmen. Knowledge about such matters is something that must be earned.

In the area of land and waters the subject of the Yindjibarndi #1 Native Title Determination Application, there are four *Ngurra*, the names of which (running east to west) are: *Garliwinyji*, *Buthurnha*, *Winyjuwarra* and *Ngurrbanha*. The areas of land and waters, which are the subject of FMG’s various tenement applications, fall within *Buthurnha Ngurra*; as do the areas that were the subject of FMG’s heritage survey.

Within this *Ngurra*, as within all others, there are two levels of authority, which involve men only. The first level of authority is that of the *Mirduwarra* (four lawmen of the *Ngurra* - one from each *Galharra* group). The *Mirduwarra* are the bosses for their respective *Galharra* group. The second level of authority is that of the *Tharngungarli* (the most knowledgeable lawman of the four *Mirduwarra*). The *Tharngungarli* is the boss for the people and the country of the *Ngurra*. Each *Tharngungarli* is assisted by a *Minga-Margu* (another of the *Mirduwarra* from the *Ngurra*). The *Minga-Margu* is the *Mirduwarra* who is “closest” to the *Tharngungarli* - in the sense of having spent the most time with the *Tharngungarli*; having thus learned the most; and, therefore the most likely to become the next *Tharngungarli* for that *Ngurra*. The senior women within each *Ngurra* exercise authority over relationships within the *Ngurra* - as between the women; as between the women and the men; and as between the women and the children of the *Ngurra*.

Over and above the authority associated with each *Ngurra*, is the authority of the *Nyambali Tharngungarli* (the ultimate human boss for Yindjibarndi People and Yindjibarndi Country). The *Nyambali Tharngungarli* must be one of the *Tharngungarli*, but must treat all *Tharngungarli* and all *Ngardangalli* (Yindjibarndi people) equally. The *Nyambali Tharngungarli* is accepted and respected,

as *Nyambali*, by all *Ngardangalli*, on the basis that he is known by all to be the most knowledgeable of the *Tharngungarli* in respect of Yindjibarndi Law. Accordingly, the *Nyambali Tharngungarli* has the final word on anything that is likely to affect the country, law or culture of the Yindjibarndi; and also on disputes among the *Ngardangalli* that cannot be resolved, at a local level, by the *Tharngungarli*.

The Authority of the Yindjibarndi Participants in the FMG Heritage Survey

On my instructions, the four Yindjibarndi people who participated in FMG's heritage survey, on 9-11 July 2010, are neither *Mirduwarra* nor *Tharngungarli*. Accordingly, they were neither authorised, nor entitled, under Yindjibarndi Law, to speak for the area, the subject of FMG's survey; and, they do not know the location of the sacred sites, artefacts and resources in that area.

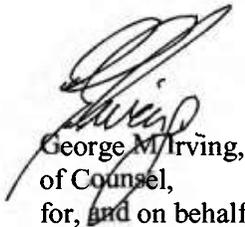
The Consequences of FMG's Actions

In addition to the time-consuming activities that will now be required, to ensure the ACMC and the Minister place no reliance on FMG's report of the heritage survey - when considering FMG's application under s. 18 of the *Aboriginal Heritage Act 1972 (WA)* - the immediate consequence of FMG's most recent meddling, in the affairs of the Yindjibarndi community, is the eruption of both intra-family, and inter-family, disputes over both FMG's meeting and its subsequent heritage survey. I am informed for example that as a consequence of the dispute over the meeting, the Chairman of YAC, Stanley Warrie, was forced to obtain a restraining order against several young men, with whom he is related, following a threat by his *Galharra* mother (his biological mother's sister) that she would be sending the men to his house, in the middle of the night, to give Mr Warrie a hiding.

It appears that the constant presence of FMG representatives in the Yindjibarndi community, which was adverted to in my letter of 25 May 2010, and their continued effort to bypass or undermine the authority of the *Tharngungarli* and the native title applicant has caused an even more serious disruption in the social fabric of the community than did the first "Maverick" meeting, conducted by FMG on 16 April 2010.

In light of what has transpired, the native title party has asked me to convey to you a request for the Tribunal to convene a mediation session in Roebourne at the earliest convenient time. The purpose of this mediation session would be to provide an opportunity, in a structured environment, for FMG to put its position, in respect of the Yindjibarndi #1 native title application, to all members of the Yindjibarndi claim group, so that the claim group can determine collectively, on an informed basis, whether to accept what is put to them directly by FMG; and, to confirm that native title applicant remains authorised by the claim group to deal with all matters in relation to the Yindjibarndi #1 native title application.

Yours Sincerely,



George M. Irving,
of Counsel,
for, and on behalf of the Yindjibarndi People.

“MW-53”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 15 pages is the annexure marked **“MW-53”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

Minutes for the
Yindjibarndi Aboriginal Corporation/NNTT/FMG Mediation Meeting
Meeting at the Roebourne Community Hall
Tuesday the 10th of August 2010

Meeting Started 10.15 am

Present

Yindjibarndi Directors

Thomas Jacobs, Stanley Warrie, Rosemary Woodley, Rosie Cheedy, Lyn Cheedy, Tootsie Daniels, Jimmy Horace, Stephen Hubert, Gabrielle Cheedy, Ricky Sandy

Yindjibarndi Elders Council Members

Ned Cheedy, Bigali Hanlon, Maudie Jerrold, Bruce Woodley, Joyce Hubert, Sylvia Allan

Yindjibarndi Community Members

Pansy Sambo, Jessica Allan, Kaye Warrie, Wendy Warrie, Jane Cheedy, Lesley Walker, , Angus Mack, Wendy Warrie, Robert Cheedy, Ellery Sandy, Clifton Mack, Russell Sandy, Celia Sandy, Ken Sandy, Elizabeth Coppin/Hunter, Rebecca Cheedy, Jill Tucker, Kingsley Woodley, Celia Sandy, Esther Pat, Marlene Harold, Joylene Warrie, Dora Solomon, Tenelia Lockyer, Barry Pat, Jean Norman, Davin Woodley, Casey Cheedy, Amorette Lockyer, Amy Jerrold, Gloria Lee/Aubrey, Mark Horace, Sue Edwins, Marion Cheedy, Kaylene Daniels, Delphine Kerr, Middleton Cheedy

Yindjibarndi Aboriginal Corporation Executive Officer

Michael Woodley

Yindjibarndi Legal Team

George Irving

Support Team

Philip Davies (minutes), Jan Kapetas, Frank Rijavec (Filming), Hayden Woodley (Filming)

FMG Team

Blair McGlew, Alexa Morcombe, David Forrest, Sukphal Singh, Michael Gallagher, Michael Thompson, Beck Alston

WA State Government Team

Paula O'Neill,

NNTT Team

Graham Neate, Alan Toogood

10.37 am - Start of the meeting

Graham Neate (GN) addressed those present and said that Michael Woodley was going to address the Yindjibarndi people only for 10-15 minutes

All people who are not here as Yindjibarndi left the room

Michael Woodley (MW) addressed the group - Michael stressed the importance of these negotiations to the Yindjibarndi people

We are arguing with FMG about the offer that FMG has made to the Yindjibarndi and the NNTT is here to try and negotiate the way through for both parties

It is important for us to try and get through this day and we can't deny that there is division in the community but we should try and just listen to what FMG and the NNTT has to say and then we will have a talk about what we want to do as a group - if the people are not happy with the direction that the Yindjibarndi Aboriginal Corporation is taking then everyone can have their say - but we should do this amongst ourselves

Robert Cheedy (RC) - who picked those applicants

Aileen Sandy (AS) - it was done in a PNTS meeting back in 2003

MW - it is a big process to go through to replace the applicants

RC - some of the family should replace the applicant who passed away

MW - well that is a fair point and we should discuss that

Ellery Sandy (ES) - if we don't agree with what you have to say then can we make our own decisions?

MW - it is not my decision - the decision belongs with the people

ES - yes but we can talk about what we want

MW - yes - we should all have a talk about what decision we want to make at the end of the day about what actions we want to take

All the non-Yindjibarndi people came back into the room

Graham Neate (GN) introduced himself to the group and explained the format for day

This is not a mediation meeting - this is a public meeting and anyone is able to attend this meeting - as you are aware this meeting is being filmed

GN then introduced David Forrest (DF) to the meeting participants

DF - thanks for everyone coming - this has been going for a good while now - I'm pretty sure that we are not poles apart - the company wants to build this mine - you guys are not big on the handouts like other people - you seem to want to gain some long term benefit that are not perceived as handouts - and above all you are wanting to protect your sites and if sites are to be interfered with then you want that done on your terms - I am hoping this to be a good day for all of you and all parties can reach some sort of outcome - you want long-term outcomes and you want to protect your culture and land

Blair McGlew (BM) - thanks for having me back and it is nice to see everyone back together - we do want to have a good relationship

BM presented his powerpoint - FMG offered about \$5 Million per year and Yindjibarndi have asked for about \$100 Million per year (depending on how you work out the formula)

We have about 2.4 billion tonnes of ore in Solomon and we want to take out about 60 million tonnes per year

We have completed a full study - we now know that we want to mine Solomon - and right now Andrew is off around the world to try and raise \$6 billion to start Solomon - we would like to start constructing the mine early next year

BM showed a film to those present - things to come out of the film - it is all about Solomon - Stage One is for 60 million tonnes of iron ore per annum that is exported via the current FMG rail - the Firetail deposit will launch the project - mining will be above the water table - **highly profitable operation** - Firetail - 360 million tonnes - Kinfgs deposit - CID - this ore body follows the course of an ancient river bed - i.4 billion tonnes very high grade - strip ratio of 2:1 - Solomon Stage 2 - current iron ore of 1.2 million tonnes - planning to send this iron ore to Anketell Point via a new railway

The Solomon hub - Fortescue forging ahead

Note: nothing was mentioned about traditional owners and/or that FMG does not yet have the mining tenements

Back to BM's presentation - Firetail is entirely in Yindjibarndi country

Kings is on the border of the Eastern Gurruma and Yindjibarndi country

FMG made an agreement with Eastern Gurruma last year

Port Hedland will have too many companies sending iron ore from it so we want to send the Stage 2 iron ore out from Point Anketell

The State thinks that is the best place to build a port and we are talking to the Ngarluma people about that - it is still too early to say exactly where the rail is going to go

We need the rail line from Firetail to get the iron ore to Port Hedland

The mine disturbance at Firetail will be about 500 hectares - all the iron is in the hills so we will not be disturbing or be below the water table

There are lots of opportunities

BM was asked how much income FMG would get from the mine - BM answered 60 million tonnes per year at about \$80 - \$100 per tonne income would be about \$6 billion per year - I think we will get about \$2 million per train - but he stressed that FMG would have a lot of costs and debt to pay off

Question - Are you offering us \$5 million at the moment are you

BM - I will get to that in a minute

BM - I have told the Yindjibarndi that we are company in a hurry

BM - back in 2007 we didn't have any mining leases

BM - we told the Yindjibarndi that we would use every legal avenue to get the mining tenements if we have too

BM - I also said that we don't just pay out big hand-outs - Andrew calls it welfare money - we would prefer to employ people - Damian started VTEC and it is his dream to deliver jobs to Aboriginal people - we have made 6 other WOCLA agreements in the Pilbara - I have told the Yindjibarndi that we can't pay the Yindjibarndi any more than what we pay other Aboriginal groups - back in early 2008 Yindjibarndi stopped heritage surveys - we had a big meeting on the Roebourne basketball courts to make sure that that was you wanted to do - we applied for a mining lease in late 2007, after a hearing the NNTT decided that FMG had negotiated in good faith - the mining leases were then granted by the National Native Title Tribunal - right now there is not an offer on the table from FMG to the Yindjibarndi people - but the positive thing is that the NNTT is prepared to mediate our process so that we can reach an agreement - other groups are getting real jobs and real business opportunities - they tell us that FMG is really good to deal with - now I am told that Yindjibarndi people want to do heritage surveys but this is not the message that we are getting from the Yindjibarndi Aboriginal Corporation (YAC) - because the YAC are still fighting the granting of the mining tenements in court - our offer is still on the table for \$5.5 million

BM - then made an offer to FMG which was put up on the whiteboard - including an Elders payment of \$1 million per year

BM - what I am putting on the table means real and serious money for the Yindjibarndi people

Bigali Hanlon (BH) - doesn't that VTEC money come from the government for training aboriginal people

BM - yes you are right - we get about \$250,000 per month from the federal government for employing aboriginal people - but we spend more money on employing aboriginal people

BH - well what you are saying is dishonest

BM - I am being upfront about what we pay and we do get money from the federal government to employ aboriginal people

BH - what I saw before - the \$5.5 million was going to come 5 years after the mine started

BM - once we start mining we start paying royalties

BH - Gina gets 2.5% and FMG have offered 1.5%

BM - I am not sure what Gina gets - we are not offering Yindjibarndi 1.5% - we are offering much less than that

BM - why are people offered different amounts - well it comes down to business negotiations and what it is worth to the parties

BM - we have different arrangements with different organisations - there is no right or wrong with this - I am saying that the offer I have just described is the FMG end point for Yindjibarndi - we will not go any higher

Lyn Cheedy (LC) - well when Andrew was here last time he said he would pay is \$3 million for the whole of Yindjibarndi country

BM - well we are offering you now \$5.5 million

LC - well what you are offering is only one train load for all of our country - this is not going to do anything for us

BM - the risk you have is that you will not get anything because you are likely to lose in the Federal Court

LC - why do you say that we will lose - the country is our home - what you are offering is not enough

BH - you are not going to build Solomon if you are going to lose money - don't stand there and underestimate our intelligence - we are not stupid - you are treating us like we are stupid black kids

Wendy Hubert (WH) - I don't want to argue any more - I feel that I am an important person that you should talk to - me and my brother

David Forrest (DF) - maybe we should open up these negotiations and that \$5 million becomes a starting point - can this become something that they can have pride in what they are doing

BH - that makes a lot of sense

BM - so Dave is suggesting that this is your money

BM - I am happy to keep talking but we need to know if Yindjibarndi wishes to make an agreement or do they want to continue down the court road

Pansy Sambo (PS) - It is about time when you come and consult with the Yindjibarndi together - rather than just telling us what you are going to do - is it going to happen or go ahead regardless of what we say today - it looks like you have got everything organised - now when you say that we could get a 14 person negotiating committee - is that going to go through YAC - I feel you are disrespecting YAC - you have caused division in our community - money has caused people to go on surveys recently which they should not have gone on - if I get nothing then am I still be able to go onto my country - Yindjibarndi has always been one - it is not so much about religion it is about our responsibility to run our Ngurra - we have managed through poverty before - if money is used in the right way it is a useful tool - what is the purpose of why my dad is still with us at 104 years old - there is a greater purpose - it is a spiritual purpose - we have lived with nothing before and we have survived - we have faith in someone

Ellery Sandy (ES) - I am bringing up something - can the people who have been bullied put your hands up - this is not on - why are we fighting over country - it is my relationship with you people that I care about - the country will always be there - we just wanted to know what is happening - we will never get what we are asking - this white fella he will take what he wants - the white fellas always win - this is where the arguments started - how many people were sitting in that meeting - no more arguments - we don't make trouble

Everyone started calling out

MW - we should respect what we are all saying - finish with your Wangka

ES - this is what my letter say - we will never get anything else extra from these people - now whose country are you mining on?

Ken Sandy (KS) - hang on I have got a map here

ES - do we have a right to say anything about our country

ES - every meeting we have been having - just getting a feed back on the FMG - we never get an honest feedback - every time we ask a question we get yelled at - we are bullying each other - we are sending letters to each other - many are being bullied and we want that to stop

Bruce Woodley (BW) - I will go separate

Rose Cheedy (RC) - well who is being bullied

Ricky Sandy (RS) - well I can go out to country and look after my country - (the talking to Lorraine Coppin) - well who are you to talk to me - you are Ngarluma

MW - to Ricky Sandy - well who are you - you have no knowledge

RS - well that is my country

12.07 pm - the participants in the meeting began to argue

12.11 pm - Graham Neate addressed the meeting after the arguments settled down

(GN) - Now what we have done is let FMG make an offer to the Yindjibarndi people

(GN) - The decision is with you people now having heard what has been offered - I suggest we stop for lunch

12.13 pm - adjourned for lunch - arguments between the Yindjibarndi people continued over lunch for about 25 minutes

1.21 pm - everybody returned from lunch

GN addressed the participants and did a recap on this morning's meeting

GN - do the Yindjibarndi want to negotiate with FMG on a deal - and if so - who do you want to negotiate on your behalf - he introduced Blair to recap on his offer to the Yindjibarndi

BM - it is not exactly a take it or leave it offer - however the package is relatively fixed - the offer is listed on the next page

Fortescue's offer to Yindjibarndi**Mining Payments****Mining Royalty**

15 cents per tonne to a maximum of \$3 million each year

VTEC Royalty

5 cents per tonne to a maximum of \$1.5 million per year

Elders Council Royalty

5 cents per tonne to a maximum of \$1 million per annum

Total = \$5.5 million per annum package

1.30 pm - all the non-Yindjibarndi people left the meeting

Alum Cheedy (AC) addressed the group - I didn't feel any good about what happened this morning - those white fellas only came here for one reason - to get an agreement with FMG - they want the whole of the country for this amount of money - rather than arguing about other things we need to concentrate on what we are here for - we need to respect everyone else's wangka

Bruce Woodley (BW) - we want to go separately on our own

AC - is there any way you can come back together

BW - no we are going on our own

Tootsie Daniels (TD) - so are you going to get legal advice

BW - we will get our own advice and we have already got a book keeper

TD - no I am not going to argue

Jill Tucker (JT) - we have talked about it and thought about it

TD - do you have your Elders

BW - we have got our Elders

JT - we are going to separate from YAC

AC - do you think we should meet about this matter

JT - we have spent a lot of money in court and we want to do something - we will put out our proposals to the mining people

TD - so you have already got your organisation

BW - we have already got our native title

LC - there is a lot of hard work that has got us here today - we don't have native title in the Yindjibarndi 1 area

BW - that is it - we are going to split up

MW - we have a group of people here that have a set mind - this is very sad - we have been talking about this from day 1 - the court case is happening to protect us and our country - this money is not enough for us and our future generations

JT - that money is every year

MW - yes but the deal is only on Firetail and Solomon - but they will take all our land

JT - we are going our own way

LC - we are fighting over this claim area - we haven't got this native title yet in this area

ES - (to Lyn Cheedy) well you go back to country and live there

LC - why not fight for country

MW - country is what we are - we only exist because we have our country - if they have got our country they got it - not us

JT - OK you can fight for it but I am going to go

MW - you have every right to go but before you do I want to explain the court thing - we are fighting for full exclusive rights - there are areas in that Yindjibarndi 1 claim that we can get full exclusive rights - our determination area only gives us non-exclusive rights - but in order to get that we need to give our knowledge - the second court case is about the FMG mining tenements - as long as we go through the court case they can't get the mining tenements - we want to go all the way with the court case - that is a good position to be in because FMG want to mine more quickly than that

George Irving (GI) - the thing that worried me about the FMG presentation today is that they said that we had lost our court case - but we haven't - they are wrong - they told the stock market that they are going to start mining that country long ago and they continue to do so - they are wrong because they don't have the mining leases granted to them yet - they want those mining leases badly - and they are getting desperate - we have applied to

the court for another court case - they haven't got the leases - I get really worried when I hear Blair McGlew when he says we have lost the case - let me tell you that there is no project without the mining leases - Andrew Forrest is going overseas to sell this project which doesn't exist - one of the ladies said this morning that you can't beat the white man - but let me tell you that so far we are winning because they haven't got what they want - we are in the winning position at the moment - that offer is virtually the same as what they offered two years ago - they wanted to get the mining leases two years ago and they haven't got them - their DVD is a lie, it's a sales pitch, and they have covered your country in tenements - George gave the figures - of the 36 licences applied for they have only got 4 - they are desperate - they are losing - you are not - in the old days when the really strong Aboriginal fellas stood up to the white fellas the white fellas poisoned the black fellas water - and FMG can't do that anymore so instead they are poisoning your minds by telling you, you are losing.

Frank Rijavec (FR) - I fully support what George and Michael are doing - I have been looking at this case for a long time and I think you are in the best position you possibly could be - you need to try and find a way to stick together

ES - it is not FMG who is splitting this community - we are sick of being bullied

FR - well if it is the bullying, then you should try and somehow work out your differences

GI - then again spoke to the group - he said that FMG are going to exploit Yindjibarndi country and the only offer you have is what Blair McGlew has put to the group today - that is nothing compared to all the tenements they have on your country - they will be making hundreds of thousands of millions out of your country - when you sign an ILUA that is it - at least if you take this case all the way to the High Court and you lose - then you can still claim compensation for the hundreds of millions of dollars that is coming out of your country - **even if you lose in the High Court the compensation you will be entitled to will be far higher than what FMG is offering you today**

JT - we don't want to do anything in Solomon Mine

GI - what I am saying is if you hold out you will get far more than what FMG is offering

JT - we don't want anything to do with Solomon - we only want to start our business at Millstream

MW - then if that is what you want you can do that - if that is all you want can we get a guarantee from you that you will not do surveys or meet with FMG secretly - we need you to guarantee that you will stay away from native title matters - if you go on your own then please stay away from native title matters - the only people who can sign off on the country that is in the Yindjibarndi 1 claim are the named applicants

BW - have we got a PBC

MW - yes the Yindjibarndi Aboriginal Corporation of which Stanley is Chairperson

BW - so we do have one

MW - yes - and we need to let you know that in order to protect the interests of the Yindjibarndi PBC we may need to prosecute the Yindjibarndi people doing heritage surveys - we may need to take you to court - I know that country - I have worked with the old fella - one thing the old people have always said is 'look after that country' - and we all may end up in court like George says fighting each other for knowledge of that country

BH - I can understand that you are frustrated - why don't you ask these people what would happen if we split - you have been here all the time over the years and you don't believe Miggo, or George or me - I feel your frustration - and that is your right if you want to split - but at the end of the day you need to know exactly why you are splitting up

At 2.15pm the Yindjibarndi people stopped talking and decided to wait for the tribunal people and FMG to come back

During the break the Yindjibarndi men all gathered together outside and talked

At 2.55 pm the NNTT people came back to the meeting

At 3.06pm the meeting re-commenced

MW - addressed the group - Blair has made an offer and we have discussed this outside with the men - I have been trying to Wangka that we don't want to split up, to form another group - we have got this mob on the run - what we need to decide on today - are we staying together - well if we say to Blair is this your bottom line - then if it is my advice to the group is that we should reject that offer once again

MW - So what I need from the people is that are we together on telling this man take this deal and stick it

FR - well you can say we reject this offer but will negotiate for a better deal

Barry Pat (BP) - well we should negotiate for a better deal

MW - I want to know what the people think - everybody is welcome to have or to voice their opinion

Generally calling out - people said to fight for a better deal

MW - masked for a show of hands - who is for a better deal - many people put up their hands - and who is for taking this deal - nobody put their hand up

BW - I want to wait to see what the white fella says about us going our separate way

3.15pm Those present waited for Graham Neate to re-enter the meeting so that Bruce Woodley could ask his question regarding the break-away Yindjibarndi group

3.35pm - Graham Neate re-entered the meeting (no FMG people had re-entered the room)

MW recommenced the meeting with Graham Neate present

BW - to Graham Neate - if we go separate as an Yindjibarndi group what will happen

GN - so if I understand does that mean that two groups will negotiate with FMG?

GN - I can't give you legal advice - but if you are saying that one part of Yindjibarndi wants to act differently to another part - there are three parties to the arrangements - the government, the grantee (FMG) and the applicants to that native title area - the applicants are the ones who sign off for Yindjibarndi - they are the three separate parties

GN - before you reach an agreement it is for the group to work out how you want to negotiate - In terms of the native title party your applicants are the ones who sign off - it is up to you people about how you get the applicants to sign off on your behalf - they may be your chosen negotiators etc

MW - you need to make it clear to the Yindjibarndi people who are interested in making a separate group

TD - so no negotiating should start without the complainants signing first - or a survey should be started before the agreement is signed?

GN - the only way an agreement can be reached is if the applicants sign - they are the key people for an agreement to be reached with FMG in the claim area

3.47 pm Graham Neate then brought the FMG team back into the room

Graham Neate then re-commenced the meeting

There are three parties to any agreement - the State party, the grantee party (FMG) and then the Yindjibarndi people who are represented by the named Yindjibarndi applicants - it is the applicants who sign off on behalf of the Yindjibarndi people

MW - then addressed the participants - we are prepared to negotiate with FMG - the key word being negotiate - we do not take kindly to ultimatums - I am pretty sure that FMG know that there is a break-away native title group - now that group can do activities but

we have asked them to not have anything to do with native title - and especially with FMG - it is the applicants who sign off on behalf of the Yindjibarndi group

MW - We asked the break-away group what they wanted to do and they said they wanted to start businesses etc - now my understanding is that the break-away group have agreed they will not have anything to do with native title and the negotiations with FMG

BM - so did Yindjibarndi discuss a bottom line

MW - Our bottom line is 2.5% as it has been for some time

GN - so Blair has just heard this and he may want some time to think about it - as I understand it Blair has said that there is a pie there and it can be cut different ways but it is only that size - what I have heard from Yindjibarndi is that they are saying the pie is not big enough

BM - well we put our position on the table and it has been three years now and it is probably best to finish things up here - maybe if we could hear from the negotiation team - is there a negotiation team proposed

MW - as you know we have a negotiation team - and we are happy to progress as we have done in the past - all meetings are to be held in Roebourne

BM - our position which has been put on the table and now we will take it back off the table and we will have to re-think our position

GI - what I understand it to be is that the Yindjibarndi are prepared to negotiate down their position of 2.5% as long as FMG are willing to negotiate their position up

MW - we are not silly - the Yindjibarndi want a better deal than what FMG has offered - this agreement put on the table does not take care of our long term needs

David Forrest (DF) - so does the Yindjibarndi position include the business opportunities

MW- yes it does

GN - Blair has just said that he would like to step outside with the FMG team to discuss their position.

4.04 pm The FMG team left the room to discuss their position

4.27 pm - The FMG team re-entered the room

GN re-convened the meeting - I will ask Blair for his response

BM - You clearly had a long and serious discussion about our offer - our position now remains what it was before - I got the sense from Michael you thought that the offer ran out after 20 years - that is not the case - I would like the Yindjibarndi to come back to us with a another offer - but our offer remains as it stands but we do not have extra to offer - if you can come back to us within the ballpark then we can talk

GI - so when you say for us to come back to us within the ballpark - what does that mean - the Yindjibarndi have said they will negotiate down from 2.5% as long as FMG will negotiate up - so the question is - is FMG prepared to go up from the offer made to the Yindjibarndi this morning

BM - a couple of years ago our offer sat at \$5 million per year and now we have gone up another \$0.5 million per year - so we may be able to go up another \$0.5 million - but we will only negotiate marginally

BH - so your original offer is for the life of the mine

BM - yes that's right

BH - we don't want you telling us how we spend any sort of compensation that may come out of an agreement - for me I feel strongly that FMG shouldn't be telling us how we should spend our money

BM - I am not saying that - if the Yindjibarndi say to us they want the money in cash, or in education or whatever - those decisions are entirely for you

BM - the twenty year offer comes

Frank Rijavec - so are you saying that any future mines within the Yindjibarndi 1 Claim area will be bound by the same agreement

BM - absolutely

BH - we should have a review mechanism in any agreement that we make with FMG

BM - that's a good point - I think that is a sensible suggestion and perhaps review mechanisms should be included within the agreement

GN - Blair has put up a proposal and you have come back with some ideas, one of which is a review clause - perhaps the best thing to do now is for the Yindjibarndi representatives to come back to FMG with a letter setting out what the Yindjibarndi offer is - now Blair is going to have a pretty fair idea of what is in the letter - it is important for the FMG to know who the negotiators are for Yindjibarndi and that the letter is very specific and I suggest the Yindjibarndi should send that letter to FMG within 21 days - and then I would be happy to hold a mediation meeting in the month after that letter goes to FMG - that would probably be September 2010 - it is probably too early to say that

talks have failed and it would be a good idea for all parties to have a think about their respective positions - Michael and George are you happy for that to happen

MW - yes we are OK to go down that path

GN - these discussions have been going on for a long time - so I am not just spinning this out - I have set some time frames that are achievable

MW - please be aware that we have law time coming up

GN - I think it is important to know whether the negotiations will be progressing or not - and hopefully we will find that out in the next month or so

GN - hopefully the Yindjibarndi will have a specific request/offer in writing to FMG by the end of August 2010.

Meeting closed 4.49pm

“MW-54”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked “**MW-54**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

26th of August 2010.

Maudi Jerrold & Allery Sandy
Lead Campaigners for the newly established Corporation.

Dear Maudi & Allery,

**RE: Separation from the Yindjibarndi Aboriginal Corporation
(Prescribed Body Corporate).**

It pains me deeply that I write to both of you, but I must express my regrets and concerns about the recent actions that you, and some other Yindjibarndi Aboriginal Corporation members under your directions, have been taking. I believe that your breakaway actions are both misguided and have been based on misinformation.

As a result of the division your group is instigating and your decisions to undertake heritage clearances and new directions without proper consultation with, or notifying the Named Applicants of the Yindjibarndi 1 Claim or all other Yindjibarndi members. There are many matters that lay before us regarding the wellbeing of **all** Yindjibarndi people that are being negotiated between the Yindjibarndi Aboriginal Corporation prescribed body corporate and FMG that are being greatly damaged by the actions of your breakaway group. Even worse, damage is being done to the unity and confidence of our Yindjibarndi community, our culture and our country.

Your participation with FMG on their exploration activities may mean that Yindjibarndi Heritage and sacred sites will be lost forever. Our children and their children will never know



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

Their ancestral connections or be able to practice the Law.

It is also likely that your actions are destroying any hope for Yindjibarndi to live a better life now and into the future, for we will lose economic opportunities that will support **every** Yindjibarndi.

Once family was and meant everything to us Yindjibarndi, and it breaks my heart that we are being divided by FMG a mining company that is only interested their profits while destroying our home.

It saddens me more to learn that your decision to join with FMG, is based on allegations that YAC and my leadership is untrustworthy, untruthful and unclear in managing YAC's Native Title matters. The Yindjibarndi Aboriginal Corporation Board Members and I reject all allegations of being false and deceiving. I remind you that all negotiations take place in an open forum to which all members are invited, and that meetings are filmed and minuted and available for members to view at any time.

My further reason for writing this letter, is to respond to the decision made by you and your followers to abandon your membership of YAC, which was sharply expressed and confirmed at the 10th of August 2010 mediation held by National Native Title Tribunal (NNTT), between YAC and FMG in the Roebourne Community Hall.

I now seek written confirmation that this is indeed the final decision of your Group. Our Board's understanding is that the following Yindjibarndi people have become members of your Group and wish to cancel their membership of the Yindjibarndi Aboriginal Corporation. From this meeting on the 10th August, it was made clear to YAC, and myself that the names stated below are the people who have voluntarily made that decision to leave.



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

Maudi Jerrold, Allery Sandy, Clifton Mack, Bruce Woodley, Jimmy Horace, Wendy Hubert, Jill Tucker, May Adams, Stephen Hubert, Ricky Sandy, Vince Adams, Ken Sandy, Davin Woodley, Robert Cheedy, Rodney Adams, Kingsley Woodley, Cecelia Sandy, Emily Sandy, Charmaine Adams, Frank Jerrold, Barbara Guinness, Frances Philips, Chet Woodley, Wesley Marnda, Glen Toby, Robert Toby, Amy Jerrold, Steven Adams, Michelle Adams, Diana Smith and Julie Stevens.

We would appreciate receiving confirmation from you and from those members listed above, (along with any others) who may have voluntarily decided to withdraw their membership of the Yindjibarndi Aboriginal Corporation, preferring to be part of your Group.

While I respect anyone's decision to leave, as Chairperson of YAC, I want to encourage that we as one Yindjibarndi find a way to overcome the separation that has arisen.

Yours Sincerely,
Stanley Warrie

Stanley Warrie.
Chairperson
Yindjibarndi Aboriginal Corporation

“MW-55”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 6 pages is the annexure marked “MW-55” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

9th of September 2010

Andrew Forrest
Chief Executive Officer - CEO
Fortescue Metals Group Ltd (FMG)

Dear Sir,

RE: Negotiations between FMG and the Yindjibarndi People

At the meeting held in Roebourne, on 10 August 2010, which was chaired by the President of the National Native Title Tribunal, I undertook to write to FMG to:

- provide an outline of the response of the Yindjibarndi People to the offer put by FMG to the Yindjibarndi at that meeting;
- indicate whether the Yindjibarndi People wish to continue to negotiate with FMG in respect of the matters related to that offer; and, if so:
- the basis upon which the Yindjibarndi People wish to continue those negotiations; and,
- the names of the people who will constitute the Yindjibarndi negotiating team.

As you are aware the Yindjibarndi Applicant asked the Tribunal to facilitate that meeting, after FMG's employees (anthropologist, Michael Gallagher, and lawyer Alexa Morecombe), succeeded in their efforts to divide the Yindjibarndi community by:

- inviting selected members of the Yindjibarndi to attend a VTEC employment and training workshop and offering a payment of \$500 to each of those attendees who were prepared to stay and hear what they had to say;
- seeking to persuade those who did remain that:
- the Yindjibarndi will never succeed in their appeals against the grant of the three mining leases, which FMG needs for its "Solomon Project", because a single judge of the Federal Court dismissed those appeals at first instance;
- the Yindjibarndi will never succeed in their native title claim for exclusive possession rights, in the unallocated Crown land that FMG needs for its "Solomon Project", because the Yindjibarndi are not physically occupying that part of their country on a day-to-day basis; and,
- if they did not participate immediately in heritage surveys for the Solomon Project they would lose the opportunity to protect any sites on areas of significance in the project area.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

Mr Gallagher and Ms Morecombe were assisted in their endeavours by at least one Yindjibarndi man, an FMG employee from the Christmas Cheek mine, who has been promised a new home in Roebourne and a substantial promotion to the position of “heritage officer” for the Solomon Project.

Together, these employees were able to convince a small number of our people that it would be in their best interests to cooperate fully with FMG, because at the end of the day FMG will get what it wants anyway and the ongoing refusal, by the Yindjibarndi negotiation team, to accept what FMG is offering means that Yindjibarndi will end up with nothing. Those people have since declared their intention to form their own group, which is to be called the “FMG Yindjibarndi”. Moreover, four of the Yindjibarndi men in that group have been engaged by FMG on a regular basis to participate in heritage surveys in the areas of Yindjibarndi country that will be affected by the proposed Solomon Project.

As indicated previously, under Yindjibarndi law the right to speak for, and make decisions about, sacred sites and areas of significance, in Yindjibarndi country, is vested exclusively in the senior Yindjibarndi lawmen - at first instance, in the senior lawmen of the relevant Ngurra, the Tharngungarli and the Minga-Margu; and, ultimately, in the Tharngungarli and Minga Margu, of all the Yindjibarndi Ngurra speaking collectively as the Nyambali-Tharngungarli.

None of the four men who have been participating in FMG’s heritage surveys in Yindjibarndi country has achieved the status of Tharngungarli or Minga-Margu; and it follows from this that they do not know the locations of many of the sacred sites and areas of significance that will be affected by the proposed Solomon Project, and have no right to speak for, or make decisions about, those within their limited knowledge.

It was against this background of internal conflict, created by FMG, that we asked the President of the Tribunal to convene the meeting on 10 August.

At the commencement of that meeting, Mr McGlew showed the Yindjibarndi People a short film. Comprised largely of computer-generated images, the film was created for the purposes of raising six billion dollars in investment funds for the development of FMG’s Solomon Project. It was an impressive sales pitch designed to leave the viewer with the belief that, with the exception of the investment funds, the Solomon Project is ready to go. Like the recent application, made by FMG under s 18 of the Aboriginal Heritage Act, the film implied that FMG is the owner of the relevant land rather than the holder of a mere licence to explore for minerals.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

The film was entirely irrelevant to the purpose of FMG's meeting with the Yindjibarndi, except as a further demonstration that FMG will ultimately do exactly what it wants to do in Yindjibarndi country and that resistance is futile. Mr McGlew reinforced this point by explaining how the Federal Court had dismissed our appeals against the grant of the three mining leases, which were the subject of the film.

Mr McGlew did not refer to the right of the Yindjibarndi to take our appeals to the Full Court and the High Court; or to our recent plea for FMG to assist the Yindjibarndi to realise our aspirations for self-determination and autonomy by underwriting a low or no interest loan which would enable us to develop appropriate Commercial structures and allow us, through our own industry, to share in the profits that will flow from the exploitation of the iron ore resource in our traditional country.

Like the previous negotiation meeting, which was held in June 2008, Mr McGlew simply ignored the expressed wishes and aspirations of the Yindjibarndi People, and instead, reiterated FMG's position that "FMG must ensure consistency across all its agreements with the Indigenous Peoples of the Pilbara".

In the time that has gone by since those agreements were made the price of iron ore has doubled; and FMG will now make twice as much profit, from the iron ore resource in Yindjibarndi country, than it stood to make under those agreements. In addition, the estimated size of the iron ore resource in Yindjibarndi country has increased substantially since FMG commenced negotiations with the Yindjibarndi. Yet, with one exception, the offer put by FMG, at the meeting on 10 August 2010, was identical to the offer put by FMG, in early 2008; namely:

- an annual compensation payment of \$3m; and,
- an annual payment of \$2m into a VTEC program to train Yindjibarndi people for employment in FMG's mines.

FMG wants an agreement with the Yindjibarndi People, which will allow FMG to acquire 20 Exploration Licences, 9 Miscellaneous Licences, 4 Mining Leases, a railway investigation Licence, a bulk sampling permit and any other licences, leases or permits that it may desire in Yindjibarndi country, in the future, for any purposes associated with the Solomon Project.

FMG currently holds three Exploration Licences in the traditional country of the Yindjibarndi People (the subject of the Yindjibarndi #1 Native Title Determination Application), and seeks the consent of the Yindjibarndi to the grant of a further 17. Collectively, those Exploration Licences will cover more than 2,500 square kilometres of the 2,778 square kilometres of Yindjibarndi country the subject of the Yindjibarndi #1 Application - the remaining 278 square kilometres being already the subject of Exploration Licences held or sought by other mining companies.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

Notably, all of FMG's Exploration Licence applications were lodged after the Yindjibarndi People lodged the Yindjibarndi #1 Native Title Determination Application, in July 2003.

Given that the grant of these 20 Exploration Licences to FMG entails the exclusive right, under the Mining Act 1978, for FMG to apply for Mining Leases (in the area covered by the Exploration Licences), the agreement sought by FMG will, in effect, preclude any future opportunity for the Yindjibarndi to mine the natural resources of our traditional country and to obtain thereby the means for financing the institutions required for the self-determination, autonomy and self-government of their society, to which we aspire, and to which we are entitled under the UN Declaration on the Rights of Indigenous Peoples.

Furthermore, since the agreement sought by FMG is to be in the form of an Indigenous Land Use Agreement (under the Native Title Act 1993), it will prevent any further claim for compensation, from FMG (or from the State or the Commonwealth), for the extraction of all the mineral wealth in our country.

As noted previously, the Yindjibarndi are deeply distressed by the fact that, unlike the owner of a freehold title granted prior to 1 January 1899, our exclusive ownership of Yindjibarndi country for thousands of years prior to 1899, does not attract the right (under Division 3 Part III of the Mining Act) to exercise a first option to extract any minerals discovered in our country; or, in the alternative, the right to receive 90% of any royalties, collected by the State, for the mineral wealth that will be extracted from our country by FMG.

Even more distressing is the fact (highlighted during the negotiations in 2008) that had the Yindjibarndi chosen, in July 2003, to lodge applications for Explorations Licences over the areas of our country now sought by FMG, then FMG would have willingly offered the Yindjibarndi People a royalty of 2.5% in return for the exclusive right to extract the iron ore from our country.

The "bottom line" on the offer put by FMG, at the meeting on 10 August 2010, is conditioned today, as it was in 2008, by FMG's concern to "ensure consistency across all its agreements with the Indigenous Peoples of the Pilbara". The Yindjibarndi People have repeatedly stated that because we did not participate in the negotiations with those other groups we do not accept the legitimacy of that bottom line. Nevertheless, Mr McGlew again made it very clear at the meeting that FMG will not negotiate outside that ballpark figure.

That offer was rejected in 2008; and, in retaliation, FMG set out to break the resolve and unity of the Yindjibarndi community. Firstly, by overwhelming the limited resources of the Yindjibarndi, through an avalanche of applications for mining interests in Yindjibarndi country, made in the Warden's Court and the Tribunal, to which we must respond or lose by default. Secondly, by sending its agents to sow seeds of dissent, to divide and conquer the Yindjibarndi community.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

FMG is clearly enjoying some success. With three sets of lawyers handling its matters in the Federal Court, the Warden's Court and the Tribunal, it is becoming increasingly difficult for us to comply with the orders made in each matter. And now of course, we have to contend with the so-called "FMG Yindjibarndi" and the ongoing disruption they are causing in our community.

Notwithstanding these apparent successes for FMG, however, the senior Yindjibarndi Lawmen, the Yindjibarndi Applicant and the vast majority of the Yindjibarndi, hold to the view that to accept the offer made by FMG would be to conspire with FMG (and with the State and the Commonwealth, under the discriminatory laws of each) to deprive our descendants of their inherent birthright under Yindjibarndi Law; and under International Law.

The one new element in the offer made by FMG on 10 August 2010 concerned the proposal for an annual payment, of \$500,000, to the "Yindjibarndi elders". No explanation was offered by Mr McGlew as to the genesis of that proposal; and the intended beneficiaries were not identified. However, throughout the course of the negotiations with FMG, neither the Yindjibarndi Applicant nor any other member of our negotiating team has ever asked for compensation payments to be directed towards particular Yindjibarndi individuals or groups. Instead our focus has been on securing outcomes for the benefit of the Yindjibarndi community as a whole - outcomes directed towards self-determination and autonomy as a means of gaining control over the social problems that have afflicted our community since colonisation. In the circumstances, we have concluded that this new element must have arisen out of discussions between FMG and the so-called FMG Yindjibarndi and is the reward for their betrayal.

Accordingly, we reject the offer that was put by FMG on 10 August 2010.

The Yindjibarndi People remain willing to continue to negotiate with FMG; and, as a mark of good faith, the Yindjibarndi are prepared to lower their opening position for the purpose of these negotiations, from the previous "2.5% royalty", put in late 2008, to a 1.5% royalty. Moreover, I can indicate that the Yindjibarndi are willing to negotiate some way downwards from that opening position, but only upon receiving written confirmation that FMG agrees to:

- negotiate upwards, in a substantial and meaningful way, from the "ball park" established by FMG's agreements with other indigenous groups in the Pilbara;
- cease doing heritage surveys with Yindjibarndi men who, under Yindjibarndi law, have no authority to speak for, or manage, our sacred sites and areas of significance;
- refer any and all future communications or requests from any members of the so called "FMG Yindjibarndi" or from any members of the Yindjibarndi



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

People, other than those comprising the Yindjibarndi Negotiating Team, to the Yindjibarndi Negotiating Team; and,

- direct all future communications or requests from FMG to me, as the lead negotiator on the Yindjibarndi Negotiating Team.

The following people will constitute the Yindjibarndi Negotiating Team:

Michael Woodley lead negotiator

Thomas Jacobs;

Aaron Hubert

Lyn Cheedy

Bigali Hanlon

Lorraine Coppin

Stanley Warrie YAC Chairperson

Philip Davies YAC consultant

George Irving, Counsel for the Yindjibarndi People

Yours Sincerely,

Michael Woodley

CEO – YAC.

Ph: (08) 9182 1497 or (08) 9182 1141.

Mobile: 0419 097 130.

“MW-56”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked **“MW-56”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



National
Native Title
Tribunal



10 September 2010

Western Australia Registry
East Point Plaza
Level 11, 233 Adelaide Terrace
Perth WA 6000
GPO Box 9973
Perth WA 6848
Telephone (08) 9268 9700
Facsimile (08) 9221 7158

<p>George Irving Michael Woodley On behalf of the Yindjibarndi Aboriginal Corporation</p> <p>gmirving@tpg.com.au mwoodley@juluwarlu.pilbara.net</p>	<p>Blair McGlew Michael Gallagher Sukhpal Singh FMG Pilbara Pty Ltd</p> <p>bmcglew@fmgl.com.au mgallagher@fmgl.com.au ssingh@fmgl.com.au</p>	<p>Paola O'Neill Scott Montgomery Department of Mines and Petroleum</p> <p>paola.oneill@dmp.wa.gov.au scott.montgomery@dmp.wa.gov.au</p>
	<p>Ken Green Green Legal</p> <p>kgreen@greenlegal.com.au</p>	

Dear Parties

WM09/82 Yindjibarndi Aboriginal Corporation (WC03/3) and FMG Pilbara Pty Ltd (E47/1398, E47/1399)

WM10/13 Yindjibarndi Aboriginal Corporation (WC03/3) and FMG Pilbara Pty Ltd (E47/1319)

WM10/20 Yindjibarndi Aboriginal Corporation (WC03/3) and FMG Pilbara Pty Ltd (M47/1431)

Thank you for your participation in the mediation conference which was convened in Perth on Friday 10 September 2010. The conference commenced at 12 pm (WST) and concluded at approximately 12.35 pm (WST).

The participants were:

Mr Graeme Neate
Mr Alan Toogood
Ms Stephanie Culver
Mr George Irving

Mr Michael Gallagher
Mr Ken Green
Ms Paola O'Neill

NNTT President and Mediator (by telephone)
NNTT Senior Case Manager
NNTT Case Manager
Counsel for Yindjibarndi Aboriginal Corporation (by telephone)
on behalf of FMG Pilbara Pty Ltd (by telephone)
on behalf of FMG Pilbara Pty Ltd
Department of Mines and Petroleum

Synopsis:

President Neate opened the mediation conference and asked Mr Green if he had had a chance to take instructions from his client in relation to the letter provided by Mr Woodley late the previous day. (Mr Woodley's letter set out the Yindjibarndi people's response to the offer put by FMG at the meeting in Roebourne on 10 August 2010.) Mr Green said that it had been difficult for him to take instructions due to the late receipt of the letter, but that it hasn't changed FMG's view that the mediation process is the best forum for the parties to discuss the issues.

Mr Irving advised that the Yindjibarndi people are willing to continue with mediation on the terms set out in Mr Woodley's letter. They would like a considered response to what is put in the letter.

President Neate indicated that the option is open to FMG to write back to the Yindjibarndi people and respond regarding the basis upon which FMG are willing to negotiate. Both Mr Green and Mr Irving then indicated that the parties are wishing to proceed to negotiate a whole of claim agreement.

Mr Irving indicated that the Yindjibarndi would prefer for negotiations to continue in Roebourne so that not only the negotiation team but any Yindjibarndi people who wish to observe, may attend. Mr Irving advised that the negotiation team was selected so that there would be younger people able to travel on the team, who could speak for some of the more elderly applicants who can't travel to Perth. Mr Irving indicated that the named applicants may wish to observe any negotiations that occur in Roebourne.

Mr Green advised that he has no issue with the location of the meeting, but would need to take instructions in relation to the issue of the Yindjibarndi sub-group mentioned in the letter.

Mr Green advised that he would take instructions on how FMG wish to proceed and respond by 17 September 2010.

Mr Green also raised the issue of the provision to FMG and the government party of the audiovisual record of those parts of the Roebourne Community Meeting on 10 August 2010 when representatives of FMG and the government party were present. Mr Irving advised that an edited version should be provided to them, subject to the cost of editing being met. It was a matter of Yindjibarndi and FMG agreeing on the costs of the provision of the edited material. It was suggested that Mr Gallagher or Mr McGlew talk to Mr Woodley or Mr Phil Davies about providing a quote or an invoice to FMG.

Agreed Outcomes:

The Tribunal notes the following outcomes were agreed from the mediation conference:

- Mr Green is to take the instructions of FMG in relation to how FMG wish to proceed, then provide a letter in response to the Yindjibarndi people, the Tribunal and the State by close of business on Friday 17 September 2010.
- Mr Woodley or Mr Davies is to provide a quote or an invoice to FMG for the provision of an edited copy of the audiovisual material so that this issue may be addressed between the parties.

The next meeting will be reconvened at the National Native Title Tribunal, Level 11, East Point Plaza, 233 Adelaide Terrace on Tuesday 21 September 2010 at 1.30 pm (WST).

If any party has any concerns regarding the above record of outcomes, please contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Culver', with a long, sweeping flourish extending to the right.

Stephanie Culver

Case Manager

Telephone: (08) 9268 7467

Fax: (08) 9221 7158

Email: stephanie.culver@nntf.gov.au

“MW-57”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked “MW-57” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Our Ref: LS-100-I-0508



17 September 2010

Michael Woodley
Chief Executive Officer
Yindjibarndi Aboriginal Corporation
PO Box 111
Roebourne WA 6718

Dear Michael

NEGOTIATIONS BETWEEN FORTESCUE AND YINDJIBARNDI PEOPLE

This letter responds to your correspondence dated 9 September 2010 and refers also to the mediation conference held on Monday 13 September 2010 under the auspice of Graeme Neate, President of the National Native Title Tribunal.

Whilst I do not intend to respond to the commentary in your letter in any detailed manner, I wish to record my disagreement with the vast majority of it. In particular, I would like to correct your comments regarding the compensation offer that was discussed at the Yindjibarndi community meeting on 10 August 2010. The accurate components of the compensation offer are attached to this letter (Attachment One).

I acknowledge your revised negotiation position, namely:

1. a reduced opening position (1.5% of sales revenue of all iron ore mined from Yindjibarndi country). At today's prices and expected export volumes, this would amount to at least \$108 million annually; and
2. a willingness to negotiate "some way downward", contingent upon FMG providing agreement on certain "conditions".

While I share your willingness to continue negotiations in an effort to reach an agreed position, I do not support the conditions you refer to.

In particular:

1. Heritage surveys must continue if we are to meet our project schedule and maintain our commitment to "best practice" in dealing with Aboriginal sites, especially where we have Yindjibarndi people of high cultural and social standing who are willing to participate in the surveys. The alternate would be

to seek consent under s18 of the Aboriginal Heritage Act 1978 (WA) on the information to date made available.

2. Communication between members of the Yindjibarndi Native Title group is an internal matter for the group. However, Fortescue will continue its willingness to engage with the entire Yindjibarndi community in its aspirations to secure long standing benefits to all parties involved. This 'best practice' model of community engagement is a fundamental driver behind the Fortescue business model.
3. The composition of any negotiation committee is a matter for the Yindjibarndi people to determine.

In these circumstances, Fortescue suggests that the mediation process should continue and be overseen by Graeme Neate, President of the Tribunal.

As to the content of the mediation process, I invite you to raise any comments or concerns you might have arising from the "consultation package" which was delivered to Slater & Gordon on 13 September 2010. As a courtesy, I will arrange for a copy of that package to be provided to the Tribunal. A copy has been provided to the Government Party (attention Clyde Lannan).

Yours sincerely,

FORTESCUE METALS GROUP LTD



BLAIR MCGLEW
LAND ACCESS GROUP MANAGER

- CC Graeme Neate, President (National Native Title Tribunal) and Mediator
- CC Alan Toogood, Senior Case Manager (NNTT)
- CC Stephanie Culver, Case Manager (NNTT)
- CC Paola O'Neil, Project Officer (Department of Mines and Petroleum)

ATTACHMENT ONE**FINANCIAL OFFER TO YINDJIBARNDI****SIGNING PAYMENTS**

\$250,000	Yindjibarndi Group payment
\$250,000	Elders council payment.
TOTAL	\$500,000 upon execution of Land Access Agreement

ANNUAL PAYMENTS PRIOR TO MINING

\$100,000 per annum

MINING PAYMENTS**Mining royalty**

15 cents per tonne to a maximum of \$3 million each year.

VTEC royalty

5 cents per tonne to a maximum of \$1.5 million per annum (details of this royalty have been advised previously).

Elders Council royalty

5 cents per tonne to a maximum of \$1 million per annum.

TOTAL = \$5.5 million per annum

“MW-57A”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 9 pages is the annexure marked “**MW-57A**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



2 November 2010

Mr Michael Woodley
 Juluwarlu Group Aboriginal Corporation
 For and on behalf of the
 Yindjibarndi Aboriginal Corporation
 PO Box 111
 ROEBOURNE WA 6718

Level 2, Council House
 27-29 St Georges Terrace
 PERTH WA 6000

Telephone: (08) 9223 4800
 Facsimile: (08) 9223 4850

www.slatergordon.com.au

Correspondence to:
 Practice Group Leader: Simon Millman
 Legal Assistant: Lauren Baptie

GPO Box 2557
 PERTH WA 6001

DX 60113 PERTH WA

Direct Telephone: (08) 9223 4800

Email:
 lauren.baptie@slatergordon.com.au

Our Reference: SAM1:323268

Dear Michael

Yindjibarndi Aboriginal Corporation –v- Fortescue Metals Group

Please find **enclosed** copy correspondence from Fortescue Metals Group dated 22 October 2010 together with its attachments.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'S. Millman'.

Simon Millman
 Practice Group Leader
SLATER & GORDON

RECEIVED 25 OCT 2010

Our Ref: LS-100-I-0515

22 October 2010

Members of the Juluwarlu Aboriginal Corporation

PO Box 111

Roebourne

WA 6718

(By Post and email admin@juluwarlu.pilbara.net)**Members of the Yindjibarndi Aboriginal Corporation**

PO Box 111

Roebourne

WA 6718

(By Post and email admin@juluwarlu.pilbara.net)**ATTENTION: SIMON MILLMAN**

Slater & Gordon Lawyers

Level 2, Council House

27-29 St Georges Tce

Perth

WA 6000

Dear Members of the Juluwarlu Aboriginal Corporation,

NOTIFICATION OF PROPOSED SECTION 18 APPLICATION AT FORTESCUE'S SOLOMON RAIL PROJECT

As you are aware, on 16 November 2007 the Juluwarlu Aboriginal Corporation, on behalf of the Yindjibarndi Aboriginal Corporation, notified Fortescue of its refusal to participate in Aboriginal heritage surveys over land at Fortescue's Solomon Project, until the conclusion of a Land Access Agreement, including a mining agreement. On several occasions, Juluwarlu did attend on surveys, before again advising Fortescue that Juluwarlu would not be carrying out heritage surveys for Fortescue.

Since Juluwarlu notified Fortescue of its refusal to participate in heritage surveys, Fortescue continued to undertake archaeological heritage surveys of the land. Fortescue also continued its attempts to engage the Yindjibarndi People by inviting their participation in heritage surveys. Fortescue also provided notification of our activities, including a request for advice about the location or existence of any Aboriginal heritage sites in the area.

In June 2010 it came to Fortescue's attention that a number of Yindjibarndi People with connection of the Solomon Project area, wished to participate in heritage surveys


Fortescue
 The New Force in Iron Ore

with Fortescue. On 6 July 2010, representatives of Fortescue attended a meeting in Roebourne where 55 Yindjibarndi People attended and indicated a willingness to participate in heritage surveys with Fortescue.

Since July 2010 Fortescue has undertaken a number of heritage surveys with Yindjibarndi people. These surveys included both archaeological and ethnographic surveys of the proposed Solomon Rail.

Proposed Section 18 Application for the Solomon Rail

As a result of heritage surveys carried out over the Solomon Rail Corridor, Fortescue has identified Aboriginal heritage sites which cannot be avoided and as a result intends to make a Section 18 Application for permission from the Minister of Indigenous Affairs to impact these sites. The section 18 Application will cover a portion of The Solomon Rail line and includes 4 Aboriginal Heritage Sites identified on the land.

The sites are:

Yin10-027	Artefact Scatter
Yin10-028	Artefact Scatter
Yin10-032	Artefact Scatter
Yin10-033	Artefact Scatter

Aboriginal Heritage Surveys over the Land

On 10 March 2010 Fortescue wrote to the Juluwarlu Aboriginal Corporation requesting the participation of Yindjibarndi People in Aboriginal heritage surveys for the Solomon rail. The letter included a request for participation in the heritage survey and a request for advice regarding the existence of any sites in the proposed area.

A copy of this request is attached to this letter.

Fortescue carried out archaeological and ethnographic surveys of the Land the subject of the Section 18 Applications on the following dates:

- Archaeological surveys were conducted between April – August 2010;
- Ethnographic survey was conducted October 2010

Final archaeological and ethnographic survey reports are currently being finalised and will be forwarded to you along with a draft copy of a section 18 notice(s).

Request to consult over the application

Fortescue would be happy to meet with representatives of the Juluwarlu Aboriginal Corporation and Yindjibarndi Aboriginal Corporation to discuss the proposed Section

18 Application in Roebourne or alternatively please provide written comment on the proposed application.

Please provide a written response to this request by 5th November 2010.

Alternatively, if no correspondence is received from the Juluwarlu Aboriginal Corporation, Fortescue will provide a written copy of the application upon lodgement with the DIA.

Should you wish to discuss these matters further please do not hesitate in contacting Grant Preller on (08) 62188406, or via gpreller@fmgl.com.au.

Yours sincerely,



Grant Preller
Heritage Approvals Superintendent
Fortescue Metals Group Limited

Attached:

1. Heritage survey requests with maps
2. Map of the Land subject to section 18 application

Cc: Department of Indigenous Affairs


Fortescue Metals Group Ltd

ACN 002 594 872
 87 Adelaide Terrace, East Perth
 Western Australia 6004
 PO Box 6915, East Perth, Western Australia 6892

Telephone + 61 8 6218 8888

Facsimile + 61 8 6218 8999

 Website www.fmg.com.au

Our Ref: FS-100-I-0003

12 March 2010

ATTENTION: MICHAEL WOODLEY

Yindjibarndi People
 C/O Juluwarlu Aboriginal Corporation
 PO Box 111
 Roebourne
 WA 6718

**By facsimile (08) 91821035
 and email admin@juluwarlu.pilbara.net**

ATTENTION: SIMON MILLMAN

Slater & Gordon Lawyers
 Level 2, Council House
 27-29 St Georges Tce
 Perth
 WA 6000

Dear Sirs

**RE: HERITAGE NOTICE: REQUEST FOR A HERITAGE SURVEY WITH
 YINDJIBARNDI PARTICIPATION**

Fortescue Metals Group Limited ("Fortescue") intends to undertake a heritage survey on tenement E45/2841, for the purpose of surveying a potential rail corridor. The majority of the corridor will be surveyed under Investigation Licence 50213/2004-15-169.

We invite the Yindjibarndi people to undertake the heritage survey in consultation with Fortescue and heritage consultant Mr. Rob Tickle. I have **attached** the Heritage Survey Request together with the associated map of the survey area.

Fortescue requests that the Yindjibarndi people respond by **20 March 2010**, as to whether Yindjibarndi representatives will be available and willing to undertake this survey with Mr Tickle. Details of the Yindjibarndi representatives who will be attending the survey, together with a comprehensive budget estimate, should also be forwarded within seven days of this letter.

If no correspondence is received from the Yindjibarndi People, Fortescue hereby:

- gives notice of its intention to proceed with Works.

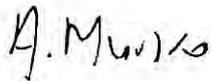
The New Force in Iron Ore

- invites the Yindjibarndi People and Juluwarlu Aboriginal Corporation to advise Fortescue of any Aboriginal sites within the Work area.

Fortescue looks forward to again working with the Yindjibarndi people on this survey.

Should you wish to discuss this Heritage Notice or the attached Heritage Survey Request further, or if you require any additional detail, please do not hesitate in contacting Jane pemberton on (08) 62188710, or via jpemberton@fmgl.com.au

Yours sincerely



Andrew Munro
Heritage Coordinator
Fortescue Metals Group Limited

Attached: Survey request YIN_035 and associated map

Cc: Department of Indigenous Affairs

	100-FR-HE-0004
	HERITAGE SURVEY REQUEST FORM

Request ID:	YIN_035	Survey Type:	FMG
	<i>Solomon Rail</i>		
Map ID:	R_PE_HE_0009	Date of Survey Request:	12 th March 2010

Outline :

Survey of the Solomon railway line.

Native Title Claimant Party:

Yindjibarndi

Requested by:

Andrew Munro

Priority:

High Medium Low

Description (eg Site avoidance survey, mine clearance survey, infrastructure survey etc):

Survey required to clear land for the purpose of initial ground truthing and construction of a railway line.

Line survey of the corridor will be 400m wide (200m either side of the centre line)

Site avoidance methodology is to be used.

TOTAL AREA: 63 ha

TRACK LENGTH: 1.6 km

Accommodation:

tba

Estimated Duration:

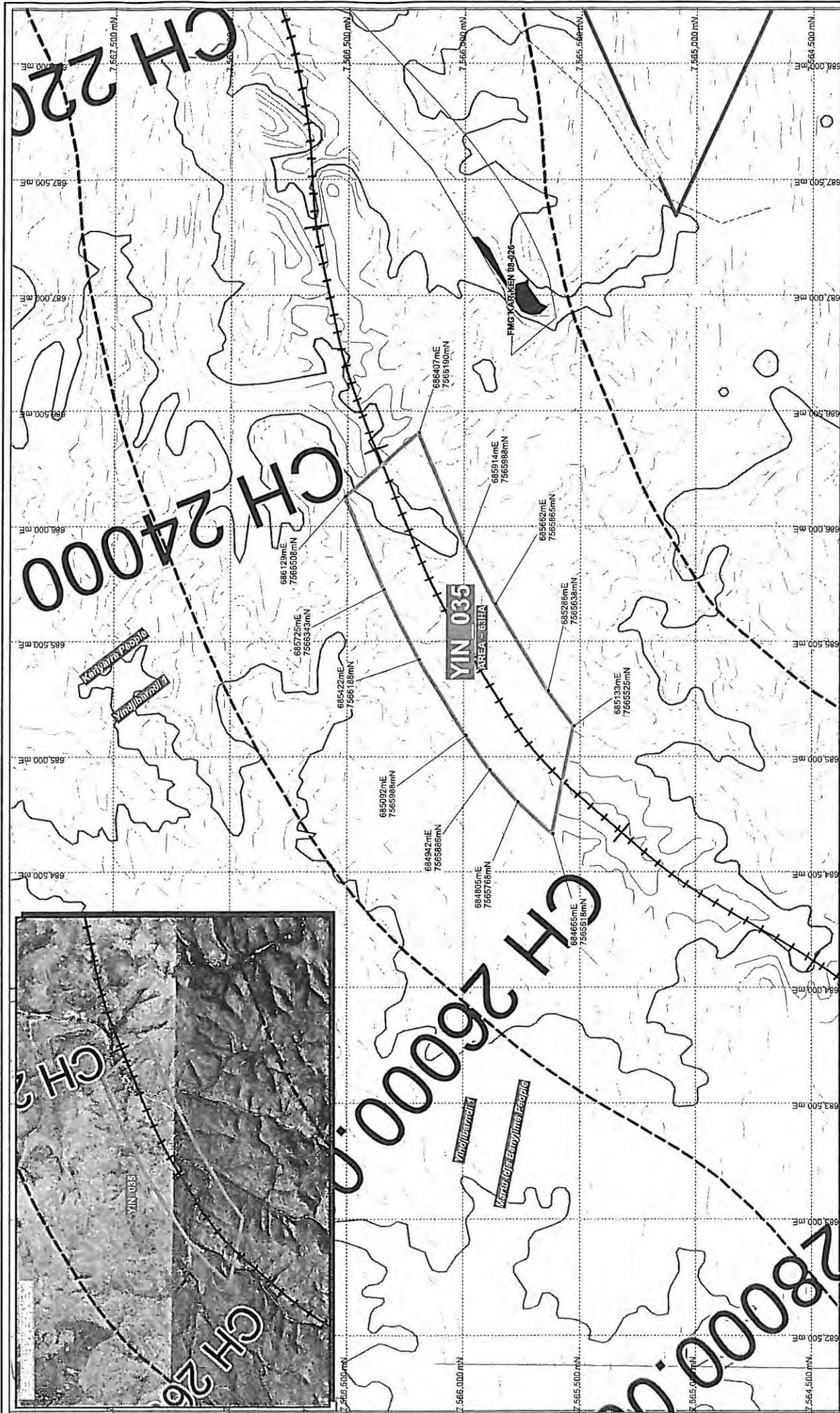
Approx 1 day

A. Munro

12th March 2010

This document is UNCONTROLLED in hard copy unless stamped & specified and managed in controlled document register

Rev	Description	Prepared by	Reviewed By	Approved By	Date



Location Map

Legend

- Heritage Survey Area - YIN_035
- Existing Ground Disturbance Areas Approved
- Heritage and Environment Surveyed Area
- Environment Surveyed Area
- Heritage Surveyed Area
- Awaiting Heritage Survey Area
- Solomon Rail Centreline with Investigation Corridor
- Existing Tracks
- FIMC Identified Aboriginal Heritage Site
- Rare & Priority Flora
- Significant Fauna Active Burrow Locations
- Significant Fauna Observations
- Weed Location
- DIA Site
- Native Title Boundary

Fortescue Metals Group Ltd

Heritage Survey Area
YIN_035
Solomon Rail

Author Name	Das 10/2016
Drawn By	Rebecca B
Designed By	Continuity 1
Projection	WGS 84 UTM Zone 59 (QDA M)
Scale	1:1500

“MW-58”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

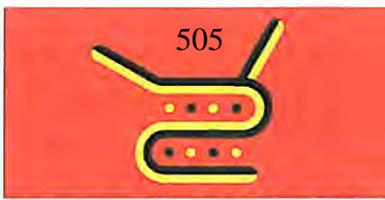
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “MW-58” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

10/11/10
Grant Peller
Heritage Approvals Superintendent
Fortescue Metals Group Limited

**RE: NOTIFICATION OF PROPOSED SECTION 18 APPLICATION AT
FORTESCUE'S SOLOMON RAIL PROJECT**

Dear Grant,

This correspondence is in response to your letter dated 22/10/10 with the FMG reference: LS-100-1-0515.

For reasons that have been made abundantly clear in the letter dated 09/09/10 sent to Andrew Forrest by Michael Woodley on behalf of the Yindjibarndi people (attached), and affidavits sworn and filed in the Federal Court by Michael Woodley on 25/05/09, 04/06/09, 24/09/10 and 06/10/10 (all attached) on behalf of the Yindjibarndi people, any application made by FMG to destroy Yindjibarndi sites via section 18 of the *Aboriginal Heritage Act 1972 (WA)* will be strenuously opposed.

In the circumstances we can see no benefit in meeting with you to discuss your proposed Section 18 Application as we do not perceive any difference in approach from the 'crash through or crash' position the FMG team has taken with the Yindjibarndi in all previous negotiations we have had.

Please be advised that we will inform the ACMC of our opposition to the Fortescue Metals Group Section 18 Application, and supply them with our supporting documentation.

Yours sincerely,

Mr Stanley Warrie
Chairperson - Yindjibarndi Aboriginal Corporation

“MW-59”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-59” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Yindjibarndi Native Title claimants
C/- Mr. Ronald Bower
Corser & Corser
Level 4, 16 Irwin street
PERTH WA 6000

10 November 2010

Hon Brendon Grylls MLA
Minister for Regional Development and Lands
9th Floor Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Minister,

Yindjibarndi Native Title Determination Application # 1

We, the undersigned, are members of the Yindjibarndi #1 native title determination application located in the Pilbara region: Ned Cheedy & Ors v State Of Western Australia WAD6005/2003 (WC03/3.)

Some of our number are also named applicants in that claim. The seven named applicants are Ned Cheedy, Mavis Pat, Aileen Sandy, Thomas Jacob, Sylvia Allen, Alum Cheedy and Michael Woodley.

Each of Aileen Sandy, Sylvia Allen and Mavis Pat has signed this letter.

We wish to inform you of three matters, as follows:

1. Limited Authority of Mr Michael Woodley

Mr Michael Woodley holds a position of authority and responsibility as one of the seven named applicants appointed by the membership of the Yindjibarndi #1 native title claimant group.

However, he has no authority to speak or act independently of his six fellow applicants, despite the appearance that he frequently does so. It is a matter of great concern and regret to us that Mr Woodley appears to present himself as having authority to act as spokesperson for our claimant group, when that is not the case. It is equally a matter of concern to us that members of the Government appear to regard Mr Woodley as having authority to speak for our group and seem disinclined to recognise the authority of the remaining six Yindjibarndi #1 applicants.

Further, the concern felt by our group as to Mr Woodley's independent actions is heightened by his failure to consult his fellow applicants or claim group members, and particularly those of the group who are, to him, elders with superior status, power and authority within the Yindjibarndi #1 native title determination applicant group.

Mr Woodley is associated with an Indigenous corporation called Yindjibarndi Aboriginal Corporation, but that entity exists for the purpose of being the 'prescribed body corporate' for the Yindjibarndi native title determination made by the Hon Justice Nicholson in the Federal Court of Australia (WAD6017/96; Daniel v State of Western Australia [2005] FCA 536) on 2 May 2005 in relation to a separate and distinct area of land. Mr Woodley is probably authorized to speak on behalf of that corporation, but that does not extend to our native title claim, being Ned Cheedy & Ors v State Of Western Australia WAD6005/2003 (WC03/3) in which Mr Woodley is merely one of seven applicants who has not been authorized to act as spokesman for our claimant group, and especially not to do so without prior consultation with us.

We would be grateful if you would kindly acknowledge your receipt of this information.

2. Legal relationship between Yindjibarndi # 1 Claimants and Fortescue Metals Group Ltd

At present there are legal proceedings being conducted in the names of the applicants in the Yindjibarndi # 1 native title claim against FMG, in relation to the proposed issuing of certain mining leases to FMG over land within our claim area.

These legal proceedings do not have the approval or support of a substantial number, possibly a majority, of the members of our native title claim group. After much deliberation and having received legal advice from Mr. Ronald Bower, more than 100 members of the group recently have signed documents indicating that they do not wish to be in litigation with FMG and would prefer to make agreements with that company as provided for in the *Native Title Act*. This large group of claim group members has instructed Mr. Bower to assist them to call a meeting of all Yindjibarndi # 1 claim group members to deal with the proposal that the litigation between our group and FMG be terminated and that we should make agreements with FMG instead.

At the time of writing the date that has been selected for the group meeting is Wednesday 1 December 2010. We will publicise the meeting within the next few days. Because there is a substantial number of claim group members who oppose the litigation against FMG we expect the result of the meeting may be that a majority of claim group members will vote in favour of the litigation against FMG being terminated.

3. Invitation to State Government Representatives

The next meeting of the group mentioned under heading 2 (above) will be at 10.00 AM on Tuesday 23 November 2010 in the dining room of the Ieramugadu Inn, 38 Roe Street, Roebourne. We would be very glad to have the pleasure of your company, or your representative, at that meeting. We would like to tell you more about our plans and aspirations as native title claimants.

Yours faithfully, SYLVIA ALLAN

Aileen Sandy
 Stephen Adams
 Clifton MACK
 Marlene Harold
 May Adams
 Amy Gerrold
 BERRY MALCOLM

Alley Sandy
 Donald Willis
 W. Hubert
 Bruce Woodcock
 Ricky Sandy
 Jennifer
 Marcus Pat
 Ken Sandy
 CELIA SANDY
 JIMMY HORACE
 MARK HORACE
 KEVIN H PHILLIPS
 Jill Tucker
 Diana Smith
 Julie Stevens

“MW-60”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

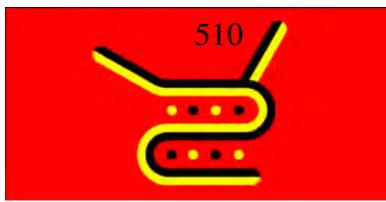
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-60” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

24/11/10
Blair McGlew
Manager Land Access
Fortescue Metals Group Limited

**RE: PHONE CONVERSATION ON MONDAY 22ND NOVEMBER 2010
REGARDING MISCELLANEOUS LICENCES.**

Dear Blair,

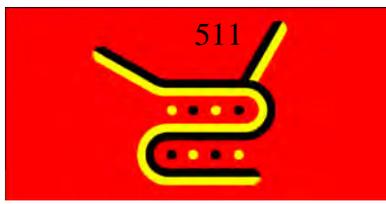
Thank you for your phone call on Monday the 22nd of November 2010. For the record, I would like to make clear why your verbal approach does not represent any genuine advance on the past/existing position made by FMG to Yindjibarndi Aboriginal Corporation (YAC).

In our discussion you mentioned that Fortescue Metals Group (FMG) had applied for miscellaneous licences and asked if the YAC would be prepared to withdraw their objections. At the same time you also stated that FMG was not prepared to compromise on the fundamentals of the existing terms being offered by FMG with regard to an ILUA between YAC and FMG. You were clear that there was no point in discussing these fundamental differences about terms because they were neither applicable nor appropriate.

While you did offer to increase the compensation package to YAC for damage to Yindjibarndi heritage and cultural values resulting from FMG's incursion and disturbance from a flat rate of \$5 million to \$6 million per annum, you said this was in response to the Honourable Brendan Grylls request that you should try and recommence negotiations with the Yindjibarndi people, and not in any way because it was a change of heart on FMG's part. The YAC see no future in committing to an Agreement and compensation package that will neither properly compensate Yindjibarndi for the on-going, massive, many-decades-long disturbance and upheaval in our traditional lands, nor provide fairly for the social and economic development our people so desperately need and desire to engage in over the period of your mining operations... and beyond! YAC believe the structure of your offer will be detrimental to the long-term interests of the Yindjibarndi people.

With specific regard to the issue of removing our objections to FMG's miscellaneous license applications, you should understand that such a piecemeal approach is untenable, and that any agreement between FMG and the Yindjibarndi people should be encompassed in a broader land use agreement.

The YAC remains committed to reaching an agreement with FMG if such agreement is based on mutual respect and prosperity, and if FMG are committed to agreement principles that serve to develop and support Yindjibarndi life and industry with the same momentum and competence as is devoted to mining iron ore – an activity that will inevitably cause irredeemable and long-term harm to our deepest cultural values, social organisation and identity as these are imbued in '*Ngurra*' – our sacred country.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

YAC urges FMG to try to understand that mutual respect in reaching our Agreement should be based on principles of equity – yes, a respect for our unique and unalienable rights as Yindjibarndi occupiers and caretakers of our ancestral lands; but FMG should also consider both the scale of the trauma to our people of the industrial intervention into our tribal heartlands, AND equitable settlement on a par with that reached with other owners of rights in land. While you state that FMG will not entertain the YAC request for compensation based on terms on a par with those that miners routinely reach with tenement holders (for example) – that is, a royalty pegged to yearly tonnages and fluctuating prices – YAC firmly believes that such an agreement structure is the only one that approaches justice and is fairly regulated to market shifts decades ahead, that we cannot possibly predict now. It is the only agreement structure that has the possibility of compensating for the generations-long impact of your mining activities on our human rights as the owners of traditional rights in that land.

The YAC position is 1.5% royalty on FOB tonnages of iron ore. FMG has not come even remotely close to seriously counter-offering on this position – a position that reflects a benchmark common to the terms agreed with average tenement owners. That is one of the reasons why our negotiations have stalled, and why we have been compelled to press our rights through the Federal Court of Australia – a course we are duty-bound to pursue in regard to FMG’s activities (as they are currently framed), until all our options under Australian law are exhausted.

I also want to take this opportunity to express our deep disappointment with regard to the continuing belligerence of FMG in staging yet another meeting yesterday (on Monday 23 November 2010) with the so called “FMG Yindjibarndi break away group” to discuss heritage and land access issues following on FMG mining developments in Yindjibarndi country [at Solomon] – a meeting that specifically excluded the main group represented in the properly elected and constituted Yindjibarndi Aboriginal Corporation (PBC). We want to stress that such intransigent and rogue behaviour flies against all the basic standards that might lead to agreement. And this, while you simultaneously affect negotiation with me. This is hardly ‘good faith’.

Such behaviour seems determined to break the integrity of our group and attain the agreement FMG desires by methods of division, payments of discrete moneys and non-transparent negotiations with regard to Native Title matters, and circumvents negotiation through the proper channels.

The YAC asks FMG, with respect, to seriously consider the agreement structure, the human values and the equity of the issues I have raised here in response to your latest approach.

Yours sincerely,

Michael Woodley
Chief Executive Officer - CEO
Yindjibarndi Aboriginal Corporation

“MW-61”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-61” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Our Ref: LS-100-I-0534

30 November 2010

Michael Woodley
Chief Executive Officer
Yindjibarndi Aboriginal Corporation



By email: mwoodley@juluwarlu.pilbara.net

Dear Michael

RE: MEETING WITH HON VINCE CATANIA MLA, MEMBER FOR NORTH WEST

During our meeting on Friday, 26 November 2010 with the Hon Vince Catania MLA, Member for North West, Julian Tapp and I undertook to respond to your proposals regarding the negotiations between Fortescue and Yindjibarndi people.

Although Fortescue has now been granted the three mining leases that allow the Solomon project to commence (M47/1049, M47/1411 and M47/1413), Fortescue remains willing to secure an agreement with Yindjibarndi that will deliver significant financial and other benefits to the Yindjibarndi community.

However, Fortescue is not prepared to continue to negotiate with you separate to the many Yindjibarndi people who no longer accept that you have any authority to speak or act independently of the other six Yindjibarndi registered claimants nor as spokesperson of the claim group itself. I will explain.

From early 2007, you have purported to lead Yindjibarndi in their negotiations with Fortescue regarding an agreement about our Solomon project. Back then, you said that Yindjibarndi wanted a royalty of 5% of all income from the Solomon project (approximately \$350 million annually) and you ceased all heritage surveys and opposed all tenure in your efforts to secure such a deal.

Since then you have reduced your royalty position only when your efforts to frustrate Fortescue's project development have failed. Specifically, your royalty position reduced to 2.5% (\$180 million annually) after the National Native Title Tribunal ruled in Fortescue's favour during August 2009, and then to 1.5% (\$100 million annually) after the Federal Court (McKerracher J) ruled in Fortescue's favour on 2 July 2010. On Friday, after the Federal Court (Gilmour J) once again ruled in Fortescue's favour, and the mining leases were granted to Fortescue, you reduced your position to \$10 million annually. The three mining leases that will start the Solomon project have now been granted to Fortescue by the State. Fortescue is now under no obligation to pay any royalty in respect of these tenements, nor any other compensation in respect of these tenements prior to Yindjibarndi obtaining a determination of native title and making a successful claim in the Federal Court.

At the same time, a substantial number (they believe they are a clear majority) of Yindjibarndi people have approached Fortescue seeking to conclude negotiations for an agreement on terms acceptable to Fortescue.

Specifically, Fortescue has been advised (see attached letter) that following consideration of legal advice from Mr Ronald Bower (Corser and Corser lawyers) approximately 100 Yindjibarndi people have signed documents indicating their support to:

1. discontinue all legal proceedings against Fortescue regarding tenure required to build our Solomon project; and
2. enter into a Land Access Agreement on agreeable terms.

I understand that the Yindjibarndi Aboriginal Corporation (the prescribed body corporate that holds the native title rights and interests for Yindjibarndi's determined native title claim) has approximately 140 members. We are also advised that YAC does not currently have any legal authority in relation to the Yindjibarndi #1 claim.

FMG has proposed to those Yindjibarndi people who support the Solomon project a package of benefits including the following:

1. Signature payment of \$500,000 in total.
2. Annual production royalty totalling \$3 million for the claim group members generally;
3. Annual production royalty totalling \$1 million for Yindjibarndi elders;
4. Annual VTEC royalty totalling \$1.5 million;
5. Mining contracts worth up to \$3 million annually; and
6. Housing and other benefits for Yindjibarndi employees of Fortescue worth up to \$2 million annually.

In total, this package is worth up to \$10.5 million annually for the Yindjibarndi people. This is a substantial package of guaranteed benefits and, as we discussed in our meeting last Friday, we believe that this package is only limited by Yindjibarndi's capacity to take up opportunities in Fortescue's business. I understand a meeting of the Yindjibarndi #1 claim group is to be held on 21 December 2010, at which the Community will formally consider finalising an agreement with Fortescue on the basis of the above package.

I think it is significant that the total of this benefits package (\$10.5 million annually) is equivalent to the \$10 million royalty that you sought from Fortescue on Friday.

As Vince correctly said at the meeting, the best outcome for all parties is to reach agreement and quickly. Fortescue shares this sentiment and feels that it is also shared by the many Yindjibarndi people who support this package of benefits.

I strongly urge you to join with your fellow Yindjibarndi people who have already expressed support for FMG's Solomon project and for an agreement with Fortescue based on the above package. Such a course will guarantee that substantial benefits can flow to the Yindjibarndi community as soon as Solomon is operating and earning revenue.

Yours sincerely,

FORTESCUE METALS GROUP LTD

BLAIR MCGLEW

GROUP MANAGER CENTRAL PILBARA APPROVALS

CC Hon Vince Catania MLA, Member for North West
 CC Ron Bower, Corser and Corser lawyers

“MW-62”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-62” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Our Ref: RWB 100096




CORSER & CORSER
LAWYERS

6 December 2010

 Mr V A Catania MLA
 PO Box 1000
 CARNARVON WA 6701

BY:

Fax: 9941 2666

Email: vincent.catania@mp.wa.gov.au

Dear Mr Catania,

YINDJIBARNDI NATIVE TITLE CLAIMANT GROUP and FMG

I believe you may have heard of my involvement in aspects of the legal affairs of the Yindjibarndi people, in respect of their native title rights and their legal relationship with Fortescue Metals Group.

The people I represent total more than 100 members of the Yindjibarndi native title claimant group, including three of the applicants named as such on the claim documents.

The reason for them appointing me to represent them is that they are all very unhappy with the way in which Mr Michael Woodley has been going about his group-representative role, because (as they describe the problem) Mr M Woodley

- tends not to consult them despite the fact that they are his constituency, and
- adopts negotiation positions and generates litigation in the name of the Yindjibarndi group without the prior knowledge or support of some of the six other applicants and more than 100 of the claimant group members.

These people tell me that they simply do not hear from him so as to know much at all about what has been said and done in their names, nor what Mr M Woodley intends to do and say in their names in the future. They also complain of other ways in which Mr Woodley relates to them which are not conducive to harmony within the group or the progress and improvement of the members' best interests.

Their present position in formal legal terms (having regard to developments in the litigation which Mr M Woodley is pursuing against FMG) appears to be that they are suffering losses in court and Mr M Woodley is not seriously pursuing negotiations with FMG for an agreement under which the rank and file members of the claimant group could expect to benefit in the ways contemplated by the Native Title Act.

One consequence of Mr M Woodley's style of operation is that the large group which I represent initiated its own negotiations with FMG. The current position is that if Mr M Woodley could be reigned in and persuaded to confine himself to actions which have been authorised by the people he (as just one of a group of seven elders) is meant to represent, then the Yindjibarndi people could complete and sign an attractive agreement with FMG and begin to receive its benefits.

I would be pleased to discuss the position with you or a member of your staff, if you would care to do so. Subject to obtaining the necessary instructions from my clients, I would also be pleased to arrange for you to speak to some of their most senior members. They will inform you that they are keen to see a resolution of the current difficulties within their group, and also those affecting their relationship with FMG.

My contact details are as follows:

Land line: 9215 0-903
Mobile: 0419 928 308
Email: ronald.bower@corsers.com.au

Yours faithfully,
CORSER & CORSER



.....
Ronald Bower
PRINCIPAL

“MW-63”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 7 pages is the annexure marked “MW-63” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

8/12/10
 Blair McGlew
 Manager Land Access
 Fortescue Metals Group Limited

And with express Copy to the Hon. Brendon Grylls, MLA, Minister for Regional Development & Lands; and Mr Vincent Catania, MLA, Member for North West

RE: Your letter [Your Ref: LS-100-1-0534], dated 30 November 2010;
 And also in reference to the letter c/- Mr. Ronald Bower which was addressed to Brendon Grylls and attached in your correspondence, dated 10 November 2010

Dear Blair,

It is especially important that I respond to your last letter, and at the same time to the letter you enclosed [written by Mr. Bower of Corser & Corser to Minister Grylls]*, so that your misinformation and your misrepresentation of the situation [and Bower's] are corrected in the record. It is especially important that Government Ministers and officers understand the character of FMG's conduct at this time.

1. My understanding of what Mr. Vince Catania meant in our meeting of 26 November regarding us reaching an agreement, was that it should be fair and beneficial to the long-term interests of the Yindjibarndi; an Agreement truly capable of fostering a better future for our people – not an Agreement that simply pleases FMG. I am convinced that Vince would never support an abortive outcome that results from FMG bully tactics, manipulation of the truth, and demoralisation and sabotage of the Yindjibarndi Aboriginal Corporation.
2. Certainly the body of our principal representative organisation [encompassing YAC and the Yindjibarndi #1 Claim group] will not consent to an Agreement and 'compensation package' that, far from being 'significant', is arrogant, greedy and an absolute joke.
3. In essence your offer represents a capped payment of .057% of the income from Solomon in any one year. This percentage is based on the only firm element of your offer, the annual \$4 million payment to Yindjibarndi over your projected income from Solomon of \$7 billion per annum – it's a percentage, what is more, that will be worth less and less against ever-inflating costs of living in the Pilbara, as the population of



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

Yindjibarndi grows and iron ore prices increase. The balance of your 'compensation package' of "up to" \$6.5million per year is speculative and dedicated to programs utterly within FMG control and principally serving FMG labour requirements. Your offer is incapable of meeting the diverse program and aims of the Yindjibarndi people who see a future far broader and well beyond some kind of indenture to FMG. So again, NO, we will not be consenting to a bad agreement.

4. Take out administration costs and your offer would represent an ever diminishing pittance to the self-development aims, cultural maintenance, and business development of the Yindjibarndi community – a group, it should be marked, whose language numbers some one thousand speakers, whose Birdarra law provides the main initiation framework for Roebourne residents of all tribes, and whose responsibilities reach into one of the most disadvantaged groups within Pilbara society.
5. To give a concrete example of just how discriminatory and inequitable this FMG offer is, consider that the most basic Rio Tinto Agreements with Traditional Owners offer an uncapped Freight-On-Board royalty of .5%. At this .5% Rio-Tinto-rate, the royalty to Yindjibarndi from the \$7 billion projected value of iron ore shipped out of Solomon, would be \$35 million dollars per year – nine times more than the \$4 million FMG are offering! AND – the Yindjibarndi share would keep pace with the value of iron ore.
6. FMG would be wise to consider, if it does not wish to open up further legal dispute, that the Yindjibarndi Aboriginal Corporation RNTBC is the only legal entity that holds and protects the rights and interest of Yindjibarndi people as determined in Daniel v The State of Western Australia [2005]. Following on this responsibility and experience, YAC has, over many years, built a transparent and properly constituted governance structure composed of 12 directors, an advisory board of 10 elders, a senior Yindjibarndi lawman as the chairperson, another as CEO, and a supporting staff that properly manages and administrates its native title for the clear majority – it is a responsibility that most particularly includes the Yindjibarndi #1 Claim and the majority of its registered claimants. The decisions of this entity are, as is the custom in Australia, governed by majority votes in ballots – not by a minority group trying to do deals on the side – a minority group, what is more, that is supported and administrated by FMG out of its Roebourne office by an FMG employee, 'anthropologist' Michael Gallagher.
7. With regard to your claim for 100 members of Yindjibarndi that are supposedly ready to sign an agreement with you – as is evident in the



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

records of the Office of the Registrar of Indigenous Corporations (ORIC), this group, that goes by the name Wirlu-murra A/C, numbers a signed up contingent of just 33 people. By contrast, the body of registered Yindjibarndi represented in YAC stands at 157.

8. In contrast to the properly notified meetings of the Y#1 Claim group, it is characteristic that meetings of the Wirlu-murra splinter group are only selectively publicised and deliberately staged to exclude the broader membership and full contingent of registered claimants who have been barred upon their attempts to enter these meetings. I, as the CEO of the Yindjibarndi Prescribed Body Corporate and Yindjibarndi #1 Claim, have never been notified or informed of these meetings.
9. It follows that any decisions or 'agreements' made by this group, i.e. the so-called "majority of claim group members" that Mr. Bowers claims "will vote in favour of the litigation against FMG being terminated", will be invalid and resolutely challenged.
10. I should point out to you, because you do not seem to understand, that this newly formed Wirlu-murra splinter has absolutely no claim to the statutory functions and responsibilities of the majority of Yindjibarndi or the Yindjibarndi #1 Claim. However, it is of no surprise that this group has arisen at this time, under the sponsorship of FMG. The sponsorship of new factions within claimant groups by mining interests who face traditional owners determined to protect their culture and their future, is a feature all Pilbara communities have suffered. It is good that this trend has abated in recent years as senior miners have matured in their approach to negotiations. However, it is evident that FMG wants to operate using the crudest of tactics that others have left behind.
11. With regard to the letter written by Mr. Bower of Corser & Corser for the Wirlu-murra 'breakaways' – this is the first we have heard of Mr. Bower in the conduct of Yindjibarndi affairs and the Yindjibarndi #1 Claim. Mr. Bower's representations on behalf of this splinter would be offensive if they were not full of lies, easily shown to be such.
12. Mr. Bower propagates lies because he relies on the word of an antagonistic splinter keen to see cash before Christmas, without any inquiry to or communication with YAC and the broader Y#1 claimant membership.
13. To the claim of my "Limited Authority" as Chief Executive Officer: The minutes of all meetings concerning the Yindjibarndi #1 claim, which yes, are convened through the auspice of the YAC, show that all major



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

decisions, such as those concerning negotiations with FMG and the decision to challenge applications and court judgements damaging to our culture and future, were put to Y#1 claimants and decided by ballot by the majority of our members.

14. It is notable that in the last such claimant-negotiating meeting where a vote was called[†], it was an overwhelming majority that voted to support the Y#1 resolve to refuse the FMG offer and continue to seek remedy through Australian Law and the constitution. And it was the minority 'breakaways' who wanted a deal done on FMG's terms and declared they were going their own way.
15. The claim Mr. Bower proposes on behalf of this splinter – that I act independently and fail to consult my “fellow applicants or claim group members, and particularly those of the group who are, [to me], elders with superior status, power and authority within the Yindjibarndi #1 native title determination group.” – is an outright lie.
16. Not only have elders with a deeper knowledge of Law and culture than those in the splinter[‡] repeatedly voted to support the chief claimant negotiators [including me], but the most senior elder, centenarian Mr. Ned Cheedy, for whom the Ned Cheedy & Ors v The State of Western Australia Y#1 claim is named, is adamantly supportive of my position, which I have represented on his and others behalf.
17. Further, while a few of the named Yindjibarndi #1 Claim applicants appear amongst the 23 signatories of Bower's letter, the majority of registered applicants and membership as of our last formal, minuted meeting, remained strong in pursuing legal remedy against judgements threatening our rights and existence, and there is no indication that we will stop this course – particularly while FMG continues its belligerent, uncompromising and divisive tactics.
18. Let it be clear that Mr. Bower does not represent me or the other named applicants or the vast majority of Yindjibarndi – and particularly those who carry the songs, names and deepest cultural knowledge for the country FMG wants to mine. If we, the main body that represent this country, are ignored, then FMG will destroy any hope of a proper healing, a healing that must be carried out by elders who have the ceremonial understanding and authority to ease the impact of the spiritual damage of opening up country at *Ganyjingarringunha*.



YINDJIBARNDI ABORIGINAL CORPORATION

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19. You might be interested to know that some of those you count in your Wirlu-murra splinter group have already expressed doubt and alarm at the aims of that group as the facts are clarified to them; and I seriously doubt that some members who signed Mr. Bowers' letter to Minister Grylls, signed with full understanding its implications or intent.
20. There is no movement within the main body of Yindjibarndi to accept the current offer from FMG, though it might be acceptable to FMG and a few self-interested 'breakaways'.
21. YAC, the majority of members, and the majority of registered claimants want to make clear their belief that – after agreement on strict protocols governing the nature of FMG's disturbance on our country and to our heritage – an uncapped, percentage-based royalty is the only credible formula offering genuine recompense.
22. To propose a capped cash offer of \$4 million per annum over the 40 year or so life of the mine, against the projected \$7000,000,000 per annum income of the Solomon mine, and against inevitable ore price raises in the decades ahead, treats the rights of Yindjibarndi with contempt. I am sure that if, under the pressure and connivance of FMG, such a deal ever comes to pass, our people will come to suffer from its inequity.
23. Your claim that I was favourable to a \$10 million settlement is also a distortion of our discussion designed to make your offer look credible. If you were honest, you would have acknowledged that the \$10 million figure I put forward was in the context of a package that included a \$6 million capped annual royalty, plus an additional \$4 million royalty to be invested in a Yindjibarndi Future Fund, plus the transfer to Yindjibarndi of several exploration tenements that FMG own in Yindjibarndi country. This Agreement package was wholly more equitable than the offer you are now proposing. My proposal was made by way of good faith in trying to find a formula that varied from the straight royalty, and which might provide the basis of a sustainable business for Yindjibarndi that justified a step back from straight royalty – and which I could take to my people for serious consideration.
24. The fact is, that the principal difficulty we have had in approaching a just Agreement has been that, since 2007, and in the face of solidarity of the Yindjibarndi group, FMG has actively sought to sabotage the group and to undermine a fair outcome. You have consistently said that FMG's position was non-negotiable, and that if



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YAC refused to accept your standard bottom-line Agreement, then your offer would be taken off the table.

25. YAC has not agreed to your bottom line, although we have been willing to compromise on terms that would represent some kind of equity. Your unwillingness to also make meaningful compromise has wrecked negotiations - a failure that has compelled us to tell you to leave our community. Instead of leaving us alone you have sought out and then resourced and supported other Yindjibarndi members who you have sponsored into meetings [often paying sitting fees] where you have kept pushing your offer as if there were no alternative. In this process you have poisoned, by sowing selective and false information, some of our members against YAC.
26. From 2007 YAC has diligently explored legal avenues to win some equity and justice for Yindjibarndi, and although the NNTT and the Federal Court have so far not ruled in favour of our appeals, our action to remedy this by further appeal to the full bench of the FC on the 6th & 7th of this month, as is our right as Australian citizens, has not run its course. It might be noted that the landmark Mabo decision was denied by every court except the High Court of Australia, and if the FC does not see merit in our appeal, then the High court must be our next resort - if Yindjibarndi and FMG are unable to reach agreement. Beyond the High Court there is the United Nations and its declarations on the rights of Indigenous people, and its court - jurisdictions in which we will put our case if we have to. Of course, there is also the 'jurisdiction' of your shareholders and investors.
27. You should be certain that the body of Yindjibarndi will pursue their rights unendingly while an unjust outcome is forced on us, no matter what kind of deal you try to make with your Wirlu-murra minority clients.
28. Also for the record: The current schedule of heritage surveys that FMG are conducting with the 'breakaways', for the price of daily survey fees, breach the most basic protocols our group have put in place to govern such surveys. They risk irreparable and illegal damage to YAC heritage by ignoring the wishes of the majority of the named applicants and by employing people ignorant of the significance of that country; and worse, by employing women in heritage clearances who by Yindjibarndi Law cannot know the significance of many sites and rituals in that country.
29. It is a pity that you should see fit, with the resources of your wealthy and powerful corporation, to denigrate and discredit me simply



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because I bring a message from our people that stands against your agenda and that of your purely commercial interests. It is an attitude that has tragic echoes in our history. Perhaps if you played the ball and ceased to manipulate information and misrepresent it to Yindjibarndi and to the Government, we would be on a pathway to some kind of settlement. Instead I see a terrible history replaying itself: The Harding Dam and its fatal consequences for sites and country in that valley, and for its chief custodians, still haunts this community. The first round of surveys that brought down that catastrophe was based on consultation with people who had no knowledge of that country; a process that was managed by arrogant city professionals who came with a fixed agenda and no idea of my country or its meanings.⁸

30. Finally, I should make it crystal clear that I will not, as long as I am a responsible registered applicant of the Yindjibarndi #1 claim, betray my duty to my Yindjibarndi Law, to my people and fellow claimants, and especially to my future generations; and nor will I join in the recklessness of a splinter group of Yindjibarndi that have no concept of the irrevocable damage to our country and to our Law of your project at *Ganyjingarringunha Ngurra* – particularly as FMG is prosecuting this project at this time. This is a painful decision. I hate the frustrating legal path, but for fear of my life as a Yindjibarndi under the law I live and practice, I will seek justice through every legal avenue, just as Eddie Mabo and his people did. In this course I am bound not just to my beliefs and law, but to the future generations of Yindjibarndi who will hold us accountable long after we are gone.

Yours sincerely,
Michael Woodley

A handwritten signature in black ink, appearing to be 'M Woodley', written in a cursive style.

Chief Executive Officer - CEO
Yindjibarndi Aboriginal Corporation

“MW-64”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “MW-64” referred to in the witness statement of Michael Woodley dated 5 June 2023.

AN OPEN LETTER FROM FORTESCUE METALS GROUP TO ALL YINDJIBARNDI PEOPLE

Fortescue is pleased let you know that we have restarted face-to-face negotiations about a land access agreement with the Yindjibarndi Aboriginal Corporation (YAC).

As many of you know, for years now Fortescue and YAC have been unable to reach an agreement about Fortescue's Solomon mining project, part of which is located on land covered by the Yindjibarndi #1 native title claim.

While Fortescue is disappointed that we don't have an agreement with all Yindjibarndi and we have been saddened to see conflict within the Yindjibarndi community, we have at all times negotiated openly and in good faith and we will continue to do so.

Fortescue would like to reassure all Yindjibarndi people that if our negotiations with YAC result in an agreement, it will be for the benefit of **all** Yindjibarndi people and not a privileged few.

Fortescue will honour the commitments we have made to our partners, the members and Directors of the Wirlu-murra Yindjibarndi Aboriginal Corporation, and the other traditional owners at Solomon, and we will continue to work closely with all of you. Fortescue hopes that we can reach an agreement with Yindjibarndi and that this will help to reunite the community.

Fortescue stands by the principles which we believe are fundamental to ending the disadvantage and disparity experienced

by Aboriginal Australians. In any agreement with Yindjibarndi, Fortescue will:

- Provide a hand-up not a hand-out to Aboriginal Australians;
- Deliver training, jobs and business opportunities; and
- Ensure that benefits are fairly distributed to all Yindjibarndi people.

Fortescue has to-date delivered approximately \$140 million in contracting benefits to Yindjibarndi related business and joint ventures involving Yindjibarndi. We have trained 156 people through our Roebourne VTEC, and we currently directly and indirectly employ 54 Aboriginal people from Roebourne and surrounding areas.

We thank YAC for the invitation to recommence negotiations. We will proceed in good faith and with the hope of a positive outcome which will see all Yindjibarndi people share in the success of the Solomon project.

Nev Power
Chief Executive Officer
Fortescue Metals Group Ltd



“MW-65”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

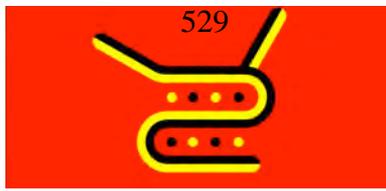
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked “MW-65” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

13/6/2013

Neville Power
CEO
Fortescue Metals Group Ltd
Level 2, 87 Adelaide Tce, East Perth, WA 6004
PO Box 6915, East Perth, WA 6892
Main Ph: +61 8 6218 8888
Direct Ph: +61 8 6218 8868
Fax: +61 8 6218 8880

Dear Nev,

RE: Your email titled “Response to YAC media release”

Thank you for your email last week in which you expressed your disappointment at YAC's response to FMG's Firetail press statement and celebration. There are issues regarding Fortescue's liability, breaches of our negotiating agreement, the undermining of trust and confidence, and the matter of our negotiations, which Fortescue should also consider.

FMG's LIABILITY

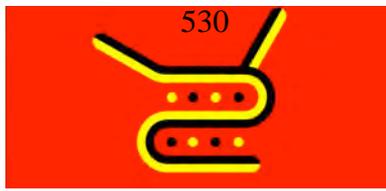
With regard to your comments regarding FMG's potential liability, I refer you to the Justice McKerracher's comments in his decision handed down in the Federal Court on 20 July 2012, which allowed FMG to be joined as a respondent to our Yindjibarndi #1 Claim:

A determination of native title in favour of (the Native Title Applicant) may entitle the (Yindjibarndi People) to compensation payable by FMG pursuant to s 123 of the Mining Act or s 24MD(3) NTA and s 125A of the Mining Act. The fact that a determination in the proceeding may give rise to a liability on the part of FMG to pay compensation clearly shows that FMG may be affected by the determination.

The fact that we have very strong evidence to justify determination of exclusive possession native title for the Claim area, we believe will certainly “give rise to a liability on the part of FMG to pay compensation”, a matter your shareholders and investors deserve to be fully informed about.

TRUST AND CONFIDENCE

I draw your attention to the FMG press release dated 6 May 2013, “Fortescue celebrates opening of Firetail Mine”, which preceded and prompted our response. Considering that we were in a process that aimed at bringing the Yindjibarndi Aboriginal Corporation—the legitimate Yindjibarndi representative body—into the picture, your manner in lording your exclusive Firetail celebrations over YAC's



YINDJIBARNDI ABORIGINAL CORPORATION

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A.B.N. Number 97 456 543 455

sincere and honest attempts to reach an agreement, are equally disappointing to our people. This lack of acknowledgement of YAC's role as the PBC responsible for country at the Firetail deposit shows complete lack of respect by FMG. We consider this to be a breach of our negotiation protocols regarding publicity affecting either party.

FMG's public statements give the impression that the Project has Yindjibarndi Traditional Owner support. This is not the whole truth, and is totally disrespectful to the Yindjibarndi Aboriginal Corporation and the majority of Yindjibarndi people who do not support the Project as long as FMG operates outside a fair ILUA, and a Heritage Agreement with the body that has been properly elected and appointed to manage these matters for ALL Yindjibarndi native title holders.

YAC's responsibility to Yindjibarndi native title holders and the broader public obliged us to correct this oversight.

DISRESPECT

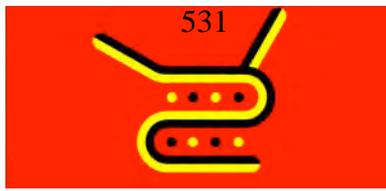
During the course of our negotiations I found it surprising that you allow your staff to make offensive statements regarding my role as YAC CEO and lead negotiator. Peter's insults in "*all roads leading to Michael Woodley*", and comparison of my role to "*dictatorship*" continue a wilful ignorance and dismissal by FMG of my fifteen years service to my community, my successful drive to build community enterprises (long before FMG arrived here), and the broad support I have won for these efforts within my own community and further afield. It is my community that has both elected and entrusted me with leadership and the role of CEO—that is why FMG's strategic campaign to smear and discredit me, for over two years now, has failed, and in fact backfired. It is time you moved on from this.

Sadly, this miscalculation has found its way into your 27 May email with swipes regarding my "*personal pursuit*" overriding "*the broader benefit for your people and your community*" and "*Destroying the opportunity for us to work together*". These jibes are slanderous, and patently ridiculous, most overwhelmingly so to members of our community who have been engaged in and who have observed the very positive outcome of negotiations I have led with RTIO in "*genuine good faith*", which have already borne fruit.

OUR NEGOTIATIONS

It is YAC's view that for our negotiations to continue, we need to tackle the tough issues upfront to see if there is truly merit in furthering the draft ILUA. Specifically, to recommence ILUA negotiations, YAC considers it crucial that FMG facilitates, as it has offered, a community meeting of the WMYAC and the YAC to commence the process of bringing the Yindjibarndi Nation together. This will enable important discussions in openly addressing the points below:

1. Acknowledgement that YAC is the body, which properly represents Yindjibarndi native title interests.
2. Cessation of native title related dealings with parties that are not properly constituted or elected to represent Yindjibarndi native title interests.



YINDJIBARNDI ABORIGINAL CORPORATION

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A.B.N. Number 97 456 543 455

3. Cessation of FMG support for the Supreme Court action against YAC.
4. Finalisation of a Heritage Protocol with YAC.
5. Recognition and endorsement of the YAC 3C model for empowering Yindjibarndi people.
6. Assurance that any FMG proposals concerning governance/structure of the ILUA (in addition those proposed by YAC) protect and benefit ALL Yindjibarndi groups incorporated or not incorporated (now or in the future) for the term of the agreement.
7. Focus on the definite financial and contractual terms of the ILUA that FMG will be legally obligated to meet.

To answer your question as to whether or not, I on behalf of YAC, am truly serious about these negotiations, I can assure you that I am. I now hope that you on behalf of FMG are of the same view.

We should learn from this rupture, use it to reset the parameters of our negotiations, and set a more prospective course. I would be pleased to discuss my thoughts further with you in respect to the above at a mutually convenient time.

Finally, you may be interested in this independent commentary regarding FMG's approach to ILUA negotiations:

["The Native Title System As A Market: Fortescue Metals Group And The Yindjibarndi"](#), by Daniel Wells, Indigenous Law Bulletin, vol 8/issue 4, January-February 2013 p20

Yours Sincerely

Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au

“MW-66”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-66” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Our Ref: LS-100-I-0765
Your Ref:



Mr Michael Woodley
Chief Executive Officer
Yindjibarndi Aboriginal Corporation
PO Box 111
ROEBOURNE WA 6718

28 June 2013

Dear Michael

RE: Your letter of 13 June 2013 regarding FMG/YAC negotiations

I acknowledge receipt of your letter of 13 June 2013 addressed to Fortescue CEO, Mr Neville Power (attached). I will respond to the substantive points you raise.

Yindjibarndi #1 native title claim

We acknowledge that if the Yindjibarndi People are successful in proving their outstanding native title determination application, and are then successful in prosecuting any subsequent compensation application, it is possible that a compensation liability may accrue to Fortescue in respect of certain future acts. In this respect, Fortescue is in the same position as every other holder of a relevant interest in land (not covered by an ILUA) elsewhere in Australia.

Trust and confidence in our negotiations

Fortescue and YAC had agreed to refrain from negative public comment about one another while our negotiations for a whole-of-country Land Access Agreement (LAA) were on-foot. For our part, Fortescue had strictly complied with this agreement. It is absurd to suggest that a press release acknowledging a major project achievement at Solomon was a slight upon, or insult towards, YAC. Our observation was that through the negotiation process Fortescue and YAC had begun to build a fragile trust in one another. Your decision to deliberately and publically attack Fortescue and our partners fundamentally undermined this trust and in doing so you discarded a significant package which would have provided intergenerational benefit worth hundreds of millions of dollars to Yindjibarndi People.

Future negotiations

Fortescue will continue to negotiate in good faith with YAC for future mining tenure through the processes prescribed in the *Native Title Act 1993* (Cth). At this time, due to YAC's deliberate breach of trust, Fortescue is unable to continue the negotiations with YAC for an LAA.

Please direct any future correspondence on this matter to me. Mr Power will be kept informed of progress and may become involved if and when an LAA appears possible.

Yours sincerely

FORTESCUE METALS GROUP



TOM WEAVER

Native Title Manager

Enc.

Attachment 1 Letter from Michael Woodley to Nev Power, dated 13 June 2013

Cc

Mr George Irving, Yindjibarndi Aboriginal Corporation

Ms Alexa Morcombe, Fortescue Metals Group Ltd

Mr Peter Huston, Fortescue Metals Group Ltd

“MW-67”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

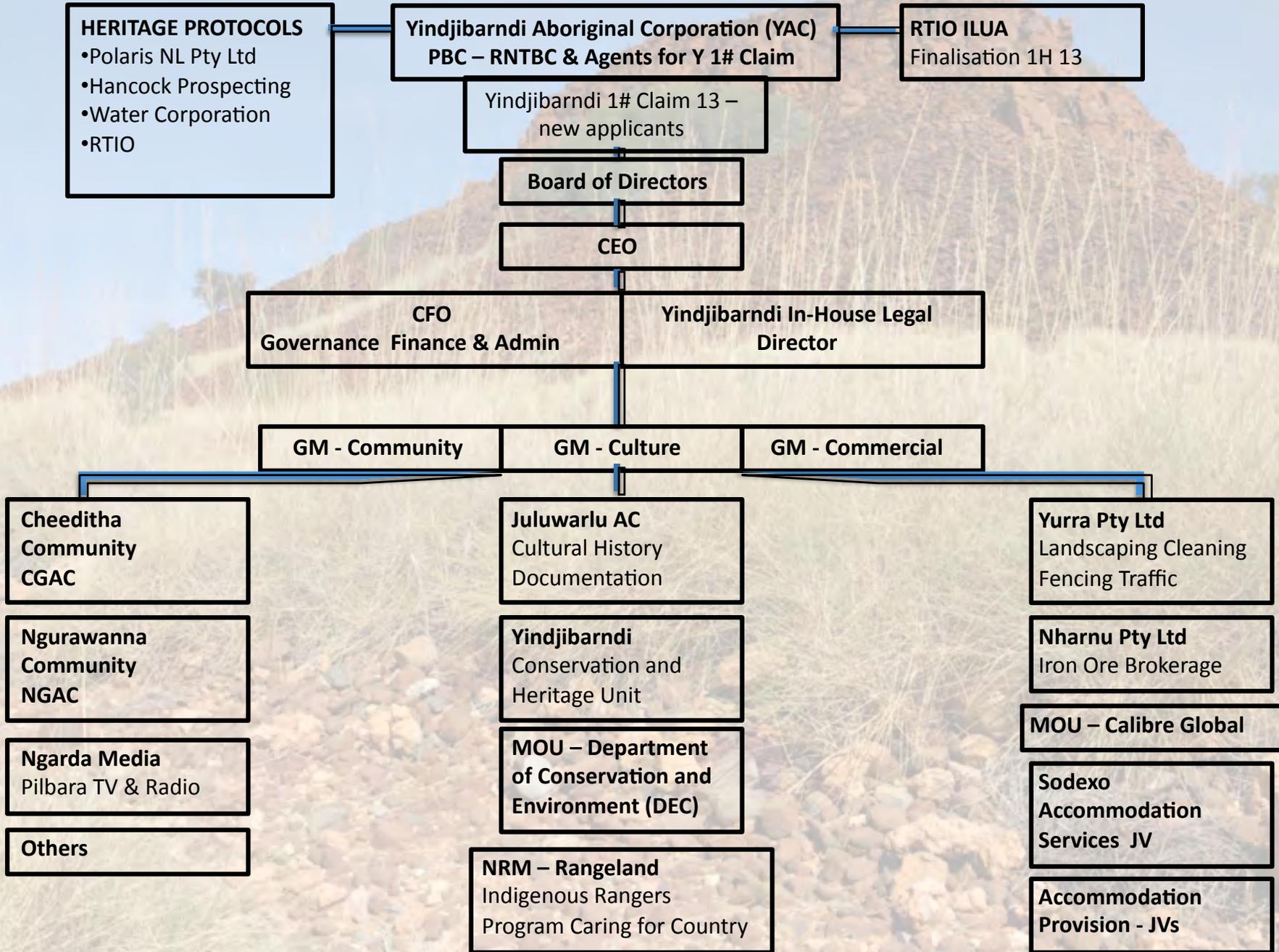
Applicant

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Respondents

This and the following page is the annexure marked “MW-67” referred to in the witness statement of Michael Woodley dated 5 June 2023.

YAC Management Structure - The 3 Cs Principle



“MW-68”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 13 pages is the annexure marked “MW-68” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

ORGANISATIONAL PROSPECTUS

JUNE 2014

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Wanthiwa Julu Yindjibarndi-ngarli.
Hello to all Yindjibarndi

*Yala nhantharri garbawa yurrawayi
buya gangkala nhaa millimilli
ganjagayi nhantharriyarndu wangka
garbarngarli nyja buwarrila, guma
yurrawayi nhaa wangka julu
banthugayi Yindjibarndi-ngarli mirda
wadirri barrham garrima mirduwarra.*

Today with this document we stand with the raising of the Sun with our heads held high, for this document holds for all of us our words and our dreams. Together like the raising and setting of the Sun it is there to touch all Yindjibarndi to stand tall and successful and don't become fearful of the light.

*Mirda gundi jujuwathayarndu
wanggarngarli, mirda gundi
nhantharriyandu ngurra, mirda gundi
nharnha nhatharri. Yindjibarndi.*
Don't forget the old people's words of wisdom, don't forget the country we come from and forget who we are. Yindjibarndi.

SECTION 01

EXECUTIVE SUMMARY

Yindjibarndi Aboriginal Corporation RNTBC (YAC) is the Registered Native Title Body Corporate of the Yindjibarndi People and the representative institution chosen by the Yindjibarndi People to be their Prescribed Body Corporate, under the Native Title Act 1993 (NTA). YAC is the legal owner of the native title rights and interests that were recognised in the 2005 Federal Court determination of native title (in *Daniel v Western Australia* [2005] FCA 536, as varied by the Full Court in *Moses v State of Western Australia* [2007] FCAFC 78), and YAC holds those rights and interests on trust for the Yindjibarndi People. YAC is also the lawfully authorised agent of the Yindjibarndi People in respect of their common law native title rights in the area of land and waters covered by the Yindjibarndi #1 native title claim.

YAC is the first point of contact for anyone wishing to undertake any activities in Yindjibarndi Country that may affect the native title rights and interests of the Yindjibarndi People.

The purpose of this document is to communicate the strategic operating context of YAC and outline the governance model which is employed to ensure that the organisation operates effectively and responsibly both internally and in relation to its dealing with external parties.

The direction and actions of the YAC in delivering outcomes is led by the vision and priorities of the Yindjibarndi people which are encapsulated in the three community priorities below:

1. Preservation and celebration of Culture;
2. Investment in and empowerment of Community
3. Delivery of Commercial outcomes to benefit the Yindjibarndi People

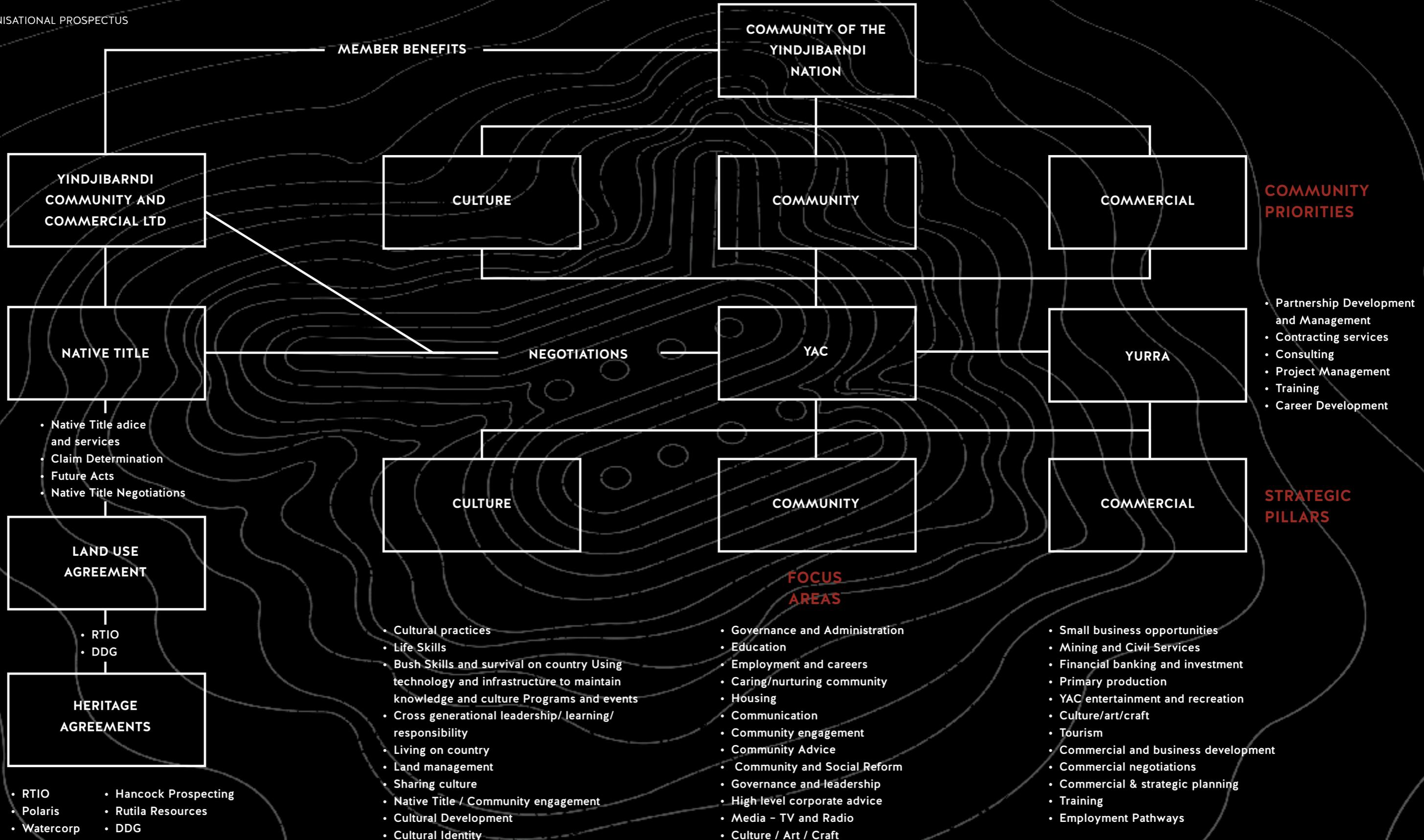
The image on the nextpage articulates our organisation's strategic framework and demonstrates how the principles above manifest themselves within our organisation.

Thomas Jacobs
Chairman

Thomas Jacobs

Michael Woddley
CEO

Michael Woddley





SECTION 02

BOARD OF DIRECTORS

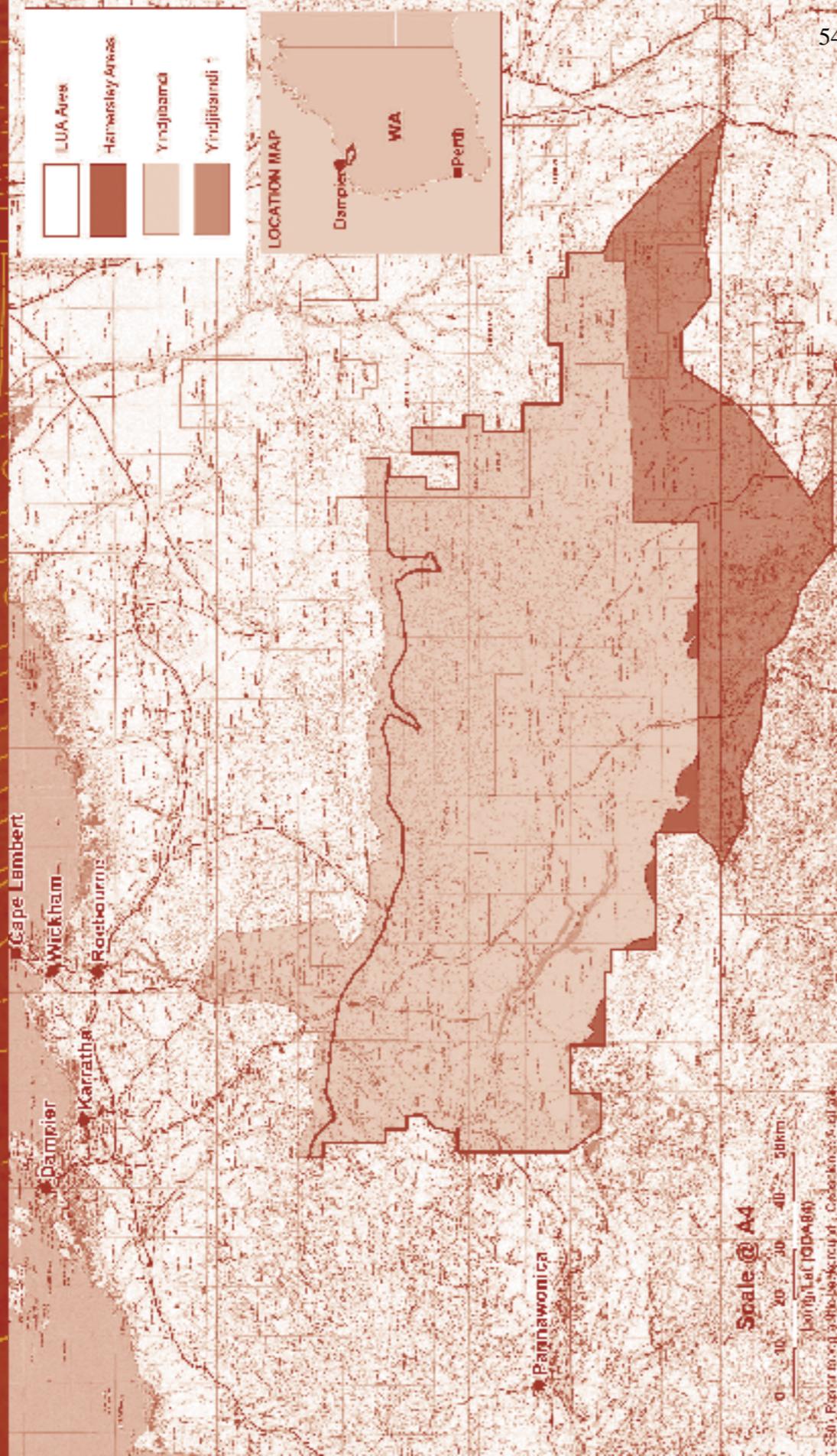
SHOWN ABOVE (LEFT TO RIGHT)

- STANLEY WARRIE
- PANSY SAMBO
- TOM JACOBS
- TOOTSIE DANIELS
- ROSEMARY WOODLEY
- RUSSELL SANDY
- MIDDLETON CHEEDY
- JOYLENE WARRIE
- JEAN NORMAN
- GABRIELLE CHEEDY
- ANGUS MACK
- CURTIS LOCKYER



The Yindjibarndi publication, Know The Song, Know The Country, outlines what Ngurra Nyjunggamu is:

In our Law it is said that in the beginning the sky was very low. When the creation spirits got up from the ground, they lifted the sky and the world out of the sea. The creation spirits are called Marrga...If Marrga are not approached and spoken to in the proper way, they might hurt visitors or make them sick. It was the Marrga and Minkala/Mangunyba (Skygod) that named and shaped the country, then all the birds and animals, and finally the Ngaardangarli (Aboriginal people) came from the Marrga themselves. In other places they call this the 'dreaming', but here we call it Ngurra Nyjunggamu - 'when the world was soft' (2004: 2).



SECTION 03

YINDJIBARNDI NATION

The Yindjibarndi People have, since before the assertion of British sovereignty, maintained their connection to Yindjibarndi Country through the continuous acknowledgement and observance of the traditional laws and customs which connect their society to Yindjibarndi Country.

In accordance with our religious 'Birdarra' Law, Yindjibarndi people, Yindjibarndi language and Yindjibarndi country are not different things, but related parts of a unity called 'Yindjibarndi' which has existed since the Ngurra Nyjunggamu.

Yindjibarndi Elders speak of how and why the first Law was given to the Yindjibarndi. Long before the Ngaardangarli, the Marrga practiced their laws with tough traditional governance. However, two Marrga troublemakers intentionally broke the rules. The Marrga decided to punish them. They found the two trouble makers up the river in Yindjibarndi country, and initiated them at a place called Ganyiyanhna on the Fortescue River; this place became the first Law of Birdarra ceremony. The markings on the flat river rock at the BilinBilin, still exemplify this occurrence.

The Ngaardangarli's connection to this land, its inherent elements and images, is demonstrated, reinforced and reproduced through the songs, stories, culture, traditions, language, actions and customs, taught by the Elders. Each religious element of flora, fauna, ceremony, song, kinship, respect, language, protocol and landscape is unified, encapsulated by the consequential philosophical structured continuum, which requires repeated ceremonial action based on knowledge of the Law,

and is the key to Ngaarda's continued survival as a unified nation.

Every component of life and death is connected by Yindjibarndi's Galharra; which is our law of social relationship, and Nyinyadt which literally means the rule of sharing (reciprocity). Galharra and Nyinyadt dictate how every living being and the country interact, respect each other and must behave in accordance with these strict rules .

The Yindjibarndi regard their country as a religious precinct with every part being a component of, and connected to, one living and interactive entity that is relationally and reciprocally responsive to the spiritual, linguistic and material actions, thoughts and deeds of the Yindjibarndi people. Therefore, as their culture demands, Yindjibarndi people take personal responsibility for the protection of their country; if they fail to care and reciprocate then not only will the country wither and die, they will also perish.

The Yindjibarndi believe that the country is inhabited by their direct familial ancestors who watch over and judge their every action. In short, the Yindjibarndi wish to take an active interest in all activities that occur within their spiritual and material realm, and ask that via consultation, communication and negotiation, their concerns and beliefs are respected by all who come into contact with them and their traditional country.

SECTION 04

YINDJIBARNDI ABORIGINAL CORPORATION

The Yindjibarndi Aboriginal Corporation (YAC) is the chosen representative body of approximately 1500 Yindjibarndi people, the majority of which reside in and around the township of Roebourne.

Yindjibarndi Aboriginal Corporation RNTBC (YAC) is the Registered Native Title Body Corporate of the Yindjibarndi People and the representative institution chosen by the Yindjibarndi People to be their Prescribed Body Corporate, under the Native Title Act 1993 (NTA). YAC is the legal owner of the native title rights and interests that were recognised in the 2005 Federal Court determination of native title (in Daniel v Western Australia [2005] FCA 536, as varied by the Full Court in Moses v State of Western Australia [2007] FCAFC 78), and YAC holds those rights and interests on trust for the Yindjibarndi People. YAC is also the lawfully authorised agent of the Yindjibarndi People in respect of their common law native title rights in the area of land and waters covered by the Yindjibarndi #1 native title claim.

YAC is the first point of contact for anyone wishing to undertake any activities in Yindjibarndi Country that may affect the native title rights and interests of the Yindjibarndi People.

The YAC heads an alliance between the five most significant and long-lived Yindjibarndi organisations: YAC, Juluwarlu Aboriginal Corporation, Cheeditha Community, Ngurrawaana Community and Ngaarda TV & Radio. This alliance has a strong history of cooperative achievement with a focus on sustainable community development.

The role of the Yindjibarndi Aboriginal Corporation includes but is not limited to:

1. Community consultation and the promotion of clear and productive communication;
2. Community empowerment;
3. Implementation of 3 C's principles;
4. To create opportunities for self-development;
5. Policy development;
6. Assessment of local content and context in broader strategy development;
7. Investment in community and people;
8. Growth of sustainable commercial opportunities for Yindjibarndi people in order to facilitate economic diversification;

YAC MANAGEMENT STRUCTURE

The management of YAC has a number of key inputs that have influenced development of the corporation's structure.

The Yindjibarndi people through the articulation of community priorities have provided strategic direction to the YAC. The 3c's principles of Culture, Community and Commercial development guide the day to day activities of the Corporation. A structural focus on the 3C principals has resulted in the establishment of three general manager positions within the organisation who are the custodians of each of the strategic pillars.

The focus areas for the management team under each strategic pillar are delivered through a range of initiatives including direct investment, partnerships, alliances and service agreements.

The YAC in delivering its responsibilities to the community ensures that all matters are delivered in a transparent and accountable manner. This is achieved through an organisational commitment to importance of best practice and auditable governance.



SECTION 05

THE TRUST

Revenues that are negotiated by YAC on behalf of the Yindjibarndi people are managed by a separate, independent organisation called the Yindjibarndi Community & Commercial Ltd.

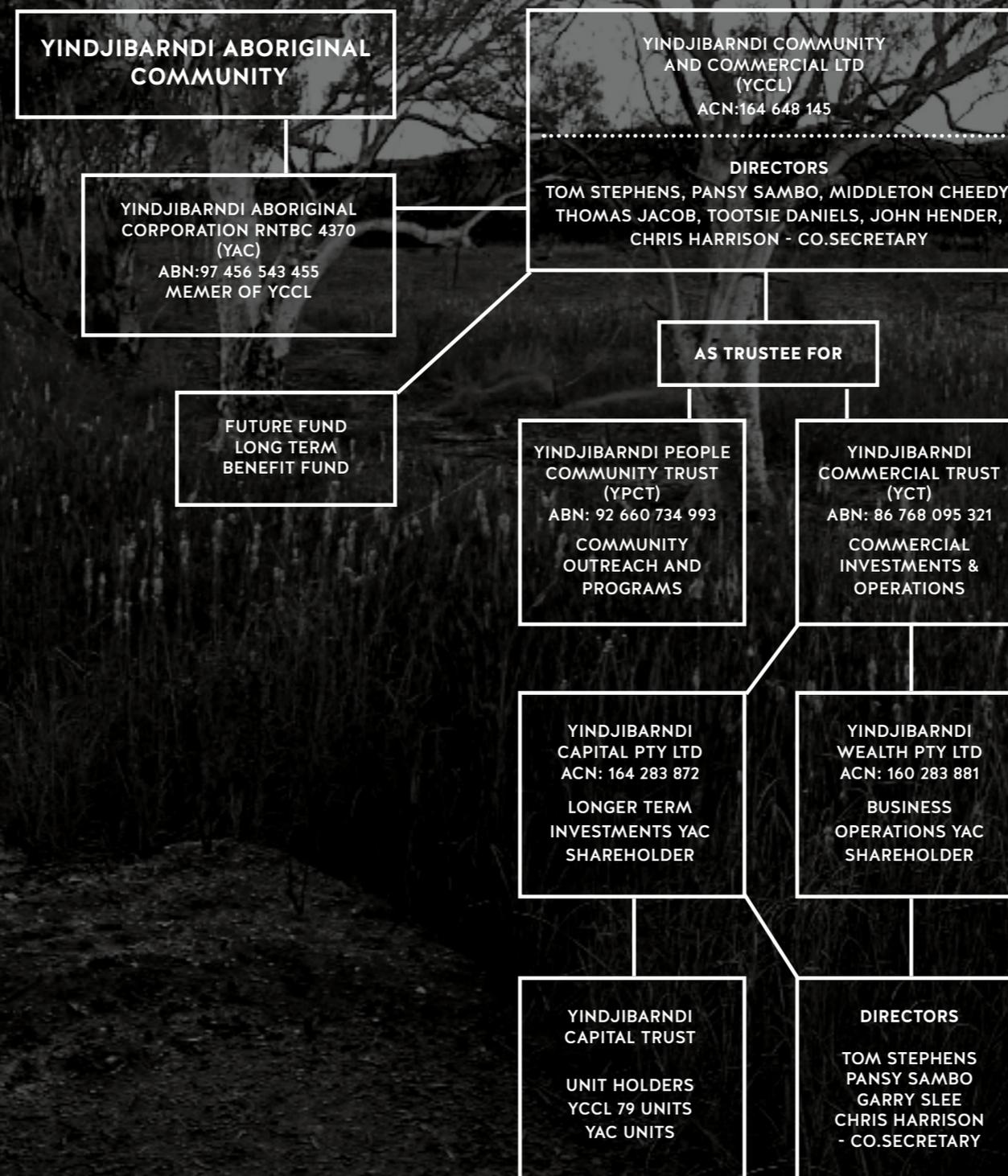
The Yindjibarndi Community & Commercial Pty Ltd is the trustee for (2) separate trusts being:

1. Yindjibarndi People Community Trust; and
2. Yindjibarndi Commercial Trust (Capital and Wealth).

The nature of the trusts is that they are fully discretionary. By this no person has a right to receive income or capital in the absence of a trustee decision to do so.



BENEFIT MANAGEMENT STRUCTURE (BMS)



SUMMARY OVERVIEW AS AT 31 MAY 2014

REPRESENTATIVES

The Yindjibarndi Community & Commercial Pty Ltd board of directors is made up of trusted members of the community with assistance from experts in governance and financial management.

Community Members – Middleton Cheedy, Thomas Jacob, Tootsie Daniels & Pansy Sambo.

Tom Stephens - an active advocate for Aboriginal rights and justice in our region since the late 1970's, was a member of the WA Parliament from 1982 until 2013; he brings a wealth of knowledge and experience to the board of the Yindjibarndi Community and Commercial Trust.

John Hender - National Manager for Native Title Trusts with Perpetual Ltd, brings 25 years of financial experience to the board of our trust; he specialises in wealth building and with his help Yindjibarndi Trust will grow to benefit current and future generations of Yindjibarndi people.

DUTIES

The duty of the trusts' board is to make decisions on the most appropriate ways to distribute revenues in order to maximise outcomes for Yindjibarndi community and self-development. The core duties for the trust include but are not limited to:

Benefit Management

As the trusts are fully discretionary it is the role of the board to assess applications and the rights of those being considered for distribution of capital or income.

Policy

The trusts' board through open communication with the YAC should establish a policy setting that encourages the most appropriate use of funds to benefit the Yindjibarndi community.



SECTION 06

THE THREE C'S STRATEGIC PILLARS

On the 15th May 2011 an all day workshop was hosted by YAC for the Yindjibarndi people with no external consultants or other influences in order to foster and promote grass roots ideas and priorities by Yindjibarndi people regarding the vision for their community.

The ideas, projects and themes generated as part of this consultation result in (3) distinct focus areas for YAC being:

1. **Community** development, growth & improvement;
2. **Culture** heritage, religion & survival;
3. **Commercial** development, progression & advancement;

In understanding this YAC has adopted these community priorities as their three organisational strategic pillars.

The importance of the delivery of outcomes within each of the pillars is recognised by the YAC. It is however critical for the delivery of real community and self-development outcomes that the three pillars be considered holistically and delivered collaboratively.

Delivering outcomes which consider Community, Commercial and Cultural outcomes together will strengthen the Yindjibarndi community standing and ability to bring about generational change and a **future that is built on self-determination.**

Stronger Yindjibarndi community built on self-determination.

SECTION 07

COMMUNITY

The key focus areas for the Yindjibarndi “community” drivers include but are not limited to:

Governance and Administration

Developing a community structure that has processes in place to support communication, innovation and planning. YAC is focused on the ongoing development of the skills required to successfully administer the different facets of a regional community.

Education

Education is one of the most important investments that can be made on the journey to self-development. YAC will continue to develop ways to improve education outcomes by providing local context to Government regarding the specific requirements of the community and through seeking opportunities for training and skills development through all 3C drivers.

Employment and Careers

YAC Training and employment services are designed to develop career paths for Yindjibarndi people, match community with local employment opportunities and support the growth of new small business opportunities.

Caring / Nurturing Community

The health of the community is central to all. YAC will continue to develop ways in which to facilitate the improvement of all elements of community health. The core community requirements being:

1. Health and nutrition;
2. Mental Health;
3. Drug and Alcohol;
4. Aged care;
5. Child services; and
6. Lifestyle development.

Communication

The promotion of communication is important not only through governance but through structured investment in communication infrastructure. YAC will continue to investigate and provide opportunities for new mediums of communication.

Housing

Housing solutions should seek to provide sustainable, affordable options that meet the varied requirements of the community, consider the local environment as well as culture in the design. YAC will remain focused on working with Cheeditha and Ngurrawaana communities and well as developing new accommodation solutions to meet future demands for all members of the community.

SECTION 08

CULTURE

The community has identified a number of key drivers that describe the cultural requirements for Yindjibarndi people which include but are not limited to:

Land Access

As the Registered Native Title Body (RNTBC) for all Yindjibarndi country, all corporate, not-for-profit and government entities must engage with the YAC if their actions are going to affect the Yindjibarndi people's native title rights and interests and/or Yindjibarndi cultural heritage. The YAC cultural and heritage department has created a team of local Yindjibarndi people and non-Indigenous professionals to oversee and protect the internationally significant religious and cultural heritage precinct which the Yindjibarndi people have occupied for up to 45,000 years. This structure includes the 'future act' and native title team who specifically deal with promoting and safeguarding the native title rights and interests of the Yindjibarndi people.

Ethnographic and Archaeological Heritage Surveys

Since 2007 the YAC has been conducting ethnographic and archaeological heritage surveys for corporations who are intending to 'disturb ground for the first time' within the Yindjibarndi native title determination and claim areas. Prior to undertaking surveys the proponent must have met with the Yindjibarndi people in a community meeting/s, explained the extent and purpose of their proposed industrial footprint, and if all agree, sign a heritage agreement with the YAC that sanctions them to proceed with the works. It is YAC policy that all surveys, substantial meetings and discussions with proponents are filmed; there is zero tolerance for drugs and/or alcohol in all aspects of YAC activities; that only Yindjibarndi men who have been through the Birdirra Law can speak for country; and that in accordance with appropriate respect and practice all Yindjibarndi Law men are consulted in counsel regarding any actions that take place within Yindjibarndi country. These policies ensure that transparency, honesty and community values, are upheld and implemented when making decisions regarding the future of every Yindjibarndi person.

Flora and Fauna - Environment

It is the aspiration of the Yindjibarndi people to manage and maintain the environmental diversity that exists within our traditional boundaries, as we have been doing effectively for 1500 generations. The YAC is developing its institutional capacity to research, implement and produce professional environmental reports that meet the legislative needs of corporations interacting with Yindjibarndi people and country. We believe that we can add value to these publications by incorporating Yindjibarndi's traditional, cultural and religious knowledge that will augment the knowledge of the people who are working in Yindjibarndi country.

Ngurawaana Rangers

The YAC supports a team of Rangers who live at the Ngurawaana community which is located near to the Millstream/Chichester National Park. These Rangers are employed by YAC and currently are involved in controlling and eradicating Date Palms and Parkinsonia which infest the Fortescue River, as well as working as a contract team for the National Park. Via this project, the Rangers are able to live on country at Ngurawaana as well as being able to put food on their table for their families.

Cultural Awareness Training (CAT)

The Yindjibarndi carry a vast knowledge about their religion, heritage, environment and country. Via the YAC, companies whose employees need to know more about the Yindjibarndi society, priorities and activities, both past and present, can hire the Yindjibarndi people to conduct comprehensive Cultural Awareness Training (CAT) which will introduce them to an Yindjibarndi perspective on life; which can be a very positive, challenging and life-changing experience for CAT participants.

Cultural Mapping

Utilising Geographical Information system (GIS) software, photography, film and interviews with Yindjibarndi Elders, the YAC organises, runs and culturally maps Yindjibarndi country. All of this information is professionally archived by the YAC. The information is available for all Yindjibarndi people according to the appropriate cultural protocols.

SECTION 09

COMMERCIAL

The strategic commercial driver is tasked with building the financial wealth of the Yindjibarndi people through sound investments and the development of community owned property assets and businesses. The aim is to provide capital growth and wealth creation on one hand whilst delivering employment, training and career development opportunities for Yindjibarndi people for the immediate and longer term future. The focus areas outlined for the Yindjibarndi commercial drivers include but are not limited to:

Small Business Opportunities

YAC will provide assistance to the development of new as well as supporting growth of existing small businesses. YAC will also continue to invest in the training and development of Yindjibarndi people to ensure that opportunities exist within the community to be engaged through the development of new and existing businesses.

Mining and Resource Services

Promotion and facilitation of opportunities that exist in the mining and resources sector through relationships and negotiations on land use agreements.

Financial / Banking / Investment

Providing financial facilities for Yindjibarndi people locally whilst also exploring opportunities that will provide longer term benefit to the community.

Land Use

Numerous opportunities exist for the use of Yindjibarndi land to create opportunities that facilitate community development outcomes. These opportunities include but are not limited to:

1. Resources;
2. Primary production;
3. Land Management; and
4. Tourism.

YAC Entertainment and Recreation

Through the utilization of existing programs and as the community develops there will be opportunities that YAC can assist with to create commercial opportunities that capture the needs of the community as well as visitors to the community.

Culture / Art / Craft

Through the continued development of strong cultural identity of Yindjibarndi people commercial opportunities will exist for cultural based enterprises. YAC like with any Yindjibarndi small business venture will assist through the provision of advice



SECTION 10

YURRA

Yurra Pty Ltd was established in early 2013 as the formalisation of a partnership between the Yindjibarndi Aboriginal Corporation (YAC) and ALM. Yurra's first contract was awarded in mid-2013 with the company's target market focused initially on the North-West of Western Australia.

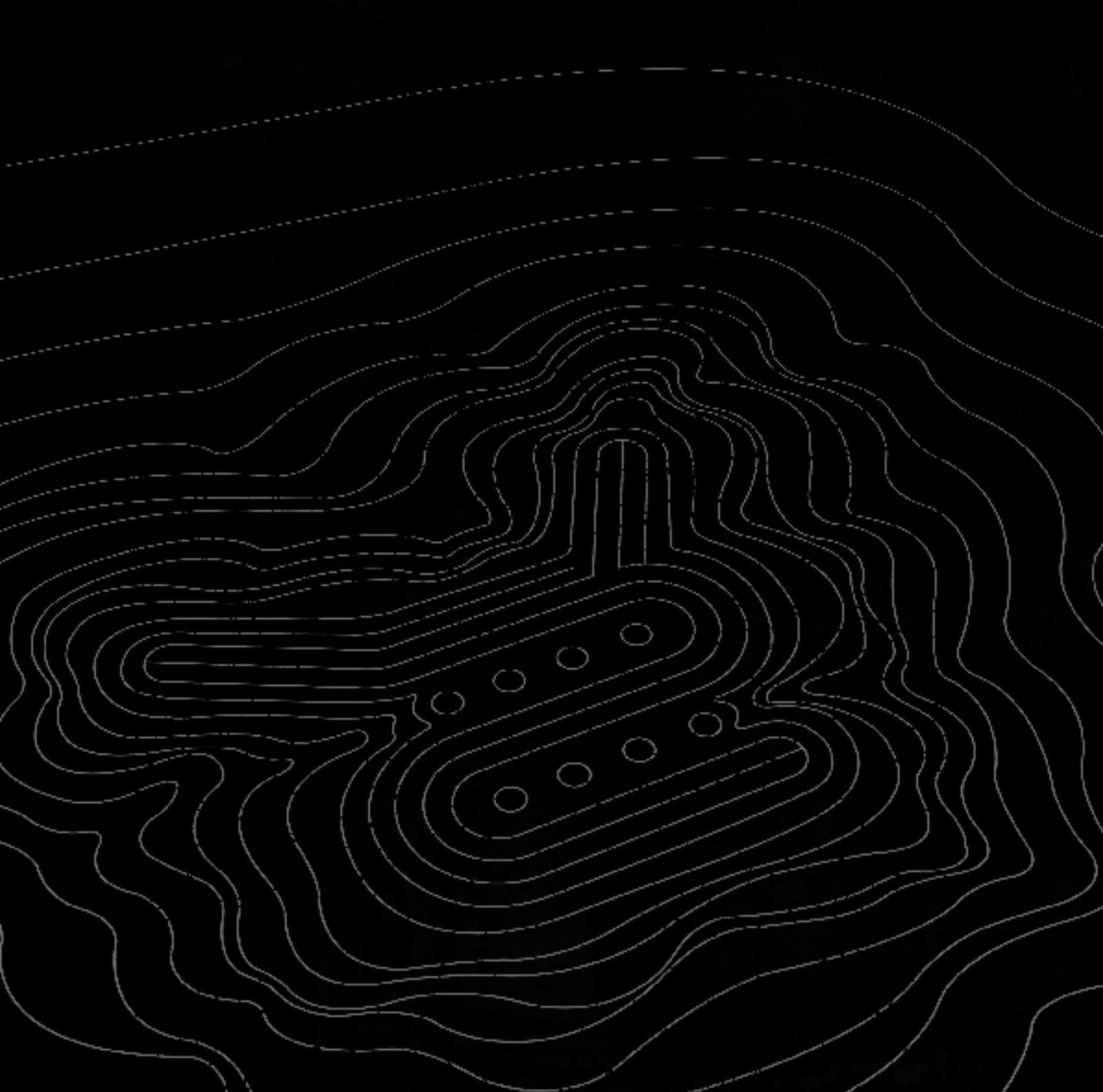
Yurra has a vision to enter into long term partnerships to deliver education and training for indigenous and local people, generate long term employment opportunities, in particular for the Yindjibarndi community, improve and grow relationships with stakeholders and develop the Yurra business brand.

The major objectives for Yurra are:

1. To have an innovative approach to building a sustainable Aboriginal business respecting the need to enhance Aboriginal Culture and Communities whilst operating Commercially;
2. As a profitable business, contribute positively to the local economies in which we operate;
3. Develop a wide range of employment opportunities with training and development apprenticeships and traineeships for employees of Yurra;
4. To create partnerships that support the development and success of associated businesses and continually strives to deliver improved client satisfaction; and
5. To establish a well-known, respected brand within the fields/industries in which we operate.

The capabilities which Yurra as a business has and is growing upon currently include:

- Partnership Development and Management;
- Contracting Services including but not limited to:
 - Commercial and Residential Landscaping;
 - Landscape and irrigation design;
 - Cleaning;
 - Minor Civil Works;
 - Waste Management;
 - Weed Control;
 - Security / Gatework;
 - Traffic Control; and
 - Maintenance Services.
- Project Management; and
- Training and Career Development.



YINDJIBARNDI ABORIGINAL CORPORATION

PO Box 111, Roebourne WA 6718

or

Suite 4, 19 Bishop Street, Jolimont WA 6014 or PO Box 196, Wembley WA 6913

P: 08 9284 0799

www.yindjibarndi.org.au



“MW-69”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked “MW-69” referred to in the witness statement of Michael Woodley dated 5 June 2023.

MW-69



Image 1



Image 2



Image 3

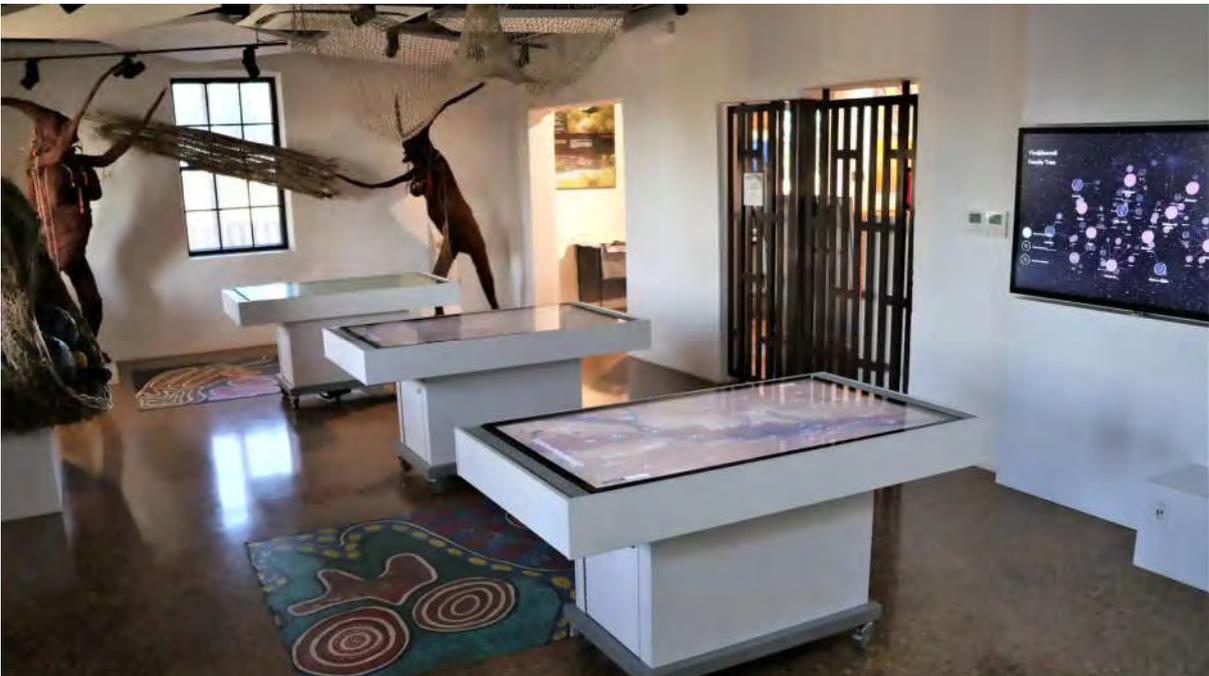


Image 4



Image 5

“MW-70”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

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YINDJIBARNDI NATION NEWS

NGARDA WANGKA

ISSUE 01 | APRIL 2023

YINDJIBARNDI NATION NEWS | NGARDA WANGKA

Wanthiwa!

Welcome to the first edition of Yindjibarndi Nation News—Ngarda Wangka, published by Yindjibarndi Nation Ltd (YNL).

In relation to Yindjibarndi's strategy on Nation building, last October we created YNL as the vehicle to deliver a range of projects and initiatives across our portfolios in cultural, community and commercial, or what we call our "3Cs". The idea and purpose are to create a working model that is supportive of all members, a value-driven concept to develop opportunities and self-confidence to achieve whatever pathway you feel is right for you. With so much going on at present, and more to come down the track, we decided to launch this new quarterly publication to update our community and all our partners on this important work.

Please get in touch if you'd like to comment on an article or indeed suggest one.

Sincerely,

Michael Woodley
Chief Executive Officer - CEO
Yindjibarndi Nation Ltd (YNL)

WARNING

This edition contains the names of people who have passed away.

A new era for Yindjibarndi



Photo: Ngaarda Media

At the signing ceremony. Back, from left to right, Yindjibarndi elders and directors, Margaret Ranger, Pansy Sambo, Lyn Cheedy, Kevin Guinness, Stanley Warrie and Middleton Cheedy. Front: Richard Cohen, managing director of Rio Tinto's iron ore port and rail services, and Yindjibarndi CEO Michael Woodley.

The Yindjibarndi people have devised a unique approach with their "3C" model—culture, community and commercial—which has been likened to the triple bottom line used by major corporations around the world.

But a new deal with Rio Tinto will enable the community to ramp up this holistic model with a new structure to deliver lasting benefits for all community members.

Yindjibarndi Aboriginal Corporation chief executive Michael Woodley said the new era was about transforming the success of native title into real community, cultural and commercial (the "3Cs") development for the benefit of every community member.

"We believe that everyone deserves to be valued. The 3Cs cuts across all of that and gives opportunities to people who may not have many years of high school education. We can harness the skills they have and the passion that they have for their benefit and for the entire community," he said.

"For more than a decade we've been focused on establishing our native title rights and responding to the bad behaviour of FMG. Now that we've won in the High Court we're moving on and delivering for all Yindjibarndi people."

"Part of this is the result of the new agreement with Rio Tinto signed last year, but for the most part what we'll achieve is the result of the will of the Yindjibarndi people to work together."

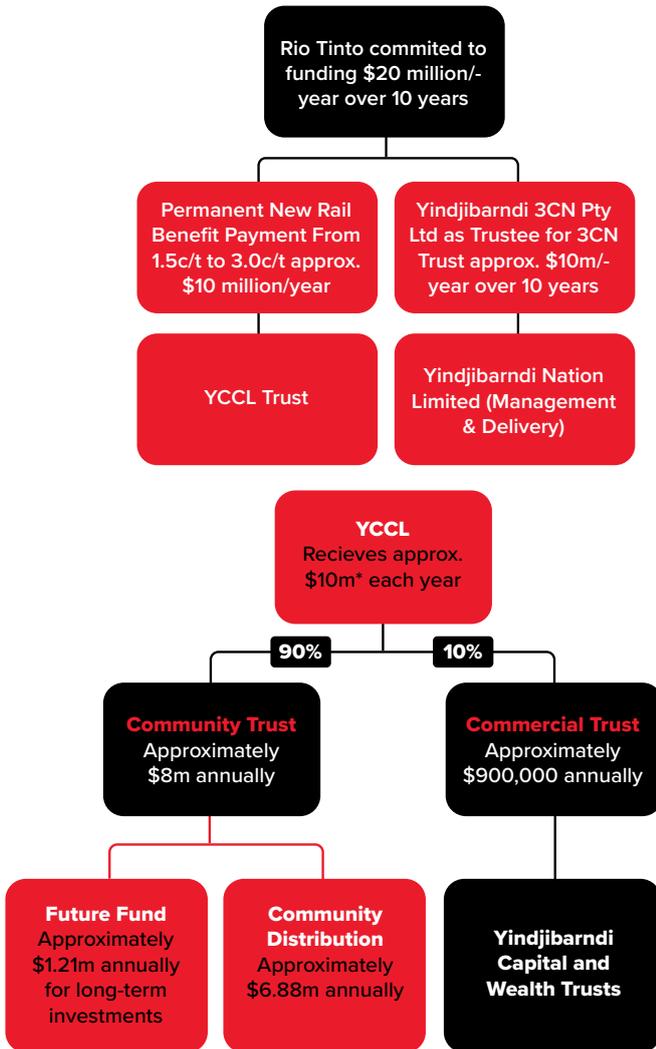


How the benefits will flow

Last October the two native title rep bodies, YAC and YNAC, established Yindjibarndi Nation Ltd, a registered public company that will be the main vehicle to manage and deliver programs for the community. YNL is funded via a trust, Yindjibarndi 3CN, which has four directors from YAC; Stanley Warrie, Angus Mack, Margaret Ranger and Roseanne Mippy. This avoids having multiple meetings and it shows the importance of native title to the community.

YNL will receive funding of \$10 million a year over the next 10 years to support a range of programs, projects and new initiatives across the 3Cs.

The Yindjibarndi Structure



*From years 2-10 YCCL returns \$1m a year to Rio Tinto to repay a loan.

The immediate community and cultural priorities are improving the housing and infrastructure in town and in the homelands, investing in culture, expanding the ranger program and pursuing business opportunities through initiatives like Yurra and Cedrant car hire. Some of the groundwork is already underway, such as the community census and the housing strategy.

New agreement with Rio Tinto

Rio Tinto is one of the world's largest mining companies with extensive iron ore operations in the Pilbara (though not yet on Yindjibarndi country). In 2013, when YAC was immersed in its costly battle with FMG, Rio agreed to a rail tariff of 1.5 cents per tonne, and a large loan, which became crucial to Yindjibarndi's journey and allowed us to be successful in our fight. These funds were paid to Yindjibarndi Community and Commercial Ltd (YCCL), which in turn funds two trusts that support community and commercial projects.

Under a new deal negotiated last year with Rio Tinto, the company has agreed to double the rail tariff to 3 cents per tonne, or around \$10 million a year. After deducting a \$1 million a year loan repayment over nine years, and administration costs, these monies are then divided between the Community trust (90 per cent), with the remaining 10 per cent going into the commercial part of the YCCL.

Directors of YCCL will have their say in the management, decision making and policy developments on how the funds will be disbursed.

YCCL independent director Tony Noonan said that in the future it would be important for the trust to have "front end services" based in Roebourne so that it can better interact with the Yindjibarndi community. YCCL is working with a Perth based provider to bring this about. He also called for the staging of an annual event so that all the parts of Yindjibarndi are "on the table" and everyone knows what the plans are.

Ben Wyatt, a Noongar man and director of Rio Tinto, said he was confident that the new structure would deliver results for the entire community. Speaking at the official launch of the new agreement, Wyatt said that it was the result of "co-design with traditional owner groups", and "an example of where this is working".

The Yindjibarndi community certainly has runs on the board, whether it's setting up a Pilbara-wide media service or transforming the derelict Victoria Hotel.

But following the "David and Goliath" victory over Fortescue Metals Group in the High Court and now the new agreement with Rio, it seems that nothing can hold us back.

ABOUT US

Yindjibarndi Nation News—Ngarda Wangka is published by Yindjibarndi Nation Ltd, a project delivery company established by the Yindjibarndi PBCs.

If you'd like to write a letter for publication, or suggest an article, contact pcleary@yindjibarndi.org.au

Postal address: Ganalili Centre, 38 Roe St, Roebourne 6718.

Compensation Case



Photo: ABC Pilbara

Elder Tootsie Daniel



Photo: Read Family

The late YAC director Margaret Read

Elders tell of their hurt and sickness from FMG's mining.

The Australian public gained a glimpse of the powerful issues at stake in the Yindjibarndi compensation case against Fortescue Metals Group when two frail elders gave evidence to the Federal Court in early March.

Speaking from her hospital bed in Karratha, YAC director Margaret Read told of the hurt and suffering she endured because of FMG's mining and its deliberate efforts to divide the community. Elder Tootsie Daniel, seated in her wheelchair, spoke at the Ganallili centre of the immense spiritual beauty of Yindjibarndi country that she had visited, which had now been destroyed.

The case presided over by Justice Debra Mortimer convened a special session for the two elders because of their frail health. Ms Read passed peacefully away on 31 March, 3 1/2 weeks after giving evidence.

Ms Read told how she visited an area near FMG's Solomon mine some years ago and heard two loud explosions that made her "really sick". The coverage of their testimony was featured extensively in the Australian media.

"Two loud bangs made me feel really sick, absolutely sick, because our country was being destroyed," she said.

She told of how she and other elders had been refused access to the mine site by FMG.

"It made me feel really, really horrible, really really bad. We could not go onto our own country."

Ms Read also spoke with great sadness about the divisions in the Yindjibarndi community that followed the intervention by FMG.

She had tried to reconcile the differences between the two groups but had not succeeded.

"I tried so many mediation programs, I spoke with my people out on the street and tried different ways of trying to communicate with them to come back with us," she said.

Mrs Daniel is the widow of Ngarluma man David Daniel who was the applicant in the joint Ngaluma-Yindjibarndi claim. Her evidence was also prominent in the successful native title case before Justice Steven Rares.

Mrs Daniel said she had learnt culture from her old people when she was young and had spent time out on country.

'Our ancestor spirits are being transferred into train carriages.'

She spoke poetically about a visit with her late husband and other elders including Woodley King, Jack Moses, and Yilbie Warrie. Mrs Daniel said her elders taught her about finding bush foods and medicines.

"These old people, they said 'This is our country, this is the country we want to come back to and live.

"When I looked at that country it was so beautiful, with wildflowers, it took my breath away," she said.

"It opened our hearts and the old people started singing corroboree songs.

"It was like the country welcomed us, it greeted us, then I just cried, it was so beautiful.

"Now, looking at that same country breaks my heart, it's all barren because of that mining.

"It breaks my heart. This country is no more, it's all barren."



Photo: ABC.

Justice Debra Mortimer handing over the Kurna native title judgment to Uncle Lewis O'Brien in 2018. She has presided over many native title cases and is now hearing the YNAC-FMG compensation case.

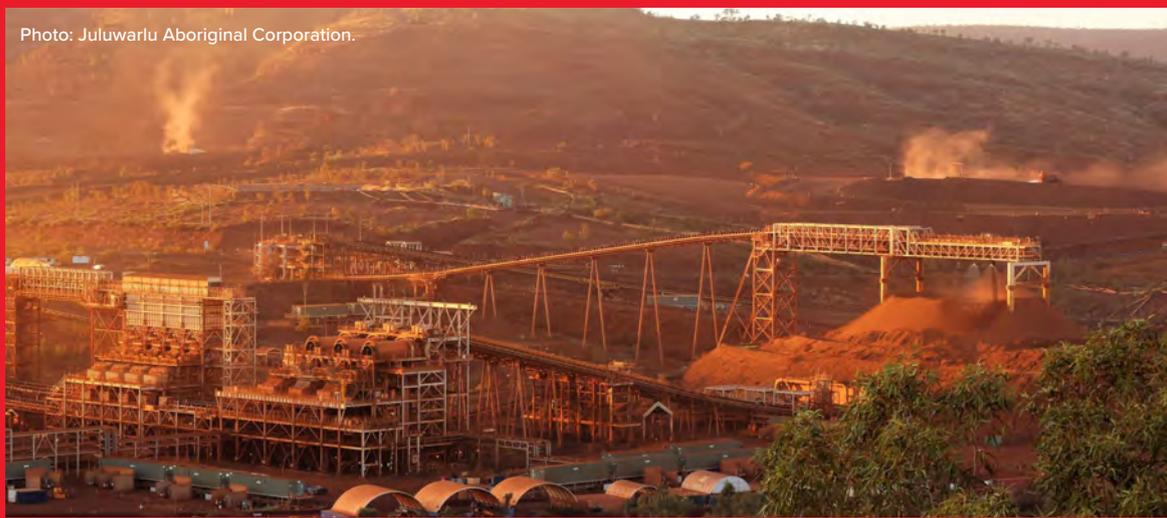


Photo: Juluwarlu Aboriginal Corporation.

Part of the extensive operations of FMG's Solomon hub mine, which has extracted around \$5 billion a year of iron ore from Yindjibarndi country since 2013.

Mrs Daniel said Yindjibarndi people had always wanted to return.

"We want to move back to country, that's what we fight for, but our homelands is where they remove iron ore and take it to other countries and that is wrong," she said.

"Our country has been disturbed and our hearts are broken."

In her affidavit, Mrs Daniel said the Solomon mine was destroying Garliwinyji country where "there are strong spirits and lots of caves".

She added: "I get a tear in my heart just thinking about the mine destroying the country. Our ancestor spirits are being transferred into train carriages."

Mrs Daniel said the division in the community was caused by FMG and that Roebourne was "like a war zone sometimes".

In her affidavit to the Court, Ms Read spoke of the bitter fighting in Roebourne because of the dispute with FMG. And she told of how the esteemed elder Ned Cheedy, who lived to the age of 106, had died of a broken heart.

"There is physical fighting on the streets of Roebourne now between the young people ... they are never ending," Ms Read said in the document.

"None of these fights happened before FMG turned up. I am not sure the rift will ever heal.

The case will resume in Perth on 31 July and on country from 7 August.

Ngurra is where the heart is

Photo Credit: Juluwarlu Aboriginal Corporation.



Some of the original housing and infrastructure at Ngurrawaana.

A major focus for the Yindjibarndi Nation is to invest in communities and homelands including Ngurrawaana, Cheeditha and Buminjina because that's what community members have emphasised in the recent census and in other meetings.

Where required, these projects will involve immediate investment in "make-safe" works so that issues like electricals are fixed, followed by planning, community consultation and long-term investment.

In collaboration with Yindjibarndi communities, YNL will be using the Rio Tinto funding to address these immediate and long-term needs.

YNL general manager for community Michael Charlton said that as the most established and longest permanent community on Yindjibarndi Ngurra, Ngurrawaana was an example of what Yindjibarndi people can achieve on this front.

"The Yindjibarndi Nation has identified the homeland movement as a key pillar of nation building, and Ngurrawaana is a logical location to support this. A clear plan including governance and infrastructure development is needed to ensure the longer-term prosperity of the community. This will ensure that any planned growth is responsive to the needs of the community," he said.

Mr Charlton added that the lack of a clear plan and management structure are in most cases the result of community population fluctuating seasonally and leading some to leave the communities.

YNL plans to invest around \$750,000 this year in immediate make-safe works and technical planning, with a view to securing community endorsement by September this year. YNL project officer Bradley Webb, who has extensive experience working on Aboriginal housing in NSW, will lead the work at Ngurrawaana and assist the other communities.

Buminjina is an important location on Yindjibarndi Ngurra. It holds significant cultural and historical value for Yindjibarndi people. The Yindjibarndi people have long held aspirations to improve

infrastructure at the site so that it can sustain more frequent and longer-term visits. There is limited infrastructure at the site but growing aspirations of the community to more frequently visit and spend longer time there. To facilitate this, a clear plan for investment and the longer-term sustainability is required.

The budget for the Buminjina works this year is \$500,000, with a plan to achieve community endorsement by September.

The Cheeditha community, located on a large parcel of freehold land just outside of Roebourne, has been the focus of numerous aspirational plans and studies to support a more sustainable and functional community. But it became clear that the housing at Cheeditha is in urgent need of repair and a revised strategy is needed to secure long-term viability.

YNL will invest \$400,000 this year in community planning for Cheeditha. The project involves using technical information being developed by Pilbara Solar.

Ganalili housing project underway



Construction has begun on the Ganalili Accommodation and Training Facility in Roebourne which will provide flexible housing for people in need of transitional accommodation and support services.

The result of a partnership between the Yindjibarndi Aboriginal Corporation and the WA government's North-West Aboriginal Housing Fund, the facility will provide six one-bedroom and three two-bedroom apartments along with a caretaker's residence and a multi-purpose office that can be used to provide training and support services.

It is being built on part of the land surrounding the former Victoria Hotel, which has now been transformed into the Ganalili cultural and business centre.

For people making the transition back into the workforce, the accommodation facility will also offer wrap-around support services including financial management and healthy living programs, thereby enabling residents to move into employment and the private market housing.

This latest Yindjibarndi initiative ties in with the Yurra group, as the units will be open to employees such as apprentices and trainees, as well as people exiting the Roebourne Regional Prison. The accommodation will not be reserved exclusively for Yindjibarndi people, according to a recent presentation by NWAHF.

The facility will be made available to the community and business sectors who provide training and pathway employment opportunities to our people and community.

YAC has contributed land and assets to the project. It will own the facility and take on responsibility for the running costs and management. NWAHF is carrying out the construction with the project managed by a joint steering committee with representation from communities, YAC and other local stakeholders.

Through February and March 2023, YAC, Yurra and the NWAHF will be working with community to consider how to best support those that will live at the facility when it opens.

Yurra celebrates 10 years

YINDJIBARNDI NATION NEWS - NGARDA WANGKA



Local workers maintaining a rail culvert as part of Yurra's \$20 million rail maintenance contract with Rio Tinto.

When Yindjibarndi Aboriginal Corporation CEO Michael Woodley sat down with Liam Wilson in 2012, what was meant to be a half hour introductory meeting instead went for four hours and the two thrashed out a plan to create a partnership business.

A decade later, Yurra Pty Ltd has grown into a diversified services company that employs over 170 staff and last year generated \$57 million in revenue. Its services provide entry-level opportunities for First Nations people in the region, with about a third of its staff identifying as Indigenous people from the Pilbara.

Yurra, which means the sun in Yindjibarndi, was registered as a company with the Australian Securities and Investments Commission in February 2013 and to have reached this milestone of 10 years in business is quite an achievement for any business, let alone a contracting business in the Pilbara.

In parallel with Yurra's journey over the past decade, Yindjibarndi Aboriginal Corporation has engaged in a David and Goliath battle with Fortescue Metals over its mining of Yindjibarndi country and related destruction of heritage. This shows that while YAC had one eye on its native title rights, it was also looking to the future with nation building opportunities for all Yindjibarndi people.

Mr Wilson had been running a landscaping and civil business based in Port Hedland, but in working with Yindjibarndi Wealth, Yindjibarndi's commercial development arm, it provided initial support for Yurra

to expand with a loan of \$350,000 which was paid back 2 years ahead of schedule.

Yurra now provides landscape construction and grounds maintenance, commercial cleaning, rail maintenance, civil construction, Industrial services and manages the Yindjibarndi ranger program. In addition, it owns a majority stake in the building company GBSC Yurra. Yurra's 10th anniversary was capped off when GBSC Yurra was in March this year crowned Rio Tinto's "Supplier of the Year" at a gala event attended by the Premier Mark McGowan and Rio's Iron Ore CEO Simon Trott.

At the 2012 meeting, Mr Woodley and Mr Wilson devised a plan to create a services based business in the Karratha even though all of Mr Wilson's work was in Port Hedland.

"We set up the structure even though we didn't have any work in Karratha. But we started in Karratha with a small amount of work in Wickham—cleaning and grounds maintenance," explains Mr Wilson.

After one full year of year of operation, Yurra generated \$2 million in revenue—a figure that has since grown 28 times over.

Yurra now boasts a list of impressive clients including Rio Tinto, Woodside, Sodexo, BHP, the WA Government, local governments, and Greening Australia, among others.

The business has a head office in Karratha which is supported by yards in Roebourne, Port Hedland and a small corporate office in Perth.

Michael Woodley says that Yurra is a great example of what Aboriginal self-determination is all about.



Yurra employee Curtis Lockyer while working on the Ganalili renovation. Photo: Yurra

“We have put our capital and knowledge to good use in creating Yurra, which is now going from strength to strength. And it is a great moment to be associated with to be establishing a self-economic capable First Nations business.

Of all the projects that Yurra has been engaged in, Mr Woodley says its work on creating the Ganalili centre in Roebourne is a standout. The project, in collaboration with partners GBSC, was able to deliver training and employment opportunities for people in and around our communities and for members in the Roebourne prison.

On behalf of the Yindjibarndi Nation, the Yindjibarndi people via Yindjibarndi Wealth owns 66.7 per cent of Yurra via its commercial trust. Yurra in turns owns 75 per cent of GBSC Yurra.

Mr Wilson says the cleaning and grounds business is a good pathway to employment for people coming into the workforce for the first time. The entry level wage is \$30 an hour, rising to \$35 an hour for a leading hand position.

Last year, Mr Wilson lead the expansion of Yurra into the scaffolding business for Woodside’s operations which is used to maintain huge facilities like LNG plants. Previously, these services were provided by a tier one multinational.

In 2018 Mr Wilson sent a 2-page letter to Woodside Ltd outlining the case for giving a local, Aboriginal-

controlled business this opportunity, which was helped by Woodside’s commitment to provide genuine opportunity to First Nation businesses. It took a while to penetrate Woodside’s large procurement operations but after some persistence, Yurra was awarded the contract which will involve trades in both offsite fabrication and onsite implementation.

Yurra has benefited from for a recent Federal Government grant that assisted the business to secure the Woodside contract, enabling Yurra to acquire 5,500 tonnes of scaffolding material and associated equipment, an investment worth over \$14 million. The scaffold material sits in a dedicated compound within the Woodside LNG operation.

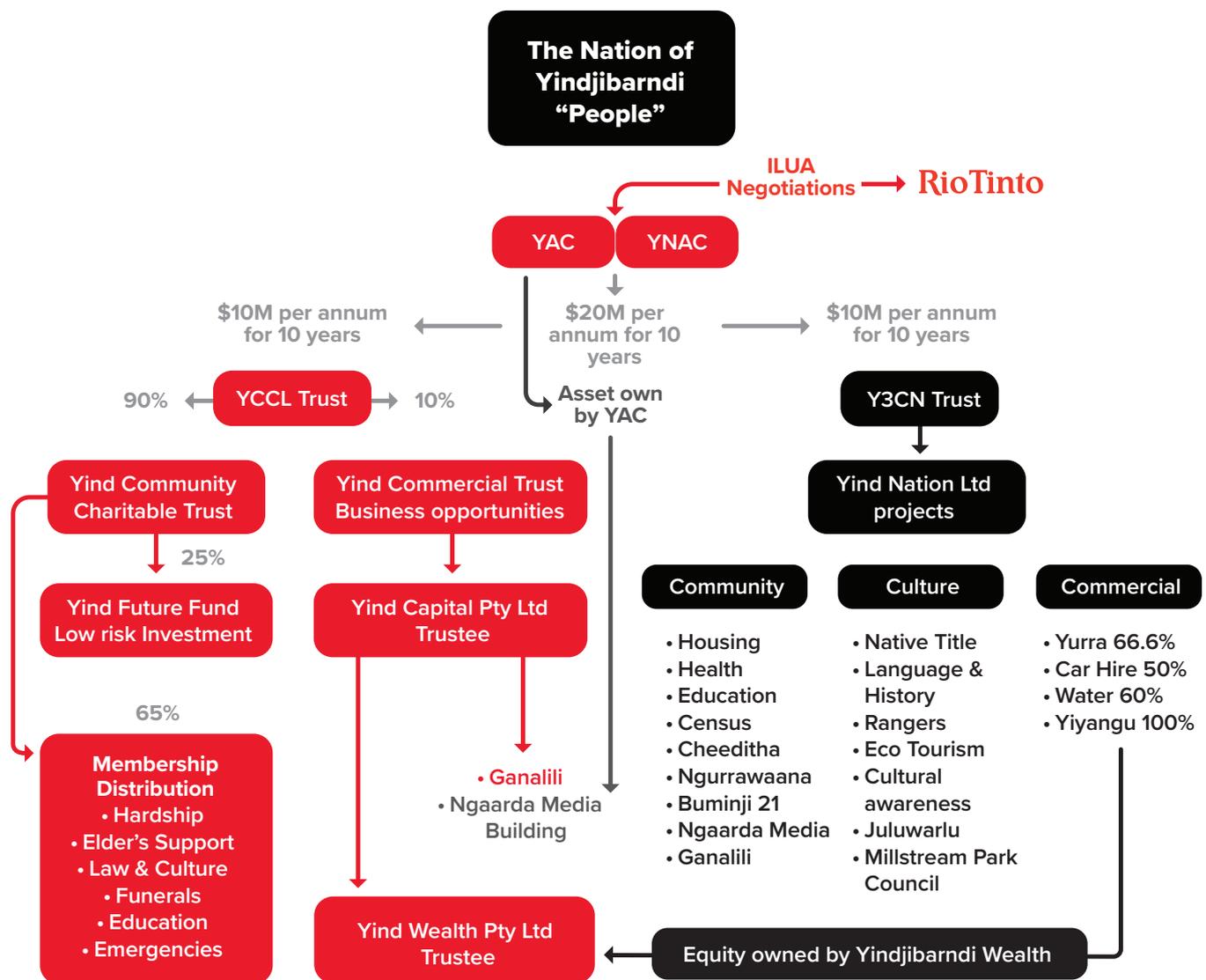
Mr Wilson says he gets very annoyed when he hears comments from business leaders that talk down the capabilities of Aboriginal people. He says the partnership with Yindjibarndi is a thriving example of what can be achieved with some planning and persistence.

The next step in the growth plan is to integrate GBSC and Yurra businesses into a multidisciplinary contracting and services group. Positive discussions are live with GBSC partners, and it’s hoped the transaction will be completed by the end of the financial year, creating a group with over 430 staff and target revenue of over \$200 million a year.

The Yindjibarndi Group

This diagram summarises the journey of our community over the past decades and our vision for the future. It begins with the formation of our native title representative body, the Yindjibarndi Aboriginal Corporation (YAC) in 2004

and Yindjibarndi Ngurra Aboriginal Corporation (YNAC) in 2017 and, more recently it shows how our community has been energised and resourced with the modernised ILUA signed with Rio Tinto in 2022.



This agreement is transformational as it will support a range of cultural, commercial and community projects over the next 10 years.

Our structure is aimed at delivering benefits to all Yindjibarndi people. Some of what you see here has been in place for some time, like the YCCL trust and Yindjibarndi Capital formed in 2013, but other parts are in the early stage, such as our renewable energy business Yiyangu and our plans for Eco Tourism in Millstream.

Even though we have come a long way, we're not resting on things that we have already achieved.

We're now in talks with other commercial and government partners to deliver on the projects we aim to bring to fruition, as well as housing, employment and health benefits for our community.

We hope that the diagram will give you some encouragement to find a place where you, as a proud Yindjibarndi individual, can play a role.

Michael Woodley
CEO
Yindjibarndi Nation Ltd



Photos courtesy of Juluwarlu and Yurra.
The wind turbines depict a possible future development.

Taking our Culture to the cloud

YINDJIBARNDI NATION NEWS - NGARDA WANGKA



Photo Credit: Juluwarlu Aboriginal Corporation.

This corroboree on the banks of the Fortescue River where the Gods left their footprints in the bedrock would be ideal content for the new App.

In the era of smartphones and cloud-based information storage, Juluwarlu Aboriginal Corporation is now looking to launch into the digital age by developing a “cultural awareness app” that stores information and can be accessed by anyone who wants to learn about Yindjibarndi culture.

With funding supported by Yindjibarndi Nation Limited (YNL) and in partnership with RTIO, the project is also aimed at generating a new source of income for Juluwarlu from businesses, government agencies and individuals who want to learn about Yindjibarndi people and country.

Juluwarlu CEO and co-founder, Lorraine Coppin echoed the voices of past Yindjibarndi elders whose vision to partake in something that began 23 years ago was a credit to their foresight, and wisdom to protect Yindjibarndi culture.

“I am forever grateful to have worked with these elders and to follow in their footsteps to continue documenting Yindjibarndi history,” Ms Coppin said.

Phil Davies, the general manager of culture for Yindjibarndi Nation Ltd (YNL), says the massive amount of material collected by Juluwarlu since its formation in 2000 is both a challenge and an opportunity for the community.

“Juluwarlu holds a nationally-significant Indigenous

digital and material archive at Roebourne which the National Library of Australia has assessed as ‘unique’ and ‘highly significant’. This includes thousands of hours of historic film and audio recordings, as well as documents, maps and photographs. This material affirms a Yindjibarndi narrative, history and identity since Ngurra Nyjunggamu [when the world was soft],” he explains.

“The cultural awareness app will enable the Yindjibarndi youth to engage with their culture, but we also see this as a resource that will be valued by the corporate and government sectors and by schools, tourists and ordinary Australians.”

The project also presents an opportunity for both Elders and youth alike to play a role in adapting the archival material into accessible content.

“Juluwarlu has established relationships with the community and has a strong rapport and reputation for effectively delivering arts projects with Elders and the Roebourne community. This project will build on and develop these relationships,” he added.

The app has now been substantially progressed to a “proof of concept” version and has received positive feedback from key groups. To progress the app to a fully functional and useable platform, substantial investment in the digital architecture will be required, alongside content development to execute a market-ready version. This needs to be done together with the development of the operating model and business case.



As part of YNL's agreement with Rio Tinto, proposals to invest in new projects have to be approved by a partnership committee. The app was put to the meeting late last year and gained a significant investment of \$500,000. Other funders are Lotterywest \$150,000, and \$50,000 each from Juluwarlu and Pilbara Development Commission.

For corporate clients, their employees will be given secure access to the platform so they can access the training remotely. The platform will track and certify that an employee has completed the training using the latest digital tracking and interface technology. These clients will be given individual username and passwords which will also have authentication requirements upon log in, thereby providing for individual tracking and certification of completion by the employee is automatically tracked.

Juluwarlu has engaged two key partners to support this project: the software development firm Brains, and Black Iris Consulting. The project is expected to be completed over a period of 12 months.

Rio Tinto is also expected to play a key role with the opportunity to become an "early adopter" of the technology, before moving to long-term integration in its training and human resources functions.

"As well as playing a leading role in supporting Yindjibarndi community generally, we think the app presents an opportunity for Rio Tinto to show that it is at the cutting edge of combining ancient Indigenous knowledge with 21st century technology," Mr Davies said.

“MW-71”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 98 pages is the annexure marked “MW-71” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

YINDJIBARNDI

HERITAGE REPORT

FOR THE

**ABORIGINAL CULTURAL MATERIAL
COMMITTEE (ACMC)**

IN RESPONSE TO

FMG PILBARA PTY LTD'S

February 2011

**SECTION 18 APPLICATION AT
'FIRETAIL PRIORITY MINING AREA AND FIRETAIL
PRIORITY INFRASTRUCTURE AREA'**

Prepared by:

JULUWARLU GROUP ABORIGINAL CORPORATION

for and on behalf of the

YINDJIBARNDI ABORIGINAL CORPORATION

(as Trustee for the Yindjibarndi People)

May 2011

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YAC INTELLECTUAL PROPERTY STATEMENT

The Yindjibarndi Aboriginal Corporation (A.B.N. 97 456 543 455) holds the copyright, intellectual and property rights for all cultural information that is contained within this report. Individuals, communities or corporate entities cannot utilise any of the information contained within this report without the express written permission of the Yindjibarndi Aboriginal Corporation (YAC). Any person or corporation deemed to have utilised information contained within this report without the prior written authorisation of the YAC will be prosecuted.

EXECUTIVE SUMMARY

This heritage report is prepared in response to the FMG Pilbara Pty Ltd February 2011 Section 18 Application for the 'Firetail Priority Mining Area'¹ and 'Firetail Priority Infrastructure Area'² presented to the Aboriginal Cultural Material Committee (ACMC) at the Department of Indigenous Affairs Office, which is located at 197 St George's Terrace in Perth, on May 4 2011. The Yindjibarndi Aboriginal Corporation (YAC) made a written³ and oral presentation at that meeting and this report adds further to those presentations. The ACMC decided to defer⁴ "making any recommendation to the Minister in relation to the Notices until further information is provided to the ACMC" (Przywolnik, DIA: letter to Michael Woodley, 06/05/11). The YAC understands that this 'YAC Heritage report in response'⁵ will be considered with reference to FMG Pty Ltd's application at the next ACMC meeting to be held on June 1 2011.

¹ 'Firetail Priority Mining Area' Section 18 Application - Tenement ID - M47/1413 - The application folder is dated February 2011 and contains a map establishing the section 18 application area within the tenement

² 'Firetail Priority Infrastructure Area' Section 18 Application - Tenement ID - E47/1447 - application folder is dated February 2011 and contains a map establishing the section 18 application area within the tenement

³ Document is titled 'To the Aboriginal Cultural Materials Committee: Outline of Submissions of the Yindjibarndi Aboriginal Corporation (YAC) - for and on behalf of the Yindjibarndi people'. This document is located at Attachment 1 of this report.

⁴ Letter to Michael Woodley, Juluwarlu Group Aboriginal Corporation, from Kathryn Przywolnik, Registrar for Aboriginal Sites, dated 6 May 2011. This document is located within this report at Attachment 2.

⁵ This YAC Heritage report dated May 2011 presented and to be considered by the for ACMC their forthcoming meeting to be held on 1 June 2011 will be referred to as the 'YAC Heritage report in response' throughout this document.

The importance of ensuring that the archaeology and anthropology conducted by FMG for this section 18 application is logical, credible and able to withstand rigorous scrutiny, accompanies the statement made within the FMG Section 18 archaeological report (located at Appendix Four of that report) by Veritas Archaeology and History Service⁶ at part 6.6 (under the heading Field Survey and Site Recording on page 6.1), which describes that, "there will be no Aboriginal sites remaining within the survey area upon completion of the project" (Veritas, March 2011: 6.1)

In this report the YAC challenges the research methods implemented by the FMG Archaeologist and the FMG Anthropologist when gathering and examining the archaeological and ethnographic heritage data, which have resulted in the conclusions drawn for their respective reports, ultimately recommending that all sites within the section 18 application areas can be destroyed. The YAC does not agree with the recommendations made within this section 18 application. The doubts over the veracity of the archaeological and ethnographic information presented to the ACMC at the meeting held on May 4 2011 by FMG Pilbara Pty Ltd arise for the following reasons:

1. The absence of any Yindjibarndi Heritage consultants being present for 3 archaeological heritage surveys conducted by Veritas Archaeology and History Service during the period commencing 28 November 2009 to 06 February 2010.
2. That the Archaeologist relies upon archaeological surveys carried out by Western Heritage Research Pty Ltd which were conducted in June, August and September/October 2008 during which there was an absence of any Yindjibarndi Heritage consultants.
3. That the 'block' archaeological survey area conducted on behalf of FMG Pilbara Pty Ltd by Western Heritage Research Pty Ltd from 22 September 2008 to 3 October 2008, without Yindjibarndi participation, was erroneously considered and recorded by FMG Pilbara Pty Ltd to be both archaeological and ethnographic, and included on their heritage

⁶ Veritas Archaeology and History Service 'Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area', Final Report, March 2011.

maps as a large yellow⁷ 'cleared' block in the Firetail section 18 application area from that point. Each subsequent FMG Pilbara Pty Ltd heritage map has included this inappropriately 'cleared' area and is relied upon by Veritas Archaeology and History Service for this application.

4. That all archaeological heritage surveys completed for the area except four (details provided at Point 4 below), have only been carried out to site avoidance⁸ standard, which is not to the site identification standard that is required for section 18 purposes, resulting in a grossly underestimated number of Aboriginal sites listed for destruction.
5. The YAC argues that the onus is with the section 18 applicant to reach a heritage agreement with the interested traditional owners so that culturally appropriate, robust and comprehensive archaeological and ethnographic heritage data is obtained for the project.

The YAC actively and positively participates in cultural heritage surveys, via signed heritage agreements with other industry proponents in the Pilbara, which work extremely well. The YAC is of the opinion that FMG Pilbara Pty Ltd is not serious about reaching a mutually acceptable heritage agreement with the YAC. A current heritage agreement⁹ between YAC and RTIO is facilitating positive and constructive Yindjibarndi heritage surveys. The first page of the YAC/RTIO Heritage Protocol has been included with this Report at Attachment Four.

6. The YAC represents large numbers of Yindjibarndi people¹⁰ who hold a cultural and specific interest in this area and they strongly object to the destruction of Aboriginal sites in the section 18 area. Specifically, the YAC authority structure respects those

⁷ The 'Scope of Works' provided by FMG for the YAC heritage survey conducted between 28/04/09 to 07/05/09 contains the large block clearance completed by Western Heritage Research Pty Ltd without any Yindjibarndi participation - document attached at Attachment 3.

⁸ Reference for the type of archaeological surveys conducted is located at point 1.1.1 to 1.1.6 and 2.4.1 of the FMG archaeological report provided by the Veritas Archaeology and History Service 'Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area', Final Report, March 2011.

⁹ The 'Yindjibarndi and RTIO Cultural Heritage Protocol', which provides a framework for cultural heritage engagement between the parties was agreed in December 2010. The first page of the Agreement is attached to this report at Attachment 4.

¹⁰ See Point 6 within this 'YAC Heritage report in response' regarding the Yindjibarndi people the YAC represents.

Yindjibarndi people who are committed to their culture and the protection of their individual and communal spiritual and cultural knowledge and country. The leader of the YAC is Ned Cheedy.

Mayinbunu (Ned Cheedy - Yindjibarndi Elder and Law man) is the *Nyarmbali* (boss) for the Yindjibarndi people. At approximately 105 years of age *Mayinbunu* is the most knowledgeable Yindjibarndi person. Ned walked the area of the section 18 application area when he used to travel from the place of his birth where he worked on *Winjawarrinha* (Hooley Station) to the law ground at *Weelumurra*. Ned knows this place as *Ganyjingarringunha* which is also the name of the permanent creek that flows just east of the section 18 application area, and into which *Ganyjingarringunha's* tributaries, that lie within the section 18 application, empty. The bores sunk by FMG Pilbara Pty Ltd provide evidence of the shallow water table within the section 18 application area. Juluwarlu Group Aboriginal Corporation has conducted many interviews with *Mayinbunu* and his family over the years testifying to the activities that have taken place within the section 18 application area. *Mayinbunu* camped in the caves with his family and later on with his colleague Long Mack while traveling through the area.

The YAC is extremely angry and disappointed that the Yindjibarndi people who have joined the Wirlu-Murra group have disrespected *Mayinbunu* by ignoring the information he has provided and have not consulted him when they have told agents of FMG Pilbara Pty Ltd that there is nothing of cultural significance within the application area¹¹.

7. The YAC strongly rejects the information given by those Yindjibarndi people represented by the Wirlu-Murra group that have agreed for this section 18 application to go ahead and who have informed the FMG Archaeological and Ethnographic teams that there are no Aboriginal sites of value to protect within the application area.

The fact that there is undeniable contemporary and colonial history, evidence of occupation, stories held by Yindjibarndi families associated with this place, burial sites,

¹¹ Reported at page 14, Conclusions and Recommendations: "Report of a Section 18 Ethnographic Survey and consultations regarding archaeological sites at FMG's Firetail Priority Mining and Infrastructure Area (M47/1431 and M47/1413) completed by David Raftery, December 2010.

rock shelters and caves containing cultural materials, water sources, artefacts and grinding stones, named locations, supplies of ochre and Gandi, all of which is incorporated into the natural environment illustrate that the Wirlu-Murra group members are not interested in highlighting the Yindjibarndi cultural values inherent within the section 18 application area for their own personal reasons.

8. The YAC strongly rejects the Ethnographic Report produced by David Raftery for the section 18 application. The YAC agrees with the opinion of the FMG Archaeologist, Veritas Archaeology and History Service as expressed at point 4.3 in the December 2010 Final¹² Archaeological Report where the Anthropologist's Ethnographic work regarding cultural significance is described as "sketchy, lacking in specificity and far from comprehensive ... [and that] further ethnographic heritage assessment needs to be undertaken in the area of the Solomon Project" (Veritas, 2010: 4.24).

The December 2010 Ethnographic Report completed by Raftery is contradictory in that it states that "no ethnographic sites were recorded during the survey ... nor any added ethnographic significance to previously recorded archaeological sites" (Raftery, 2010: 3). However, Raftery then goes on to document the Pebble Mouse Mounds YIN 09-003 and YIN 09-055 saying it was suggested to him "that the area could be fenced with bright tape placed around it" (Raftery, 2010: 11). If there was no ethnographic significance then why would someone suggest it could be fenced? It appears that Raftery has no concept of what a section 18 application means when he states at Recommendation One that, "the section 18 processes that FMG intends to apply to the Firetail PMI area proceeds" (Raftery, 2010: 15), however mentions nothing about the contradictory evidence relating to the Pebble Mouse Mounds, but then goes on to document that the Yindjibarndi "should be involved with appropriate strategies for the ongoing management of archaeological sites" (Raftery, 2010: 15).

If all sites are destroyed within the section 18 application area then the Yindjibarndi won't have any sites to manage.

¹² Veritas Archaeology and History Service 'Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area', Final Report, December 2010.

The comments made by Veritas at section 4.3 (labelled Ethnographic Context¹³) in the December 2010 'Final' Archaeological Report are relevant because even though Veritas omitted the criticisms from the subsequent March 2011 'Final' Archaeological Report, the Ethnographic Report completed by Raftery, upon which Veritas was remarking, is identical, indicating that no additional ethnographic field work for the section 18 application area was undertaken post December 2010.

9. The YAC rejects the notion that Veritas Archaeology and History Service or FMG Pilbara Pty Ltd speak for Yindjibarndi country. The YAC questions the consultation methodology associated with how Veritas and/or FMG Pilbara Pty Ltd have selected nine particular Aboriginal sites to investigate via a Section 16 application¹⁴ prior to them being destroyed. The YAC reserves the right to manage all Aboriginal sites, cultural heritage materials, information and knowledge networks that are associated with and lie within the Yindjibarndi determination¹⁵ and application¹⁶ areas.
10. The YAC considers the section 18 application area a religious precinct¹⁷.
11. The YAC considers that the archaeological and ethnographic reports supplied for the section 18 application do not provide evidence that all rock shelters and caves have been investigated to section site identification 18 standard. The YAC estimates that there are at least 250 rock shelters and caves that currently exist within the section 18 application area, some of which provide evidence of walled niches and rock shelter ochre sources. It is unclear how many of these significant cultural areas have been thoroughly investigated

¹³ Section 4.3: Ethnographic Context at page 4.21 located in the Veritas Archaeology and History Service 'Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area', Final Report, December 2010.

¹⁴ Veritas Archaeology and History Service 'Application for a research permit under the provisions of Section 16 of the Aboriginal Heritage Act 1972 for Aboriginal Sites'.

¹⁵ For further details refer to the document titled 'To the Aboriginal Cultural Materials Committee: Outline of Submissions of the Yindjibarndi Aboriginal Corporation (YAC) - for and on behalf of the Yindjibarndi people'.

¹⁶ Ibid

¹⁷ For further details refer to the affidavit of Michael Woodley, Yindjibarndi Law man, sworn on 1 April 2011 and submitted to the Warden's Court, for Objections to Miscellaneous Licence applications KR 102/090, KR 201/090, KR 232/090, KR 233/090, KR 253/090, KR 254/090, KR 133/101, KR 128/090, KR 207/090 and KR 270/090 included with this report at Attachment 9.

via the heritage process, and none of which, apart from the nine listed for further research, appear to be highlighted or protected by this application.

The YAC considers this section 18 application area to be a burial ground precinct because of the terrain, the large number of suitable funerary chambers and the location on the edge of traditional territories. Such a place was contemplated by Worms¹⁸ "Aboriginal people everywhere have endeavoured to place the final abode of the dead as far away as possible from that of the living ... for this reason the places where the souls of the dead congregate are thought to be in deep caves at the furthest end of tribal territories" (Worms, 1986: 197).

The Department of Indigenous Affairs (DIA) notified the YAC on the 15 March 2011 that skeletal remains had been uncovered via archaeologists employed by FMG Pilbara Pty Ltd within the section 18 application area. Given that all sites within the area are to be destroyed then the YAC is very concerned for the spiritual and mental health of the country and the Yindjibarndi people who are intricately linked and interdependent. The DIA will be accompanying YAC representatives to the burial site in the next few weeks.

12. The YAC details its own cultural information which is specific to the section 18 application area which includes:

- a. *Gurdi*: The Pebble Mouse "is only a little fella but he has a big name in the *Burndud (Law)*"¹⁹ (Thomas Jacobs, statement made 07/03/11).
- b. *Yamararra*: Rock Shelters, Caves and Burials
- c. *Gandi* – The Yindjibarndi men have specifically identified sacred stone areas that they and their ancestors have visited and interacted with over space and time that fall within the section 18 application area.
- d. *Ochre* – The Yindjibarndi people know of significant ochre sites within the section 18 application area.

¹⁸ Worms, E.A. 1986 *Australian Aboriginal Religions* (translated by M.J. Wilson, et al.). Nelen Yubu Missiological Unit, Kensington (New South Wales).

¹⁹ Yindjibarndi Law man, Thomas Jacobs, describing the Pebble Mouse to Philip Davies, Juluwarlu Anthropologist, on 07/03/11.

- e. *Ngiyalunha, Murda Ngarli, Nhuga Ngarli, Juna Ngarli, Barri Ngarli, Wanda Ngarli and Marlunghu* - Yindjibarndi spirits inhabit the rocks, caves, watercourses and hills encompassed by the survey request areas. The Yindjibarndi urge that these ancestral beings be respected according to Yindjibarndi Law
- f. *Wundu, Bawa and Jinbi* – Rivers, water and springs are highly significant as one of our Yindjibarndi’s main natural resources essential for maintaining Yindjibarndi culture, heritage, diversity and religious beliefs.
- g. *Warndangarli* – This represents all trees in Yindjibarndi country – as part of cultural sustainability, the Yindjibarndi depend highly on these elements to maintain a cultural existence in contemporary society.

The following points from 1 - 12 provide further information regarding the 12 points outlined in the Executive Summary.

1. VERITAS HERITAGE SURVEYS

ABSENCE OF YINDJIBARNDI PARTICIPANTS

1. The YAC do not accept that Yindjibarndi heritage archaeological and ethnographic heritage surveys can be thoroughly and professionally conducted without Yindjibarndi Heritage consultants. Yindjibarndi Heritage consultants were not present for 3 archaeological heritage surveys conducted by Veritas Archaeology and History Service during the period commencing 28 November 2009 to 06 February 2010, despite advice given to FMG Ltd by Ms Pam Thorley, Registrar of Sites for the DIA in letters dated 4 March 2008²⁰ and 14 May 2009²¹. Both letters urge FMG to reach agreement with the

²⁰ Letter from Ms Pam Thorley, Registrar of Sites for the DIA, to Mr Blair McGlew, dated 4 March 2008 - included with this report at Attachment 5.

Yindjibarndi so that heritage can be conducted and without "evidence of appropriate consultation, the ACMC may not be able to assess the significance of sites, and the notice may be referred back to the proponent for further consultation" (Thorley, DIA: letter to Mr Blair McGlew, 04/03/08).

2. WESTERN HERITAGE RESEARCH SURVEYS ABSENCE OF YINDJIBARNDI PARTICIPANTS

2. The section 18 application Archaeological Report relies upon archaeological surveys carried out by Western Heritage Research Pty Ltd in June, August and September/October 2008 whereby there was an absence of Yindjibarndi Heritage consultants. This is despite the advice provided by Ms Pam Thorley, Registrar of Sites for the DIA in the letter dated 14 May 2009 to Ms Jane Pemberton, FMG, regarding a complaint made by the YAC over a 'block' heritage survey conducted by Western Heritage whereby a 'block' archaeological and ethnographic clearance was given without Yindjibarndi participation. The letter states,

"any form of ethnographic survey should have made attempts to consult with YAC in order to work out the potential ethnographic values of the area ... failure to adequately consult with the Yindjibarndi people over the proposed drill hole locations has the potential to result in activities that may breach the Aboriginal Heritage Act 1972" (Thorley, DIA: letter to Ms Jane Pemberton, 14/05/09).

It is the opinion of the YAC that the research conducted by Western Heritage Research is flawed. This was put to Ms Jane Pemberton by Mr Michael Woodley in a letter dated April 16 2009²², in which Mr Woodley stated that that the YAC strongly oppose heritage surveys being conducted without any Yindjibarndi participation and that the YAC would

²¹ Letter from Ms Pam Thorley, Registrar of Sites for the DIA, to Ms Jane Pemberton, dated 14 May 2009 - included with this report at Attachment 6.

²² Letter to Ms Jane Pemberton from Mr Michael Woodley on 16 April 2009. Included in this report at Attachment 7.

not perform any 'block' surveys, but would assist FMG Pilbara Pty Ltd with their exploration drilling as they had previously agreed.

3. WESTERN HERITAGE RESEARCH SURVEYS INVALID 'BLOCK' HERITAGE SURVEY

3. The block archaeological survey area conducted on behalf of FMG Pilbara Pty Ltd by Western Heritage Research Pty Ltd from 22 September 2008 to 3 October 2008, without Yindjibarndi participation, was considered by FMG to be both archaeological and ethnographic and included on their heritage maps as a large yellow²³ (cleared) block in the Firetail section 18 application area from that point. The YAC does not see any evidence from the information presented within this section 18 application that this false and inappropriate data has been corrected. In fact it seems this data has been relied upon by Veritas Archaeology and History Service for the final March 2011 report presented to the ACMC on 4 May 2011.

The YAC had undertaken heritage surveys with FMG in the hope that the parties could reach a heritage and land use agreement, however it became clear that FMG was taking a belligerent, 'take it or leave it' position whereby they were using every means possible to force the Yindjibarndi into signing an agreement.

The 'block' survey conducted by Western Heritage Research Pty Ltd is another example of the way that FMG Pilbara Pty Ltd has implemented their Yindjibarndi consultations with little consideration for cultural heritage that lies within the section 18 application area.

As indicated by the map attached at Attachment 3, the invalid 'block' survey is a key part of the heritage precinct that makes up this section 18 application area. The application in this area is founded upon invalid and disrespectful archaeological and ethnographic heritage investigations.

²³ The 'Scope of Works' provided by FMG for the YAC heritage survey conducted between 28/04/09 to 07/05/09 contains the large block clearance completed by Western Heritage Research Pty Ltd without any Yindjibarndi participation - document attached at Attachment 3.

4. VERITAS - RELIANCE ON SITE AVOIDANCE HERITAGE SURVEYS

4. Part 2.4.1 of the Archaeologist's Report reveals that all archaeological surveys conducted within the section 18 application area since 2007, relied upon by the Archaeologist for the section 18 application area, have only been heritage surveyed according to site avoidance investigation level except for:
- a. FMG Survey Request 29 over DIA site 17338
 - b. Survey Request 33 over the Trial Pit
 - c. Parts of Survey Request 41 for Aboriginal sites that were nominated by FMG
 - d. Western Heritage Research Pty Ltd Archaeological Survey conducted from 22 September 2008 to 3 October 2008 was supposedly to site identification standard however this survey did not have any Yindjibarndi people participating and is the subject of YAC concerns in points 2 and 3 above.

The YAC contends that because the majority of heritage surveys overseen by FMG in the section 18 applications areas are to site avoidance enquiry only, that the majority of Aboriginal sites within the area will have been avoided and not brought to the attention of the archaeologists, therefore leaving them undisturbed and not investigated.

The YAC contends that the ten sites highlighted within the section 18 applications represent only a fraction of the number of Aboriginal sites present. Such a position is untenable for the applicant because of the nature of the works proposed whereby the whole of the section 18 application area will be taken up for mining with all sites destroyed.

5. ONUS ON SECTION 18 APPLICANT FOR COMPREHENSIVE CULTURAL MATERIALS

5. The YAC argues that the onus is with the section 18 applicant to reach a heritage agreement with the traditional owners so that culturally appropriate, robust, interrogative archaeological and ethnographic heritage data is obtained for the project. This context is highlighted within the two letters from Pam Thorley, the Registrar of Sites, written to FMG in 2008 and 2009. It is not the responsibility of the Traditional Owners to volunteer culturally specific information that belongs to them personally and/or may be held by their community for someone else's project they do not agree with. The Yindjibarndi undertook 5 work area clearance heritage surveys with FMG from July 2007 to May 2009 in the hope that a culturally appropriate heritage and land access agreement could be reached.

The YAC declined to participate in heritage surveys within the section 18 application area following the fifth heritage survey conducted by them with FMG Pilbara Pty Ltd which concluded on May 7 2009. It had become clear to the YAC that FMG Pilbara Pty Ltd were not serious about reaching a mutually beneficial heritage or land use agreement.

6. YAC REPRESENTS ALL YINDJIBARNDI

6. The YAC represents the current population of the Yindjibarndi people which is "estimated to be about 1500 people"²⁴ (Particulars of Objection KR102/090, 2011: 1.4). Since the breakdown in heritage agreement negotiations between the YAC and FMG Pilbara Pty Ltd, the YAC and Juluwarlu Group Aboriginal Corporation have conducted several independent field trips and many interviews with Yindjibarndi people with an interest in, and who wish to protect, the area to which the section 18 application applies. These

²⁴ Particulars of Objection KR102/090 to the application for Miscellaneous Licence L47/350 by FMG Pilbara Pty Ltd in the Wardens Court, May 2011. Document attached at Attachment 8.

people all strongly object to the destruction of Yindjibarndi sites which will be the result if the ACMC recommends the approval of the section 18 application.

An indicative list of 274 Yindjibarndi people who support the YAC position is attached to this report at Attachment 10.

The most recent field trip with between 35 and 40 people was conducted between Wednesday 11 May and Friday 13 May following the recent ACMC May 4 2011 hearing. This field trip reconfirmed the views of the Yindjibarndi people represented by the YAC that they do not agree with the destruction of Aboriginal sites within the section 18 application area.

7. YAC REJECTS WIRLU-MURRA INFORMATION

7. The YAC strongly rejects the information given by those Yindjibarndi people represented by the Wirlu-Murra group that have agreed for this section 18 application to go ahead and who have informed the FMG Archaeological and Ethnographic teams that there are no Aboriginal sites of value to protect within the application area.

8. YAC REJECTS SECTION 18 ETHNOGRAPHIC REPORT

8. The YAC strongly rejects the Ethnographic Report produced by David Raftery for the section 18 application. The YAC agrees with the opinion of the FMG Archaeologist, Veritas Archaeology and History Service as expressed at point 4.3 in the December 2010 Final²⁵ Archaeological Report where the Anthropologist's Ethnographic work regarding cultural significance is described as "sketchy, lacking in specificity and far from comprehensive ... [and that] further ethnographic heritage assessment needs to be undertaken in the area of the Solomon Project" (Veritas, 2010: 4.24).

²⁵ Veritas Archaeology and History Service 'Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area', Final Report, December 2010.

The December 2010 Ethnographic Report completed by Raftery is contradictory in that it states that "no ethnographic sites were recorded during the survey ... nor any added ethnographic significance to previously recorded archaeological sites" (Raftery, 2010: 3). However, Raftery then goes on to document the Pebble Mouse Mounds YIN 09-003 and YIN 09-055 saying it was suggested to him "that the area could be fenced with bright tape placed around it" (Raftery, 2010: 11). If there was no ethnographic significance then why would someone suggest it could be fenced? It appears that Raftery has no concept of what a section 18 application means when he states at Recommendation One that, "the section 18 processes that FMG intends to apply to the Firetail PMI area proceeds" (Raftery, 2010: 15), however mentions nothing about the contradictory evidence relating to the Pebble Mouse Mounds, but then goes on to document that the Yindjibarndi "should be involved with appropriate strategies for the ongoing management of archaeological sites" (Raftery, 2010: 15).

If all sites are destroyed within the section 18 application area then the Yindjibarndi won't have any sites to manage.

The comments made by Veritas at section 4.3 (labelled Ethnographic Context²⁶) in the December 2010 'Final' Archaeological Report are relevant because even though Veritas omitted the criticisms from the subsequent March 2011 'Final' Archaeological Report, the Ethnographic Report completed by Raftery, upon which Veritas was remarking, is identical, indicating that no additional ethnographic field work for the section 18 application area was undertaken post December 2010.

²⁶ Section 4.3: Ethnographic Context at page 4.21 located in the Veritas Archaeology and History Service 'Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area', Final Report, December 2010.

9. YAC SPEAKS FOR COUNTRY - NOT VERITAS AND/OR FMG PILBARA PTY LTD

9. The YAC rejects the notion that Veritas Archaeology and History Service or FMG Pilbara Pty Ltd speak for Yindjibarndi country. The YAC questions the consultation methodology associated with how Veritas and/or FMG Pilbara Pty Ltd has selected nine particular Aboriginal sites to investigate via a Section 16 application²⁷ prior to them being destroyed. The YAC reserves the right to manage all Aboriginal sites, cultural heritage materials, information and knowledge networks that are associated with and lie within the Yindjibarndi determination²⁸ and application²⁹ areas.

10. YINDJIBARNDI RELIGIOUS PRECINCT

10. The YAC considers the section 18 application area a religious precinct³⁰.

11. YINDJIBARNDI BURIAL GROUND PRECINCT

11. The YAC considers that the archaeological and ethnographic reports supplied for the section 18 application do not provide evidence that all rock shelters and caves have been investigated to section site identification 18 standard. The YAC estimates that there are at least 250 rock shelters and caves that currently exist within the section 18 application

²⁷ Veritas Archaeology and History Service 'Application for a research permit under the provisions of Section 16 of the Aboriginal Heritage Act 1972 for Aboriginal Sites

²⁸ For further details refer to the document titled 'To the Aboriginal Cultural Materials Committee: Outline of Submissions of the Yindjibarndi Aboriginal Corporation (YAC) - for and on behalf of the Yindjibarndi people'.

²⁹ Ibid

³⁰ For further details refer to the affidavit of Michael Woodley, Yindjibarndi Law man, sworn on April 4 2011 and submitted to the Warden's Court, for Objections to Miscellaneous Licence applications KR 102/090, KR 201/090, KR 232/090, KR 233/090, KR 253/090, KR 254/090, KR 133/101, KR 128/090, KR 207/090 and KR 270/090 - Included with this Report at Attachment 9.

area, some of which provide evidence of walled niches and rock shelter ochre sources. It is unclear how many of these significant cultural areas have been thoroughly investigated via the FMG Pilbara Pty Ltd heritage process, and none of which, apart from the nine listed for further research, appear to be highlighted or protected by this application.

The YAC provides further evidence regarding these caves and rock shelters at point 12 b below.

The YAC considers this section 18 application area to be a burial ground precinct because of the terrain, the large number of suitable funerary chambers and the location on the edge of traditional territories. Such a place was contemplated by Worms³¹ "Aboriginal people everywhere have endeavoured to place the final abode of the dead as far away as possible from that of the living ... for this reason the places where the souls of the dead congregate are thought to be in deep caves at the furthest end of tribal territories" (Worms, 1986: 197).

The Department of Indigenous Affairs (DIA) notified the YAC on the 15 March 2011³² that skeletal remains had been uncovered via archaeologists employed by FMG Pilbara Pty Ltd within the section 18 application area. Given that all sites within the area are to be destroyed then the YAC is very concerned for the spiritual and mental health of the country and the Yindjibarndi people who are intricately linked and interdependent. The DIA will be accompanying YAC representatives to the burial site in the next few weeks.

12. YINDJIBARNDI CULTURAL INFORMATION

12. The YAC details its own cultural information which is specific to the section 18 application area which includes:

Please find a map of the locations to be discussed on the next page. Hard copies of A3 or A1 Maps can be provided to the ACMC if requested.

³¹ Worms, E.A. 1986 *Australian Aboriginal Religions* (translated by M.J. Wilson, et al.). Nelen Yubu Missiological Unit, Kensington (New South Wales).

³² Letter to Mr Michael Woodley from Ms Kathryn Przywolnik dated May 12 2011 - included with this report at Attachment 11.

- a. ***Gurdi***: The Pebble Mouse "is only a little fella but he has a big name in the *Burndud* (Law)"³³ (Thomas Jacobs, statement made 07/03/11).

This information is relevant to the application for YIN 09-03 and YIN 09-47.

This information about *Gurdi*, the Pebble Mound Mouse, was told by Ned Cheedy.

Gurdi is sung in the *Burndud* which is the ancient Yindjibarndi song cycle sung every year.

The words are:

Gurdi thulma thulma

Gurdi wirri thalayi

Gurdi thulma thulma

Mouse awareness in the eyes

Mouse moving in the night

Mouse awareness in the eyes

In the *Ngurranyjunggamu* times (when the world was soft) *Gurdi* was travelling through the Yindjibarndi country, and as *Gurdi* travelled he heard the passionate singing of the *Gurdi Burndud* song. *Gurdi* was attracted and captivated by the song and now *Gurdi* is everywhere in the Yindjibarndi country making his home. The Yindjibarndi sing this *Gurdi Burndud* every year in the *Burndud* song cycle when young boys are put through Yindjibarndi *Birdarra* Law.

The *Gurdi* is related to all Yindjibarndi via the *Galharra* relationship system which incorporates all living entities within a structured framework of reciprocal roles and responsibilities.

The YAC are extremely concerned that the members of the Wirlu-Murra group who accompanied both the FMG Archaeologist and Anthropologist ignored their cultural responsibilities and did not bother recognising and requesting that all significant Yindjibarndi heritage sites, including the *Gurdi*'s, be protected.

³³ Yindjibarndi Law man, Thomas Jacobs, describing the Pebble Mouse to Philip Davies, Juluwarlu Anthropologist, on 07/03/11.



Photo 1: *Gurdi* mound – home of the pebble mound mouse. Photo taken on fifth and final Yindjibarndi/FMG heritage survey on May 6 2009.

b. ***Yamararra***: Rock Shelters, Caves and Burials

As mentioned earlier in this report the YAC has conducted its own independent heritage surveys to the section 18 application area. For the reasons already put, the YAC considers that FMG Pilbara Pty Ltd have not conducted thorough archaeological and ethnographic investigations in the section 18 area, something which is revealed by the respective reports provided by the applicant to the ACMC on May 4 2011.

The Section 18 application location is riddled with rock shelter and caves.



Photo 2: View of the terrain within the section 18 application area.



Photo 3: View of the gully near YIN WH10

For this Heritage Report the YAC provides cultural material for one gully that is situated within a radius of 250 metres of YIN WH10 which is described within the Archaeologist's Section 16 Report³⁴ as "a rock shelter with a walled niche" (Veritas, 2010: 18) with the centroid GPS coordinates being given as E594311 N7554070. The YAC have identified 4 caves and 22 rock shelters (including 2 with walled niches and 2 with ochre sources) all within the one gully and within a 250 metre radius of YIN WH10. Five of these rock shelters marked from one to five on Map 1 fall just outside the northern portion of the section 18 application area (as is described on Map 1).

It is clear to the YAC that detailed and exhaustive archaeological and ethnographic investigations have not been carried out within this location because of the evidence that is revealed within the rock shelters and caves which are within very close proximity to YIN WH10. This imprecise method is indicative of the approach taken by FMG Pilbara Pty Ltd and the consultants they direct for the whole of the section 18 application area.

Walled niches and sources of ochre are highly significant cultural features that need to be managed in a culturally appropriate way, allowing for comprehensive dialogue between the people who have knowledge of, and can speak for, the country responsibly.

The YAC do not accept that Veritas and FMG Pilbara Pty Ltd can select some rock shelters with walled niches over others without the advice and active involvement of YAC representatives. The YAC estimates that there are at least 250 rock shelters and caves that currently exist within the section 18 application area. The question the YAC puts is how does Veritas and FMG Pilbara Pty Ltd

³⁴ Veritas Archaeology and History Service 'Application for a research permit under the provisions of Section 16 of the Aboriginal Heritage Act 1972 for Aboriginal Sites'.

justify their selection of nine rock shelters and/or caves when there are so many that should be further identified, investigated, managed and protected?

The cave site where the skeletal remains have been revealed is also marked on the map. The YAC do not accept that FMG Pilbara Pty Ltd and/or the Wirlu-Murra group have the skills, cultural knowledge or the concern to adequately manage the *Yamararra* within the section 18 application area.

GPS coordinates of Rock Shelters & Caves within close proximity to YIN WH10
GPS Projection is GDA 94 - MGA Zone 50

<i>Map 1</i>	<i>Site ID</i>	<i>mE</i>	<i>mN</i>
1	Walled Niche 1	+594250.2159	+7554273.239
2	Rock Shelter 5	+594267.9122	+7554351.510
3	Rock Shelter 3	+594282.1106	+7554379.764
4	Rock Shelter 1	+594348.4049	+7554443.019
5	Rock Shelter 2	+594352.6653	+7554413.879
6	Rock Shelter 4	+594349.8578	+7554358.656
7	YIN WH10	+594310.9891	+7554070.069
8	Rock Shelter 6	+594198.4411	+7554274.436
9	Rock Shelter 7	+594212.3589	+7554255.976
10	Cave	+594238.3147	+7554266.780
11	Rock Shelter 8	+594219.8842	+7554237.997
12	Rock Shelter 7	+594223.2035	+7554241.077
13	Rock Shelter 9	+594224.1660	+7554212.399
14	Walled Niche 2	+594225.1682	+7554207.522
15	Cave 1	+594226.2258	+7554194.675
16	Rock Shelter 10	+594227.0191	+7554189.356
17	Rock Shelter 11	+594196.2043	+7554159.541
18	Rock Shelter 12	+594203.9025	+7554153.185
19	Rock Shelter 13	+594193.6772	+7554133.763
20	Rock Shelter	+594183.9650	+7554113.895
21	Cave 3	+594181.6886	+7554095.532
22	Cave 4	+594186.8694	+7554082.217
23	Rock Shelter 16	+594284.8432	+7554061.923
24	Rock Shelter 15	+594317.9870	+7554084.529
25	Rock Shelter 17	+594243.2262	+7554036.823
26	Rock Shelter 18	+594223.9960	+7554012.252
27	Rock Shelter	+594105.1926	+7553878.794



Photo 4: Cave with walled niche: lies directly under a drill hole and track at E594250 N7554273



Photo 5: Walled Niche of cave above at Photo 4.

YAC Heritage Report for the Aboriginal Cultural Material Committee (ACMC) in response to FMG PILBARA PTY LTD'S February 2011 Section 18 Application at 'Firetail Priority Mining Area and Firetail Priority Infrastructure Area' May 2011



Photo 6: Walled Niche at E594225 N7554207

- c. ***Gandi*** – The Yindjibarndi men have identified sacred stone areas that they and their ancestors have visited and interacted with over space and time that fall within the section 18 application area³⁵.

Map 1 identifies buffered zones for *Gandi*. As detailed in Michael Woodley's affidavit (Attachment 9) *Gandi* is men's business that is not usually discussed in open forums. The affidavit has been put because the heritage process requires Indigenous groups to provide evidence of their religious understandings, ceremonies and artefacts so they can be 'protected'.

³⁵ For further details refer to the affidavit of Michael Woodley, Yindjibarndi Law man, sworn on 1 April 2011 and submitted to the Warden's Court, for Objections to Miscellaneous Licence applications KR 102/090, KR 201/090, KR 232/090, KR 233/090, KR 253/090, KR 254/090, KR 133/101, KR 128/090, KR 207/090 and KR 270/090 included with this report at Attachment 9.

The YAC will not identify anything further on *Gandi* other than what is already offered via the maps and affidavit, unless requested and upon agreement being reached on the nature of the arrangements.

- d. **Ochre** – The Yindjibarndi people represented by the YAC know of significant ochre sites within the section 18 application area. These have not been identified within the heritage surveys because the surveys were based upon clearing areas for drill holes and tracks. The Wirilu-Murra group have not identified any of these locations during their heritage surveys.

- e. **Ngivalunha, Murda Ngarli, Nhuga Ngarli, Juna Ngarli, Barri Ngarli, Wanda Ngarli and Marlunghu** - are all Yindjibarndi spirits that inhabit the rocks, caves, watercourses and hills encompassed within the section 18 application area. The YAC is concerned for the future of the country and the reflection that brings to Yindjibarndi culturally appropriate heritage management is not in place for the section 18 application area.

- f. **Wundu, Bawa and Jinbi** – Rivers, water and springs are highly significant as one of our Yindjibarndi's main natural resources essential for maintaining Yindjibarndi culture, heritage, diversity and religious beliefs.

As detailed at Map 1 the eastern branch of *Ganyjingarringunha* runs through the section 18 application area. River courses and creek beds feature significantly in the cultural lives of the Yindjibarndi, giving life and operating as freeways for the old people who used to walk and camp in the area.

- g. *Warndangarli* – This represents all trees in Yindjibarndi country – as part of cultural sustainability, the Yindjibarndi depend highly on these elements to maintain a cultural existence in contemporary society.

CONCLUSIONS

The YAC considers that, if allowed to proceed, the Section 18 application brought before the ACMC on May 4 2011 by FMG Pilbara Pty Ltd will undeniably damage and destroy Yindjibarndi country, culture and heritage within the allocated precinct, to the detriment of the Yindjibarndi people. To facilitate such an extreme act the ACMC needs to be absolutely certain that all Aboriginal archaeological and ethnographic sites within the area have been located, researched, examined and surveyed via the site identification process, and that all Aboriginal persons with an interest in that location have been able to shape and inform the process so that they are able to protect and engage with their Aboriginal sites and cultural heritage now and into the future, as they have always done.

This report documents and demonstrates that the heritage work completed and presented by FMG Pilbara Pty Ltd to the ACMC for recommendation to the Minister does not achieve the standard necessary to allow for the destruction of all Yindjibarndi Aboriginal sites within the section 18 application area. It also illustrates that the members of the Wirilu-Murra group are ignoring their cultural heritage responsibilities, which only adds to the discrimination and disadvantage of all current and future generations of Yindjibarndi people.

In the YAC's opinion, at the very least, the recommendation should be made that FMG Pilbara Pty Ltd must engage with, and reach agreement on, a mutually beneficial Cultural

Heritage Management Plan (CHMP) with the Yindjibarndi Aboriginal Corporation, prior to any further ground disturbing work within the section 18 application area.

This conclusion is in addition to the submissions made by the YAC at the May 4 ACMC hearing described via the oral arguments and contained within the written document titled, 'To the Aboriginal Cultural Materials Committee: Outline of Submissions of the Yindjibarndi Aboriginal Corporation (YAC) - for and on behalf of the Yindjibarndi people' (included in this document at Attachment 1).

The YAC reserves the right to manage all Aboriginal sites, cultural heritage materials, information and knowledge networks that are associated with and lie within the Yindjibarndi determination³⁶ and application³⁷ areas.

Acknowledgements

The Yindjibarndi/Juluwarlu team would like to acknowledge all the Yindjibarndi people represented by the Chairperson, Directors and members of the Yindjibarndi Aboriginal Corporation, and the Chairperson, Directors and members of the Juluwarlu Group Aboriginal Corporation, and all others who have contributed their knowledge to complete this survey and report.

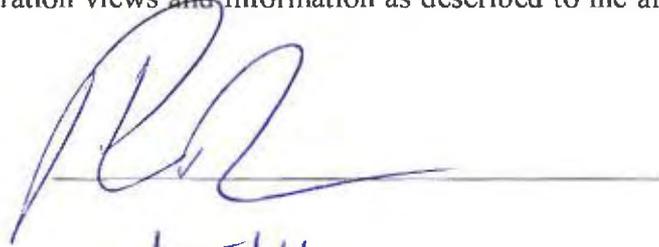
³⁶ For further details refer to the document titled 'To the Aboriginal Cultural Materials Committee: Outline of Submissions of the Yindjibarndi Aboriginal Corporation (YAC) - for and on behalf of the Yindjibarndi people'.

³⁷ Ibid

Signed for and on behalf of the Juluwarlu Group Aboriginal Corporation:

I state that this 'Heritage Report in response' is a true and accurate reflection of the Yindjibarndi Aboriginal Corporation views and information as described to me and which is the subject of this report.

Signed



Date

20/05/11

FULL NAME (PRINT)

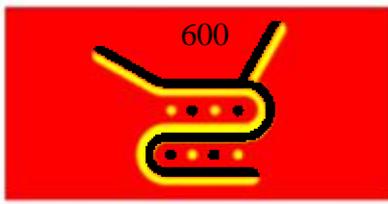
PHILIP JAMES DAVIES

Philip Davies

Anthropologist

B. Soc. Science (Anthropology and Sociology), B. Arts Honours (Anthropology)

Juluwarlu Group Aboriginal Corporation



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

ATTACHMENT ONE

George M Irving
Barrister



PO Box 4031
Swan View
PERTH WA 6056
Telephone: (08) 9255 2891
Facsimile: (08) 9255 2892

To the Aboriginal Cultural Materials Committee

Outline of Submissions of the Yindjibarndi Aboriginal Corporation (YAC) -
for and on behalf of the Yindjibarndi People:

Regarding: the applications of FMG Pilbara Pty Ltd, under s 18 of the *Aboriginal Heritage Act 1978*, to use unallocated Crown land in the Pilbara Region of Western Australia for the development of mining and associated infrastructure.

1. Introduction

- 1.1. FMG has made two applications, under section 18 of the *Aboriginal Heritage Act 1978* (“the Act”), for the Minister’s consent to alter damage or destroy sites of significance to the Yindjibarndi people in accordance with their traditional laws and customs and religious beliefs. One application relates to what is called the “Firetail Priority Infrastructure Area at Solomon Mine in Western Australia” (“Infrastructure Application”); and, the other application relates to what is called the “Firetail Priority Mining Area at Solomon mine in Western Australia” (“Mining Application”). It is noted that no such mine exists.
- 1.2. The area of land and waters, affected by each application, is the subject of the Yindjibarndi #1 native title determination application, which was filed in the Federal Court of Australia on 23 July 2003 on behalf of the Yindjibarndi People.

2. Section 18 Application must be made by Landowner

- 2.1. An application under section 18 of the aboriginal heritage act must be made by a land ‘owner’; and, for the reasons that follow, it is submitted that FMG Pilbara Pty Ltd (FMG) does not own the land in question.

- 2.2. The land, the subject of the Infrastructure Application is identified in paragraph 4 of the application as vacant Crown land; over which FMG holds a bare licence (to explore for minerals). However, this s 18 application does not relate to exploration activities but rather to the construction of infrastructure.
- 2.3. FMG has applied for the grant of miscellaneous licences which would allow the development of the proposed infrastructure; however those applications are subject to objections lodged in the Wardens Court by YAC. Those objections are listed for a five-day hearing before the Warden commencing on 16 May 2011.
- 2.4. The land the subject of the Mining Application is identified in paragraph 4 of the application as vacant Crown land, in which, it is said, FMG holds mining lease M 47/1413. However, the validity of the grant of that mining lease was the subject of an appeal to the Full Court of the Federal court, which was heard on 6 and 7 December 2010; and, the decision of the Full Court is still pending.
- 2.5. It is submitted that in both cases FMG is simply not in a position to satisfy the Committee that it is the ‘owner’ of the land in the sense required by the Act, since the tenure, which would permit the ‘use’, for which the consent of the Minister is sought, is the subject of court proceedings. Accordingly, it is respectfully submitted that consideration of these applications by the committee would be pre-emptive of the court’s jurisdiction; and the committee should therefore refuse to consider the applications.

3. The Native Title Rights of the Yindjibarndi People in the s 18 Application Areas

- 3.1. The Yindjibarndi #1 Native Title Claim (which includes all of the land where FMG wishes to develop its so-called “Solomon Project”) is in fact an extension of a previous native title claim (the *Ngarluma and Yindjibarndi* claim) that was fought and won in the Federal Court. By its determination, on 3 July 2003, the Federal Court ruled that the Yindjibarndi People constitute a “‘society’ - bound together and united under its own traditional system of law”¹.
- 3.2. The Federal Court declared on 3 July 2003 that native title ‘exists’²; and under that title, Yindjibarndi people have the right to enter the land and waters of the ‘Native Title Area’³; and:

¹ As required by the High Court in *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58, at [49] (“*Yorta Yorta*”)

² See *Daniel v Western Australia* [2003] FCA 666 (“*Daniel*”);

³ See *Moses v State of Western Australia* [2007] FCAFC 78, at [7].

- a. the right to remain on the land;
- b. the right to build shelters on the land;
- c. the right to take ochre;
- d. the right to care for and to protect sacred objects and sites, including by performing any ceremonies required under traditional law to be performed at those sites; and,
- e. the right to use and enjoy the land and waters in the Native Title Area for camping, hunting, fishing and foraging.

3.3. In respect of the areas affected by FMG's Applications it should be noted that, on 21 January 2008, the Office of Native Title advised the Yindjibarndi People that:

...the State concedes, for the purposes of the Yindjibarndi #1 Claim, that there is a Yindjibarndi society which has continued to exist since sovereignty as a body united by its acknowledgement and observance of laws and customs of a normative system referral back to a pre-sovereignty society.

- 3.4. Under the same system of law, which was recognised in the 2003 Determination (and conceded by the State for the Yindjibarndi #1 claim), the Yindjibarndi People also hold rights in the areas the subject of the applications made by FMG, each of which concerns an area of unallocated Crown land (UCL) which, since before the assertion of sovereignty in 1829, has been continuously possessed, occupied, used and enjoyed by the Yindjibarndi People to the exclusion of all others. The exclusive rights of the Yindjibarndi People in the UCL area are "registered" under the Native Title Act and are awaiting formal recognition by way of a further determination of the Federal Court. The registered rights include the right to protect sacred objects and sites, and areas of significance to the Yindjibarndi People in accordance with their traditional laws, customs and religious beliefs.
- 3.5. The Committee has been provided with a copy of a recent affidavit sworn by Michael Woodley in support of objections, under the *Mining Act*, to seven Miscellaneous Licences applications made by FMG to develop infrastructure for the Solomon Project. The evidence given by Mr Woodley in that affidavit identifies sites and areas of significance to the Yindjibarndi People, in the areas affected by the s 18 Applications; and, attests to the continuous ongoing use and significance of these UCL areas, by Yindjibarndi people, for religious ceremonies and for other purposes⁴.

⁴ See also the uncontested evidence of Mr Woodley which was accepted by the National Native Title Tribunal in *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia*, [2009] NNTTA 91.

- 3.6. The Committee has also been provided with a copy of a recent affidavit sworn by Ned Cheedy, which attests to Michael Woodley's authority to speak on such matters. Ned Cheedy is 105 years of age, and is last remaining Yindjibarndi Law Boss of his generation.
- 3.7. The passing down of responsibility to Mr Woodley, by the law bosses of his grandfather's generation (which is touched on in Mr Woodley's affidavit evidence (at [2.1]-[2.4]) was also the subject of evidence given by Mr Woodley's grandfather, in *Daniel*; and, his Honour observed:

"Bruce Woodley, Woodley King, Kenny Jerrold testified as to the significance of the thalu at Jirda Hill. Woodley King was taught its significance when he was a boy. He felt it was the responsibility of younger men, especially his grandson Michael Woodley, to look after it. It is now regularly visited by younger men. (Daniel, at [1331])"

Woodley King felt that the Yindjibarndi people had a special role in protecting thalus on their land. Jirda Hill thalu had been looked after since the Ngurranyujunggamu and he hoped his grandson would follow him in looking after it (T 179)." (ibid, at 1349)

- 3.8. It is to be noted that Woodley King did not nominate his son, Bruce Woodley, as the person "especially" responsible for "protecting thalus" in Yindjibarndi country, but rather his grandson, Michael Woodley; and it is clear from the evidence cited by his Honour that this nomination was made in the presence of Bruce Woodley.
- 3.9. Importantly, there are no overlapping native title claims to the UCL area; and there has been no prior extinguishment of the rights held by the Yindjibarndi People in the UCL area. Accordingly, it is beyond dispute, in our submission, that the Yindjibarndi People are entitled, at the very least to a determination which reflects the same rights recognised by the Federal Court in 2003. A connection report and, in my view, sufficient additional evidence has been provided to the State to warrant a consent determination of native title which gives formal recognition to the ancient right of the Yindjibarndi People to possess, occupy, use and enjoy the UCL area to the exclusion of all others, (including FMG) and to protect sacred objects and sites, and areas of significance to the Yindjibarndi People in accordance with their traditional laws, customs and religious beliefs.
- 3.10. In light of the finding by the Federal Court and the concession made by the State, it is submitted that the Committee should accept, as contemplated by ss 7(1) of the Act, that the society of the *Yindjibarndi People* constitutes a group of Aboriginal persons who "usually live subject to Aboriginal customary law"; and accordingly, that the Act cannot be construed so as to take away or restrict the right of the *Yindjibarndi People*, to possess, occupy, use and enjoy the areas affected

by FMG's s 18 Applications, to the exclusion of all others; and to protect sacred objects and sites, and areas of significance to the Yindjibarndi People - in accordance with their traditional laws, customs and religious beliefs; rather than by way of the protection afforded by the Act.

4. Section 18 Decision is a Future Act under the Native Title Act 1993 (Cth)

4.1. It is submitted that, because a decision of the Committee is a pre-condition for the exercise of the executive power of the Minister - to consent to an act that is wholly or partly inconsistent with the native title right of the Yindjibarndi People to protect sacred objects and sites, and areas of significance to the Yindjibarndi People, in accordance with their traditional laws, customs and religious beliefs - a decision by the Committee is a "future act", as defined by s 227 of the *Native Title Act* 1993 ("NTA"), and by virtue of s 109 of the Commonwealth Constitution, it is therefore an act which must comply with the 'future act' provisions in Part 2, Division 3 of the NTA. However, such compliance has not occurred.

4.2. Ordinarily, it is the "Applicant" on any native title claim who, in accordance with s 251B of the *Native Title Act* 1993 ("NTA"), is authorised by all members of a native title claim group to lodge a native title application; and, who therefore "*may deal with all matters arising under [the NTA] in relation to the application*".⁵

5. Standing to Respond to S 18 Application

5.1. According to the Office of the Registrar of Indigenous Corporations, the Wirlu-Murra Aboriginal Corporation still has only 33 members; but in any event, neither the corporation nor its members has standing in respect of any matters that affect the native title rights of the Yindjibarndi People.

5.2. In contrast to the position of the Wirlu-Murra Corporation, it is noted that YAC is, pursuant to a Determination made by the Federal Court,⁶ the Prescribed Body Corporate (PBC) for the Yindjibarndi People; and, accordingly, YAC is required, by the NTA⁷ and the *Native Title (Prescribed Body Corporate) Regulations 1999* ("PBC Reg"), to manage the native title rights and interests of the common law holders and negotiate with third parties who wish to undertake activities that would affect those rights and interests; and, may enter into agreements with third

⁵ See NTA s 62A. The Applicant on the Yindjibarndi #1 Claim is comprised of seven Yindjibarndi people: Ned Cheedy, Mavis Pat, Aileen Sandy, Thomas Jacob, Sylvia Allen and Alum Cheedy and Michael Woodley.

⁶ In Daniel, under s 56 of the NTA.

⁷ See NTA s 56 and s 57.

parties, if the common law holders give their informed consent, and exercise any procedural rights on behalf of the common law holders.⁸

- 5.3. As the PBC for the common law holders for the Yindjibarndi People YAC must, before making any decision (including a decision to make an agreement) that affects the rights and interests of the Yindjibarndi People ensure that the common law holders, or any sub-group of the common law holders whose right and interests would be affected by the decision, understand the purpose and nature of the decision and consent to the decision being made.⁹
- 5.4. In light of the above, following the Yindjibarndi PBC Determination, in 2005, the Yindjibarndi People and the seven members who are the Applicant for the Yindjibarndi #1 Native Title Determination Application decided that YAC should assume responsibility the management of the Yindjibarndi #1 Native Title Determination Application and for negotiations with third parties who wish to undertake activities in the Yindjibarndi #1 Application Area, as this would ensure consistency in both negotiations and in procedures to obtain the informed consent of the common law holders of the registered native title rights and interests.

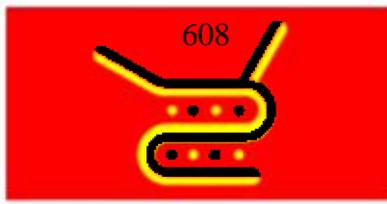
6. Effect of Decision upon Religious Freedom

- 6.1. It is further respectfully submitted that, because a decision of the Committee, is a pre-condition for the exercise of the executive power of the Minister, to consent to an act that may interfere with the right of Yindjibarndi people to freely practice their religion, through the on-going observance of the religious ceremonies attested to by Mr Woodley, a decision by the Committee recommending that consent by the Minister be given, under conditions that in any way interfere with or prevent the ongoing exercise of such religious observances would constitute an exercise of power in breach of:
- a. the guarantee of religious freedom, enshrined in s 116 of the Constitution;
 - b. the right of Mr Woodley, in community with other members of the Yindjibarndi People, to enjoy their own culture and to profess and practice their own religion, as declared in Article 27 of the International Covenant on Civil and Political Rights - to which Australia is a signatory;

⁸ See PBC Reg 6.

⁹ See PBC Reg 8 .

- c. the right to maintain, protect and develop past, present and future manifestations of Yindjibarndi culture, such as archaeological and historical sites, artefacts, designs, and ceremonies; and, the right to manifest, practice, develop and teach the spiritual and religious traditions, customs and ceremonies of the Yindjibarndi People and to maintain, protect, and have access in privacy to their religious and cultural sites - as declared by Articles 11 and 12 of the Declaration on the Rights of Indigenous Peoples, which was adopted in the United Nations by General Assembly Resolution 61/295 on 13 September 2007, and endorsed by the Commonwealth government, on the half of all Australians, in April 2009.



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

ATTACHMENT TWO



Government of **Western Australia**
Department of Indigenous Affairs

ENQUIRIES: Ryan Crawford 9235 8117

OUR REF:

YOUR REF:

Mr Michael Woodley
Executive Officer
Juluwarlu Group Aboriginal Corporation
P.O. Box 111
ROEBOURNE WA 6718

Dear Mr Woodley,

DEFERRAL OF TWO SECTION 18 NOTICES – CONSTRUCTION AND OPERATION OF TWO MINING AREAS AND ASSOCIATED INFRASTRUCTURE KNOWN AS THE “FIRETAIL PRIORITY INFRASTRUCTURE AREA” AND THE “FIRETAIL PRIORITY MINING AREA” – E47/1447, E47/1334 & M47/1413

I refer to the two section 18 Notices (“the Notices”) submitted by Rod Campbell (“the Applicant”) as an authorised representative of FMG Pilbara Pty Ltd (“the Landowner”) seeking ministerial consent under section 18 of the *Aboriginal Heritage Act 1972* for the construction and operation of two mining areas and associated infrastructure known as the “Firetail Priority Infrastructure Area” and the “Firetail Priority Infrastructure Areas”. I advise that the Aboriginal Cultural Material Committee (“ACMC”) considered the two Notices at its 4 May 2011 meeting and resolved to defer making any recommendations to the Minister in relation to the Notices until further information is provided to the ACMC.

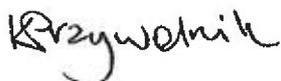
The ACMC appreciate the presentations made by representatives of Yindjibarndi Aboriginal Corporation (YAC), the Wiru-Murra Yindjibarndi Aboriginal Corporation and FMG Pilbara Pty Ltd, at the 4 May meeting and the information provided for these presentations. The issues raised during presentations regarding Land ownership are under consideration and any recommendations determined by the ACMC in the June meeting will be subject to clarification that the Notices are valid statutory applications.

Following presentations the ACMC decided that further heritage information is required to allow for the identification of all Aboriginal sites on the two Land parcels, full consideration of the importance and significance of these sites and provide recommendations to the Minister. It is understood that YAC is endeavouring to provide further heritage information to the ACMC by 20 May 2011 and DIA has strongly encouraged the Applicant to consult with YAC on the Purpose and heritage values associated with the Land. Additionally, the ACMC have requested further information specific to the ethnographic importance and significance of the two Pebble Mouse Mounds located on the Land.

In the interest of procedural fairness, the Applicant will be provided with a copy of the YAC submission when it is forwarded to DIA to allow the opportunity to provide comment prior to reconsideration of the two Notices at the meeting of the ACMC on 1 June 2011.

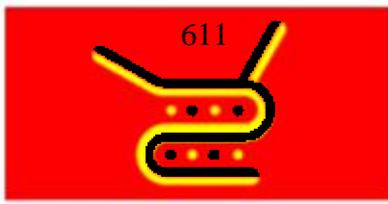
If you have any queries in relation to this request please contact Ryan Crawford on 9235 8117 or at ryan.crawford@dia.wa.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'KPrzywolnik', written in a cursive style.

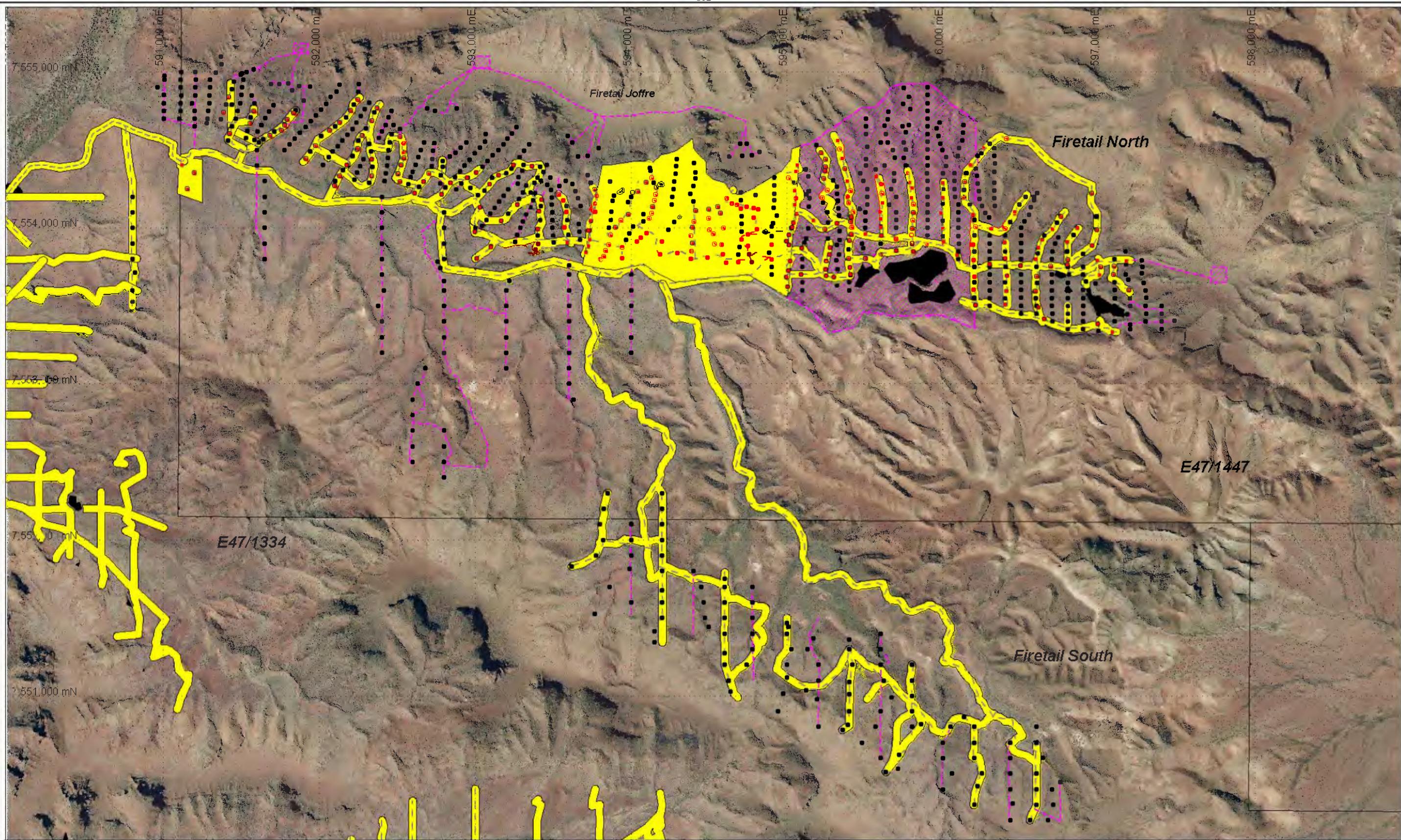
Kathryn Przywolnik
Registrar of Aboriginal Sites

6 May 2011



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

ATTACHMENT THREE

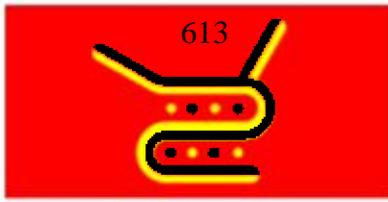


Legend

- Existing Drillhole
- Planned Drillhole
- Line Survey
- ▨ Block Survey
- Existing Heritage Clearance
- Heritage Site



Fortescue Metals Group Ltd	
Firetail Project	
Author: NN	Date: 01-04-09
Drawn By: NN	Revised:
Dwg No:	Report No:
Scale: 1:22,000	Projection: MGA Zone 50 (GDA94)



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

ATTACHMENT FOUR

Yindjibarndi and RTIO Cultural Heritage Protocol

DATE: November 2010

PARTIES

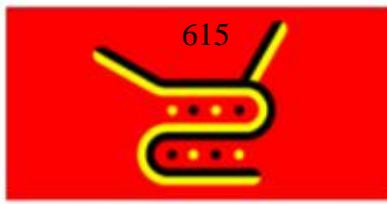
Yindjibarndi Aboriginal Corporation ABN 97 456 543 455 on behalf of the **Yindjibarndi People (YAC)**

Hamersley Iron Pty Limited ACN 004 558 276 and **Robe River Mining Co Pty Ltd** ACN 008 694 246 as manager for and on behalf of the **Robe River Iron Associates Joint Venturers (RTIO)**

1. INTERPRETATION

1.1 Definitions

- (a) **Aboriginal Heritage Act** means the *Aboriginal Heritage Act 1972 (WA)*.
- (b) **Aboriginal Site** means an "Aboriginal site" as defined in the Aboriginal Heritage Act and a "significant Aboriginal area" or "significant Aboriginal object" as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*.
- (c) **Activity** means any Ground Disturbing Activity or any Non-Ground Disturbing Activity as defined in this Protocol.
- (d) **Business Day** means any day other than a Sturday, Sunday or public holiday observed in Perth, Western Australia.
- (e) **Commencement Date** means the date this Protocol is signed by the parties.
- (f) **Cultural Heritage** means the traditional laws, customs and religious beliefs of the Yindjibarndi People associated with Yindjibarndi Country and with Aboriginal Sites in Yindjibarndi Country.
- (g) **DIA Guidelines** means any guidelines of the Aboriginal Cultural Material Committee or Department of Indigenous Affairs concerning reports prepared for the purpose of making a Section 16 or 18 Application.
- (h) **Fit for Purpose Survey** means a Survey which, at RTIO's discretion, utilises either, or both, the Site Avoidance Methodology or the Site Identification Methodology described in clause 8.
- (i) **Expiry Date** means twelve months from the date of this Protocol or such other date, beyond 12 months, as is agreed in writing.
- (j) **Ground Disturbing Activity** means any activity that is not a Non-Ground Disturbing Activity.



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

ATTACHMENT FIVE



Department of Indigenous Affairs
Government of Western Australia



ENQUIRIES: Laura Gladstone 9235 8112
OUR REF: Letter to Fortescue Metals Group Re Heritage Surveys on Yindjibarndi Country
YOUR REF: Yindjibarndi Prescribed Body Corporate

Mr Blair McGlew
Head of Land Access and Community Development
Fortescue Metals Group Ltd
87 Adelaide Terrace
EAST PERTH WA 6892

Dear Mr McGlew,

Heritage Surveys on Yindjibarndi Country

It has come to the attention of the Department of Indigenous Affairs that FMG intended to begin heritage surveys at Solomon on 3 March 2008 without the involvement of the Yindjibarndi traditional owners.

The Department recommends conducting surveys with traditional owners to successfully locate all heritage sites within the tenement. The Department is aware of instances where surveys conducted without traditional owners have not identified all sites on land, and breaches of the *Aboriginal Heritage Act 1972* have resulted.

We wish to further advise that any section 18 Notice seeking consent to use land pursuant to the *Aboriginal Heritage Act 1972* will require evidence of appropriate consultation with Yindjibarndi people to enable the Aboriginal Cultural Materials Committee (ACMC) to make a well informed recommendation to the Minister. Without appropriate Yindjibarndi participation, the ACMC may not be able to assess the significance of sites, and the notice may be referred back to the proponent for further consultation.

The Department strongly urges FMG to reach agreement with the Yindjibarndi people to conduct heritage surveys. The Department is willing to arrange mediation between FMG and the Yindjibarndi Aboriginal Corporation in order to reach such an agreement, if both parties believe this would assist. Please advise if you would like the assistance of the Department in this matter.

Yours sincerely

Pam Thorley
REGISTRAR OF SITES
4 March 2008

1st Floor 197 St George's Terrace Perth Western Australia 6000
PO Box 7770 Cloisters Square Perth Western Australia 6850
Telephone (08) 9235 8000 Facsimile (08) 9235 8088
www.dia.wa.gov.au



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

ATTACHMENT SIX



ENQUIRIES : Cesar Rodriguez - Ph 9235 8035

OUR REF:

YOUR REF:

COPY

Received
27/05/09
[Signature]

Ms Jane Pemberton
Heritage Approvals Coordinator
Fortescue Metals Group
Level 2
87 Adelaide Terrace
PERTH WA 6004

Dear Ms Pemberton

EXPLORATION DRILLING AT FIRETAIL NORTH - ASSOCIATED HERITAGE SURVEYS

I wish to advise that on a recent visit to the town of Roebourne by Officers from the Department of Indigenous Affairs (DIA) the Yindjibarndi Aboriginal Corporation (YAC) raised some concerns with regard to a block heritage survey conducted by Fortescue Metals Group (FMG). This survey was conducted in order to satisfy heritage approval processes in relation to proposed exploration drilling within the Firetail North Project area, located some 60 kilometres north of the Town of Tom Price on mining tenement E47/1447.

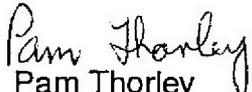
It was alleged that correspondence forwarded to YAC by Fortescue Metals Group (FMG), requesting their assistance for a proposed block heritage survey, contained information that suggested that FMG had already began exploration drilling in an area where block heritage survey clearance was seen to exist. YAC have stated that the person responsible for this survey was Wayne Glendinning, of Western Heritage Research. The heritage clearance reportedly addressed both archaeological and ethnographic areas of heritage significance, however, YAC have reported to DIA that they were not involved in this block heritage survey in any manner. YAC have a Native Title application over the area where the heritage survey took place and are a party who speak for ethnographic values that relate to the area. As such, any form of ethnographic survey should have made attempts to consult with YAC in order to work out the potential ethnographic values of the area.

It is further apparent, from a map provided by FMG to YAC, that exploration drilling has already commenced in the area surveyed exclusively by Western Heritage Research. Please be advised that failure to adequately consult with the Yindjibarndi people over the proposed drill hole locations has the potential to result in activities that may breach the *Aboriginal Heritage Act 1972*.

It is understood that you are currently in negotiations with YAC regarding future surveys for the area and that members from YAC have recently travelled to the area to conduct a survey over a limited area of proposed exploration drilling. DIA recommends that you continue to engage the Yindjibarndi people over this matter to ensure that no Aboriginal heritage sites are impacted by the proposed drilling operations.

If you have any queries regarding this letter please contact Mr Cesar Rodriguez, Senior Heritage Officer for the Pilbara Region, on 9235 8035 or at cesar.rodriguez@dia.wa.gov.au.

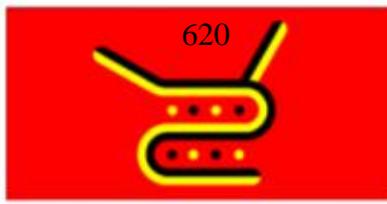
Yours sincerely


Pam Thorley
Registrar of Aboriginal Sites

COPY

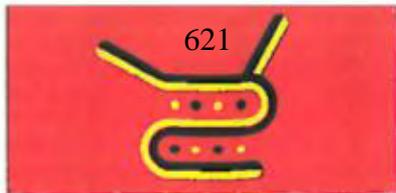
19 May 2009

Cc - Mr Michael Woodley
Chief Executive Officer
Juluwarlu Group Aboriginal Corporation
PO Box 111
ROEBOURNE WA 6718



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

ATTACHMENT SEVEN



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

16/04/09

Jane Pemberton

Heritage Approvals Coordinator

Fortescue Metals Group

Level 2

87 Adelaide Terrace

Perth, WA

6004

Main: 08 6218 8710

Mobile: 0448 975154

Fax: 08 6218 8880

E-mail: jpemberton@fmgl.com.au

Web: www.fmgl.com.au

CC: Blair McGlew FMG
CC: Stuart Robinson FMG
CC: Simon Millman Slater & Gordon

Re: Yindjibarndi/FMG Firetail Heritage Survey Request to commence 27/04/09

Dear Jane,

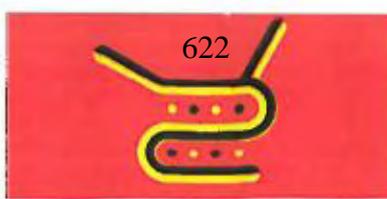
Thank you for your emails to Philip Davies dated 06/04/09 and 16/04/09, and your phone message left on my mobile phone on Tuesday 14/04/09. The Yindjibarndi also received FMG's revised draft Land Access and Mineral Exploration Agreement via email from Sukhpal Singh on 15/04/09.

Subsequently Phil and I have spoken to you briefly today.

The Yindjibarndi are willing to commit to FMG's request for a further 10 day heritage survey commencing Monday 27/04/09. As we understand it, and in the absence of any other documentation received by the Yindjibarndi to this point, this heritage survey will be a continuation of FMG's survey requests YIN 23(B) and 26 which was emailed to Philip Davies and me by you on 01/04/09. The attachment to the email contained a map and an FMG memorandum from Nicholas Nitschke (CC: Stuart Robinson) to Heritage (FMG) outlining the heritage work to be completed at Firetail.

Just to reconfirm previous discussions on site, the Yindjibarndi survey team will not conduct any 'block' ethnographic or archaeological heritage surveys, but will complete a work program that inspects proposed FMG drill holes. The inspection result will either sanction or cancel the proposed drill hole depending on the its potential interference with a culturally significant feature.

During the recent survey held at Firetail by the Yindjibarndi from the 03/04/09 to 09/04/09 it came to our attention that FMG have been conducting surveys in Yindjibarndi country without the Yindjibarndi being present. We reiterate that we



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

strongly oppose this behaviour – we are the only people who speak for our country, and the only people who should conduct Yindjibarndi heritage surveys on our country are those people authorised to do so by the Yindjibarndi Aboriginal Corporation (YAC).

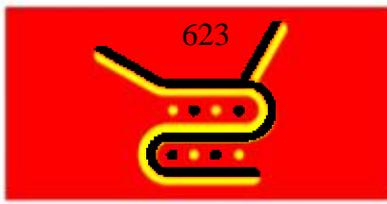
In the meeting held on 08/04/09 which commenced at 5.30pm at the FMG Solomon camp between Stuart Robinson (FMG), Tiny Godley (FMG), Andrew Munro (FMG), Wayne Glendenning (Western Heritage Research), Jim Dawson (Western Heritage Research) and the Yindjibarndi representatives, the Yindjibarndi requested copies of all previous heritage surveys that were undertaken by FMG without YAC authorised heritage participants. Stuart said he would provide these reports to us; would you please send these as soon as possible.

Philip Davies is currently working on the ethnographic report for the Yindjibarndi heritage survey completed last week (03/04/09 to 09/04/09). The ethnographic report will not be a 'block' ethnographic heritage report – it will mirror the work performed by the Yindjibarndi heritage team which inspected and cleared or rejected proposed FMG drill holes. The report will also include the recommendations made by the Yindjibarndi participants during the survey. The ethnographic report will be completed and sent to you by the close of business on Monday 20/04/09, along with the accompanying invoice from Juluwarlu Group Aboriginal Corporation.

We look forward to working with you over the coming weeks

Yours sincerely

Michael Woodley
Executive Officer
Yindjibarndi Aboriginal Corporation
Phone: 08 91821497
Mobile: 0419 097130
Email: mwoodley@juluwarlu.pilbara.net



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

ATTACHMENT EIGHT

BEFORE THE WARDEN AT
PERTH

Application L47/350
Objections KR97/090, KR102/090
and KR128/090

BETWEEN:

FIVIG PILBARA PTY LTD

Applicant

AND

CAZALY IRON PTY LTD

Objector

Objection KR97/090

YINJIBARNDI ABORIGINAL CORPORATION
(as Trustee for the Yindjibarndi People)

Objector

Objection KR102/090

T R RICHARDSON

Objector

Objection KR128/090

PATICULARS OF OBJECTION KR102/090

The Objector to objection KR102/090 provides the following particulars in response to the request by the Applicant:

1. Request 1:

- 1.1. The Objector is a Prescribed Body Corporate, pursuant to a Determination of the Federal Court, made on 2 May 2005 (per Nicholson J) under s. 56 of the *Native Title Act 1993* (“NTA”), which provided that “*the Yindjibarndi Aboriginal Corporation is to hold the native title rights and interests in trust for the Yindjibarndi People*” (“Yindjibarndi Determination”). The immediate consequence of this was that the details of the Yindjibarndi Determination, along with those of the Yindjibarndi Aboriginal Corporation, were entered into the National Native Title Register, which is required to be kept by the Native Title Registrar in accordance with Part 8 of the NTA. Thereupon, the Yindjibarndi Aboriginal Corporation became a Registered Native Title Body Corporate for the purposes of s. 57 of the NTA.
- 1.2. Pursuant to the Yindjibarndi Determination, the Objector holds the native title rights and interests in trust for the Yindjibarndi People in accordance with s. 56 of the NTA.
- 1.3. The details of the native title rights and interests, held in trust by the Yindjibarndi Aboriginal Corporation for the benefit of the Yindjibarndi People, are set out in the National Native Title Register, which is required to be kept by the Native Title Registrar in accordance with Part 8 of the NTA. The National Native Title Register is open for inspection by any member of the public during normal business hours.
- 1.4. Pursuant to the Yindjibarndi Determination, as varied by the Full Court of the Federal Court on 7 June 2007, in *Moses v State of Western Australia* [2007] FCAFC 78 (“*Moses*”), “*Yindjibarndi People*” means all “*Aboriginal persons who recognise themselves as, and are recognised by other Yindjibarndi People as, members of the Yindjibarndi language group*”. The evidence given in the Federal Court Hearing which preceded the Yindjibarndi Determination demonstrated that current members of the Yindjibarndi language group (“Yindjibarndi Descendants”) are descended from specified apical ancestors who belonged to the Yindjibarndi language group and “came from” Yindjibarndi Country. The meaning of “Yindjibarndi People”, which was upheld by the Full Court, in *Moses*, reflects the fact that the Federal Court was satisfied that the Yindjibarndi Descendants constitute a “society”, in the sense required by the High Court (in *Members of the*

Yorta Yorta Aboriginal Community v Victoria [2002] HCA 58 at [50]); which is to say, they constitute a body of persons united under, and bound together by, a normative system of traditional laws and customs, which predates the assertion of British sovereignty in 1829, and from which arises their native title rights and interests by virtue of their continuous observation of those laws and customs. The current population of the Yindjibarndi People is estimated to be about 1500 persons.

- 1.5. The area of land the subject of the Yindjibarndi Determination is a matter of public record, and is depicted on maps kept by the National Native Title Tribunal, which are available to the public through the Tribunal's website. The geographical coordinates of the land and waters covered by the Yindjibarndi Native Title Determination are kept on the *National Native Title Register*, which is required to be kept by the Native Title Registrar in accordance with Part 8 of the *NTA*. The Native Title Register is open to inspection by any member of the public during normal business hours. The Objector receives no assistance at all from the relevant Native Title Representative Body (Pilbara Native Title Service); and, no funding whatsoever from either the State or the Commonwealth in respect of native title matters. Consequently, the Objector does not have the resources to produce a detailed map which depicts the area of land, if any, that overlaps with the area that is the subject of Miscellaneous Licence Application L47/350 (**Overlap Area 1**).

2. Request 2:

- 2.1. The area of land the subject of the Yindjibarndi #1 Native Title Determination Application is a matter of public record and depicted on Maps kept by the National Native Title Tribunal, which are available to the public through the Tribunal's website. The geographical coordinates of the land covered by the Yindjibarndi #1 Native Title Determination Application are kept on the *Register of Native Title Claims*, which is required to be kept by the Native Title Registrar in accordance with Part 7 of the *NTA* and is open to inspection by any member of the public during normal business hours. The Objector does not have the resources to produce a detailed map which depicts the area of land that overlaps with the area of land that is the subject of Miscellaneous Licence Application L47/350 (**Overlap Area 2**).
- 2.2. The areas of waters the subject of the Yindjibarndi #1 Native Title Determination Application is a matter of public record and depicted on Maps kept by the national Native Title Tribunal, which are available to the public through the Tribunal's website. The geographical coordinates of the waters covered by the Yindjibarndi #1

Native Title Determination Applications are kept on the *Register of Native Title Claims*, which is required to be kept by the Native Title Registrar in accordance with Part 7 of the *NTA* and is open to inspection by any member of the public during normal business hours. The Objector does not have the resources to produce a detailed map which depicts the areas of waters that overlap with the area that is the subject of Miscellaneous Licence Application L47/350 (**Overlap Area 3**).

2.3. The following response concerns the history of the Applications, made by the Yindjibarndi People, for Determinations of Native Title, the relationships between those applications, any relevant litigation and the native title rights and interests sought or obtained by those applications:

- a. The Yindjibarndi People have made two Applications for Determinations of Native Title:
 - i. The first Application, as indicated above, was the subject of the Determination made by the Federal Court (the “Yindjibarndi Native Title Determination”) in *Daniel* and varied by the Full Court in *Moses*. The history of that application is set out in *Moses*.
 - ii. According to the *Register of Native Title Claims*, the second Native Title Determination Application (the “Yindjibarndi #1 Application”) was lodged in the Federal Court of Australia, on 9 July 2003, by Ned Cheedy, Guinness Gilby, Mavis Pat, Aileen Sandy, Edie Whalebone, Kenny Jerrold, Thomas Jacob, Sylvia Allen, Alum Cheedy, and Michael Woodley for and on behalf of the Yindjibarndi People. This application has yet to be determined.
 - iii. The Yindjibarndi #1 Application is currently the subject of negotiations between the Yindjibarndi People and the State of Western Australia, pursuant to directions made by the Federal Court. In light of the determination of the Full Court, in *Moses*, the State accepts that the current members of the Yindjibarndi People continue to constitute a body of persons united under, and bound together by, a normative system of traditional laws and customs, which predates the assertion of British sovereignty in 1829.

- iv. The issue that remains to be resolved between the parties in the Yindjibarndi #1 Application, either by way of consent or through litigation, is the ongoing connection of the Yindjibarndi People, by their traditional laws and customs, to the area of land and waters covered by the Yindjibarndi #1 Application and the ongoing observance of those laws and customs within that area since the assertion of sovereignty. This issue was the subject of comprehensive sworn testimony, given by Michael Woodley to the NNTT, in respect of an application by FMG Pilbara Pty Ltd for the grant of three mining leases M47/1409, M47/1411 and M47/1413 in areas of unallocated Crown Land the subject of the Yindjibarndi #1 Application (see: *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia*, [2009] NNTTA 91 (13 August 2009); and, *FMG Pilbara Pty Ltd/ Wintawari Guruma Aboriginal Corporation/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia*, [2009] NNTTA 99 (27 August 2009) (“**NNTT Future Act Determinations**”). The sworn testimony of Mr Woodley was not disputed either by the State or by FMG Pilbara Pty Ltd, and was fully accepted by the NNTT. That testimony is fully replicated in the NNTT Future Act Determinations.
- b. The area of land and waters the subject of Yindjibarndi #1 Application and the area of land and waters the subject of the Determination, in *Daniel and Moses*, are each part of the traditional cultural and religious domain of the Yindjibarndi People, which is referred to by the Yindjibarndi People as “Yindjibarndi Country”. The Native Title Claim Group in the Yindjibarndi #1 Application is comprised of the descendants of the same apical ancestors who, in the Yindjibarndi Determination, were held to belong to the Yindjibarndi language group and to have “come from” Yindjibarndi Country.
- c. There are no other existing Native Title Determination Applications that relate to the area of Yindjibarndi country that would be affected by the grant of L47/350 and no further Native Title Determination Applications are contemplated in respect of that area. The only other native title litigation, in respect of that area, concerns the Federal Court Appeals (WAD 161 and 168 of 2009) (“**Appeals**”) against two Future Act Determinations made by the NNTT under s. 38 of the NTA, in respect of three applications by the Applicant for

the grant of mining leases M47/1409, M47/1411 and M47/1413 (“**Future Act Determinations**”) in areas of unallocated Crown Land the subject of the Yindjibarndi #1 Application (see: *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia*, [2009] NNTTA 91 (13 August 2009), and *FMG Pilbara Pty Ltd/ Wintawari Guruma Aboriginal Corporation/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia*, [2009] NNTTA 99 (27 August 2009). The Appeals were heard by McKerracher J on 2, 3 and 4 March 2010. The decision of McKerracher J is pending. It appears, from maps provided by the Applicant to the Objector that Miscellaneous Licence Application L47/350 overlaps with the area covered by Mining Lease Application M47/1409.

- d. Naive title rights and interests cannot, as a matter of law, be sought or obtained. What is sought, by way of a Native Title Determination Application, and obtained, by way of a Native Title Determination, is the legal recognition of the pre-existing rights and interests in lands and waters, which burdened the Crown’s radical title at the time of the assertion of British sovereignty; and which, where it is shown that the society in question has continued since that time to observe its traditional laws and customs, from which those rights and interests arise, continue to burden the Crown’s radical title (see: *Mabo v Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1, per Brennan J, at [62], [68], [69] and [83]). Such is the nature of the native title rights and interests held by the Yindjibarndi People. Those rights and interests are set out, as a matter of public record, in the *National Native Title Register*, and the *Register of Native Title Claims*.

3. Request 3

- 3.1. According to Miscellaneous Licence Application L47/350 the purpose for which Miscellaneous Licence L47/350 is sought by the Applicant is:

a road, a powerline, pipeline, taking water, a communications facility, a water management facility, a bore field, an aerial rope way, a conveyor system, an aerodrome, a power generation and transmission facility and storage or transportation facility for minerals or mineral concentrate.

The activities referred to in paragraph 3 of the Objector's Grounds for Objection are set out in the affidavit of Damon Edwards (at [27]-[33]) (which was filed in this matter on 4 March 2010). Those activities include the construction of:

- a. a road ... to accommodate traffic to the Ore Processing Facility ("OPF") and train loading area at the Firetail mine site and to provide access for construction and maintenance of a powerline, borefield, and pipeline;
- b. pipelines to convey water from the production bores to the road construction locations, the OPF and other locations as required;
- c. a power station ... and powerline to provide power for the Firetail minesite operations;
- d. communications systems comprising optic fibre distribution, conventional cable and radio networks;
- e. a conveyor system ... to transport iron ore from the Firetail, mine site to the OPF
- f. an airstrip or airport ... for use of aircraft to service the Firetail mine site;
- g. a stockyard with rows of stock piles serviced by stackers and reclaimers;
- h. conveyors [to] transport the ore into and out of the stockyard;
- i. a train loader; and,
- j. various building works including a control room, workshops, offices, a switch yard, a substation, works for the treatment of oily waste.

Mr Edwards states (ibid at [36]) that the infrastructure development proposed to be carried out by the Applicant on Miscellaneous Licence L47/350 is "critical" to the development of the Firetail minesite in the Solomon Hub.

- 3.2. Native title law does not differentiate between "rights" and "interests" in the way posited by the Applicant, in request 3.2. Construction of the aforementioned infrastructure, without the consent of the Yindjibarndi People, will necessarily have an adverse impact on the registered right of the Yindjibarndi People to occupy, possess, use and enjoy (as against the whole world) the areas upon which the

proposed infrastructure is constructed (“**proposed Footprint areas**”), since the Yindjibarndi People will not be able to exercise this right in the proposed Footprint areas during the lifetime of the proposed infrastructure. Similarly, construction of the proposed infrastructure, without the consent of the Yindjibarndi People, will necessarily have an adverse impact on the other registered right and interests of the Yindjibarndi People, since the Yindjibarndi People will not be able to exercise those registered rights and interests, in the proposed Footprint areas, during the lifetime of the proposed infrastructure.

3.3. The Objector says:

- a. each of the proposed activities (described above in [3.1]) will disrupt the cultural heritage of the Yindjibarndi People; in that, pursuant to the traditional laws, customs and religious beliefs of the Yindjibarndi People, such proposed activities may only occur in Yindjibarndi Country in accordance with an agreement between the Yindjibarndi People and the proponent and should not proceed in the absence of such an agreement (a comprehensive account of this aspect of the cultural heritage of the Yindjibarndi People has previously been provided to the Applicant by way of sworn testimony from Michael Woodley, which was not disputed by the Applicant, and is reproduced in the Future Act Determinations).
- b. each of the proposed activities (described above in [3.1]) will disrupt the social activities of the Yindjibarndi People; in that, they will prevent members of the Yindjibarndi People from freely using the land and waters (in the proposed Footprint areas) for all of the social activities in which, from time to time, they may currently freely choose to engage (pursuant to their traditional laws, customs and religious beliefs); including:
 - i. camping, hunting and fishing;
 - ii. collecting traditional fruits and medicines;
 - iii. collecting resources such as wood, ochre and stone for cultural, social or religious purposes;
 - iv. preserving sites and objects of cultural, social and religious significance;

- v. teaching their children, in situ, about the cultural heritage of Yindjibarndi Country and the Yindjibarndi People;
 - vi. carrying out cultural and religious ceremonies, rituals and observances.
- c. each of the proposed activities (described above in [3.1]) will disrupt the spiritual activities of the Yindjibarndi People; in that, they will prevent members of the Yindjibarndi People from freely exercising their religious beliefs through the practice of their religious ceremonies, observances and rituals associated with sites, places and objects of religious significance (situated in or near the proposed Footprint areas);
- d. each of the proposed activities (described above in [3.1]) will disrupt the economic activities of the Yindjibarndi People; in that:
- i. according to the traditional laws, customs and religious beliefs of the Yindjibarndi People, individuals who are not members of the Yindjibarndi People and who desire to exploit the resources of Yindjibarndi Country, may only do so under an agreement with the Yindjibarndi People which conforms with the sacred principle of reciprocity; and,
 - ii. the long-term economic goal of the Yindjibarndi People is to commercially exploit the mineral resources of their traditional country themselves so as to ensure, in addition to the benefits that will flow (from commercial exploitation of such resources) to the people of Western Australia and Australia, that sufficient benefits will also flow to the Yindjibarndi People to provide the means by which to secure the future survival of their distinct society through the provision of health, education, employment and other services designed to achieve that goal.
- e. each of the proposed activities (described above in [3.1]) will disrupt the lifestyles of the Yindjibarndi People; in that, members of the Yindjibarndi People will for the lifetime of the proposed infrastructure be prevented from freely carrying out the above activities in the proposed Footprint areas.
- 3.4. The traditional burial grounds, wells, springs and other water courses, situated within the proposed Footprint area, are sites of particular significance to the

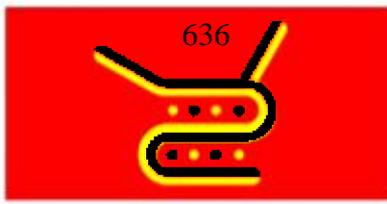
Yindjibarndi People, and contain objects of particular significance to the Yindjibarndi People, pursuant to traditional laws, customs and religious beliefs. As such, they are protected by s. 5 of the *Aboriginal Heritage Act 1972 (WA)* (“AHA”). Section 7 of the AHA provides, in effect, that the Yindjibarndi People, being a group of Aboriginal persons who usually live subject to Aboriginal customary law (as determined by the Federal Court in the Yindjibarndi Determination) are not required to disclose any information about such sites or objects, or otherwise to act contrary to any prohibition under Yindjibarndi customary law or tradition. The Objector has previously explained to the Applicant (through the testimony of Michael Woodley, in the Future Act Determinations) that it would contravene the traditional laws, customs and religious beliefs of the Yindjibarndi People, to disclose to any persons who are not a members of the Yindjibarndi People any information regarding significant places, sites or objects in Yindjibarndi Country or to invite such persons into Yindjibarndi Country, otherwise than under an agreement which ensures that visitors will respect the religious imperatives of Yindjibarndi Country (by going only to such areas as are sanctioned by the Yindjibarndi People) and honour the sacred principle of reciprocity (by sharing the fruits of their exploits in Yindjibarndi Country with the Yindjibarndi People).

- 3.5. The Objector repeats and relies upon the particulars set out above (at [3.1]) in respect of the work and activity that would be allowed under the proposed Miscellaneous Licence.
- 3.6. The work and activity that would be permitted to be carried out by the Applicant, under the proposed Miscellaneous Licence will, if done in a manner not sanctioned by the traditional laws, customs and religious beliefs of the Yindjibarndi People, alter, damage, or destroy the sites referred to above (at [3.4]) and thus constitute an offence under s. 17 of the AHA.
- 3.7. The objector says that the nature and magnitude of the activities, which the Applicant proposes to conduct in the proposed Footprint areas (described above, at [3.1]) are such that they will necessarily have an adverse impact upon the flora and fauna living in those areas, for example:
 - a. all plants and many creatures will not be able to get out of the way of the bulldozers and other construction equipment that will be used to create the proposed airstrip and the proposed road, and to lay the proposed pipeline and

- powerline and to clear the land that will be required to construct the proposed stockyard, the proposed conveyors, and the various other proposed buildings;
- b. thereafter, no plants will grow, and few, if any, creatures will thrive in the proposed footprint areas or their immediate surrounds.
- 3.8. As previously stated to the Applicant (through the testimony of Michael Woodley, in the Future Act Determinations) each part of Yindjibarndi country and each of the flora and fauna within each part of Yindjibarndi Country, including those within the proposed Footprint areas is, in accordance with the traditional laws, customs and religious beliefs of the Yindjibarndi People, spiritually related to Yindjibarndi human beings, through the Galharra, in such a direct way that any activity by the Applicant which causes physical or spiritual damage, injury or suffering to Yindjibarndi Country, or to the flora and fauna, in the proposed Footprint areas will, if done without the consent and agreement of the Yindjibarndi People, cause physical and spiritual harm and suffering to the Yindjibarndi People.
4. No Particulars are sought by the Applicant in respect of paragraph 4 of the Objection.
5. No Particulars are sought by the Applicant in respect of paragraph 5 of the Objection.
6. The Objector says that the Applicant has failed to discharge the specific obligations under the *NTA* or under: ss 33, 35 and 123 of the *Mining Act 1978 (WA)* (not 124 as the Applicant states in the Applicant's Request for Particulars); in the following ways:
- a. The Applicant has, contrary to s. 24MD(6A) of the *NTA*, failed to accord to the Objector the same procedural rights under the *Mining Act 1978 (WA)* ("*Mining Act*") as would be accorded to the owner or occupier of "ordinary title", which is defined in s. 253 of the *NTA* as "a freehold estate in fee simple" in both the land which would be affected by the proposed Miscellaneous Licence and to the land which adjoins or surrounds any waters that might be affected by the proposed Miscellaneous Licence.
 - b. Pursuant to s. 33 (1b) of the *Mining Act* the Applicant is required to establish, in respect of any land to which s. 29(2) applies, that both the owner and occupier of such land have consented in writing to the grant of the Miscellaneous Licence. The Applicant already knows (as a result of the

(testimony of Michael Woodley, in the Future Act Determinations) that the Yindjibarndi People are entitled to the benefit of s. 24MD (6A); however, the Applicant has neither sought nor obtained the consent in writing of the Yindjibarndi People to the grant of the Miscellaneous Licence. The Objector says that s. 29 (2) of the Mining Act does apply to the land the subject of the Miscellaneous Licence Application, because:

- i. the land is under cultivation; in that the Yindjibarndi People manage the resources of the land generally and bestow labour and attention on the land, regularly carrying out particular rituals and ceremonies, to promote the production of plants, and animals which are used or consumed by the Yindjibarndi People;
 - ii. there are burial grounds situated on the land;
 - iii. there are wells and springs situated on the land.
- c. The Objector does not press the grounds of the Objection that relate to s. 35 of the Mining Act.
 - d. The Objector does not press the grounds of the Objection that relate to s. 35 and 123 of the Mining Act



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

ATTACHMENT NINE

BEFORE THE WARDEN**AT PERTH**

Applications: L47/350, L47/354, L47/355, L47/361, L47/367 L47/368 and
M47/1453

Objections: KR102/090, KR201/090, KR232/090, KR233/090, KR253/090,
KR254/090, KR133/101; KR128/090, KR207/090 and KR270/090

BETWEEN:**FMG PILBARA PTY LTD****Applicant****AND****YINDJIBARNDI ABORIGINAL CORPORATION****Objector**

(Objections KR102/090, KR201/090, KR232/090, KR233/090, KR253/090, KR254/090 and KR133/101)

AND**T R RICHARDSON****Objector**

(Objections KR128/090, KR207/090 and KR270/090)

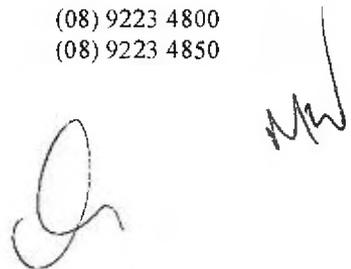
AFFIDAVIT OF MICHAEL WOODLEY SWORN 1 APRIL 2010

**IN SUPPORT OF OBJECTIONS BY YINDJIBARNDI ABORIGINAL
CORPORATION**

Lodged by:
Simon Millman
Slater and Gordon
Level 2, 27-29 St George's Terrace
Perth WA 6000
Solicitor for the Yindjibarndi Aboriginal Corporation

Tel: (08) 9223 4800
Fax: (08) 9223 4850

Dated: 1 April 2011



I, **MICHAEL WOODLEY**, Chief Executive Officer, of Yindjibarndi Aboriginal Corporation, PO Box 111 Roebourne, in the State of Western Australia, make oath and say as follows:

1. Introduction

- 1.1 I am a member of the Yindjibarndi People and the Chief Executive officer of the Yindjibarndi Aboriginal Corporation (**YAC**), the Objector in: KR102/090, KR201/090, KR232/090, KR233/090, KR253/090, KR254/090 and KR133/101 (“**Objections**”), which relate to applications by the Applicant, FMG Pilbara Pty Ltd (“**FMG**”), for the grant of six Miscellaneous Licences L47/350, L47/354, L47/355, L47/361, L47/367 and L47/368; and one Mining Lease Application M47/1453 (“**Tenements**”).
- 1.2 I make this affidavit in support of the YAC Objections and, except where I say otherwise, the facts set out in this affidavit are within my own knowledge and belief; and, to the best of my knowledge and belief, they are true and correct.
- 1.3 Pursuant to a determination made by the Federal Court in 2005 (“the **Yindjibarndi Determination**”), YAC is a Prescribed Body Corporate and the corporate Trustee for the *Yindjibarndi People* - the common law holders of the native title rights and interests, which were recognised in the Yindjibarndi Determination and in the Full Court’s decision, in *Moses v State of Western Australia* [2007] FCAFC 78 (“**Moses**”). “*Yindjibarndi People*”, is defined in *Moses* (at Schedule 3) and means all “*Aboriginal persons who recognise themselves as, and are recognised by other Yindjibarndi People as, members of the Yindjibarndi language group*”.
- 1.4 The Native Title Determination Application that was the subject of the Yindjibarndi Determination did not cover all of the traditional country of the Yindjibarndi People; so, on 9 July 2003, together with Ned Cheedy, Guinness Gilby (now deceased), Mavis Pat, Aileen Sandy, Edie Whalebone (now deceased), Kenny Jerrold (now deceased), Thomas Jacob, Sylvia Allen and Alum Cheedy, I lodged a further Native Title Determination Application (“the Yindjibarndi #1 Application”) in the Federal Court of Australia (Federal Court Reference: WAD 6005/03). The seven of us who remain are the Applicant for the Yindjibarndi #1 Application and are authorised, jointly, by all members of the native title claim group to deal with all matters arising under the Native Title



Act in relation to that application. The area of land covered by the Yindjibarndi #1 Application adjoins the southern boundary of the area that was the subject of the Yindjibarndi Determination and is part of the traditional country of the Yindjibarndi People.

- 1.5 As the Prescribed Body Corporate for the Yindjibarndi People, YAC is required to act for and on behalf of the Yindjibarndi People in all matters affecting the native title rights and interests recognised in the Yindjibarndi Determination. YAC is also required under its Constitution, to maintain, protect and preserve the traditional laws, and customs of the Yindjibarndi People and has power to take and defend legal proceedings relating to the traditional land of the Yindjibarndi People and to heritage issues.
- 1.6 Each of the Tenements, in this case, is situated in the area of land that is the subject of the Yindjibarndi #1 Native Title Determination Application; and all but one, are wholly located in an area of unallocated Crown land, which is, and always has been, occupied, used and enjoyed by Yindjibarndi People. This area is where I go each year to carry out my cultural obligations, which I describe below. The L47/350 Tenement will affect an area of the Mount Florence pastoral lease. This area also is occupied, used and enjoyed by Yindjibarndi People; and always has been, for ceremonial and other purposes which are also described below.
- 1.7 I have read the affidavit of Damon Edwards that was filed in this matter on 4 March 2010. Mr Edwards describes what FMG is planning to do in these areas for FMG's so-called "Solomon Project". FMG's project will destroy sacred sites, burial grounds and other areas, which are significant to the Yindjibarndi People; and it will prevent us from carrying out the religious ceremonies and ritual's that we have always performed in those areas. FMG's project has already broken the unity that the Yindjibarndi community has always enjoyed and, if it goes ahead, it will cause further damage to our community.
- 1.8 To explain how and why this will happen, it is necessary to say something about how the Yindjibarndi People works, as a community; and how we are connected to how we are connected to the country where FMG wants the Tenements.

Two handwritten signatures in black ink are located at the bottom right of the page. The first signature is a stylized, cursive 'S' or 'D'. The second signature is a more complex, cursive scribble.

2 Learning about Yindjibarndi Law and Culture

2.1 In addition to being the Chief Executive Officer of YAC, I am also the Chief Executive Officer of Juluwarlu Group Aboriginal Corporation (“*Juluwarlu*”), which is the Law and Culture arm of the Yindjibarndi. *Juluwarlu*’s mission is *Ganyjagayi Mirnu* (keeping knowledge) and to this end, we collect, record, document and broadcast the language, history, and culture of *Yindjibarndi*. *Juluwarlu* owns and operates a community television station, JTV34, which is situated in Roebourne, and produces documentaries and films about our history and culture. *Juluwarlu* also publishes books and pamphlets depicting the importance of our country our language and our Law. *Juluwarlu* tries to use the most effective methods and technologies, to educate and train Yindjibarndi children in our Law and culture; and to create employment opportunities that allow us to maintain our connection with our country and to carry out our obligations, under our Law, to look after Yindjibarndi country and the Yindjibarndi People.

2.2 All up I have spent more than 20 years learning everything I can about Yindjibarndi Law and culture from the old Yindjibarndi Law Bosses of my grandfather’s generation. They have taught me what they learned from their old Law Bosses: the ceremonies, songs and stories for *Yindjibarndi*; the sites and areas in Yindjibarndi Country, which are significant to us because of our religious beliefs; the ancient language we use in our ceremonies; and the dreaming meditation (*Buyawarri*) we use to receive the ancient knowledge from our country. I have worked hard on this because, like other senior Yindjibarndi Lawmen in the present generation, such as Angus Mack and Fabian (“Charlie”) Cheedy, I believe the survival of Yindjibarndi Law and culture is important, not just for Yindjibarndi but for everyone. The continued practice of our *Birdarra* Law ceremonies keeps our community strong; they ensure the survival of our religion; provide a proper structure to resolve disputes and help young men to keep away from the grog and out of the prisons.

2.3 In 2004, I met Dr Kathryn Trees. Dr Trees was doing field work for her report to the WA Law Reform Commission. In her report, Dr Trees wrote how she witnessed a strong revival of our *Birdarra* Law ceremonies, following a slump in attendance caused by the deaths of the old Law Bosses. When Dr Trees

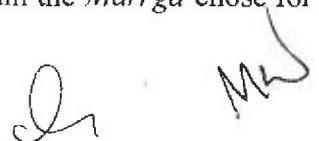
On - *MW*

reported that this revival was being “led by a younger generation, who are in their 30’s”, she was referring to me, to Angus Mack and to Charley Cheedy. Together, we had to take responsibility from the old Law Bosses because most of the men in our fathers’ generation had lost themselves to the grog in the 1960’s and 70’s mining boom. This was the reason why my grandfather, Woodley King, pulled me out of school in sixth grade and took me out to *Ngurrawana* in our traditional country at Millstream. He wanted to make sure I learned everything about Yindjibarndi Law and culture so it did not end with his generation.

- 2.4 Today, thanks to him and the other old Bosses, Yindjibarndi Law and culture is still going strong; and I am seen as the man responsible for making sure our Law ceremonies are conducted each year in the proper way.
- 2.5 To explain why FMG’s proposed Solomon Project is not good for the Yindjibarndi community requires an understanding of our religious beliefs and practices. In the past, Yindjibarndi Law Bosses would not talk about our religious beliefs and practices in public, and a lot of sacred sites and important areas were destroyed. We have decided to talk about them, in the hope that by explaining these things we will be able to save what has been left to us, for our future generations.

3 *Yindjibarndi Religious Beliefs*

- 3.1 In the time of creation, which we call *Ngurranyujunggamu*, the world was still soft; and the *Marrga* (creation spirits) walked over the land and made the world as we see it today. Throughout Yindjibarndi country you can still see pictures of the *Marrga*, which they carved in rocks and left behind as proof that they are still here.
- 3.2 During the *Ngurranyujunggamu*, laws were given to the *Marrga* by *Minkala*, our name for God. However the *Marrga* foresaw their own passing, and so they gathered together all the *Ngaardangarli* (Pilbara Aborigines), at *Gumunha*, in the heart of what is now Yindjibarndi country. In those times, all the *Ngaardangarli* in the area spoke a common language, were of the one group, and carried no responsibility for any particular country or Law. The *Marrga* divided the *Ngaardangarli* into groups - Yindjibarndi, Ngarluma, Banyjima, Gurruma, and others - and put each group into the domain the *Marrga* chose for

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their language and Law. Each group was commanded by the *Marrga* to speak and look after their domain in accordance with the language and Law of that domain.

- 3.3 Today, Yindjibarndi country is acknowledged by all *Ngaardangarli* as being a holy place, the centre where all Law began; and the Law carried by Yindjibarndi, which is called "*Birdarra*", is referred to as *Thudungu*, as the big sister 'sitting on top' of all other Law. Yindjibarndi do not say this; instead, we refer to the Law of our neighbours, which is called "*Wallijingha*", as the "top Law". In this way, we each show our respect for the other's Law.
- 3.4 The original common language of the *Ngaardangarli* is preserved in the *Burndud*, the song cycles we sing each year in the *Birdarra* Law ceremonies. My grandfather and the other old Law Bosses taught me that language so it would not be lost; and today I have transcribed over a hundred of these songs – word for word: its name; what it is; and what it means.

4 Yindjibarndi *Birdarra* Law - Ceremonies and Rituals

- 4.1 The *Birdarra* is like our Bible: it contains not only the commandments of *Minkala* as taught by the *Marrga* but also the history and culture of *Yindjibarndi*.
- 4.2 In accordance with the *Birdarra*, I and other Yindjibarndi people believe that Yindjibarndi people, Yindjibarndi language and Yindjibarndi country (and everything that is in Yindjibarndi country, both past and present) are not different things, but related parts of the one thing, called "*Yindjibarndi*" - which has existed since the *Ngurranyujungamu*. This is why I, and the other Yindjibarndi lawmen, believe we must continue to look after Yindjibarndi country, in the way the *Birdarra* says we must - because we don't just belong to Yindjibarndi country, we are Yindjibarndi country, and if the Law is broken we suffer. We believe the *Marrga* are our spiritual ancestors and that they, along with the spirits of all our old people still reside in our country, in its rivers, creeks, springs, and hills; that they see and feel everything that happens to *Yindjibarndi*; and that they watch over us to make sure we do what we are required to do, under our law, in the proper way.

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4.3 Looking after country in the proper way means performing the ceremonies and rituals we are required to perform each year; speaking and singing to Yindjibarndi country in Yindjibarndi language, using the country, sharing its resources in accordance with our Law; and, most importantly, maintaining its heartbeat - the *Birdarra*. We believe Yindjibarndi country is alive and is spiritually connected to us; so, if we do not follow our Law it can grab us in a way that can hurt us or kill us. This is why it is essential we to continue follow our Law and to practice our religious beliefs, rituals and ceremonies.

4.4 I will describe some of the ceremonies and rituals we perform each year in the area that will be affected by the Tenements; but first it is necessary to explain how the structure of authority in Yindjibarndi society is connected to Yindjibarndi country under Yindjibarndi Law.

5 Yindjibarndi Galharra

5.1 The most important part of the *Birdarra* Law is *Galharra*.

5.2 *Galharra* is the system of Law that governs all our relationships. Under this system, everything that is *Yindjibarndi* is divided into four groups: *Banaga*, *Burungu*, *Garimarra* and *Balyirri*. Every animal, every plant and water place, the sun, the moon and the stars; fire, wind and water; and every Yindjibarndi child that is born – everything belongs to one of these groups.

5.3 *Galharra* tells us how a person in one group must behave in relation to all people and things in that same group and in relation to all people and things in the other three groups. *Galharra* is the centre of everything: it tells each of us what we must do and what we must not do in our relationships with each other and in our relationships with our country and its resources.

5.4 *Galharra* sets the rules for sharing work, responsibilities and resources in Yindjibarndi country. For example, the *Galharra* of each man and woman determines their roles and responsibilities at *Birdarra* initiation ceremonies and at funeral ceremonies. These roles and responsibilities change, depending on the *Galharra* of the initiate and so on. *Galharra* tells us who will be the bosses, and who will be the workers at these ceremonies.



- 5.5 *Galharra* also tells us who we can may marry and who we must avoid; who we must care for and who must care for us; who we must defer to and who must defer to us.
- 5.6 The *Galharra* system also connects each Yindjibarndi person to a particular part of their *Ngurra* ("home area") and provides a structure of authority for our community.
- 5.7 In Yindjibarndi country, *Galharra* determines who should first approach a particular *Yinda* (permanent pool) or *Wundu* (watercourse); and who should drive any particular *Thalu* (sacred site). If a man wants to work with wood, he will make sure that the tree shares his *Galharra*; otherwise it will be very difficult for him. On the other hand a person should not eat the meat of an animal that has the same *Galharra*, because that animal is his or her brother or sister, and eating its meat will make them sick.
- 5.8 I, along with other Yindjibarndi people, visit Yindjibarndi country all the time; and whenever we can, we travel with members of each of the four *Galharra* groups. This is because there are particular parts of our country that require members of particular *Galharra* groups to collect things and to perform the rituals and ceremonies. Having members from each of the *Galharra* also means we keep the country in balance.
- 5.9 The Yindjibarndi *Galharra* Law today is the same law given by *Minkala* to the *Marrga*. It was passed down to us, by the *Marrga* and our old people, and we are obliged to keep it going. That is what we have done, even through the hardest of times, and it is what we must keep doing. *Galharra* is a relationship system, based on respect and reciprocity - it binds us together as a community and ensures that resources of our country are shared by the present generation and preserved for future generations.

6 *Ngurra*

- 6.1 In Yindjibarndi language, the word "*Ngurra*" can be used in three different ways. Firstly, it means "the whole of Yindjibarndi Country" because this is the "home" for Yindjibarndi. Secondly, it means the "home area" for the *Marrga* spirits that live in different areas of Yindjibarndi Country. For example, the area where FMG wants the Tenements is called *Ganyjingarringunha Ngurra*. This is



because *Ganyjingarringunha* is the Yindjibarndi name for the *Wundu* (watercourse) that runs roughly north-south through the western edge of the area that will be affected by the Tenements. That watercourse is the “home” of *Barrimirndi*, the *Marrga* who, in accordance with our beliefs, created all the *Wundu* in Yindjibarndi Country during the *Ngurranyujunggamu*.

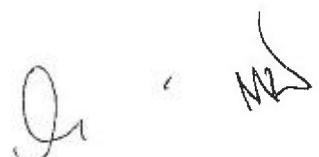
- 6.2 The word “*Ngurra*” is also used to refer to 13 different areas, in Yindjibarndi Country, which are “homes” for the “*Ngurrarangarli*” - our name for Yindjibarndi human beings - whose spiritual beings come from, and then return (after their passing) to these *Ngurra*. We often refer to *Ngurrarangarli* in a shorter way, as “*Ngurrara*”. Each of these 13 *Ngurra* is divided into two parts by a *Wundu* (a river or watercourse) from which the *Ngurra* takes its name; and, into four areas - one area for each of the four *Galharra* groups. The *Banaga* and *Burungu* groups are on one side of the *Wundu*; and, *Garimarra* and *Balyirri* are on the other side. We call the *Banaga* and *Burungu* side “*Walhany*”; and the *Garimarra* and *Balyirri* side “*Ngarrli*”. These divisions are very important for our ceremonial activities.
- 6.3 Each of these 13 *Ngurra* holds the spiritual life-force of all the ancestors who belonged to the *Ngurra*; each has its own special *Thalu*, which must be worked by the *Ngurrara* to control creatures and other things in Yindjibarndi country; and each has its own sacred resources, such as *Gandi* (sacred stones used in initiation ceremonies) and *Yarna* (ochre) which is used by the *Ngurrara* in rituals or ceremonies.
- 6.4 In the area covered by the Yindjibarndi #1 Native Title Determination Application, there are four of these *Ngurra*. Looking west to east, they are called: *Garliwinyji*, *Buthurnha*, *Winyjuwarra* and *Ngurrbanha*. Today these are among the strongest *Ngurra* in Yindjibarndi country, because we have always been able to access them to do what we need to do, under our law, to look after them, and to look after the *Ngurrara* who come from them. The area where FMG wants the Tenements is in *Garliwinyji Ngurra*; the proposed Miscellaneous Licence L47/350 also goes into *Buthurnha Ngurra*.

7 *The Authority Structure in the Ngurra*

- 7.1 Under the *Birdarra* Law, Yindjibarndi women exercise authority over relationships: between women; between men and women; and between children

and adults; and Yindjibarndi men exercise authority over Yindjibarndi Law and Yindjibarndi Country. It is not my place to talk about how women exercise their authority; so I will only talk about the structure of authority for Yindjibarndi Law and Yindjibarndi Country.

- 7.2 For each of the 13 *Ngurra*, there are four bosses, which we call “*Mirduwarra*” - one boss for each of the four *Galharra* groups. One of these *Mirduwarra*, the most knowledgeable, in our Law, is also called “*Tharngungarli*” or “*Tharngu*”. The *Tharngu* is the overall boss for both the *Ngurra* and the *Ngurrara*; and is assisted by one of the other *Mirduwarra*, who is called “*Minga-Margu*”. He is the *Mirduwarra* who is “closest” in knowledge to the *Tharngungarli*; and is therefore likely be the next *Tharngu* for the *Ngurra*. All *Mirduwarra* are what we call “senior Lawmen” in English; and the *Tharngu* and *Minga-Margu* are what we call the “Law Bosses” in English.
- 7.3 The *Tharngu* who is acknowledged and respected as the most knowledgeable, in the *Birdarra* Law, is also called “*Nyambali*”. He is the Chief Law Boss for *Yindjibarndi*. The *Nyambali* also has a *Minga-Margu* - the *Tharngu* who is “closest” in knowledge to him; and is therefore, likely be the next *Nyambali*.
- 7.4 The *Nyambali* and the *Tharngu*, in accordance with our beliefs, are directly accountable to the *Marrga*, for making sure the *Birdarra* continues to be followed, and that sacred places, important areas and objects in Yindjibarndi country are properly protected and preserved for the future generations of *Yindjibarndi*. This is why the *Nyambali* will not make decisions alone. Instead, important decisions affecting Yindjibarndi Law and Yindjibarndi Country are made by what we call the “*Nyambali-Tharngungarli*”, the *Nyambali* and the *Tharngu*, sitting together as one body.
- 7.5 The *Nyambali-Tharngungarli* still meets today to discuss important issues and reach consensus on what fits best with the *Birdarra*. But these days, important decisions affecting country are made by consensus of all members of the Yindjibarndi community, sitting together in a community meeting, in which the *Nyambali* and *Tharngu* provide advice and guidance. This is because the authority of the Law Bosses today really depends on whether the Yindjibarndi People, as a community, wishes to continue to practice the *Birdarra* Law ceremonies and to uphold the *Birdarra* Law.



- 7.6 Ned Cheedy, who at 105 is the last of the old Law Bosses, is the current *Yindjibarndi Nyambali*. He is also the *Tharngu* for *Winyjuwarra Ngurra*; the *Mirduwarra* for the *Balyirri Galharra* group in that *Ngurra*. Thomas Jacobs is the *Tharngu* for *Buthurnha Ngurra* and the *Mirduwarra* for the *Balyirri Galharra* group in that *Ngurra*; and I am now the *Tharngu* for *Garliwinyji Ngurra*, the *Mirduwarra* for the *Garimarra Galharra* group and *Minga-Margu* for Ned Cheedy.
- 7.7 As was said many times, in the evidence given by Yindjibarndi people, during the Federal Court hearing for the Yindjibarndi Determination, under our law, if someone other than a *Ngurrara* wants to go to a particular area in Yindjibarndi country, they should let the *Tharngu* for that *Ngurra* know; and if someone other than an Yindjibarndi person wants to go there they should ask permission from the *Tharngu* who will speak to the *Ngurrara* before saying yes or no.

8 Obligations for Strangers in Yindjibarndi Country

- 8.1 When *Ngaardangarli Manjangu* (Aboriginal strangers) from neighbouring countries wish to come into Yindjibarndi country, the *Tharngu* must under our Law find out who they are and what they intend to do. If their intentions are worthy, we will then do the *Binjimagayi* ritual and work out how their *Galharra* fits into our *Galharra* system. If there is any doubt about their intentions, the Lawmen will insist they do the *Binga* ritual where we impose a duty to test their character. For example, they might be asked to hunt for, kill, and cook a particular animal for the elders. If they fail to do this the proper way, they might be required to do it again or they might be sent back to their own country. Going through the *Binjimagayi* ritual and, if necessary, the *Binga* ritual, guarantees that they are fully accepted by *Yindjibarndi* as related visitors to our community because they are now part of our *Galharra* system and must follow our rules; they now have fathers to watch over them and guide them in Yindjibarndi country and make sure they are safe; and, because they have shown us that they know and accept our *Galharra* Law, we are assured that they will honour the reciprocal rights and obligations under our Law.
- 8.2 Nowadays, these rituals are still performed during our law time; outside of law time *Ngaardangarli* who wish to visit Yindjibarndi country will ring us and let us know what they wish to do. If they are just passing through there's no



problem, but if they want to use the resources of Yindjibarndi country we still need to find out who they are and what they intend to do; and they still need our permission and have to share what they get with us.

- 8.3 Sometimes, fitting someone into our *Galharra* system can be difficult. For example, some years ago, my sister, Roxanne, and my cousin, Jenny, got married – and both of their husbands are whitefellas. Their marriages created a lot of discomfort in the Yindjibarndi community because under our law the boys were *Manjangu* and in such circumstances no one knew how to relate to them.
- 8.4 Every year, after they got married, the Yindjibarndi Lawmen would discuss the two boys and what to do about their position in our community. Concerns were raised by initiated men in the *Galharra* group that had marriage rights with the two women. They complained about how they had been robbed them of the possibility of marriage with the two women; and they wanted to be *Mangagji* for the two boys (which means allowing them to initiate the boys). This would result in the men feeling contented in allowing that relationship to continue. Their desire was not to hurt the boys, but to set things right in the community by fitting them into our social structure so that they then come under the same rules as everybody else. However, the Lawmen wanted to make sure that the boys were fully committed to the women they had married and that they respected our community and our Law. So we waited.
- 8.5 The boys themselves were very keen to go through the Law and each year they attended the ceremonies and worked hard on the side to help out. Finally, we put these two boys through the law. Now, under our *Birdirra* Law, they belong to a *Galharra* group and we have to treat them accordingly. This does not mean that these boys now have rights in Yindjibarndi country - their wives and children have rights – but what it does mean is that everyone in the community is confident that they will not break our Law, and so the community is at ease.
- 8.6 With mining companies, like FMG, it is not possible to include them in our *Galharra* system and the only alternative is an agreement which sets out rules about how they will relate to *Yindjibarndi*. Our Law requires us to let *Manjangu* come into our country and share with them the resources in our country but only when there is a proper relationship based on reciprocity and respect.



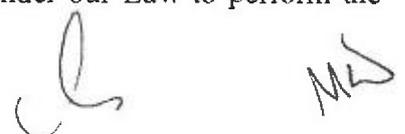
8.7 There is no agreement between FMG and the Yindjibarndi People. YAC has been trying to negotiate an agreement for a number of years; but FMG has insisted on having the same terms it previously negotiated with other Aboriginal groups in the Pilbara and so FMG refused to consider our proposals. Instead, over the past twelve months, FMG worked hard to create division in our community and then negotiated an agreement with a group of breakaways. The agreement that has been negotiated with that group is not based on reciprocity and respect: it makes FMG master of our country and the Minister master of our sacred sites; it provides a minimal amount of compensation to a select group of people, in return for the loss of our procedural rights - to object to the grant of mining tenements or other interests required by FMG (or anyone else with whom FMG has an agreement) anywhere in Yindjibarndi country at any time in the future; and prohibits the Yindjibarndi People from ever claiming compensation for the loss of our traditional rights - to occupy, use and enjoy our traditional country and to carry out our religious ceremonies and rituals in any part of our country that FMG wants.

8.8 YAC will not sign such an agreement and neither will the Native Title Applicant.

8.9 If the Tenements are granted and FMG's Solomon project goes ahead it will prevent me and other Yindjibarndi people from continuing to exercise our traditional rights in the area affected by that project. As I said earlier, a large part of this area is unallocated Crown land that is, and always has been occupied, used and enjoyed, exclusively, by Yindjibarndi people; it contains hunting grounds, burial grounds, and sacred sites that have always been used by us and continue to be used by me and other Yindjibarndi people for the religious ceremonies and rituals, which we are required to perform under our Law.

9 The Yindjibarndi *Wuthurru* (introduction) Ritual

9.1 For example, there are countless water places in our country: rivers, creeks, springs, and permanent pools and whenever people approach one of these places, including those in *Ganyjingarringunha Ngurra* where FMG wants the Tenements, the *Ngurrara* for the area are required to perform the *Wuthurru* (introduction) ritual. This ritual introduces the people to the *Barrimirndi* and to the other *Marrga* in the area. The requirement under our Law to perform the

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Wuthurru ritual applies to all Yindjibarndi people and also to *Manjangu* (strangers) - although strangers must be introduced by an Yindjibarndi person. In this ritual we first talk to the country, in its language:

Ngurra gangnagarrinha yingu buluyugayi birbiwarni wanngayi thurdud, mirda nhantharri bayarri...

Country we come here today to visit you and talk straight please don't get angry and harm us...

Ngurra nhantharri wanggayi jujungu ngarringu nhurla yindangga mirdawa nhantharri bayarri...

Country we also ask you to let the Barrimirndi snake who lies here in this permanent pool know that we are here and ask him don't harm us...

Juju yinda yambali gangnagarrinha buluyugayi barni yala nyinguwayi margurra barni mirda nhantharri bayarri...

Barrimirndi great snake and boss of this permanent pool we come to visit you, to sit by your side in respect of your laws- don't harm us...

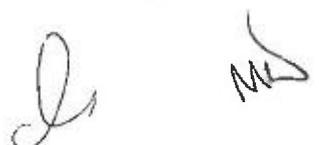
Then we pick up a handful of water, from the pool, river or creek, take a sip and spray it back into the water. When Yindjibarndi people perform this ritual the *Barrimirndi* and the *Marrga* recognise us as *Yindjibarndi*, and accept the *Manjangu* as our related visitors. This keeps us all safe.

- 9.2 If the Tenements are granted and FMG's Solomon project goes ahead it will prevent me and other *Garliwinyji Ngurrara* exercising our traditional right to perform the *Wuthurru* ritual in *Ganyjingarringunha Ngurra*.

10 Yindjibarndi *Thalu* Ceremonies

- 10.1 It is my duty, and the duty of the other senior *Yindjibarndi Lawmen* to regularly visit different parts of Yindjibarndi country to perform *Thalu* ceremonies - these ceremonies let the country know we are still here, that we haven't forgotten our country, and that it should not forget us. Those of us who work the different *Thalu* must be the correct *Galharra* for the particular *Thalu* and must get painted up with local ochre. Again, we must ask the *Marrga* in the area for permission to break the leaves off a tree, which we then use to brush the *Thalu* from side to side, while at the same time talking and calling out in Yindjibarndi language.

- 10.2 For example, there is a *Maliya* (honey) *Thalu* located just south of the area where FMG wants the Miscellaneous Licence L47/354, and each year this *Thalu* is worked by men from the *Banaga* and *Burungu Galharra* groups. The ochre that we need to work this *Thalu* comes from the ochre quarry that is located in the area covered by one of the Mining Leases (M47/1409) that was the subject of the appeal to the Full Court. Under our Law we are required to cultivate *Maliya* in Yindjibarndi country, by performing the *Thalu* ceremony while telling the *Maliya Thalu* to fill the trees, the Snappy Gum, the River Gum, the Ghost Gum, and the small caves with honey.
- 10.3 Working the *Maliya Thalu* in Yindjibarndi country requires us to use the ochre (“*Yarna*”) from an ochre quarry located in the area covered by M47/1409. If FMG mines that area in the way that it plans to, there will be no ochre left in that place and we will no longer be able to exercise our traditional right to carry out our ceremony at the *Maliya Thalu*.
- 10.4 There are *Thalu* for everything in Yindjibarndi country and working them is how I, and the other senior Lawmen, protect and control the fish in the rivers, the birds in the trees and all the other creatures, bush foods and bush medicines in Yindjibarndi country. This is how we cultivate the things we need to get from our country - if we don't do this they will become harder and harder to find, until there are none left.
- 10.5 There are other kinds of *Thalu* in Yindjibarndi country. Some are used for healing. We call the healing *Thalu*, “*Mawarn*”. *Mawarn Thalu* must be worked by senior Lawmen who have been given special powers; and we call such men “*Mawarnkarra*”. One of our *Mawarn Thalu*, *Tharndibirndinha Marnda* is a hill (“*Marnda*”) located in the area that will be affected by Miscellaneous Licence L47/350. Attached to this affidavit is a map, marked “**MW1**”, which shows the location of the *Tharndibirndinha Marnda Thalu*. This *Thalu* is still used today by Yindjibarndi *Mawarnkarra* for healing ceremonies and the *Yarna* (ochre), which is needed to work this *Thalu*, is collected from a site situated to the west of the *Tharndibirndinha Marnda Thalu*. That *Yarna* site is also shown on attachment MW1.
- 10.6 If the Tenements are granted and FMG's Solomon project goes ahead it will prevent the Yindjibarndi *Mawarnkarra* exercising their traditional right to obtain

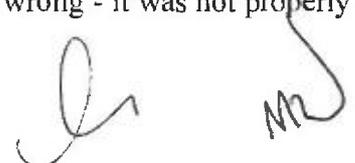
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the ochre required for healing ceremonies at *Tharndibirndinha Marnda Thalu* and prevent Yindjibarndi people from exercising their traditional right to be healed by *Mawarnkarra* at *Tharndibirndinha Marnda Thalu*.

11 The Birdarra Initiation Ceremonies

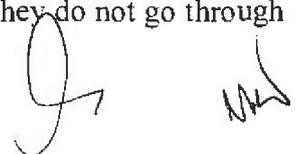
- 11.1 Every year before we put our boys through the *Birdarra* initiation ceremonies, I and other Lawmen must travel to the various *Ngurra* in Yindjibarndi country, to collect *Gandi* - the sacred stones that are used in the initiation ceremonies. These stones are the only stones we can use in the ceremonies. There are four songs that we sing, to get permission from the *Marrga* to find, take and use the *Gandi*. Those songs are sacred and cannot be written down. One of the areas we go to each year is the area that will be affected by the Tenements and this *Gandi* area is also shown on the map attached as MW1.
- 11.2 As I said earlier, *Ganyjingarringunha* is the Yindjibarndi name for the *Wundu* (watercourse) that runs roughly north-south through the western edge of the area that will be affected by the proposed Tenements; and, *Ganyjingarringunha Wundu Yaayu* is what we call the two arms of the watercourse that run, roughly west-east through the Tenements into *Ganyjingarringunha*. "Yaayu" is the Yindjibarndi word for "east". The bed and banks of *Ganyjingarringunha Wundu Yaayu* is one of two areas where we collect *Gandi* for the initiation of boys from *Garliwinyji Ngurra*; and there are many boys of different ages from that *Ngurra*.
- 11.3 Also as I explained earlier, each of the 13 *Ngurra* in Yindjibarndi country is divided into two parts by a watercourse and has four *Galharra* areas. The *Banaga* and *Burungu* groups are on the *Walhany* side of the watercourse; and, *Garimarra* and *Balyirri* are on the *Ngarrli* side. The *Gandi* area for each *Ngurra* is in the same way divided into two sides by a watercourse, and those sides are also called "Walhany" and "Ngarrli". As each boy reaches the right age for initiation, the *Mirduwarra* for his *Galharra* must travel to the *Gandi* area on either the *Walhany* side or the *Ngarrli* side of the *Ganyjingarringunha Wundu*, and perform a ritual that allows us to find and take the *Gandi* for the boy's ceremony. In *Garliwinyji Ngurra*, the *Ngarrli* side is *Ganyjingarringunha Wundu Yaayu*. It is here (and nowhere else) that *Gandi* for the *Garimarra* and *Balyirri* boys, from *Garliwinyji Ngurra*, must be found.

- 11.4 The ritual to find the *Gandi* involves the dreaming meditation we call “*Buyawarri*”; and what needs to be understood is that this ritual is not just a fly in and fly out thing. You have to camp there; and you have to sing the four sacred songs until you put yourself in the country, become one with it, so that you are “*Buyawarri*” - dreaming with the country.
- 11.5 My first experience of this ritual was in 1994, when my grandfather and I went with Ned Cheedy and some of the other old Law Bosses to the *Gandi* area for the *Winyjuwarra Ngurrara*, on the *Ngarrli* side. We camped there for a couple of days, with the Bosses singing the country. Then on the third day we followed old Cheedy as he walked along a creek bed, going this way and that, for about three kilometres, all the time singing these four songs, over and over, until he finally knelt down and started digging. I was impatient and wondered why he couldn't have just gone in a straight line to the place. But then, while he was still digging, I saw a *wili-wili* get up a few kilometres away and start travelling towards us. It too went this way and that, until finally it came to the place where Cheedy was, and there, right over the hole he had just dug, it vanished.
- 11.6 The knowledge that is received during this ritual to find the *Gandi* is not something you can learn; it is something that is given to you. Some people take part in our Law ceremonies for a long time and never get the knowledge; but then, for some, the mind opens and the knowledge comes through. I have performed this ritual in the bed and banks of *Ganyjingarringunha Wundu Yaayu* on many occasions for the *Garimarra* boys, from *Garliwinyji Ngurra*.
- 11.7 Once found, the *Gandi* must be handled very carefully by the right *Mirduwarra*, who must then hand it to the father of the boy. The father then hands it back to the *Mirduwarra* to show his trust in the *Mirduwarra*, and the *Mirduwarra* must then shape and sharpen the *Gandi*, with the utmost care, so that it is properly prepared and can be used on the boy, for his initiation, without causing any harm.
- 11.8 If any of these things are not done exactly as required under our Law it puts the boy in great danger; both his body and his spirit could be harmed by the *Gandi* and, in the worst case, it may cause his death. In the past, when such tragedies have happened, it was always because the *Gandi* was wrong - it was not properly

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prepared, it was handled by the wrong person, or it got mixed up and used on the wrong boy.

- 11.9 It is not possible for me to say precisely where the *Gandi* are located. I can only show the spots where they have been found previously; and I have done this, for the area of the proposed Tenements, on the attached map, marked "MW1".
- 11.10 As for the future, all I can say is that the present day *Mirduwarra* agree they would not look beyond 250 metres on either side of the centre of the *Wundu*, because *Gandi* are unique cold stones, which are kept cold by the *Wundu* - so the further you go away the deeper you would have to dig.
- 11.11 If the Tenements are granted and FMG's Solomon project goes ahead it will prevent me and the *Balyirri Mirduwarra* exercising our traditional right to conduct the ritual to find *Gandi* for the *Garimarra* and *Balyirri* boys from *Garliwinyji Ngurra*; it will prevent future generations of boys from *Garliwinyji Ngurra* exercising their traditional right to go through their initiation ceremonies; it will prevent me and other *Garliwinyji Ngurrara* exercising our traditional right to camp at *Ganyjingarringunha Ngurra* so we can perform the ritual and to fish and hunt in that area, to collect bush tucker and bush medicine and to look after the sacred sites and areas of significance in that area; it will also prevent us exercising our right and obligation, under our traditional Laws, to teach our younger generations about the laws, customs and religious traditions that have always been associated with that area.
- 11.12 The *Birdarra* initiation ceremony is the first stage, of a long process, for those boys who choose to earn respect in our community by becoming Yindjibarndi Lawmen. It introduces the boy to our rich culture and our religion, shows him how he is related spiritually to Yindjibarndi country, and gives him a sense of what he can look forward to and enjoy, if he continues to go through our ceremonies. In this way, we make young men strong; it helps keep them away from alcohol, drugs and gaol, and gives them an important reason to continue to live and to struggle against the problems that have been hurting our community for a long time.
- 11.13 When our boys go through their initiation ceremonies they learn about our law and culture from, and listen to and accept the authority and guidance of, the senior Yindjibarndi Lawmen and the Law Bosses. When they do not go through

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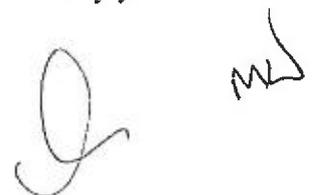
these ceremonies the Lawmen lose their connection with them, and their authority over them; and it is these boys we see all the time getting into trouble, with the grog and the drugs, ending up dead or in prison. They are incomplete, stumbling around, lost like so many of our parents' generation. This is why the continuation of our *Birdarra* Law ceremonies was so important to my Grandfather and the other old Law Bosses. If they stop, it will be the end for Yindjibarndi.

12 Yindjibarndi *Yamararra*

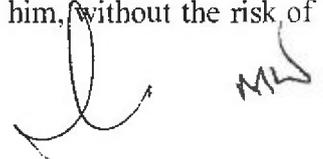
- 12.1 There are numerous *Yamararra* (caves) in the area that will be affected by the Tenements and these too are shown on the map attached as MW1. These *Yamararra* overlook the *Wundu* (riverbed). Our Yindjibarndi ancestors used these *Yamararra* as burial chambers when senior lawmen passed away. The Law Bosses would prepare the *Malgarri* (deceased) for burial by covering the body in *Maliya* (honey); and then wrapping the body in paper bark before placing it in the *Yamararra*. The physical remains of one of our ancestors were found in one of the *Yamararra* that will be destroyed by FMG's project during a recently survey conducted by FMG and members of the breakaway group in the Firetail part of its Solomon project and I am currently working with DIA on a management plan for this issue.
- 12.2 If the Tenements are granted and FMG's Solomon project goes ahead it will prevent me and other Yindjibarndi people from exercising our traditional right to look after and preserve the burial grounds of our ancestors.

13 *Yawarnganha* and the *Yulbirri Thurru* Ritual

- 13.1 Yindjibarndi people have continued to exercise and enjoy our traditional rights in the Mount Florence Pastoral Lease area, although we have to make arrangements to do that so our activities don't clash with pastoral activities. But this has never been a problem because the current owners of the Pastoral Lease, like those who had pastoral interests in that area before, have always respected the traditional rights of Yindjibarndi people; so we have always been able to go there to camp, hunt and fish, collect bush tucker and bush medicines, and perform particular religious ceremonies. And we do this every year.

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- 13.2 The area on the Mount Florence Pastoral lease that will be affected Miscellaneous Licence L47/350 is an area we call "*Yawarnganha*". *Yawarnganha* is a flat plain that lies between *Gambulanha* (the Yindjibarndi name for the Hamersley Ranges) and *Birdarrdamra* (the Yindjibarndi name for the Chichester Ranges).
- 13.3 *Yawarnganha* is very important for two reasons. Firstly, because this is the only area in Yindjibarndi Country where the sacred trees called "*Wirndamarra*" grow and we use the wood from these trees to make certain sacred objects which identify Yindjibarndi people with our Law and country so no other group can steal our lands. Secondly, *Yawarnganha* is the only place in Yindjibarndi country where the emu run; and, during our Law time, which occurs between October and February each year, Yindjibarndi people have to go to *Yawarnganha* and hunt emu for the *Yulbirri Thurru* ritual. This is a ritual performed by grandfathers with their newly initiated grandsons. The young man must hunt for an emu on the *Yawarnganha* plain; and, once he has one, he must take it to one of the *Yulbirri Thurru* areas (chosen by his grandfather) which surround the mouths of the watercourses that flow out of *Gambulanha* (the Hamersley Ranges) into *Yawarnganha*, near the base of the escarpment
- 13.4 The Yindjibarndi name for the escarpment is "*Gumbayirranha*"; which, in our language, means "a face-to-face reflection of each other"; and it is here, that the young man must for the first time show his face to the face of *Gambulanha*.
- 13.5 When Yindjibarndi look face-to-face at *Gambulanha* we reflect each other; the Range and its knowledge is the Yindjibarndi and his knowledge - it's like looking into a mirror and seeing a true reflection of yourself and all the fine features of your face that you must care for and protect: a head that holds the key to the all Yindjibarndi knowledge; a mouth that speaks and sings to you; an eye looking over and seeing everything; an ear that hears everything that the birds, plants, animals and the *Ngurrara* are saying. And a brain that controls all Yindjibarndi movements on country and responds by activating all sorts of unanswerable events that Yindjibarndi put down to natural chain of events.
- 13.6 The *Yulbirri Thurru* ritual is carried out where the waters flow out of *Gambulanha* for the young man's safety, it allows him to be seen by the spirits of our country, so that the religious knowledge can find him, without the risk of

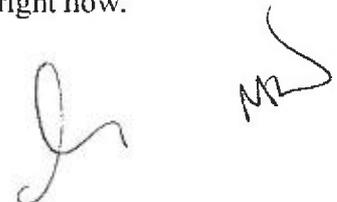
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being grabbed by them. To this end the grandfather teaches his grandson how to cook the emu on hot stones and then covers his body with the emu oil. The *Yulbirirri Thurru* ritual makes the young man and country one, so that he can receive the knowledge and be accepted by all the elements of the country as a *Birirri* (man).

- 13.7 The *Yawarnganha* plain is named after the hot stones that are used to cook the emu; and these stones can be found only in the river along the *Mangudunha* - this is a hunting and gathering ground and is like a cause-way located between the Range and the Fortescue River.
- 13.8 I have indicated on the attached map, marked "MW1" the areas in which the *Yulbirirri Thurru* ritual must be conducted. One of these areas falls within the proposed Miscellaneous Licence L47/367. If the Tenements are granted and FMG's Solomon project goes ahead it will prevent Yindjibarndi people from exercising our traditional right to perform the *Yulbirirri Thurru* ritual in that area. The building of the proposed railway and other infrastructure along with the creation of the mine will also prevent us from exercising our traditional rights, in the affected areas and the surrounding country, to hunt, fish and collect bush tucker, bush medicines and other items required by us for cultural reasons. It will no longer be possible for us to quietly enjoy our spiritual connection with that area of our country.

14 Conclusion

- 14.1 The agreement that FMG has negotiated with the breakaway group is concerned only with the procedural rights of Yindjibarndi People to object to the grant of mining tenements and other interests in our traditional country. It does not take into account how FMG's project will prevent us carrying out our religious ceremonies and rituals and exercising the other traditional rights I have described above.
- 14.2 Being able to do these things in the future is very important to us because it is the practice of our religious ceremonies and rituals that holds us together as a community and makes us strong. If we are unable to do these things it will hurt our community and make things worse than they are right now.

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14.3 FMG is trying to force us to sign an agreement that will make FMG the master of our country and we cannot consent to that because it would break our Law to agree to it. A copy of that agreement is attached and marked "MW2".

SWORN by Michael Woodway)

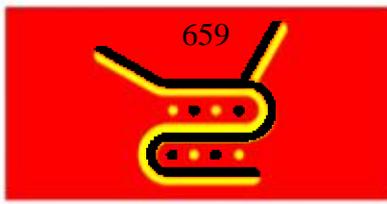
NAME)

at Reeborne in the State of Western Australia)

this 4th day of April 2011)

Before me:

Elizabeth Suelh, JP
5843



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

ATTACHMENT TEN

Yindjibarndi Member List

Albert Jimmy	Tehilla Cheedy
Allan-Harrison Chris (Jnr).	Fabrian Cheedy (Jnr).
Allan Jessica	Richard Cheedy
Allan Janie May	Alum Cheedy
Allan Denzil	Locklyn Cheedy
Allan Lisa	Jack Cheedy
Allan Lorraine	Jane Cheedy
Abedee Thomas	Kasiey Cheedy
Betty Ball	Kenrick Cheedy
Andrew Ball	Kayla Cheedy Walker
Cheedy Ned	David Walker (Jnr).
Cheedy Rosie	Aiana Perri Cheedy
Cheedy-nee Sandy - Terrance.	Marion Cheedy
cheedy Milton	Rebecca Cheedy.
Cheedy Shandell.	Shane Cheedy
Haysan Lockyer	Lyn Cheedy
Jerimaya Lockyer.	Tehilla Lockyer
Hilrei Cheedy	Amerta Lockyer.
Patrick cheedy	Curtis Lockyer.
Pansy Sambo	Simon Lockyer.
Warrick Sambo	Keslye Walker
Dawayne Sambo	Anton Lockyer
Randell Sambo	Terwyn Lockyer.
Rowen Sambo	Naralyn Lockyer.
Robert Cheedy	horraine Capps
Gabrielle cheedy	Michael Woodley
Emilyn Smith	Hayden Woodley
Mitchell Cheedy	Kyle Woodley
Cherry-(cindy) Cheedy	Fimola Woodley
Travis Hubert.	John Woodley
Fabrian Cheedy	Michael Woodley (Jnr)
Aston Cheedy	Wimioja Woodley.

Wil Woodley	Dorothy Coppin Pat.
Alison Woodley	Cornira Wally
Preston Woodley	Jenisci Wally
Shirley Woodley	Clord Bobby
Clearence Woodley	Tressia Coppin
David Woodley	Gilissa Coppin
Davin Woodley	Tralley Moody
Wade Woodley	Jasper Coppin
Deacon Woodley	Thomas Jacobs
Kayne Sid Walker	Tanya Jacob
Drew Woodley	Rockick Jacob.
Tyria Suzie Woodley	Rekish Jacob
Rosemary Woodley	Rodella Jacob
Kingsley Woodley	Stanley Warrie
Alicia Montana Woodley	Masie Ingi
Chet Woodley	Matthew Ingi
Bianca Dann	Kay Warrie
Shermici Woodley	Joelyn Warrie
Byan Woodley	Shaka Warrie
Eryta Woodley	Iran Warrie
Aaron Hubert	Danny True.
Aaron Hubert (Jnr).	Daniel True.
Austin James	Jayden Trele.
Willy James	Merrvin Warrie
Andrew James	Terrance Warrie
Linda Evelyn James	Alyes Warrie
Austin James (Jnr).	Karen True.
Jessy James	Sharon Warrie
Rosanna James.	Doreen Warrie
Ronda Norman	Janice Warrie
Jean Norman	Wendy Warrie
Debby Coppin	Sarah Hicks
Sebastiani Coppin Pat	Nenell Hicks

Shave Hicks	Belinda Hunter.
Kathleen Hicks	Rodyn Hunter.
Cassandra Hicks	Shehvey Hunter.
Belissa Tucker	Timika Walters.
Relik Stream	Tara Walters
Michael Hubert. (Jnr).	Korna Walker
Kathy Warrie	Judith Coppin
Kerry Warrie	Christine Hammond.
Sharon Togo	Simara Walker
Renea Walker	Kondan Walker
Lyle Wally	Countney McKay
Rebecca Williams	Ala McKay
Margaret Read	Lilli McKay
Ross William	Jonathon Walker
Kelly William	Nickolas Walker
Terrsha Williams	Rosanna Pat
Les William	Corella Walker
Belinda Williams	Milton Walker
Ava Williams	Jicklyn Pat
Chaz William	Selleck Walker
Betty Coppin	Birry Pat
Janine Fredrick	Easter Pat
Renick Dann	Jashua Pat
Nurany Dann.	Mavis Pat
David Coppin	Masie Pat
Joe Fedrick	Trisha Pat.
James Coppin	Terry Pat
Maureen Coppin	Morton Miller
Wiggy Coppin (nee Hunter)	Russell Sandy
Terrance Hunter	Ruth Williams.
Carol Hunter	Jennifer Williams
Maureen Hunter	Sonia Wilson
Zekel hunter.	Marie Wilson.

Ivy Wilson	Dolly Mack.
Billy King	Leroy Mack
Andy King	Colin Mack
John King (Jnr).	Waylon Mack.
Kevin Guinness	Nathaniel Moody.
Camelia Miller	Eileen Percy.
Chris William	Aaron Wilson.
Joyce King Hubert	Steven Hubert.
Matthew Hubert.	Michell Braun.
Dennis Hubert.	Jodie Braun.
Harry Mills	Marvin Warrie (Jnr).
Henry Miller.	Jacinta Warrie
Jeanie King	Jackson Warrie
Lawrence Woodleg	Yilby Warrie (Jnr).
Linda Norman.	Jasmine Mack
Vicki Wilson	Sarah Mack
Lynette Wilson	Nicklas Mack
Juice Wilson	Ann Marie Mack.
Susan Edwings	Simon Zerich
Nicky Guinness	Eastell Ryder
Janine Guinness	Tony Ryer.
Esther Guinness.	Johnelle Ryer
Brigidi hanton.	Joe Sincly
Kalisa Hicks	Bruen Wilson.
Ashley James	Vince Guinness
Maurcen James	Tramaine Guinness.
Doris Lockyer	Emiya Dann.
Howard Lockyer	Steven Darryln.
Megan Lockyer	Colin Darryl
Billy Lockyer.	Michael Lockyer.
Angus Mack	Davey Harmond.
Kimberly Mack	Cleaver Harmond.
Allan Mack.	Ronald Harmond.

John Albert.

Wayne Kelly

Justine Kelly

Tina Twe.

Dennis Kelly.

Reannie Kelly.

Justine Kelly (JWR).

Davin Toby

Lawrence Toby

Karen Toby

Heanne Toby.

Nickla Toby.

Jacita Toby.

Glen kee.

Doyle kee

Jayden kee

Kimberly kee

Jenny Hubert.



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

ATTACHMENT ELEVEN



Government of Western Australia
Department of Indigenous Affairs

ENQUIRIES: Ryan Crawford 9235 8117

OUR REF:

YOUR REF:

Mr Michael Woodley
Executive Officer
Juluwarlu Group Aboriginal Corporation
P.O. Box 111
ROEBOURNE WA 6718

Dear Mr Woodley,

REQUEST TO ATTEND INSPECTION OF POSSIBLE SKELETAL REMAINS AT WALLED NICHE IN YINDJIBARNDI #1 NATIVE TITLE CLAIM AREA, HAMERSLEY RANGE, PILBARA

I write in response to your letter to Mr Jeremy Elliott, dated 1 April 2011, regarding the identification and management of skeletal remains associated with a walled niche in the vicinity of Fortescue Metals Group's proposed Firetail Mine within the Yindjibarndi #1 Native Title Claim Area, Pilbara.

DIA was advised on 11 March 2011 by Mr Stuart Rapley, Principal Archaeologist for Archae-Aus Consultants, that the walled niche and contents had been the subject of a police investigation that day. Mr Rapley and the police officers photographed the contents of the walled niche and provided the photographs to the State Pathologist for identification. I understand that during the Police inspection the three rocks comprising the walled section were removed by Mr Rapley and the contents were photographed *in situ*. On 12 April 2011 the Registrar of Aboriginal Sites was advised that the State Pathologist had not been able to make a determination on whether the material is bone, either animal or human and has requested further information be provided to allow for proper assessment.

In order to assist the State Pathologist, DIA officers will be travelling to the location of the walled niche soon to conduct an inspection and would like to extend the opportunity for representatives of YAC to participate in this inspection. At this stage the inspection is an information-gathering exercise to better inform the State Pathologist of the contents of the niche and subsequent discussions on potential management options.

At your earliest convenience could you please advise whether yourself and other representatives of YAC wish to participate in the inspection with DIA representatives and possible dates of availability.

Yours sincerely,

Dr Kathryn Przywolnik
Registrar of Aboriginal Sites

12 May 2011

“MW-72”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-72” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Media Release



Fortescue
The New Force in Iron Ore

Fortescue rejects claims of unlawful heritage dealing

PERTH, 7th November 2011: Fortescue Metals Group (Fortescue) categorically rejects offensive claims that it is operating unlawfully regarding Aboriginal heritage sites at its Solomon Hub project.

Fortescue has worked and continues to work closely with Yindjibarndi people including many Yindjibarndi Elders to identify Aboriginal heritage sites on the Solomon Hub project.

“We have spent many millions of dollars to protect and avoid significant Aboriginal heritage sites at the Solomon Hub and will continue to do so. From the time we begin exploration in any area, many years prior to a project commencing, we work closely with Aboriginal land owners to identify and protect Aboriginal Heritage Sites in accordance with the Aboriginal Heritage Act (WA),” Fortescue Director Development Peter Meurs said.

Michael Woodley’s allegations that Fortescue has damaged sacred sites are untrue and part of an ongoing campaign by a man who no longer has the support of the majority of the Yindjibarndi community and who has repeatedly failed to provide proof to support his claims.

Mr Woodley’s claim that Fortescue forced heritage consultants to change their report is also spurious and mischievous. Fortescue requested the correction of unqualified commentary in the report in question. Both the original and corrected versions of the report were submitted to the Department of Indigenous Affairs (DIA). The DIA was aware of both versions of the report at all times and process has not been subverted.

Fortescue takes these allegations very seriously and will co-operate fully with any investigation instigated by Federal Minister for Sustainability, Environment, Water, Population and Communities Tony Burke.

Mr Woodley and his diminishing group of supporters have had numerous opportunities to put forward evidence of significant ceremonial activity on the Yindjibarndi land impacted by Fortescue’s Solomon Hub project. They have failed to do so.

Mr Woodley’s legal campaign against Fortescue, has included an appeal to the Full Federal Court and an application to the High Court. At every point of the way the National Native Title Tribunal (NNTT) and the Courts (including the Full Federal Court) have rejected Mr Woodley’s claims against Fortescue. The High Court application stands abandoned because Mr Woodley failed to file the necessary documents.

In fact, in June this year, the NNTT found that Mr Woodley's assertions were not supported by any other members of the Yindjibarndi, even those who he claimed supported him.

In the NNTT decision, **FMG Pilbara Pty Ltd/ Ned Cheedy and others on behalf of the Yindjibarndi People**/Western Australia, [2011] NNTTA 107 (17 June 2011)(attached), the Tribunal:

- accepted sworn evidence from 10 Yindjibarndi men who disputed Michael Woodley's claims that ceremonies were conducted on the Fortescue leases. In fact they gave evidence that the ceremonies are conducted hundreds of kilometres from the Application Area (para 49 at pg 37)
- accepted that four of the men who gave the sworn evidence are Senior Yindjibarndi Lawmen. (para 94 at78)
- refused, notwithstanding Mr Woodley's evidence, to find that any significant ceremonial activity was conducted in the area of the leases. (para 99 at 84)
- described Mr Woodley's evidence in the proceeding, "uncorroborated, contested and potentially unauthorized". (para 80 at 70)

The fact of the matter is that Fortescue makes every effort to avoid sites of high significance, including burial sites, ethnographic (story sites), engraving and rock art sites. Fortescue identifies and protects Aboriginal Heritage Sites in accordance with the Aboriginal Heritage Act (WA).

On Sunday 6th November, the Wirilu-murra Yindjibarndi Aboriginal Corporation (WYMAC), more than 230 members-strong, held an AGM in Roebourne. This group of Yindjibarndi people outnumbers supporters of Mr Woodley two-to-one and has initiated legal proceedings in the Federal Court to remove Mr Woodley as an applicant to the Yindjibarndi (No 1) Native Title Claim and in the Supreme Court to have Yindjibarndi Aboriginal Corporation (YAC) placed under the control of an independent receiver.

Mr Woodley has never challenged the NNNT's finding that Fortescue negotiated in good faith with the Yindjibarndi People. In August 2011, the Full Federal Court dismissed Michael Woodley's legal action against Fortescue's application for mining leases at Solomon and the Western Australian government granted Fortescue the three mining leases required to start mining.

Fortescue has negotiated and reached an agreement with the majority of the Yindjibarndi community.

Media Contacts:

Elizabeth Gosch

Fortescue

Mobile: 0414 319 775

Email: egosch@fmgl.com.au

“MW-73”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-73” referred to in the witness statement of Michael Woodley dated 5 June 2023.



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3



4

“MW-74”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “MW-74” referred to in the witness statement of Michael Woodley dated 5 June 2023.



“MW-75”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 37 pages is the annexure marked “**MW-75**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



18 November 2011

Minister for Sustainability, Environment,
Water, Population and Communities
Parliament House Canberra ACT

via email to: [\[mailto:Ann-Marie.Wilcock@environment.gov.au\]](mailto:Ann-Marie.Wilcock@environment.gov.au)

Dear Minister,

***Application for Declarations to Protect Sites & Objects
of Significance to Aboriginal People in accordance with their traditions***

Introduction

I act for the Yindjibarndi Aboriginal Corporation (YAC); for Michael Woodley (the Chief Executive Officer of YAC) and for the YAC Directors: Stanley Warrie (Chairman), Thomas Jacobs, Pansy Sambo (nee Cheedy), Tootsie Daniels, Jane Cheedy, Bigali Hanlon, Joylene Warrie, Russell Sandy, Curtis Lockyer, Jean Norman, Angus Mack and Gabrielle Cheedy (the Applicants).

The Applicants hereby apply for declarations under sections 9, 10 and 12 of the *Aboriginal and Torres Strait Islander Heritage Protection Act* 1984 (the Act) to protect, from immediate threat of injury and desecration, an area of land and waters in the Pilbara region of Western Australia, known to the Applicants as “*Ganyjingarringunha Ngurra*”, wherein are situated sites and objects of significance to the Applicants in accordance with their traditional laws, customs and religious beliefs (their Traditions). The Applicants make this application collectively, as the YAC Executive; and, individually, as members of the *Yindjibarndi People* - the ‘society’ of indigenous people that was formally recognised, in the determination of native title made by Nicholson J in the Federal Court,¹ and upheld by the Full Court of the Federal Court² (the “*Yindjibarndi Native Title Determination*”), as a “*a body of persons united in and by its acknowledgment and observance of a body of laws and customs*”³.

YAC is the representative body chosen by the *Yindjibarndi People* (and declared by the Federal Court in the *Yindjibarndi Native Title Determination*) to be the Prescribed Body Corporate (PBC) under the *Native Title Act* 1993 (the NTA), which holds on trust for the *Yindjibarndi People* the native title rights and interests that were declared to exist by the Court in an area of land and waters in the Pilbara region of Western Australia (the *Yindjibarndi Determination Area*).

The area of land and waters of *Ganyjingarringunha Ngurra*, over which declarations are sought, is an area of unallocated Crown land situated in “*Gambulanha*” (the *Yindjibarndi* name for the Hamersley Ranges). This unallocated Crown land is the subject of a Native Title Determination Application (the *Yindjibarndi #1 Claim*), which was lodged in the Federal Court on behalf of the

¹ in *Daniel v Western Australia* [2005] FCA 536

² in *Moses v State of Western Australia* [2007] FCAFC 78

³ The precondition for any determination of native title, as established by the decision of the High Court in *Members of the Yorta Yorta Aboriginal Community v Victoria* [2002] HCA 58, at [49]-[50]



Yindjibarndi People, on 23 July 2003. The Yindjibarndi #1 Claim covers land and waters in the southern part of the traditional country of the Yindjibarndi People (the Yindjibarndi #1 Claim Area) and adjoins the northern portion of Yindjibarndi country that was the subject of the 2005 Yindjibarndi Native Title Determination (the Yindjibarndi Native Title Area).

On 8 August 2003, the Yindjibarndi #1 Claim was accepted for ‘Registration’, in the “Register of Native Title Claims”, which is maintained by the Registrar of the National Native Title Tribunal (the Tribunal), in accordance with Part 7 of the *Native Title Act 1993* (the NTA). Registration of ‘claimed’ native title rights and interests, under the NTA, gives rise to certain procedural rights, such as the so-called ‘Right to Negotiate’ about the grant of any mining leases that might adversely affect the claimed native title rights and interests that are registered⁴. Relevantly, the registered claimed rights, in Yindjibarndi #1 Claim, include: the right of the Yindjibarndi People to possess, occupy, use and enjoy the unallocated Crown land, in *Gambulanha*, to the exclusion of all others; the right to protect and care for sites and objects, of significance to Yindjibarndi people, in accordance with their Traditions, and, the right to carry out their religious rituals and ceremonies, which are associated with such sites and objects⁵.

As a general rule, procedural rights under the NTA, such as the right to negotiate, may be exercised only by the Applicant, acting on behalf of the claim group⁶; and, if the Applicant is comprised of several members of the claim group, those members are required to act ‘jointly’ in the exercise of their power⁷, to deal with all matters arising under the NTA, by way of unanimous decisions⁸. In the Yindjibarndi #1 Claim however, pursuant to a Notice of Appointment⁹, executed by all members of the Applicant and filed in the Federal Court on 23 February 2008¹⁰, YAC is the authorised agent for the Applicant¹¹. The YAC Directors thus act for the Applicant, in the Yindjibarndi # 1 Claim, and for the Yindjibarndi People on whose behalf the Yindjibarndi #1 Claim was lodged.

The Land and Waters over which a s 9 Declaration is sought

The unallocated Crown land in the area known to the Applicants as “*Ganyjingarringunha Ngurra*” is where Fortescue Metals Group Ltd and its subsidiaries, including FMG Pilbara Pty Ltd (FMG), wishes to develop as part of its proposed Pilbara expansion project, the proposed “Firetail” mine and supporting infrastructure. To this end FMG has acquired, four mining leases (referred to hereafter as M47/1409, M47/1411, M47/1413 and M47/1431) and has applied for the grant of a

⁴ I say, “so-called”, because, as the Federal Court has previously observed, while the overall effect of the relevant provisions “*may be described, in broad terms, as amounting to a right to negotiate, no such right is expressly conferred*” by the NTA upon a native title claim group: *Bullen on behalf of the Esperance Nyungars v Western Australia* [1999] FCA 1490, at [37]. In reality, the right to negotiate is nothing more than a six-month period time, during which a mining company must make an offer to, and negotiate with, a registered claim group, with a view to obtaining the claim group’s consent for the grant of any mining lease sought by the mining company. However, at the end of the six months, if no agreement has been reached, the mining company may apply to the National Native Title Tribunal, under s 35 of the NTA, for a determination, under s 38, allowing the grant of the mining lease to be made.

⁵ A copy of Tribunal’s Registration decision may be downloaded from the Tribunal’s website at:

http://www.nntt.gov.au/Applications-And-Determinations/Registration-Test/Pages/Yindjibarndi_1_WC033.aspx

⁶ This is because under s 61(2) of the NTA, the Applicant is authorised by all members of the claim group to make the claim and to deal with all matters arising under the NTA in relation to the claim. If it so happens that the Applicant is no longer authorised by all members of the claim group, or exceeds the authority given by the claim group, then the only course open is for one or more members of the claim group to apply to the Federal Court, under s 66B of the NTA, to have the Applicant replaced.

⁷ under s 62A of the NTA

⁸ *Roe v Kimberley Land Council Aboriginal Corporation* [2010] FCA 809; and *Tigan v Western Australia* [2010] FCA 993

⁹ Form 164, in Schedule 1 of the Federal Court Rules

¹⁰ in accordance with Order 78 Rule 42(1) of the Federal Court Rules

¹¹ pursuant to s 84B of the NTA



further mining lease (referred to hereafter as M47/1453) as well as six miscellaneous licences¹², which overlap the mining leases. Collectively, M47/1409, M47/1411, M47/1413, M47/1431 and M47/1453 cover a contiguous area of the unallocated Crown land, in *Ganyjingarringunha Ngurra*, which is the subject of the Yindjibarndi #1 Claim; however, two of those mining leases, M47/1409 and M47/1411, also extend beyond the boundary of the Yindjibarndi #1 Claim.

Each of FMG's existing mining leases was acquired by FMG without the free prior and informed consent of YAC and the Yindjibarndi People - the result of applications made by FMG (under NTA s 35) for determinations by the Tribunal (under s 38) allowing the grant of the mining leases to FMG by State of Western Australia. The Tribunal initially made a determination on 31 July 2009 allowing the grant of M47/1413¹³; however, this determination was subsequently amended by the Tribunal, on 13 August 2009¹⁴, after the Tribunal confirmed that four ochre sites, which the Tribunal had ordered could not be disturbed without the consent of the Named Applicant¹⁵, were situated, not in M47/1413, but in an adjoining area, subsequently covered by M47/1431. The determination allowing the grant of M47/1409 and M47/1411 was made by the Tribunal on 27 August 2009¹⁶.

M47/1431, which sits between and partially adjoins M47/1413 and M47/1409), was granted to FMG following a determination made by the Tribunal on 17 June 2011¹⁷; and, notably, the four ochre sites in M47/1431, which the Tribunal previously ordered should not be disturbed without the consent of the Named Applicant, were not made the subject of such orders in this determination¹⁸.

The first two determinations of the Tribunal (allowing the grant of M47/1409, M47/1411 and M47/1413) were the subject of appeals to the Federal Court¹⁹; and, to the Full Court of the Federal Court²⁰. The determination of the Tribunal allowing the grant of M47/1431 was not appealed, for reasons that will be discussed further below.

The grant of M47/1453, which is situated between M47/1431 and M47/1409, is still pending a determination by the Tribunal but was the subject of a determination made by a WA Wardens' Court on 18 August 2011²¹.

The area over which the Applicants apply for a declaration under s 9 of the Act is:

- a. the whole of the land and waters covered by M47/1413, M47/1431 and M47/1453; and
- b. such portions of mining leases M47/1409 and M47/1411 that are within the boundaries of the Yindjibarndi #1 Claim.

The precise co-ordinates of the relevant boundary of the Yindjibarndi #1 Claim are already known to FMG and the State; and, since there are no other interests in the land that could be affected by the

¹² the miscellaneous licences are L47/350, L47/354, L47/355, L47/361, L47/367 and L47/368

¹³ in *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia*, [2009] NNITA 80

¹⁴ in *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia*, [2009] NNITA 91

¹⁵ in Tribunal proceedings of this kind, the Named Applicant is called the Native Title Party

¹⁶ *FMG Pilbara Pty Ltd/ Wintawari Guruma Aboriginal Corporation/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia*, [2009] NNITA 99

¹⁷ in *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2011] NNITA 107

¹⁸ The reasons for this are discussed below

¹⁹ in *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2010] FCA 690

²⁰ in *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011] FCAFC 100

²¹ in *FMG Pilbara P/L v Yindjibarndi Aboriginal Corporation* [2011] WAMW 13



proposed declaration, a description of the land in the above terms should, reasonably, provide the requisite degree of certainty for a declaration under the Act. It is noted, and intended, that any portions of the aforementioned mining leases, which are overlapped by FMG's miscellaneous licences, whether granted or pending, will be equally protected by the proposed s 9 declaration.

For the sake of convenience, given the difficulty that generally attends the pronunciation of "Ganyjingarringunha Ngurra", for non-Yindjibarndi speakers, I shall, unless the context requires otherwise, refer to the area over which the s 9 declaration is sought as the "Declaration Area". In this regard, it is noted that FMG (and FMG's heritage Consultants) and representatives of the State generally refer to the Declaration Area as the "Firetail Area".²²

The purpose for which temporary protection is sought over the Declaration Area is to allow the execution of ethnographic and archaeological field surveys to delineate the precise locations of sites and objects in the Declaration Area that are the subject of the applications under sections 10 and 12 of the Act. The Applicants have arranged for these surveys to commence in December.

Evidence of the Particular Significance of Sites and Objects in the Declaration Area

A substantial body of evidence concerning the particular significance to the Applicants of sites and objects in the Declaration Area, has already been given by YAC's Chief Executive Officer, Michael Woodley, in a number of Tribunal and court proceedings concerning the grant of FMG's mining leases and miscellaneous licences.

In the hearing of YAC's objections²³ to the grant of M47/1453 and various miscellaneous licences in the Declaration Area, which was determined by a Mining Warden, on 18 August 2011 (the Warden's Court Objection Hearing),²⁴ Ned Cheedy, the oldest living member of the Yindjibarndi People, and "Nyambali" ("Chief Law Boss") for *Yindjibarndi*²⁵, gave the following uncontested evidence about Michael Woodley's particular right, under the traditional laws and customs of the Yindjibarndi People, to speak for the Declaration Area²⁶:

"I am 105 years of age and "Nyambali" for Yindjibarndi because I am the last of the old Yindjibarndi Law Bosses. I gave evidence to the Federal Court, in the Ngarluma and Yindjibarndi hearing, about where I was born and about Yindjibarndi People and our Law and culture and I am making this affidavit now because I might not be around for much longer.

I went through all the Yindjibarndi Law ceremonies a long time ago. I put Michael Woodley's grandfather, Woodley King, through his Birdarra Law ceremonies; and I also put Michael Woodley through all the Birdarra Law Ceremonies. Together with his grandfather, and the other old Yindjibarndi Law Bosses who have now passed on, I taught Michael Woodley everything we know about Yindjibarndi country, and about Yindjibarndi Law, culture and religion.

Michael Woodley is Tharngu²⁷ for Garliwinyji Ngurra, which includes Gambulanha and Ganyjingarringunha Ngurra where FMG wants the Solomon mine, and he is also the proper

²² Needless to say, the attribution of an English proper noun, for a part of their traditional country, which already bears a name, is matter of some sensitivity for the Applicants, since it is seen as a form of appropriation and dispossession.

²³ under the WA Mining Act 1978

²⁴ FMG Pilbara P/L v Yindjibarndi Aboriginal Corporation [2011] WAMW 13

²⁵ The Applicants use the expression "Yindjibarndi" to refer to "everything that belongs to Yindjibarndi country"

²⁶ a copy of Mr Cheedy's affidavit, sworn on 8 April 2011, is attached as **Annexure 1**

²⁷ "Tharngu" is an abbreviated form of "Tharngungarli", which, as explained below, refers to the "law bosses" for 13 "Ngurra" ("home" or "family" areas) in Yindjibarndi Country



man to speak for Yindjibarndi Country and for Yindjibarndi Law, culture and religion because he is now the man with all the knowledge. Michael still comes to talk to me about these things, out of respect; but, today, Yindjibarndi people and others should listen to and respect what Michael Woodley says about Yindjibarndi Country and about Yindjibarndi Law, culture and religion, because when he speaks about these things, he is speaking for me and for all the other old Law Bosses who came before me."

The substance of Mr Cheedy's evidence was endorsed by the Chairman and Directors of YAC, in a recent response to an application made by FMG for ministerial consent²⁸, to damage or destroy sites in the Declaration Area. YAC's Chairman, Stanley Warrie, wrote to the WA Aboriginal Cultural Materials Committee, on 1 November 2011, in the following terms²⁹:

"In the middle of 2007 the Yindjibarndi community and the YAC Directors decided that YAC should take control over all decisions concerning Yindjibarndi country. Before that time the Pilbara Native Title Service had been representing the Yindjibarndi People for both the Yindjibarndi Native Title Determination Area and the Yindjibarndi #1 Claim Area. But we were unhappy with the way things were going and so resolutions were passed by the YAC Directors, by the Yindjibarndi Working Group and by the Yindjibarndi Community that YAC would now take control.

In September 2007, I wrote to Andrew Forrest to tell him that YAC was prepared to negotiate a land access agreement with FMG but in future FMG would have to respect our human rights and could negotiate only with YAC.

At that time and throughout the next two years, the Yindjibarndi community was very strong and solid. Everything was decided at community meetings; and everybody was standing together to support our Chief Executive Officer, Michael Woodley. Everybody agreed that the Native Title Act seemed to work more for the benefit the mining companies than traditional owners; and everybody agreed that we had to try a new way of getting our rights recognised by the Courts. The Yindjibarndi community decided to fight for our right to carry out our religious practices in our country. However, this would require us to give evidence about our religion and our religious ceremonies and rituals.

I have read the affidavit that was sworn by Michael Woodley and filed in the Wardens Court in April this year and I know a lot of what Michael said is information that the old law bosses kept secret; however, in 2008 we all agreed that Michael should speak openly about these things. We made that decision because it was clear that keeping the Birdarra secrets in the past did not help us when we tried to protect our sacred sites and it didn't help us when we tried to get our traditional rights the northern part of our country recognised by the Court. Our hope was that a greater understanding of our religious beliefs would lead to greater respect for the relationship we have with our country.

Everybody also agreed that Michael Woodley was the right man to give this evidence; because, apart from Ned Cheedy, Michael is the most knowledgeable of the Yindjibarndi lawmen. It makes me sad to say this, but the truth is that me and the other men in my generation drank so much grog when we were growing up that we were unable to keep hold of the knowledge our fathers were trying to pass down to us. For Michael Woodley it was different; his grandfather, Woodley King, took control of him when he was still a boy and he kept him under control. Michael was taught by the old law bosses how to receive the knowledge and he worked hard to get it. In the proper way, I should be boss for Michael in the law, but because of the grog I have to live with the shame of my son teaching me.

²⁸ under s 18 of the Aboriginal Heritage Act 1972 (the AHA)

²⁹ a copy of Mr Warrie's letter is attached as **Annexure 2**

Michael has that knowledge and he holds it for all of us; he doesn't drink alcohol, and we trust him absolutely because he makes sure everything is done the proper way - with no short cuts. He is the only one with the deep knowledge to properly conduct our ceremonies and rituals; and the only one who can now pass that knowledge on to our younger generations and so ensure the future survival of our culture. This is why other groups from the Pilbara and the Kimberley ask him to help with their ceremonies

Other men from my generation do conduct ceremonies; but their ceremonies are dangerous because they allow grog and they take shortcuts, like using resources that don't come from the right place for the boys going through law.

I have read what Michael Woodley said in his affidavit about the significance of the Solomon Project area; and I know what he said is true. I have travelled through that country many times and I have seen and felt its significance.”

The Tribunal's determination in *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2009] NNTTA 91, sets out (at 15-27) the entirety of the evidence given by Mr Woodley in respect of the area of land and waters covered by M47/1413, M47/1409 and M47/1411. This determination is available on the web³⁰. Likewise, the evidence given by Michael Woodley in opposition to the grant of M47/1431 is set out, in its entirety (at 46-55), in the Tribunal's Determination in *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2011] NNTTA 107 (also available on the web³¹). This evidence was described by the Tribunal as being “consistent with, but more detailed in certain respects with the affidavit he swore” in the hearings for the grant of M47/1413; and for M47/1409 and M47/1411.

Mr Woodley's evidence, in the M47/1431 Tribunal hearing, was disputed by certain members of the Yindjibarndi People; who, in mid-2010, had formed a breakaway group and, with FMG's financial support, subsequently established the Wirlu-murra Yindjibarndi Aboriginal Corporation (WMYAC)³². FMG filed affidavits sworn by members of WMYAC supporting the grant of M47/1431 and contradicting the evidence given by Michael Woodley; and, the Tribunal took the view that because the WMYAC deponents included three members of the Named Applicant, it appeared Mr Woodley and the other members of the Named Applicant were no longer in a position to file any responsive affidavits³³. Unfortunately, YAC did not at that time have sufficient resources to appeal the Determination of the Tribunal³⁴. Nevertheless, as is apparent from the Tribunal's determination (at [49]) the evidence given by the WMYAC members was template in form; and, since the male deponents refuted any use of the M47/1431 area by themselves, they could not properly refute the use of that area by Michael Woodley and others, as deposed by Michael Woodley, which might be unknown to them. In any event, although provided with the

³⁰ at: <http://www.austlii.edu.au/au/cases/cth/NNTTA/2009/91.html>

³¹ at: <http://www.austlii.edu.au/au/cases/cth/NNTTA/2011/107.html>

³² the details of these events are discussed below

³³ *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2009] NNTTA 91, per Member O'Dea, at [98] since the members of the Named Applicant are required to act jointly. However, as indicated earlier, YAC is the appointed agent for the Named Applicant, and the authority of YAC pursuant to that appointment, in 2008, has not been revoked by any subsequent joint decision of the Named Applicant. Accordingly, YAC was, as a matter of law, authorised to file responsive affidavits.

³⁴ In the period since the breakdown of the negotiations between YAC and FMG, in December 2008, there have been 15 determinations made by the Tribunal and various courts, involving litigation between FMG and YAC; each of which, in turn, has involved Directions hearings and other interlocutory issues. In addition, YAC has had to contend with negotiation conferences; and, more recently with multiple applications by FMG for ministerial consent under s 18 of the AHA to damage or destroy sites of significance to the Applicants. YAC receives no funding or assistance from government.



opportunity to do so, the WMYAC members did not challenge the subsequent testimony of Ned Cheedy and Michael Woodley in the Warden’s Court Objection Hearing, in May 2011; which, by virtue of the overlapping miscellaneous licences (the grant of which YAC was the subject of YAC’s objection) related to the same area of land covered by M47/1431 and the other Mining Leases.

Michael Woodley’s evidence provides a comprehensive account of the Applicants’ Traditions³⁵. In essence, that evidence might be summarised as follows:

- a. Yindjibarndi country is traditionally divided into 13 different areas, called “*Ngurra*”³⁶.
- b. Yindjibarndi people believe that the spiritual essence of each Yindjibarndi human being emanates from and belongs to one of these 13 *Ngurra*; and thus, Yindjibarndi human beings are called “*Ngurrarangarli*” or, in shortened form, *Ngurrara*³⁷.
- c. There are four *Ngurra* in the Yindjibarndi #1 Claim Area, which, running west to east, are called: *Garliwinyji Ngurra*, *Buthurnha Ngurra*, *Winyjuwarra Ngurra* and *Ngurrbanha Ngurra*³⁸.
- d. *Yindjibarndi* is divided into four “*Galharra*” groups (social sections): “*Banaga*” and “*Burungu*”; “*Garimarra*” and “*Balyirri*”³⁹; and two moieties: “*Walhany*” (which is comprised of *Banaga* and *Burungu*); and, “*Ngarrli*” (comprised of *Garimarra* and *Balyirri*)⁴⁰. Relationships, as between the members of the social sections and moieties, are governed by a complex system of rules, called “*Galharra*”⁴¹.
- e. The *Galharra* system is reflected, geographically, in each *Ngurra* by its division (via the river for which it is named) into two sides - the “*Walhany side*”, for the *Banaga* and *Burungu Ngurrara*; and the “*Ngarrli side*” for *Garimarra* and *Balyirri Ngurrara*⁴².
- f. Yindjibarndi Law, including the *Galharra* system, is called the “*Birdarra*”⁴³. The *Birdarra* is believed to be the commandments of “*Minkala*” (the Yindjibarndi name for God), which were given to the Yindjibarndi People, by the creation spirits (“*Marrga*”) sent by *Minkala* at the “time of creation”, when the “world was soft” (the “*Ngurranyujunggamu*”), to give form to the world”⁴⁴.
- g. Under *Birdarra* Law, Yindjibarndi women exercise authority over relationships: as between women; as between men and women; and as between children and adults; and Yindjibarndi men exercise authority over Yindjibarndi Law and Yindjibarndi Country⁴⁵.
- h. In each of the 13 *Ngurra* there are four bosses, one for each of the *Galharra* groups; these bosses are called “*Mirduwarra*”, and one of them (the one who is respected as the most knowledgeable in *Birdarra* law) is also called the “*Tharngu-ngarli*” or

³⁵ A copy of Michael Woodley’s affidavit of evidence, sworn on 4 April 2011, and received into evidence in the Warden’s Court Objection Hearing, is attached as **Annexure 3**.

³⁶ Annexure 3, at [6.2]

³⁷ *ibid*; the suffix “ngarli” is a reference to persons; so, the “*Ngurrara-ngarli*” are the persons who come from the relevant *Ngurra*

³⁸ *ibid* at [6.4]

³⁹ *ibid* at [5.2]

⁴⁰ *ibid*, at [6.2]

⁴¹ *ibid* at [5]

⁴² *ibid* at [6.2]

⁴³ *ibid* at [3.3]

⁴⁴ *ibid* at [3]

⁴⁵ *ibid* at [7.1]



“*Tharngu*” - the overall boss for both the *Ngurra* and the *Ngurrara*. The second-most knowledgeable of the *Mirduwarra* is called *Minga-Margu* and assists the *Tharngu*⁴⁶.

- i. The *Tharngu* who is acknowledged and respected as the most knowledgeable (in the *Birdarra* Law), is called “*Nyambali*” - the Chief Law Boss for *Yindjibarndi*. The *Nyambali* also has a *Minga-Margu* - the *Tharngu* who is “closest” in knowledge to him; and is therefore, likely be the next *Nyambali*⁴⁷.
- j. Ned Cheedy is the current *Yindjibarndi Nyambali*; he is also the *Tharngu* for *Winyjuwarra Ngurra*; and *Mirduwarra* for the *Balyirri Galharra* group in that *Ngurra*; and, Michael Woodley is the *Tharngu* for *Garliwinyji Ngurra*; *Mirduwarra* for the *Garimarra Ngurrara* and *Minga-Margu* for the current *Nyambali*⁴⁸.
- k. Each of the 13 *Ngurra* has its own sacred resources, such as *Gandi* (sacred stones used in initiation ceremonies), and *Yarna* (ochre quarries of varying colours used in rituals and ceremonies); which, in accordance with the *Birdarra* Law, may be used only by the human beings whose spirits emanate from that *Ngurra*; i.e. the *Ngurrara*⁴⁹.
- l. The “*Gandi* area”, for *Garliwinyji Ngurrara*, is situated in *Ganyjingarringunha Ngurra*; and, in this instance, the term *Ngurra* refers to what is believed to be the “home” of one of the *Marrga*⁵⁰. *Ganyjingarringunha Ngurra* is also divided into two sides, by the river for which it is named - *Ganyjingarringunha Wundu*⁵¹. The *Walhany* side of this *Ngurra* is on the western side of the river; and the *Ngarrli* side is on the eastern side⁵². As this river passes by the western edge of M47/1413 it is fed by a creek which runs in through the middle of M47/1413. That creek shares the same name as the river, “*Ganyjingarringunha Wundu*” but with the addition of one word “*Yaayu*”, which is the *Yindjibarndi* term for “east”⁵³. An arm of that creek also runs through the adjoining M47/1431⁵⁴. The “*Gandi* area”, for *Garliwinyji Ngurrara* in the *Ngarrli* moiety, is the bed and banks of that creek⁵⁵.
- m. As the *Mirduwarra* for the *Garimarra Galharra* group in *Garliwinyji Ngurra*, Michael Woodley is obliged to collect *Gandi* from the bed and banks of *Ganyjingarringunha Wundu Yaayu* (and “nowhere else”) for use in the initiation ceremonies of *Garimarra* boys who come from *Garliwinyji Ngurra*⁵⁶.
- n. The precise locations of the *Gandi* are unknown, since they are found beneath the surface of the creek bed⁵⁷. They are ‘unique cold stones’ (kept cold by the creek); and, for this reason, the *Mirduwarra* would not look beyond 250 metres on either side of the centre of the creek bed⁵⁸. The location of the *Gandi* is revealed through the performance of a religious ritual, which Michael Woodley has performed on many occasions at *Ganyjingarringunha Wundu Yaayu*⁵⁹.

⁴⁶ *ibid* at [7.2]

⁴⁷ *ibid* at [7.3]

⁴⁸ *ibid* at [7.6] and see Annexure 1

⁴⁹ *ibid* at [6.3] and [11.3]

⁵⁰ the water serpent called “*Barrimirndi*” who is held to be the creator of all rivers, creeks, and springs, which are collectively referred to as “*Wundu*” or “water courses”: see Annexure 3 at [6.1]

⁵¹ *ibid*, at [6.1] and [11.2]

⁵² *ibid*, at [11.2]-[11.3]

⁵³ Annexure 3, at [6.4].

⁵⁴ *ibid*

⁵⁵ *ibid* at [6.7]

⁵⁶ Annexure 3 at [11.3] and [11.6]

⁵⁷ *ibid* at [11.10]

⁵⁸ *ibid*

⁵⁹ *ibid* at [11.4]-[11.6]



The Tribunal's findings about the Particular Significance of sites and objects

In *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2009] NNTTA 91⁶⁰, Michael Woodley attested to the existence of *Yarna* (ochre) sites in M47/1409, and M47/1413, from which ochre is obtained by Mr Woodley, and other Yindjibarndi Lawmen, for use in healing rituals and “increase” ceremonies⁶¹. The current use and the particular significance of those ochre sites was made the subject of specific findings by the Tribunal⁶²; as were four ochre sites subsequently found to be situated in M47/1431⁶³. The Tribunal held⁶⁴, that “*the areas where the ochre quarries and Gandi are located within the proposed lease [M47/1413]...are areas of particular significance to the native title party*”; and, in respect of M47/1409 the Tribunal held⁶⁵:

[T]he evidence set out in relation to ceremonial activity, clearly indicates that there is an ochre quarry within the area which needs to be accessed in order to properly perform the Maliya Thalu in accordance with Yindjibarndi Law. If that ochre quarry had been precisely located in the evidence set out, I would be inclined to make it a condition that that quarry should not be interfered with without the consent of the Yindjibarndi native title party and that access should be ensured, except in circumstances where safety is imperilled.

The Tribunal's findings about the current use and the particular significance of the *Gandi* and the *Yarna* were not disturbed by the Full Court of the Federal Court⁶⁶; which noted⁶⁷:

“The appellants’ case was considered by the Tribunal and the primary judge on the basis that the appellants’ use of ochre and gandi are religious practices. This approach has not been contested by the State or FMG. Further, if the ochre and gandi sites are dug up in the process of mining iron ore, the appellants will be prevented from continuing to access the ochre and gandi.”

In *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2009] NNTTA 91, Michael Woodley also attested to the existence of numerous “*Yamararra*” (caves/rock-shelters) that overlook the *Wundu* (creek) in M47/1409 and M47/1413; some of which contain the physical remains of “*our old people; [and] others... their sacred gear which they used in ceremonies in nearby law grounds*”⁶⁸. Notably, in the past 8 months, human skeletal remains have been found in three such caves or rock-shelters; two of which are situated in M47/1413; and one in the Yindjibarndi portion of M47/1409. The Tribunal's finding on the *Yamararra* was that “*the numerous caves... are sites of particular significance to the native title party*”⁶⁹.

⁶⁰ and in *FMG Pilbara Pty Ltd/ Wintawari Guruma Aboriginal Corporation/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia*, [2009] NNTTA 99, since the same evidence was given in both cases

⁶¹ see: *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2009] NNTTA 91, p 17-18 at [3.7]-[3.10]; and, see also: Annexure 3 at [10.1]-[10.6] and the map attached thereto, marked “MW1”

⁶² *ibid*, at [74]

⁶³ namely, YIN_09_05; YIN_09_06; YIN_09_11; and YIN_09_15 - *ibid*, at [73] and [79]; and see also Annexure 1 of the Tribunal's determination

⁶⁴ *ibid* at [74]

⁶⁵ *FMG Pilbara Pty Ltd/ Wintawari Guruma Aboriginal Corporation/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2009] NNTTA 99, at [47]

⁶⁶ in *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011] FCAFC 100

⁶⁷ in *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011] FCAFC 100, at [86]

⁶⁸ p21 at [5.6], [5.7] and [5.10]; see also: Annexure 3 at [12]

⁶⁹ at [72]



Under the Traditions of the Applicants, the “sacred gear” of the old Law Bosses remains “alive”, is considered “dangerous” and should not be destroyed, but relocated by Mr Woodley and other senior Yindjibarndi Lawmen.

The Tribunal declared that it was that it “was not prepared... to make specific conditions in relation to sites ... which are not precisely located”⁷⁰. However, the Tribunal made the following observations:

It is a defence to a prosecution under the AHA if the person charged can prove that he or she did not know, and could not reasonably be expected to have known, that the place was a site covered by it (s 62). Obviously, this defence would not be available to [FMG].

*I accept that [FMG] fully understand their obligations under the AHA and has complied with them to date. I am satisfied they will continue to do so and take whatever action is necessary to avoid interference with sites of particular significance to the [Yindjibarndi People] in accordance with their traditions”.*⁷¹

Immediate Threat of Injury and Desecration

On 23rd of October, 2011, two vehicles carrying seven people authorised by YAC to inspect *Yamararra* in the area covered by the M47/1413 mining lease were refused access to that area by FMG personnel for what was claimed to be “safety reasons”.

On 28 October, 2011, Michael Woodley and the YAC Chairman, Stanley Warrie, in company with several YAC Directors and members, and anthropologist, Phillip Davies, travelled to M47/1413 by way of an ancient “freeway” known to only a few senior Yindjibarndi lawmen. They were thus able to arrive at the target area, unobserved by FMG employees. Upon their arrival they observed that FMG had already commenced development and, in so doing, had damaged part of the creek bed, which runs through M47/1413 and M47/1431, wherein are situated the *Gandi*; and, part of an ochre quarry situated on the boundary of M47/1413 and M47/1431. A letter describing and depicting this damage, written by Phillip Davies on behalf of the Applicants, was forwarded to the Department of Indigenous Affairs (the DIA), for the attention of the Aboriginal Cultural Materials Committee, on 2 November 2011⁷². As that letter makes clear, these sites have been damaged by FMG without any ministerial consent, as required by s 18 of the *Aboriginal Heritage Act 1972* (the AHA).

That such damage could occur in circumstances where YAC has previously provided the DIA with all the information set out above, regarding the particular significance of these sites, is proof positive of the “DIA's inability to effectively monitor or enforce the State's heritage protection regime”⁷³.

⁷⁰ FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia, [2009] NNTTA 91, at [80]

⁷¹ *ibid* at [77]-[78]

⁷² A copy of that letter, dated 2 November 2011, is attached as **Annexure 4**

⁷³ “*Submissions of the DLA to the Functional Review Committee, Established to Review the DLA*”, June 2006 at 57 (DIA Submissions); attached as **Annexure 5**. Notably the Report on that Review, found that, “*The DLA's assessment of Aboriginal peoples' perceptions of their performance on heritage and cultural matters is very accurate. Consultations and submissions received from Aboriginal people and organisations confirm that they see the department as authorising the 'wholesale destruction of sites', many see that cultural rights are not being protected and that section 18 is just a process for the legal destruction of land*”; Report of the Review of the Department of Indigenous Affairs, by Dr Dawn Casey, PSM FAHA, April 2007, at 82 (attached as **Annexure 6**). More recently, the WA Auditor General reported that the, “*DLA has not effectively monitored or enforced compliance with conditions on mines under the Aboriginal Heritage Act 1972. As a result, heritage sites may have been lost or damaged without the State knowing or acting*”; WA Auditor General, Report 8: “*Ensuring Compliance with Conditions on Mining*”; September 2011, at 7 (Attached as **Annexure 7**). The Auditor General went



The Declarations sought by the Applicants under sections 10 and 12 of the Act

The Applicants, accordingly, apply for a declaration under s 10 of the Act to protect from injury the area of land and waters that surrounds the two arms of the creek bed in M47/1413 and M47/1431 - to a distance of 250 metres on either side of the centre of each arm of that creek bed; and, for a declaration under s 12 to protect all rock-shelters, caves and ochre sites situated in the Declaration Area. The Applicants, apply for declarations in terms of the following:

- the sites/objects the subject of this declaration are declared to be sites/objects of particular significance to the Applicants, in accordance with their traditional laws customs and religious beliefs, which are used by the Applicants for religious purposes; and,
- the sites/objects the subject of this declaration shall not be entered, disturbed or damaged by any person, without the free prior and informed consent of Michael Woodley and the Yindjibarndi Aboriginal Corporation.

The determinations of the Tribunal were the subject of appeals to both the Federal Court and the Full Court of the Federal Court. In short, YAC argued that the grant of the mining leases, and the activities permitted under them would prevent the Yindjibarndi from exercising their rights, under s 116 of the Commonwealth's *Constitution*, and under *Article 27* of the *International Covenant on Civil and Political Rights*, to freely carry out religious observances associated with sites of significance. And, in this regard, the Full Court of the Federal Court noted⁷⁴:

“The appellants’ case was considered by the Tribunal and the primary judge on the basis that the appellants’ use of ochre and gandi are religious practices. This approach has not been contested by the State or FMG. Further, if the ochre and gandi sites are dug up in the process of mining iron ore, the appellants will be prevented from continuing to access the ochre and gandi.”

The Dispute between FMG and YAC

It is widely known that FMG and YAC have been in dispute for quite some time over FMG's proposed project in the Yindjibarndi #1 Claim area. Since that dispute is now directly affecting to the nature and degree of “protection” afforded under the AHA to the significant sites and objects described above, it is appropriate, and convenient at this point, to describe that dispute.

- FMG's Negotiation Strategy

In mid-2007 three exploration licences (Tenements)⁷⁵ were granted to FMG in the Yindjibarndi #1 Claim Area, with the consent of YAC after both parties reached agreement on the terms of a

on to observe (at 23) that: “DIA has consistently failed to follow up when operators have not submitted progress reports or taken voluntary corrective action when a Section 18 condition has been breached. Non-compliance with conditions could for example be an operator's failure to erect suitable fences to protect a heritage site or, actual damage to a site”. In its 2006 submissions to the Functional Review Committee, the DIA noted that “Indigenous affairs is regarded as the most studied, reviewed and reported area of public policy in Australia” [however the DIA submitted that] “governments tend to adopt recommendations that have limited resource implications, are politically acceptable or that can be accommodated without a significant shift in the way the bureaucracy does business with Indigenous people”; the DIA concluded that the real problem is that “[t]he typical short-term and reactive response to crises or current political imperatives of government does little to address the long-term and systemic nature of the problems faced by Indigenous people and perpetuates a cycle of activity and interest that either dissipates with time, disappears due to competing budgetary pressures” (DIA Submissions at 49).

⁷⁴ in *Cheedy* on behalf of the Yindjibarndi People v State of Western Australia [2011] FCAFC 100, at [86]

⁷⁵ E47/1333, E47/1334 and E47/1447

“Yindjibarndi Heritage Agreement” (YHA)⁷⁶. Under the agreement “*the Yindjibarndi #1 Native Title Applicants [“the Applicants”]*, through YAC, consented to the grant of the Tenements and agreed to undertake heritage surveys at the request of FMG to ensure that FMG’s exploration activities did not disturb damage or destroy any sites or objects of significance to the Yindjibarndi People. In return, FMG promised “*not to undertake any ground disturbing work of any kind in any area of the Tenements that has not been subject to a Heritage Survey*” pursuant to the YHA; and, that FMG “*will not during the life of the Tenements make any application under s 18 of the AHA [for ministerial consent to disturb damage or destroy any sites or objects of significance to the Yindjibarndi People] with respect to the area within the Tenements without the written consent of Applicants*”. Notably, recitals clause C to the YHA expressly acknowledged that “[t]he Yindjibarndi Aboriginal Corporation represents the Applicants and is authorised to enter this contract as their agent”.

The YHA was executed by FMG; and, forwarded to YAC in the post. On the strength of that, YAC agreed to undertake heritage surveys for FMG. In the course of those surveys a significant ethnographic site was identified by the Yindjibarndi participants and FMG’s representatives on the surveys were asked, and agreed, to ensure the site was not disturbed. However after the surveys concluded, YAC was informed by FMG that the site had been bulldozed. YAC subsequently refused to execute the YHA, on the grounds that it was manifestly apparent, after the bulldozing, that the YHA was incapable of protecting sites of significance to the Yindjibarndi People. Andrew Forrest subsequently apologised for the bulldozing; and YAC then agreed to negotiate the terms of a new heritage agreement with FMG. However, those negotiations were overtaken by formal negotiations under the ‘right to negotiate’ provisions of the NTA, following notifications in late 2007 and early 2008 (under s 29 of the NTA) that FMG had applied for, and the State was intending to grant M47/1409, M47/1411 and M47/1413.

Relevantly, YAC Chairman, Stanley Warrie, wrote to Andrew Forrest, on 15 November 2007 advising that YAC was authorised to negotiate with FMG and would do so provided FMG:

- recognised the economic, political and social disadvantage faced by the Yindjibarndi People;
- fully respected their fundamental human right to civil, political and cultural self-determination – as “enshrined within the United Nations *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social and Cultural Rights*”; and,
- ensured, all negotiations are conducted through YAC.

Notably, the YHA and the above letter were both written at a time when YAC and the Yindjibarndi People had no legal representation.

FMG’s stipulated preference, in the subsequent formal negotiations, was to achieve agreement on the terms of what FMG called a “*Whole of Claim Land Access Agreement*”. In essence, what FMG was seeking was the consent of the Yindjibarndi People to the grant of any and all tenure desired by FMG, at any time in the future, for an unspecified “*Project*” in the Yindjibarndi #1 Claim Area. The formal negotiations culminated in a three-day negotiation session, on 10-12 June 2008, involving FMG’s lead negotiator, Blair McGlew and other FMG representatives; the YAC

⁷⁶ a copy of the YHA is attached as **Annexure 8**

Directors and Elders' Council, a large number of YAC members; and YAC's newly appointed legal representative⁷⁷. This meeting was digitally recorded, and an excerpt from the recording was screened earlier this year in the ABC's Four Corners broadcast, "*Iron and Dust*".

In essence, FMG's offer for the proposed Whole of Claim Land Access Agreement, comprised:

- a signature payment of \$250,000;
- a vocational training package, under which Yindjibarndi people could get training to work in FMG's mines, valued at \$2m per annum;
- a 5% FOB 'royalty' – capped at \$3m per annum;
- a heritage protection protocol which effectively replaced the traditional right (and the religious obligation) of the Yindjibarndi people to determine whether any site or object of particular significance can be damaged, with a right to be consulted by FMG - prior to FMG making any application for ministerial consent, under s 18 of the AHA, to damage or destroy such sites.

As an alternative to a "Whole of Claim Land Access Agreement", FMG sought the consent of the Yindjibarndi People to the immediate grant of the three mining leases, the subject of the 'right to negotiate'; and, to the grant of a railway investigation licence and a bulk sample permit. In return for this consent FMG was prepared to offer:

- a signature payment of \$50,000;
- a vocational training package, valued at \$1m per annum;
- a 5% FOB 'royalty' – capped at \$1.5m per annum; and,
- a heritage protection protocol in the same terms as those described above.

Mr McGlew informed those present at the meeting that FMG "*preferred to get access to the Yindjibarndi #1 Claim area under the [proposed] agreement but, if agreement wasn't possible, then FMG would get access anyway through the legal process, which would commence around the end of the year*".

FMG's offer, on both counts was rejected unanimously by all Yindjibarndi people who were present at the negotiation session, including those members who subsequently broke away from YAC to establish the Wirlu-murra Yindjibarndi Aboriginal Corporation (WMYAC).

YAC's negotiation position in 2008 was predicated on what the United Nations, in 2007, declared to be "*the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world*"⁷⁸. The Applicants hold the view that YAC is obliged (under the fiduciary duties it owes to current and future generations of the Yindjibarndi People) to ensure that negotiated outcomes do

⁷⁷ I was appointed Counsel for YAC with Slater & Gordon as my instructing solicitors.

⁷⁸ UN Declaration on the Rights of Indigenous Peoples, Article 43 - adopted by the General Assembly of the United Nations, at the 107th Plenary Meeting on 13 September 2007. The *Declaration* is available through the website of the Australian Human Rights Commission http://www.hreoc.gov.au/social_justice/declaration/assembly.html

not fall below those “*minimum standards*”. Accordingly, in all negotiations affecting the native title and procedural rights of the Yindjibarndi People, YAC negotiates for outcomes that uphold:

- the right of the Yindjibarndi People to *self-determination and autonomy in matters relating to their internal and local affairs*⁷⁹;
- the right of the Yindjibarndi People to *maintain, protect and develop past present and future manifestations of [Yindjibarndi] culture, such as archaeological and historical sites*⁸⁰;
- the right of the Yindjibarndi People to *manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; and to maintain, protect and have access in privacy to their religious and cultural sites*⁸¹;
- the right of the Yindjibarndi People to be *actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions*⁸²;
- the right of the Yindjibarndi People to *own, use, develop and control their lands by reason of their traditional ownership of those lands*⁸³; and,
- the right of the Yindjibarndi People to *develop priorities and strategies for the development or use of [Yindjibarndi Country], particularly in connection with the development, utilisation or exploitation of mineral, water or other resources*⁸⁴; to ensure that any such development proceeds only after the Yindjibarndi People have, through YAC as their own chosen *representative institution, given their free, prior and informed consent*⁸⁵; and, to ensure there are *appropriate measures to ... mitigate adverse social, cultural or spiritual impact*⁸⁶.

The Applicants are aware that the Commonwealth Government’s subsequent endorsement of the *Declaration*, on 3 April 2009, came with the caveat that it will ‘*will not affect the law concerning native title*’⁸⁷; however the Applicants consider it would be improper for the chosen representative institution of the Yindjibarndi People to negotiate for outcomes that fall below the minimum standards of the *Declaration*. The position of the YAC Directors in this regard was unanimously endorsed at meetings of the members of YAC and the Yindjibarndi People throughout 2008 and 2009. Relevantly, in the negotiations with FMG, YAC’s starting position, in return for the consent sought by FMG in the proposed “Whole of Claim Land Access Agreement”, was the equivalent of a 5% FOB royalty, similar to what was then paid in iron ore royalties to the State Government. YAC’s “vision” was to obtain the means for securing the future survival of the language, law, culture and society of the Yindjibarndi People, through substantial compensation that would be directed towards the development of cultural governance structures and commercial enterprises that would maintain the connections between Yindjibarndi people and Yindjibarndi country; and, towards the delivery of housing, health and education programs and services to Yindjibarndi people

⁷⁹ See Articles 3 and 4 of the *Declaration*

⁸⁰ See Article 11 of the *Declaration*.

⁸¹ See Article 12 of the *Declaration*.

⁸² See Article 23 of the *Declaration*

⁸³ See Article 26 of the *Declaration*

⁸⁴ See Article 32 of the *Declaration*, at [1].

⁸⁵ Article 32, at [2]

⁸⁶ Article 32, at [3].

⁸⁷ Statement of the Commonwealth Minister, on the web at:

http://www.jennymacklin.fahcsia.gov.au/statements/Pages/un_declaration_03apr09.aspx

(and to other indigenous people in the Pilbara) as contemplated by clause 2 of the YAC Constitution.

YAC's offer was rejected out of hand, by FMG's Blair McGlew, on the grounds that it was "*extortionally high*" (sic) and went "*far beyond the ball-park established by agreements between FMG and other indigenous groups in the Pilbara*". Notably, as shown in the Four Corners program, that particular exchange was between Blair McGlew and Vince Adams⁸⁸; who on 14 June 2011 swore an affidavit in a Supreme Court action⁸⁹ (to have an administrator appointed to YAC) alleging that:

"Since 2007, I have been excluded from the YAC and excluded from the YAC decision making process. I have not been sent notifications of meetings, I have not been consulted about YAC business, I have not been informed of anything that YAC has done and I have not been informed when an Annual General Meeting has been held. I have not been able to participate in a vote or discussion on any matter or decision of the YAC."

In late 2008, YAC lowered its offer to an uncapped 2.5% FOB royalty - the same amount of compensation regularly paid by larger mining companies to individuals and smaller mining companies who hold exploration licences, in return for an agreement allowing the larger mining to exploit resources in the area covered by their exploration licence⁹⁰. FMG rejected this offer and in December 2008, FMG commenced its "legal process"⁹¹. Notably, as the price of iron ore skyrocketed, YAC reduced the sought after uncapped royalty, to the point where it was in line with the 0.5% FOB royalty offered and paid by other major mining companies in respect of iron ore land access agreements in the Pilbara. On each occasion however, YAC's offer was rejected out of hand. The rationale, offered by Mr McGlew, in the June 2008 meeting was that "*Aboriginal people can't handle that kind of money*".

On 23 July 2009, FMG wrote to YAC to advise that the grant of exploration licences E47/1398 and E47/1399 had become a "*high priority*", and FMG wished to "*energetically advance negotiations for the grant*". After confirming receipt of its letter to YAC, FMG advised the Department of Mines and Petroleum ("DMP") that FMG and YAC "*are now negotiating in good faith*" about the grant of the two licences. FMG's letter to YAC included a draft agreement; and, FMG invited YAC to consent to the grant of the two exploration licences on the terms expressed therein. In effect that agreement proposed that the Yindjibarndi People agree to waive all procedural rights in respect of both the grant, and any renewal, of the two exploration licences; and to waive any future entitlements for compensation, whether under the NTA, the *Mining Act 1978* (WA) or otherwise; and, in return, FMG would:

- a. (subject to any reasonable restriction imposed from time to time by FMG) agree that Yindjibarndi People may enter the areas covered by the two exploration licences at all times;

⁸⁸ an Yindjibarndi man who has since become one of the leading figures in the breakaway WMYAC

⁸⁹ commenced by the WMYAC, which is apparently wholly funded by FMG

⁹⁰ Examples of this are: the 2.2% royalty paid by Hamersley Iron for a mining tenement held by the late Lang Hancock (see: Dr Mary Edmunds, 'They Get Heaps: A study of Attitudes in Roebourne Western Australia', published by Aboriginal Studies Press, Canberra, 1994); and, the 2.5% royalty payable to one Derrick Ammon under an agreement with Consolidated Minerals (as described in the judgement of the Supreme Court, in *Ammon v Consolidated Minerals Limited* [No 3] [2007] WASC 232

⁹¹ FMG's litigation strategy is described below

- b. utilise a heritage protection protocol, which replicated the terms of the heritage protection protocol offered in June 2008; and,
- c. pay \$5,000 to the Yindjibarndi People upon the grant of each of the exploration licences.

Five days later, on 28 July 2009, FMG forwarded another letter to YAC; this time offering a “Whole of Claim Land Access Agreement”, on the following terms:

- a signature payment of \$245,000;
- an annual mining payment (to a maximum of \$2.1 million); and,
- an annual vocational training payment (VTEC) to a maximum of \$1.4 million; and,
- a heritage protection protocol, which replicated the terms of the heritage protection protocol offered in June 2008

This offer was lower than the offer previously made by FMG in June 2008; and this, it was said, was the consequence of the “global financial downturn”. The letter advised that the offer would remain open for thirty days and, if not accepted beforehand, would then be withdrawn. YAC did not accept the offer.

In December 2009, FMG put the same offer back on the table; and in January 2010; FMG asked YAC to arrange a community meeting so that FMG could satisfy itself that the Yindjibarndi People knew of, and were satisfied with YAC’s decision to reject the offer. YAC refused that request and after threatening, in February 2010, to organise his own community meeting an FMG document titled “Yindjibarndi - Fortescue Information Paper” was circulated within the Yindjibarndi community inviting people to call Blair McGlew on a mobile telephone number. The flyer stated that FMG had been attempting to negotiate with Yindjibarndi, since 2008, but Yindjibarndi wanted “*way too much*”; so FMG “*asked the Tribunal to decide whether the mining leases could be granted*” and the Tribunal held that FMG “*had negotiated in good faith with Yindjibarndi and told the State that the leases could be granted*”. The flyer then stated:

“Under the law, no financial compensation is payable to Yindjibarndi if the leases are granted in this way”

Not surprisingly, given that no Yindjibarndi person holds a degree in law, at least one person contacted Mr McGlew; and, on 8 March 2010, Mr McGlew convened his own meeting of YAC members, without either informing or inviting the YAC Directors. Tribunal Member John Catlin later described this event as, a “Maverick meeting”; and, it gave rise to serious dissent and internal disputes within the previously unified Yindjibarndi community.

At a subsequent community meeting, arranged by YAC to try to reach a new consensus and held on 16 March 2010, a unanimous resolution was passed to continue to reject FMG offer and to seek an “uncapped royalty”⁹².

⁹² I attended the 16 March 2010 meeting and provided a detailed account of the negotiations between YAC and FMG, as well as a detailed account of YAC’s legal strategy, concerning s 116 of the Constitution and Article 27 of the ICCPR. The meeting was attended by approximately 85 YAC members, and included the members of the Yindjibarndi #1 Applicant

On 6 July 2010, YAC was informed that another meeting had just finished between FMG representatives and some members of YAC; and, that in the course of that meeting a number of YAC members had agreed to recommence heritage surveys for FMG in the “Firetail” area. YAC was unaware of the meeting until after it had concluded. The YAC Directors arranged for a community meeting to be held, two days later, to discuss what had happened; and, the minutes of that meeting were taken by Dr Jan Kapetas, an employee of Juluwarlu Group Aboriginal Corporation, the organisation that manages the day-to-day affairs of YAC pursuant to a written agreement. It is apparent from those minutes that at least some of the Yindjibarndi attended at the July 6 meeting believed they had been “tricked”. The minutes record Ms Bigali Hanlon, as stating:

“FMG told people at that meeting on Tuesday that they have lost their Court Case, and you can’t do anything. That gave people the understanding that their only hope was to do surveys now”

Ms Cheedy stated:

We didn’t understand what was going on in the Tuesday meeting. I was there. I thought they were offering jobs for people. Put your names down here, write down everyone who might be interested in work. Now I see we were being tricked.

Relevantly, the following exchange then took place:

Michael Woodley: *That country is too important to us. Ten years ago, I went out there with the old people, all gone now. Recording...(weeps) Cannot continue.*

Tootsie Daniel: *Sacred country too. Very sacred.*

Bigali Hanlon: *FMG argue that because we don’t go there, do ceremony, we got no rights, but we can’t go out there most of us. It’s not possible. But we know that country. We know those places. They’re part of us and our heritage. It’s always been and always will be.*

Michael Woodley: *We all know what our country means to us. It’s our life. I go out there. A lot of us are going there. We do the ceremony for the sites. Wimiya and my grandfathers talked that country. They taught us what it means, what to do. The Law, the jawi.*

Barry Pat: *We all together. Must be full house. Can’t be divided. Our Law says that. Depends on that.*

Michael Woodley: *YAC as the prescribed body corporate can tell ACMC whether survey people are the right people. No-one can just put themselves down if they know nothing. We will write to ACMC today and tell them what’s going on. FMG are not just doing this to us. They have a record of being mavericks. People will be asked on these surveys to sing jawi, tell story. How can they do that? They don’t know. They don’t go to Law, most of them. They are not custodians or Law men for that country. But what they say, will count – and then FMG can mine the country and kill it.*

who subsequently joined WMYAC and swore affidavits in the Tribunal hearing for the grant of M47/1431, supporting the grant and alleging that they had not informed of YAC’s legal strategy and had not authorised Michael Woodley to give the evidence he provided to the Tribunal in that matter.

Barry Pat: *Under Yindjibarndi law, man, not woman can speak.. Knowledge people only can speak for country.*

Michael Woodley: *Worse. There is a lot of powerful and dangerous stuff there. Old Law Grounds. Spirits. Sickness for those who don't know what they're doing. Only Law men can go there safely.*

The July 6 meeting gave rise to a breakaway group of about 15 YAC members, who on the occasion of the final formal negotiation session between YAC and FMG (chaired by the President of the Tribunal), on 10 August 2010, announced they were leaving YAC to establish the “FMG Yindjibarndi”.

Just prior to the close of the business day before that final negotiation session, YAC received a new draft of FMG’s proposed “Whole of Claim Land Access Agreement” (Draft #6); and the outcome of such late delivery was that there was insufficient time, prior to the commencement of the 10 August meeting, for the YAC Directors and YAC’s Counsel to peruse the document to ascertain whether, and if so what changes had been made to previous versions of the draft agreement. No changes were highlighted or tracked in the document, and the covering letter made no mention of any changes. Moreover, although the meeting commenced with a presentation by Blair McGlew, about an increased compensation offer, Mr McGlew made no mention of any other changes or alterations to the previous drafts.

Mr McGlew described FMG’s new offer as:

- a mining royalty of 15 cents per tonne to a maximum of \$3 million each year;
- a “VTEC” royalty of 5 cents per tonne to a maximum of \$1.5 million per year; and,
- an Yindjibarndi Elders royalty of 5 cents per tonne to a maximum of \$1 million per annum.

He then stated:

“a couple of years ago our offer sat at \$5 million per year and now we have gone up another \$0.5 million per year - so we may be able to go up another \$0.5 million - but we will only negotiate marginally”

What Mr McGlew failed to say, and what remained unknown to the YAC Directors, on that day and for some period of weeks afterwards, was that FMG had, in Draft #6, unilaterally extended the definition of the “Agreement Area”, so that it went beyond the Yindjibarndi #1 Claim Area, to include the whole of the Yindjibarndi Native Title Determination Area. The intended scope of FMG’s new proposed ‘Project’, was reflected in the re-drafted “Recitals” which, relevantly, stated:

- a) *...Yindjibarndi Aboriginal Corporation (YAC) is the Prescribed Body Corporate (PBC) for the Yindjibarndi People in the determined Ngarluma Yindjibarndi native title claim (WAD 6017/96) (“Daniel”). Daniel was approved for Determination on 2 May 2005 in Federal Court proceedings Daniel v Western Australia [2005] FCA 536.*
- b) *FMG proposes to construct the Project Infrastructure, and undertake Project Operations, in the Pilbara region of Western Australia.*

- c) *FMG has not yet identified the full nature and extent of its Project or the precise location of the activity to the Yindjibarndi People and to YAC.*
- d) *FMG has nonetheless requested... YAC to forego certain procedural rights under the NTA to assist FMG with land access for the Project... so that it can proceed in a timely manner. FMG also wishes to obtain tenure for future Projects in a timely and efficient manner.*
- e) *In order to facilitate the Project ...YAC [is] willing to forego certain procedural rights under the NTA, in exchange for the procedures, protections and other benefits provided under this Agreement.*
- f) *...YAC and FMG wish to enter into this Agreement to record their agreement concerning the... Project within the Agreement Area.*

And, as indicated above, the “Agreement Area” was said to include: “*the Yindjibarndi portion of the native title determination area in Daniel v State of Western Australia [2005] FCA 536, determined on 2 May 2005 (Daniel)*” in respect of which YAC is the Prescribed Body Corporate”.

In effect, Draft #6 provided that YAC and the Yindjibarndi #1 Applicant “*consent to the grant and renewal of all Project Tenure*”; and, will not object to the grant of any further tenure desired by FMG for its Project. “*Project Tenure*” was defined to include all “*Mining Tenure*”; “*Mining Tenure*” was defined, to include mining leases, miscellaneous licences and any “*Exploration Licence*”; and, “*Exploration Licence*” was defined to include “*any exploration licence which FMG has applied for in the Agreement Area*”. The definition of “*Exploration Licence*” also referred to FMG’s “*Existing Mining Tenement Applications*”, as set out in “*Schedule C*” of the draft agreement; however, apart from its heading, Schedule C was, like all previous versions, a blank page. The agreement was to be registered as an Indigenous Land Use Agreement, under the NTA, so as to be binding on all future generations of Yindjibarndi People; and, the agreement required YAC, the Yindjibarndi #1 Applicant and the Yindjibarndi People to waive all procedural rights in respect of both the grant, and any renewal, of all Project Tenure; and to waive any future entitlements for compensation, whether under the NTA, the *Mining Act 1978 (WA)* or otherwise.

The changes in Draft#6 were discovered a few weeks after the August 10 meeting, in the course of an on-line exercise to try to discover exactly how many FMG exploration licence applications were pending in the Yindjibarndi #1 Claim area. A search of the DMP database disclosed the existence of 18 applications in the Yindjibarndi #1 Claim area; and, 25 applications in the Yindjibarndi Native Title Determination Area, 21 of which had been lodged by FMG before 13 February 2006.

YAC’s Constitution defines a “native title decision” as a decision which affects any of the native title rights held by YAC in the Yindjibarndi Native Title Determination Area. The native title rights referred to in YAC’s Constitution are not merely procedural rights; they are real property rights held by YAC in the Yindjibarndi Native Title Determination Area, in trust, for the benefit of the Yindjibarndi People.

Before making any decision to surrender those substantive native title rights and interests; or before making any decision to do, or agree to do, any other act that would affect those rights, the YAC Directors must, in accordance with the *Native title (Prescribed Bodies Corporate) Regulations 1999*, as reflected in clause 15.1(c) of YAC’s Constitution, “*consult with and obtain the informed consent of the common law holders*”. The “*common law holders*” are defined in the Constitution as being: “*for the whole of the determination area, the Yindjibarndi People*”. The YAC Directors are



further required, by clause 15.2 of the Constitution, to ensure that any “*such consultation is made and consent is given in accordance with a process of decision making undertaken in accordance with law and custom*”, which is defined in clause 22 to mean:

“the body of traditions, laws and customs and beliefs recognised and held in common by the common law holders, and includes those traditions, laws, customs and beliefs exercised in relation to [any] particular area of land and waters, traditionally accessed resources, and persons” (emphasis added).

Clause 2 (1) of the YAC Constitution requires YAC to “*protect, preserve and advance the traditional laws and customs of the Yindjibarndi People*”; and, clause 2.2 requires YAC to “*promote and support the culture, traditions and customs of the Yindjibarndi People*”; as well as their “*well-being, economic development and social progress*”; and, to “*provide education, training and employment*” to that end.

Following the August 2010 negotiation session, FMG negotiated a draft agreement (Draft #7) with the breakaway group of Yindjibarndi members who, in November 2010, established the WMYAC. There are two very significant additional terms, in Draft #7; namely:

the consent given by YAC and the Yindjibarndi People to the grant and renewal of all Project Tenure desired by FMG at any time, and anywhere within Yindjibarndi country, also includes consent to the grant and renewal of any tenure desired by any other person (anytime and anywhere in Yindjibarndi country) with whom FMG has, or enters into an agreement; and,

although Draft #7 requires execution by YAC⁹³, YAC receives no compensation under the agreement; instead, the agreement states that “FMG must pay \$500,000 to WMYAC within 14 days” of the execution of the Agreement; and must pay \$3 million in cash, “during each Royalty Year pay... to WMYAC”.

The agreement is completely silent about what promises WMYAC has made to FMG in return for those promised payments. According to one report⁹⁴, FMG is fully funding WMYAC “in the same way that it fully funds other native title representative bodies that are authorised to negotiate on behalf of native title claim groups. In this instance, YAC is the only representative body authorised to negotiate with FMG; and the funds provided to WMYAC are being used to finance actions brought by WMYAC, in the Supreme Court and the Federal Court, to remove YAC from that position.

- ***FMG’s strategic use of the NTA***

Between 16 October 2003 and 13 February 2006, FMG applied for 18 exploration licences in the Yindjibarndi #1 Claim Area; and, 21 exploration licences in the Yindjibarndi Native Title Area, which, collectively, cover nearly 7,000 square kilometres of Yindjibarndi country⁹⁵. As indicated earlier, YAC was unaware of the existence of the vast majority of these exploration licence

⁹³ As the PBC and holder of the native title rights in the Yindjibarndi Native Title Area; and as the agent for the Yindjibarndi #1 Applicant

⁹⁴ by Paul Cleary in the Sydney Morning Herald, in June 2011

⁹⁵ A list of FMG’s exploration licence applications is attached as **Annexure 9**

applications, until late 2010⁹⁶, since very few have advanced through the ‘right to negotiate’ procedures in the NTA. Instead, they appear to be “parked” in the WA Department of Minerals and Petroleum, until such time as FMG notifies the Department that one or more of them has become a “priority”, for FMG. Thereupon, the ‘right to negotiate’ is triggered by way of a formal notification by the State of its intention to grant the relevant exploration licence; and, if 6 months elapses without agreement being reached, FMG may apply to the Tribunal, under s 35 of the NTA, for a determination to allow the State to grant of the tenement/s. However, the fact of notification does not necessarily mean that, at the end of six months FMG will make such an application. As demonstrated below, some of these 39 exploration licences have been pending any such application by FMG for five or more years.

The NTA was enacted as ‘beneficial’ legislation for the Aboriginal peoples of Australia, in order to “*rectify the consequences of past injustices*”; and, “*to ensure that Aboriginal peoples...receive the full recognition and status within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire*”⁹⁷. However, the “parking” mechanism described above has allowed FMG to use the NTA, to obtain a substantial advantage; as against FMG’s competitors and as against the Yindjibarndi People.

The advantage obtained by FMG as against its competitors, arises out of the operation of the *Mining Act 1978 WA* (the Mining Act), which in effect provides that the first person to lodge an exploration licence application, over any particular area, has the right (in priority over any other applicant) to the grant of an exploration licence over that area⁹⁸; and a subsequent exclusive right to require the Minister to grant one or more mining leases in that area⁹⁹. The policy is designed to encourage exploration by guaranteeing that the costs of exploration are not thrown away through the grant of a mining lease to a competitor. In return, the holder of an exploration licence is required to expend a minimum of \$300 per annum, for each square kilometre of each exploration licence, on exploration or mining costs¹⁰⁰; and to surrender 40% of the exploration licence area after 5 years¹⁰¹. This policy is designed to ensure mining companies can’t lock up the land against their competitors.

Of the 39 exploration licences, applied for by FMG between October 2003 and February 2006, only five have been granted to date. Collectively those five licences cover less than 1000 square kilometres of the Yindjibarndi country. The outcome of the “parking” mechanism in this respect means that FMG:

- has effectively locked up 6,000 square kilometres of Yindjibarndi country against all competitors for periods of up to eight years;
- has saved approximately \$2.1 million per annum in compulsory exploration costs; and,
- has avoided the surrender of 40% of its much heralded “acreage”.

⁹⁶ FMG’s approach to good faith negotiations, for a “broad [unspecified] project”, which has been approved by both the Tribunal and the Full Court of the Federal Court, has allowed FMG to hide from YAC and the Yindjibarndi People the details of what clearly is known to FMG about the intended scope of its “Project”.

⁹⁷ NTA Preamble

⁹⁸ *Mining Act* s 105A(1)

⁹⁹ see *Mining Act* s 67(1) and s 75(7)

¹⁰⁰ See *Mining Act*; sections 62, 63 and 63A (b); and *Mining Regulations 1981*, at [21]

¹⁰¹ See *Mining Act* s 65

The use of the “parking” mechanism also allows FMG to use s 35 of the NTA to engage in strategic litigation to deplete the resources of uncooperative native title representative bodies, such as YAC. In YAC’s case, this commenced in December 2008, following the standoff over compensation in June 2008.

In the first instance FMG applied to the Tribunal, under s 35 of the NTA, for a determination to allow the grant of M47/1413; and then, in January 2009, made a separate application for a determination to allow the grant of M47/1411 and M47/1413. While all three mining leases could have been the subject of a single s 35 application, the two applications meant that, over the first six months of 2009, YAC had two separate cases to run, both of which required evidence and contentions; firstly, about negotiations in good faith; and, secondly, about the effect of the grants on each of the matters set out in s 39 of the NTA. The second half of 2009 was then taken up with preparing the appeals at first instance against those determinations; and, at the same time, FMG commenced an action by way of Plaintiff for specific performance, in the Wardens Court in July 2009, alleging YAC was in breach of the YHA by failing to provide FMG with reports on the outcomes of surveys undertaken by YAC - notwithstanding that, at the end of each day of a survey, YAC participants had provided FMG with daily work sheets reporting the outcomes of the day’s survey, which allowed FMG to get on with its exploration activities. The Plaintiff was energetically advanced by FMG, through interlocutory proceedings which necessitated the filing of a detailed defence and the production of unnecessary formal reports on the outcomes of the surveys¹⁰² - whereupon FMG withdrew the Plaintiff.

On 18 December 2009 (in a move quite contrary to FMG’s usual policy of parking its exploration licence applications under the NTA’s ‘right to negotiate’) YAC received notification from the State, pursuant to s 29 of the NTA, to the effect that, unless an objection was lodged in the Tribunal, the State intended to use the NTA’s expedited procedure to grant exploration licence E47/1818 to FMG. Since the expedited procedure allows exploration licences to be granted with no ‘right to negotiate’, YAC was obliged to lodge an objection and did so, on 17 March 2010; then, after several requests for additional time, YAC was able to file (on 25 August 2010) evidence and contentions to satisfy the Tribunal that the grant would impact upon community activities and sites of particular significance¹⁰³. Notably, FMG did not bother to file any evidence or contentions in this matter. In the event, the Tribunal determined on 29 November 2010 that the expedited procedure could not be used to grant E47/1818¹⁰⁴.

At the same time, throughout 2010, while YAC’s resources were engaged in the appeals to the Federal Court against the Tribunal’s determinations allowing the grant of M47/1409, M47/1411 and M47/1413, FMG commenced six separate proceedings in the Wardens’ Court seeking the grant of six miscellaneous licences¹⁰⁵, over the same area covered by M47/1409, M47/1411 and M47/1413, notwithstanding that the mining leases were the subject of the appeals and had not been granted; and, accordingly, there was no legal foundation upon which the miscellaneous licences could be

¹⁰² the only alternative open to YAC was to proceed to a hearing of the Plaintiff, which, given the requirements of the appeals was no real alternative

¹⁰³ as required by s 237 of the NTA

¹⁰⁴ see: *Yindjibarndi Aboriginal Corporation/ Western Australia/ FMG Pilbara Pty Ltd*[2010] NNITA 194

¹⁰⁵ Collectively these six applications covered a contiguous area; and all six were for an identical purpose - the development of “mining and associated infrastructure”; accordingly, they could have been the subject of one application and there was no apparent reason for the making of six separate applications other than it meant YAC would have to deal with six different court cases; or, alternatively, make an interlocutory application, supported by evidence, requesting that they be jointly determined. This was the course adopted.

granted at that time¹⁰⁶. Nevertheless, the proceedings necessitated a further stretching of YAC's limited resources; firstly, to satisfy deadlines set by FMG for detailed "further and better particulars" of YAC's objections to the grant of the miscellaneous licences¹⁰⁷; and secondly to file and serve evidence and submissions and attend a hearing to contest FMG's interlocutory application to change the venue for the hearing of YAC's objections, from Karratha to Perth¹⁰⁸.

The hearing of the appeal against the Tribunal's determinations allowing the grant of M47/1409, M47/1411 and M47/1413 took place over three days, in March 2010; and, on 2 July 2010, McKerracher J handed down his decision dismissing the appeals¹⁰⁹. There then followed, in relatively quick succession, an unsuccessful application by FMG for the costs of the appeals¹¹⁰; an unsuccessful application by YAC to stay the grant of the three mining leases until after determination of the appeals to the Full Court¹¹¹; an application by FMG for the costs of the stay application¹¹²; and then, on 6-7 December 2010, the hearing of the appeals by the Full Court of the Federal Court¹¹³.

At the same time, on 25 August 2010, FMG applied under s 35 of the NTA for a determination by the Tribunal, allowing the grant of a fourth mining lease, M47/1431; and, two exploration licences: E47/1398 and E47/1399; both of which had been "parked" for years under the right to negotiate provisions of the NTA - E47/1398 for 5 ½ years; and, E47/1399 for 4 ½ years¹¹⁴.

By the end of 2010, it was simply no longer possible to keep up with the demands of the litigation¹¹⁵; and, this increasingly resulted either in non-compliance with directions set by the Court and the Tribunal; or alternatively in documents being drawn too hastily. Thus, in the determination, on 1 March 2011, of an application by YAC to amend compliance dates for the filing of YAC's documents in response to FMG's most recent s 35 application, the Tribunal commented at length upon the "*lamentable history of non compliance by the native title party*"¹¹⁶. Notably, YAC's application was opposed by FMG on the grounds that "*the approval of an extension of directions would prejudice the grantee party in that it would cause further delay [in] the resolution of its applications for the grant of tenements and incur unnecessary and additional*

¹⁰⁶ Section 91(6) of the Mining Act provides that a miscellaneous licence shall not be granted unless the purpose for which it is sought is directly connected with mining operations; and in the absence of the three mining leases, the subject of the appeals, there were, and could be, no "mining operations", as defined by s 8 of the Mining Act.

¹⁰⁷ the only alternative being a contested hearing on the question of whether further and better particulars should be ordered by the Wardens' Court

¹⁰⁸ see: *FMG Pilbara Pty Ltd v Yindjibarndi Aboriginal Corporation & Anor* [2010] WAMW 18 - the determination of Mining Warden, Wilson M, allowing FMG's application for a change of venue (from Karratha to Perth) for the hearing of YAC's objections to the grant of Miscellaneous Licences: L47/350, L47/354, L47/355, L47/361, L47/367 and L47/368

¹⁰⁹ see: *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2010] FCA 690

¹¹⁰ see: *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* (No 2) [2010] FCA 1154

¹¹¹ see: *Cheedy v State of Western Australia* [2010] FCA 1305

¹¹² see: *Cheedy v Western Australia* (No 2) [2011] FCA 305

¹¹³ see: *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011] FCAFC 100

¹¹⁴ see: *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2011] NNTTA 107, at [1] - these periods of 'parking' are dated from the time of notification by the State of its intention to grant the licences, not from the date on which FMG first lodged its applications for the licences, which in each case was 8 April 2004. Notification for E47/1398 occurred on 12 January 2005; and notification for E47/1399 occurred on 18 January 2006.

¹¹⁵ Although Slater & Gordon were the solicitors on the record, they did not have experienced native title lawyers and so the vast bulk of the legal work fell to YAC's Counsel. By way of comparison, FMG had in-house lawyers dealing with Tribunal matters, and engaged two external firms of lawyers to take carriage of the litigation in the Federal Court and the Wardens' Court; Green Legal for the Tribunal and Federal Court matters; and, Maxim litigation followed by Lawtons Lawyers, for the Wardens Court matters; in addition, FMG could also afford to brief senior Counsel to appear at court hearings; whereas, with the exception of the Full Court appeals, YAC was unable to brief senior Counsel. By the end of 2010, YAC's Counsel was seriously exhausted.

¹¹⁶ see: *Ned Cheedy and Others on behalf of Yindjibarndi People #1/FMG Pilbara Pty Ltd/Western Australia* [2011] NNTTA 30, at [10]



costs”¹¹⁷. The alternative outcome, for YAC, was observed by the Full Court in the determination of the appeals against the Tribunal’s determinations allowing the grant of M47/1409, M47/1411 and M47/1413:

*The original Notices of Appeal were subsequently amended and replaced with Amended Notices of Appeal filed on 18 November 2010. Several of the grounds of appeal in the Amended Notices of Appeal were not addressed in the written submissions of the appellants but were not expressly abandoned. Further, the oral argument on the hearing of the appeal relied on grounds which were not pleaded in the Amended Notices of Appeal. Some of these grounds had not been argued before the primary judge and no application was made at the hearing of the appeal for those arguments to be relied upon at the hearing of the appeals.*¹¹⁸

The Court made the following observation:

*The conduct of the appeals in these respects was so disorganised and below an acceptable standard that we have reluctantly drawn attention to the matter. In the result, the hearing of the appeals was confused and took longer than was necessary. The State and FMG were not given proper notice of the arguments to be relied upon. Consequently, they were not able to be of as much assistance to the Court as would have been the case if the appellants’ written submissions had reflected the arguments to be relied upon.*¹¹⁹

The potential effect of such an observation is that it allows FMG to seek a costs order against the legal representatives of YAC.

2011 has seen no diminution in the ongoing use of strategic litigation. In addition to interlocutory proceedings for, and the hearing of, YAC’s objections in the Wardens’ Court, in May 2011¹²⁰; FMG has, to date lodged in the Wardens’ Court, in excess of 100 miscellaneous licence applications, to construct a new railway line through Yindjibarndi country to the proposed new port of Anketell. YAC is of course obliged to object to the grant of those licences without the free prior and informed consent of the Yindjibarndi People, obtained in accordance with YAC’s Constitution. A hearing by an Independent Person, under s 24 MD (6B) is also pending, in respect of the miscellaneous licences that were the subject of the Wardens’ Court hearing in May this year.

On 27 June 2011, FMG lodged a further application, under s 35 of the NTA, for a determination by the Tribunal; this time to allow the grant of exploration licence E47/1319. FMG applied for this particular exploration licence application on 16 October 2003. It was then parked in DMP, for 4½ years, until the State gave notification (under NTA s 29, of its intention to grant the licence) on 23 April 2008; after which it was parked under the NTA’s ‘right to negotiate’ provisions, for a further 3 years. YAC was notified of FMG’s s 35 Application but was not subsequently informed of the Directions made by the Tribunal to bring the application to a hearing, by the filing of evidence and contentions concerning ‘good faith’ negotiations and evidence and contentions as to the effect of the grant on the registered native title rights of the Yindjibarndi People and the other considerations set out in s 39 of the NTA¹²¹.

On a completely new front, the members of YAC who broke away to establish the WMYAC have applied to the Supreme Court for orders to remove the current YAC Directors and to appoint an

¹¹⁷ *ibid* at [7]

¹¹⁸ *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011] FCAFC 100, at [81]

¹¹⁹ *ibid*, at [82]

¹²⁰ see: *FMG Pilbara P/L v Yindjibarndi Aboriginal Corporation* [2011] WAMW 13

¹²¹ It appears the Tribunal’s Directions were forwarded to Slater & Gordon, who no longer act for YAC.

administrator - on grounds that are manifestly unsustainable¹²². They have also applied to the Federal Court for orders, under s 66B of the NTA, to replace the current members of the Applicant for the Yindjibarndi #1 Claim, notwithstanding that their application has no reasonable prospect of success. This is because, in order to mount a successful s 66B Application, the persons making the application must establish that they have been authorised to make the application by way of resolutions passed at a meeting that is fairly representative of all members of the claim group - as defined in the native title claim.

The Yindjibarndi #1 claim group, as defined in the Yindjibarndi #1 Native Title Claim, is: “the descendants of [31 named] Yindjibarndi Ancestors”. The WMYAC s 66B application is based on resolutions passed at a meeting of indigenous people, held in Roebourne on 16 March 2010, in response to a notice (published seven days earlier) inviting the attendance of “*all members of the Yindjibarndi #1 Claim Group*”. No mechanism was in place at the meeting to establish whether the attendees were in fact the descendants of the 31 named ‘apical ancestors’ or whether they constituted a fair representation of the descendants of all the named apical ancestors. In identical circumstances, the Federal Court held¹²³:

“the native title claim groups are defined in each case by reference to apical ancestors and biological descendants of those persons.... The advertisements and notices did not refer to the relevant native title claim groups except by use of the generic title of the applications in question. The membership of the native title claim group by those who attended each meeting was not demonstrated. Rather it was reported as an asserted self-identification.

In my opinion, each of the motions for amendment under s 66B suffers from the same fatal deficiency. The evidence is insufficient to demonstrate that there has been notification to members of the native title claim group as defined or that those who attended belonged to it. A fortiori, there is no evidence that the meetings were, in any sense, fairly representative of the native title claim groups concerned.”

And, finally, FMG has to date lodged four applications for ministerial consent, under s 18 of the AHA, to damage or destroy sites of significance to the Yindjibarndi People in the Declaration Area - each of which required YAC to lodge responses with the Committee. Notably, conditional consent has been given by the Minister in respect of one of those applications, which required FMG to, among other things, consult with YAC (to the satisfaction of the Registrar) to clarify the ethnographic significance of the area; and, to execute comprehensive ethnographic and archaeological surveys and provide reports on the outcomes of those surveys to the Registrar. As discussed below, however, FMG subsequently applied to the State Administrative Tribunal for a review of the Ministers decision, seeking orders to delete those conditions. YAC was, of course, obliged to apply to become a party to that proceeding.

FMG’s approach to the Protection of sites and objects under the AHA

On 18 February 2011, FMG made an application for ministerial consent to damage or destroy sites that are situated in M47/1413. FMG’s application was made by way of a Notice¹²⁴ to the

¹²² the grounds allege firstly, their exclusion from YAC meetings - in circumstances where video footage of meetings, from which it is alleged they were excluded, demonstrate their physical presence; and, secondly, financial impropriety - in circumstances where the same allegations (made by the same people in March 2010) have been fully investigated by examiners (appointed by the Office of the Registrar of Indigenous Corporations) who determined there were no substance to the allegations and no evidence of any fraudulent transactions.

¹²³ in *Bolton on behalf of the Southern Noongar Families v State of Western Australia* [2004] FCA 760, per French J at [45]-[46]

¹²⁴ under s 18(2) of the *Aboriginal Heritage Act 1972* (WA) (the AHA)

Committee¹²⁵, advising that FMG requires to use a portion of M47/1413 (the Land) for the purpose of the “*construction and operation of a mining area and associated infrastructure*” (a “Purpose”) which, without the Minister’s consent, under s 18(3) of the AHA, would be likely to result in an offence, under s 17, in respect of seven Aboriginal sites on the Land identified in FMG’s Notice. FMG’s Notice was accompanied by a large volume of supporting documents, which are irrelevant for present purposes but can be provided under separate cover if needed. FMG resubmitted the Notice, on 17 March 2011¹²⁶. The difference between the two Notices relates firstly to a particular heritage report, compiled by FMG’s heritage consultants, *Veritas Archaeology and History Service* (Veritas), and *Eureka Heritage* (Eureka) (the Heritage Consultants). Veritas, is the trading name of archaeologist Rob Tickle; and Eureka is the trading name of archaeologist Sue Singleton. This was the primary heritage report submitted by FMG in support of its Notice. The only other difference was the inclusion of a “Final Report”, dated December 2010, by Anthropologist David Raftery.

The heritage report submitted with FMG’s Notice of 18 February 2011 was titled *Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area - Final Report, December 2010* (the December Heritage Report)¹²⁷; and, the heritage report submitted with FMG’s Notice of 17 March 2011 was titled *Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area - Final Report, March 2011* (the March Heritage Report) (emphasis added)¹²⁸.

Notably, both versions of this Heritage Report contained the following observations:

“One notable lack of resource material is an in-depth professional ethnographic study for the Firetail and larger Solomon area. This area could have provided a last refuge for Aboriginal people in the Pilbara and thus warrants further anthropological enquiry. Preliminary indications as to the use of the area as a last refuge can be gleaned from the written accounts of pastoralist WP Robinson’s [sic] who took up the Mt Florence pastoral station in the 1880s. ... This primary resource material shows that until comparatively recently some Aboriginal people were still living traditional lives in the area of the Solomon project”¹²⁹ (emphasis added).

...

“The FMGL Solomon exploration area appears to have been unallocated Crown [land] situated between three pastoral stations since European occupation of the Pilbara [and] may have provided refuge and sanctuary to Aboriginal groups; a place where they could congregate, conduct activities and continued cultural practice in relative safety and independently of the white man”.

...

The Firetail/Solomon area may also have played a role in the creation of new pathways between areas of land when traditional travel groups became blocked and fragmented i.e. the provision of safe passage around hostile land connecting one part of country to another. It is likely that ethnographic stories could be associated with such use these stories may be held within living memory of community members. A comprehensive ethnographic heritage

¹²⁵ the Aboriginal Cultural Materials Committee established under s 28 of the AHA

¹²⁶ the Notice was accompanied by a large volume of supporting documents, all but one of which were the same as those submitted in support of the 18 February Notice.

¹²⁷ a copy of December 2010 Heritage Report, is attached as **Annexure 10**

¹²⁸ a copy of the March 2011, is attached as **Annexure 11**

¹²⁹ December Heritage Report at 2.18; and March Heritage Report at 2.20

assessment may produce evidence that would enable a better understanding of the archaeological material in the Firetail and larger Solomon area¹³⁰ (emphasis added).

The difference between the two reports concerns five pages of text in the December Heritage Report that were written by a qualified anthropologist, Kath Beech, engaged by Eureka specifically to carry out specialised desktop ethnographic research relevant to the country affected by proposed “Firetail” and “Solomon” project; and, against that backdrop, to critically examine the assessment of ethnographic significance attributed to that area in the ethnographic reports compiled by FMG’s consultant anthropologist, David Raftery.

Based on the work undertaken by Kath Beech, the December Heritage Report described Raftery’s ethnographic reports as “*sketchy, lacking in specificity and far from comprehensive*”¹³¹. The December Heritage Report noted that “*only people who have the knowledge for that country can identify the places of significance*”; that “*not all Yindjibarndi people who were authorised to speak for country [had been] consulted or present at the surveys*”, carried out by Raftery; and, that “[*t*]*he method of identifying cultural knowledge holders and those authorised to speak for Country was not made clear*”¹³².

Veritas and Eureka were clearly aware of the evidence, given by Michael Woodley in the Tribunal hearings, as to the ethnographic significance of the areas surveyed by Raftery, since Mr Woodley’s evidence was expressly referred to in the December Heritage Report; however, it was made apparent that Raftery was unaware of that evidence and that his consultation with Yindjibarndi people had included only the members of WMYAC; accordingly, Veritas and Eureka stated:

*“The most instructive finding common to all three [Raftery] reports is that further ethnographic heritage assessment needs to be undertaken in the area of the Solomon Project. After consideration of the survey reports it is the recommendation of Veritas and Eureka that a comprehensive ethnographic study be undertaken over the Firetail area so that the ethnographic values of the area are identified, and appropriate management strategies formulated prior to the commencement of any ground disturbing activity being undertaken by FMGL. Such a study should allocate sufficient time for effective community engagement and include a thorough desktop review and analysis of available ethnographic resources prior to engagement with the community. Equal attention must be given to male and female perspectives, and consultants should follow cultural protocols in relation to gathering gender-specific information. The method of identifying cultural knowledge holders and those authorised to speak for County should be systematic, exhaustive and transparent.”*¹³³

By letter dated 4 March 2011 the Registrar of Aboriginal Sites, at the Department of Indigenous Affairs (DIA) advised FMG that its 18 February 2011 Notice was deficient in a number of respects, including:

- only representatives from the Wirilu-Murra Yindjibarndi Aboriginal Corporation (WMYAC) group had been consulted and it was “*unclear whether the survey participants hold the requisite heritage knowledge to sufficiently identify all Aboriginal sites on the Land*”;

¹³⁰ December Heritage Report at 2.20; and March Heritage Report at 2.23

¹³¹ December Heritage Report at 4.22

¹³² *ibid*

¹³³ December Heritage Report at 4.24

- ethnographic reports by David Raftery, indicated two women had been deferred to, “*as the most senior members of the participants in an ethnographic survey*”; and this was a cause for concern given the observation that “*there was a general acknowledgement about the lack of knowledge, particularly by the women, of traditional life in the Firetail area despite there being a substantial body of archaeological evidence of occupation*”;
- correspondence from YAC indicated that the survey participants “*did not possess the knowledge required to identify all sites on the Land*”

The Registrar concluded:

“In light of these concerns you may wish to delay consideration of the Notice and continue consultation with YAC..., including Ethnographic surveys across the Land with YAC representatives to enable the ACMC to be confident that all heritage values associated with places on the Land have been identified, documented and included within the Notice.”¹³⁴

FMG responded by resubmitting its Notice, on 17 March 2011. The new Notice was accompanied by the March Heritage Report, in which the critique of the ethnographic work undertaken by Raftery was deleted. In a letter to the Registrar, dated 15 March 2011, FMG provided an explanation for the deletion:

“Fortescue make it a policy not to interfere or dictate outcomes of reports prepared by consultants, however in this instance Fortescue can confirm that as Mr Tickle does not have any ethnographic training, he has been requested to remove these ethnographic assessments from the report as they easily mislead the reader to believe only minimal consultation and ethnographic assessment was undertaken for the purpose of these Notices.

Fortescue is confident that the ethnographic significance of all areas has been adequately addressed and that no sites of significance have been identified on the Land due to the fact that there is no verified knowledge of any sites with ethnographic significance in this specific valley”.¹³⁵

However, another change made to the December Heritage Report concerned the details of the contribution attributed to Kath Beech in the authorship declaration for the report (on the back of the title page). The December Heritage Report states, “*Kath Beech provided specialist research skills and composed much of the background material. Kath also provide (sic) peer review and support*”. In the March Heritage Report this was changed to: “*Kath Beech assisted with document formatting and the provision of peer review and support*”.

Following the aborted field trip to M47/1413, on 23 October 2011, YAC published a press release which highlighted the findings in the December Heritage Report about the inadequacy of the ethnographic assessment of the significance of the Land; and, shortly thereafter, YAC was contacted by Sue Singleton, the principal of Eureka. After several discussions concerning the changes made to the December Heritage Report, Ms Singleton wrote a letter to the Registrar, dated 5 November 2011, which was copied to YAC¹³⁶. Ms Singleton states:

Eureka was engaged by FMGL, independently of Veritas, to work collaboratively with Veritas to coordinate and conduct desktop research and field surveys. Information on the

¹³⁴ a copy of the Registrar’s letter to FMG, dated 4 March 2011, is attached as **Annexure 11**

¹³⁵ a copy of FMG’s letter to the Registrar, dated 15 March 2011, is attached as **Annexure 12**

¹³⁶ A copy of Ms Singleton’s letter is attached as **Annexure 12**

identification of Aboriginal cultural heritage sites was presented in reports for the purpose of notices made by FMGL for ministerial consent under section 18 and applications under section 16 of the Aboriginal Heritage Act 1972. The purpose of these reports was to provide sufficient information to assist the officers of the Department of Indigenous Affairs (DIA) and the Aboriginal Cultural Materials Committee (ACMC) in its task of assessing the cultural significance of the Study Area.

In July 2010, at the time of Eureka's engagement by FMGL, it was agreed that a team of appropriately qualified personnel would be assembled to carry out the tasks necessary for the preparation of anticipated s18 notices and s16 applications during 2011, and to collaborate with Veritas in report preparation.

To this end, I sub-contracted colleague Kath Beech to carry out background ethnographic research on the Study Area and to report on the ethnographic work that had been carried out for the purpose of the s18 notice preparation. Kath is a qualified anthropologist and holds a Masters degree in the field of anthropology and development.

...

The December 2010 Report, Section 4.3 - Ethnographic Context, contained the results of background research into the historical and contemporary ethnographic evidence relevant to the Study Area, and an analysis of the ethnographic work undertaken by anthropologist David Raftery. This section was compiled and written by Kath Beech, and not Rob Tickle, as stated by FMGL in their letter of 15 March 2011, Point 10. The Raftery reports to which this section referred were made available by FMGL on request by Veritas/Eureka. It was our understanding, at the time of reporting, that there were no further ethnographic reports available or in planning.

The ethnographic research undertaken by Kath Beech found that sworn evidence given to the Native Title Tribunal clearly demonstrated that there are members of the Yindjibarndi People who belong to the YAC and who are connected to the Study Area. These YAC members claim to hold relevant ethnographic information that would be material in the assessment of cultural heritage significance. In contrast David Raftery's reports on consultation with the members of Wirlu-murra Yindjibarndi Aboriginal Corporation demonstrated that they held little, if any ethnographic knowledge about the Study Area. Pointing out the deficiencies in consultation was intended to assist the ACMC in determining any requirement for further ethnographic investigation.

In addition to the DIA guideline requirements for ethnographic enquiry, we considered it our professional responsibility to ensure that all relevant ethnographic information was documented.¹³⁷

Ms Singleton goes on to say that she was told by FMG that:

*"FMGL's Heritage Department would take responsibility for reporting all sites to the Registrar, as required under s 15 of the [AHA]. However, I am very concerned that this may not have happened as site cards were requested by the Registrar on submission of both a s16 application and the December s18 notice."*¹³⁸

And:

¹³⁷ letter from Sue Singleton to the Registrar, dated 5 November 2011, at 2

¹³⁸ *ibid* at 3

“A substantial body of detailed recording, carried out in preparation for s18 notices and s16 applications, was performed by Veritas and Eureka. Due to the discontinuation of our services, this information has not been reported. FMGL has now engaged other archaeologists to re-survey, re-record and re-asses areas we surveyed and as a result, I am concerned that the information we acquired about sites will not be reported, and that this may put Eureka in breach of s 15 of the Act.”¹³⁹

Presumably as a result of her contract with FMG, Ms Singleton did not, in her letter to the Registrar, report all the sites recorded by Veritas and Eureka; however, she stated to YAC that her database records 227 sites; and it appears most, if not all, of those sites still have not been reported to the Registrar by FMG as required by s 15 of the AHA¹⁴⁰.

In relation to the changes made to the December Heritage Report, Ms Singleton states (at 3) that FMG requested the changes on the grounds that the section contained *“opinion and commentary...considered prejudicial”* to FMG interests; and, that *“it was not the role of Veritas/Eureka to report about, comment on or assess the ethnographic aspects of the study area”*. However, as Ms Singleton insists, in her letter to the Registrar:

“It is Eureka’s opinion that the information and analysis contained in the ethnographic section of the December 2010 Report is current. The ethnographic content was written by a qualified anthropologist who was acknowledged in the authorship declaration of the report.”¹⁴¹

Notably, Ms Singleton holds this view, notwithstanding her perusal of a Final Report by David Raftery, dated December 2010, a copy of which was provided to Ms Singleton by YAC, in October 2011.

Ms Singleton states (at 3) that, in her view, the justification given to the Registrar by FMG, in its letter of 15 March 2011, was *“misleading”*; and, she is *“very concerned that the deleted aspects of the December 2010 Report may have led the Committee into making a decision that does not accurately reflect the overall significance of the area”*. She concludes:

“In the course of our consultancy, Veritas and Eureka expressed concerns to FMGL heritage personnel about the inadequacy of the ethnographic studies and the lack of consultation with YAC. The Study Area is a rare find; and, as we reported in the December 2010 Report, it has not yet been the subject of any substantive ethnographic survey; nor has it been the subject of a comprehensive archaeological report which takes into account all the information we compiled from our work in the area and which needs to be assessed as a whole.”¹⁴²

As indicated earlier FMG’s March Notice also included the Final Report on the Ethnographic Surveys, carried out by FMG’s consultant anthropologist, David Raftery¹⁴³ (the Raftery Report).

As is apparent from the Raftery Report, the purpose of his survey was *“to identify any ethnographic sites that might be located in [the Firetail Priority Mining and Infrastructure Area], and to “glean any additional ethnographic significance of previously recorded archaeological sites”¹⁴⁴*. Mr

¹³⁹ *ibid*

¹⁴⁰ s 15 of the AHA requires any person who has knowledge of a site shall report its existence to the Registrar or the police

¹⁴¹ Letter from Sue Singleton to the Registrar, 5 November 2010, at 3-4

¹⁴² *ibid* at 4

¹⁴³ A copy of the final Raftery Report, dated December 2010, is attached as **Annexure 15**

¹⁴⁴ Annexure 8 at 3



Raferly however concluded however that: “No ethnographic sites were recorded during the survey that this report documents, and nor was any information recorded that added ethnographic significance to previously recorded archaeological sites”¹⁴⁵.

The apparent absence of enthusiasm, on the part of the WMYAC members, during the course of the survey, of 25 sites, is perhaps best demonstrated by the five “Rock shelter” sites listed in “Table 3” of the Report¹⁴⁶, which is headed: “Sites not visited, but to which no ethnographic significance was attached”; and, by the following record, concerning site “YIN 10-004”, which Mr Raferly described as a “Rock Shelter, Walled Niche”¹⁴⁷; and which the survey team is said to have “visited” on “3/11/2010”¹⁴⁸.

Under the heading “Detail”, Mr Raferly reports that:

“The actual Walled Niche was not located during the survey; however, custodians visited an area that very closely approximated its location. The survey team made it very clear that they knew of nothing in this particular area that ethnographic significance should be ascribed [sic]. It [sic] was instructed by the survey team that no additional ethnographic significance should be attached to any of the previously recorded archaeological data for this area”.¹⁴⁹

The only other recorded comments, during the site visits, concerned a “scarred tree”, YIN 09-047, which, “it was suggested...was evidence of the use of a yandi dish”¹⁵⁰; and, two Pebble Mouse mounds, YIN 09-003 and Yin 09-055, where, “It was explained that mice burrow into [the] area creating a ‘caving-in’ effect...at night time”, which “no one claimed to have witnessed”¹⁵¹. In the remaining 21 instances, the “Detail” column states: “No comment recorded”.

YAC received a copies of FMG’s Notices, and responded by providing to the Committee, a Heritage Report compiled by anthropologist Phillip Davies, dated May 2011 (the “Yindjibarndi Heritage Report), along with written submissions, highlighting the findings of the Tribunal in relation to the ochre and *Gandi* sites and the numerous caves and rock-shelters. It will be recalled that the Tribunal “was not prepared... to make specific conditions in relation to sites ... which are not precisely located”¹⁵², but nevertheless observed:

*It is a defence to a prosecution under the AHA if the person charged can prove that he or she did not know, and could not reasonably be expected to have known, that the place was a site covered by it (s 62). Obviously, this defence would not be available to [FMG].*¹⁵³

As indicated earlier, the determinations made by the Tribunal in respect of M47/1409, M47/1411, and M47/1413, were the subject of appeals to both the Federal Court and the Full Court of the Federal Court, where it was noted that:

“The appellants’ case was considered by the Tribunal and the primary judge on the basis that the appellants’ use of ochre and gandi are religious practices. This approach has not

¹⁴⁵ *ibid*

¹⁴⁶ Annexure 8, at 13

¹⁴⁷ Annexure F at 11

¹⁴⁸ *ibid*

¹⁴⁹ *ibid* at 11-12

¹⁵⁰ *ibid* at 11

¹⁵¹ *ibid*

¹⁵² *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia*, [2009] NNTTA 91, at [80]

¹⁵³ *ibid* at [77]



*been contested by the State or FMG. Further, if the ochre and gandi sites are dug up in the process of mining iron ore, the appellants will be prevented from continuing to access the ochre and gandi.”*¹⁵⁴

The Yindjibarndi Heritage Report included a map depicting the locations of the ochre and gandi sites in the Land; and, a table showing the precise locations of 27 caves and rock-shelters, each of which was identified and recorded by Mr Davies, using a hand held GPS, during a brief field survey he carried out on a small portion of the Land, in company with Michael Woodley and other senior Yindjibarndi lawman¹⁵⁵. That table is reproduced below and it is noted that the first five of the sites, identified in the table, were subsequently struck through, in response to additional information received by Mr Davies from FMG, which demonstrated that they are in fact situated just outside of the Land affected by the s 18 Notice. The remaining 22 sites however are all situated within the area the subject of FMG’s Notice.

Table 1: sites in the Land, the subject of FMG’s s 18 Notice:

<i>Map 1</i>	<i>Site ID</i>	<i>mE</i>	<i>mN</i>
1	Walled Niche 1	+594250.2159	+7554273.239
2	Rock Shelter 5	+594267.9122	+7554351.510
3	Rock Shelter 3	+594282.1106	+7554379.764
4	Rock Shelter 1	+594348.4049	+7554443.019
5	Rock Shelter 2	+594352.6653	+7554413.879
6	Rock Shelter 4	+594349.8578	+7554358.656
7	YIN WH10	+594310.9891	+7554070.069
8	Rock Shelter 6	+594198.4411	+7554274.436
9	Rock Shelter 7	+594212.3589	+7554255.976
10	Cave	+594238.3147	+7554266.780
11	Rock Shelter 8	+594219.8842	+7554237.997
12	Rock Shelter 7	+594223.2035	+7554241.077
13	Rock Shelter 9	+594224.1660	+7554212.399
14	Walled Niche 2	+594225.1682	+7554207.522
15	Cave 1	+594226.2258	+7554194.675
16	Rock Shelter 10	+594227.0191	+7554189.356
17	Rock Shelter 11	+594196.2043	+7554159.541
18	Rock Shelter 12	+594203.9025	+7554153.185
19	Rock Shelter 13	+594193.6772	+7554133.763
20	Rock Shelter	+594183.9650	+7554113.895
21	Cave 3	+594181.6886	+7554095.532
22	Cave 4	+594186.8694	+7554082.217
23	Rock Shelter 16	+594284.8432	+7554061.923
24	Rock Shelter 15	+594317.9870	+7554084.529
25	Rock Shelter 17	+594243.2262	+7554036.823
26	Rock Shelter 18	+594223.9960	+7554012.252
27	Rock Shelter	+594105.1926	+7553878.794

As the holder of mining lease M47/1413, FMG is, pursuant to s 18(1) of the AHA, deemed to be the “owner” of the Land; notwithstanding, that the Land is, and has always been, unallocated Crown land where, as was acknowledged in the decision of the Full Court, the Yindjibarndi People

¹⁵⁴ in Cheedy on behalf of the Yindjibarndi People v State of Western Australia [2011] FCAFC 100, at [86]

¹⁵⁵ Yindjibarndi Heritage Report at 25

have “exercised their native title rights and interests without interference by the activities of others in the past or the present”¹⁵⁶.

Relevantly, s 18(2) of the AHA provides:

“Where the owner of any land gives to the Committee notice in writing ...the Committee shall...form an opinion as to whether there is any Aboriginal site on the land, evaluate the importance and significance of any such site, and submit the notice to the Minister under together with its recommendation...as to...consent...and...conditions”.

In this form, s 18(2) imposes two pre-conditions on the submission of any notice to the Minister. The first arises by virtue of the use of the term “where”, at the commencement of the provision, which requires that the owner of land has given the Committee a notice; and the second arises by virtue of the use of the term “shall”; which requires that the Committee has formed an opinion as to whether there are sites on the land and if so has evaluated the importance and significance of those sites.

In evaluating the importance and significance of any site, the Committee is required by s 39(2) of the AHA to take into account:

- a. *any existing use or significance attributed under relevant Aboriginal custom;*
- b. *any former or reputed use or significance which may be attributed upon the basis of tradition, historical association, or Aboriginal sentiment;*
- c. *any potential anthropological, archaeological or ethnographical interest; and,*
- d. *aesthetic values.*

And, s 39(3) provides that:

Associated sacred beliefs, and ritual or ceremonial usage, in so far as such matters can be ascertained, shall be regarded as the primary considerations to be taken into account in the evaluation of any place or object for the purposes of this Act.

The evidence given to the Committee by and on behalf of YAC clearly demonstrated both former and current use of the Land by Yindjibarndi people and described the associated sacred beliefs, rituals and ceremonial usage of the land by Yindjibarndi Lawmen.

Section 18(3) of the AHA provides that *“Where the Committee submits a notice to the Minister under subsection (2) [the Minister] shall consider [the Committee’s] recommendation...”*. In this form, s 18(3) imposes, as a pre-condition for the exercise of the Minister’s power, a requirement that the Minister has before him a recommendation of the Committee that is a consequence of the Committee forming an opinion as to whether there are any Aboriginal sites on the land, and the Committee’s evaluation of the importance and significance of any such sites.

On 30 June 2011, the Minister gave conditional consent for FMG to use the Land for the purpose specified in FMG’s Notice. However, the only sites identified in the Minister’s Consent were the seven sites identified in FMG’s Notice¹⁵⁷. Presumably, the Minister was following the

¹⁵⁶ Cheedy on behalf of the Yindjibarndi People v State of Western Australia [2011] FCAFC 100 at [31]

¹⁵⁷ YAC requested a copy of the Committee’s recommendations to the Minister, from DIA, but that request went unanswered.

recommendation of the Committee, when he attached, inter alia, the following conditions to his consent:

- a. condition 4, which requires FMG consult with representatives of YAC and the WMYAC, to the satisfaction of the Registrar (before commencing any mining activities) so as to “clarify the status of heritage places on the Land and identify all heritage values associated with places on the Land”; and,
- b. condition 5, which requires FMG, prior to the commencement of mining activities, “to provide the Registrar with information on the location and archaeological and ethnographic assessments of all rock-shelters and caves located on the Land which will include copies of all archaeological and anthropological reports over the Land”.

Assuming that conditions 4 and 5 (as attached to the Minister’s consent) do accurately reflect the recommendation of the Committee, then it appears the Committee was unable to form an opinion as to whether, in addition to the seven sites identified in the FMG’s Notice, there are additional sites on the land; and, that the Committee, was unable to evaluate the importance and significance of any such sites. Leaving aside the question of whether the pre-conditions for the exercise of the Minister’s power under s 18 (3) were satisfied, what the above demonstrates is that, as a matter of policy, the Committee was required to carry out its statutory duty based solely on the information that was put before it by FMG; and, that the evidence provided to the Committee by YAC was seen as an irrelevant consideration. If this is correct, then it discloses a serious and fundamental defect in the current procedures used to assess the significance of the sites and objects presumptively “protected” by s 17 of the AHA. It is apparent that, in this case, those procedures have allowed FMG to control or manipulate the information provided to the Committee.

On 5 August 2011 FMG applied to the State Administrative Tribunal (SAT) to review the Minister’s decision and to delete the aforementioned conditions. YAC was not informed of FMG’s application to the SAT until 8 September 2011, when the State Solicitors Office advised YAC that the SAT had ordered that YAC be notified of FMG’s application; and, that YAC and WMYAC be invited to attend a mediation session between the parties on 6 October 2011. Those orders were made under a protocol between the former Minister for Indigenous Affairs and the President of the SAT.

On 6 October 2011, I attended that mediation session, on behalf of YAC, in company with YAC’s anthropologist, Phillip Davies. Notably, no WMYAC representatives were in attendance; however, FMG’s legal representative, Ken Green, informed the SAT that he had discussed the SAT invitation with the WMYAC legal representative, Ron Bower of Corser & Corser, who had informed him that WMYAC did not oppose the orders sought by FMG.

In contrast I informed the SAT members and the parties that the conditions attached to the Minister’s consent were of great consequence to YAC since the Minister’s Consent had not identified the ochre and gandi sites in the Land nor the caves and rock-shelters identified in the Yindjibarndi Heritage Report and thus without the conditions attached to the Ministers consent those sites would be destroyed and Yindjibarndi people would thereby be prevented from carrying out religious practices associated with those sites.

The YAC representatives were then asked to leave the room so that the parties could negotiate; and, at the conclusion of those negotiations we were informed that the parties had reached agreement

and that the SAT would be inviting the Minister to reconsider his decision in light of the agreement reached between the parties. My request to be informed of the new agreed conditions was declined; and instead YAC was invited to file and serve submissions, on or before 24 October 2011, so that the Minister could take them into account if he decides to reconsider his decision. The SAT invited the Minister to do so on or before 15 November 2011. YAC was contacted by a representative of the Minister, on 15 November 2011 and was informed that the parties had agreed to an extension of time.

YAC is very concerned about what course the Minister will adopt, because of the Minister's comments, on Radio 6 RTR, on or around the morning of 30 June 2011, when in response to a question about the ongoing dispute between FMG and YAC, the Minister stated

“Andrew [Forrest] is a personal friend of mine”; and, “I take great advice and great guidance from his wisdom [and] I do not think his motives towards Aboriginal people are anything but altruistic”.

Conclusion

In light of the injury that has already befallen the *Gandi* site and the *Yarna* site, the Applicants fear that the sites and objects in the Declaration Area, described earlier, which are of particular significance to them under their traditional laws, customs and religious beliefs, are under immediate threat of injury and desecration, and that, unless prevented by an emergency declaration under s 9 of the Act, those sites and objects will shortly be destroyed. And, on the strength of the other matters discussed above, the Applicants have no confidence that the protection afforded to those sites and objects under s 17 of the AHA, will suffice to prevent such destruction.

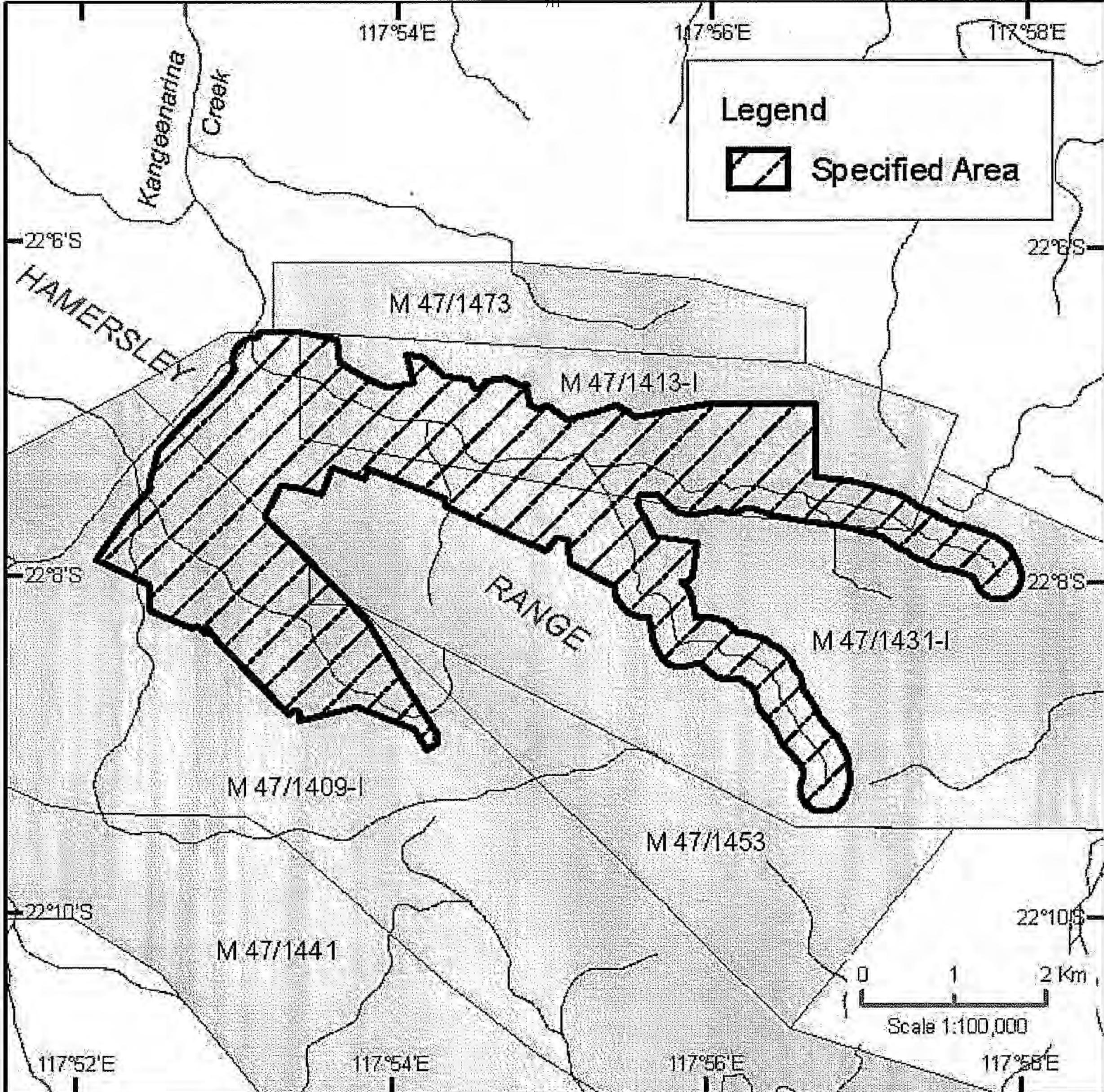
Accordingly the Applicants respectfully request that declarations be made under the Act in the terms discussed earlier.

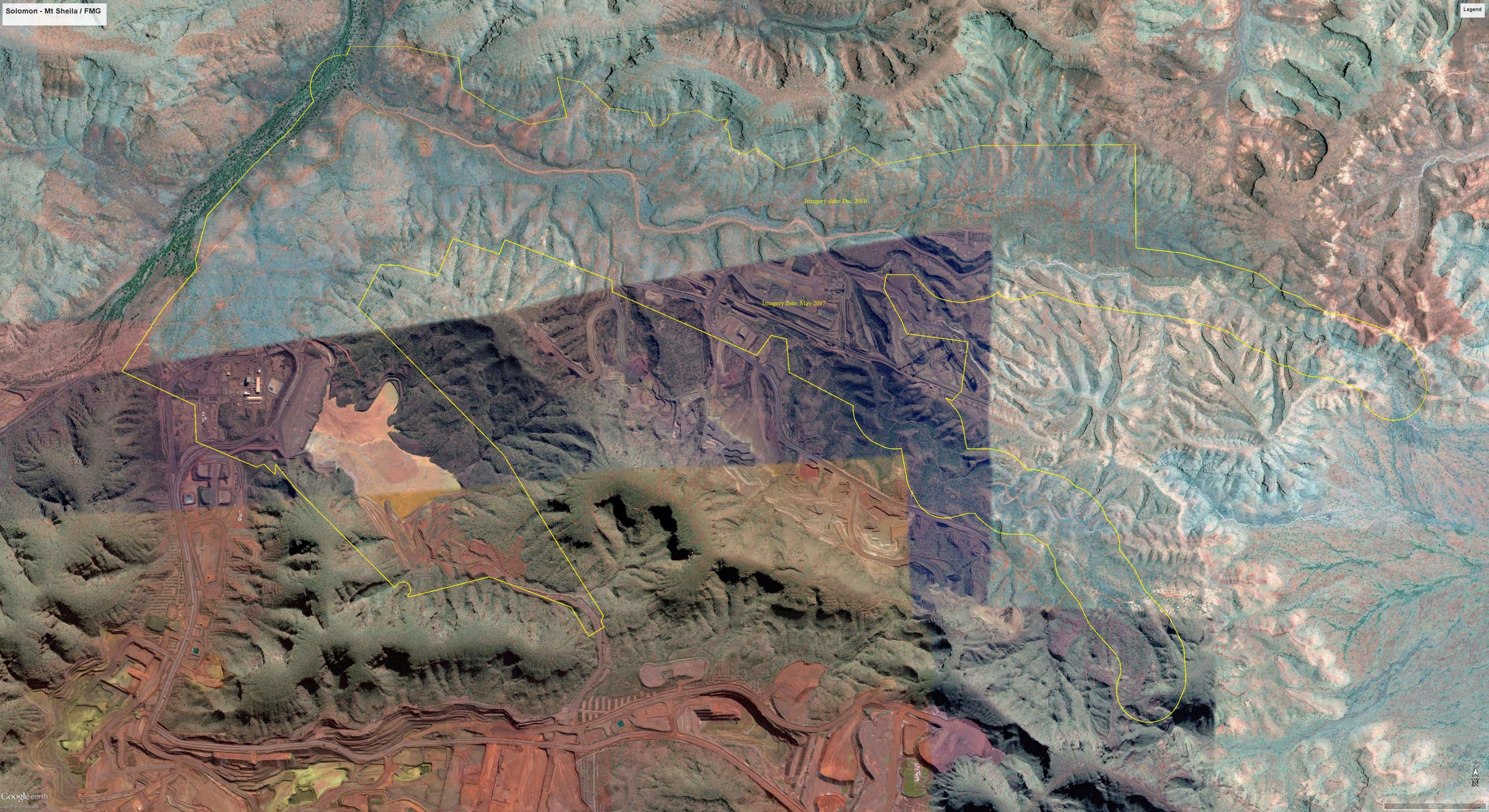
Yours Sincerely,



George Irving

Counsel for Yindjibarndi Aboriginal Corporation





Imagery date: Dec 2010

Imagery date: May 2017

“MW-76”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-76” referred to in the witness statement of Michael Woodley dated 5 June 2023.



WA HERITAGE CRISIS DEEPENS – FMG THREAT TO SUE STATE

The Yindjibarndi People have been battling for 4 years against an increasingly belligerent, litigious, and unscrupulous Fortescue Metals Group (FMG).

On 28 October, at FMG's Solomon Project in the Pilbara, the Yindjibarndi Aboriginal Corporation (YAC) discovered that FMG had desecrated an ochre quarry and destroyed part of a creek where sacred *Gandi* are found (stones used in initiation rituals). The WA Department of Indigenous Affairs (DIA) and the Aboriginal Cultural Materials Committee (ACMC) were informed of these sites, but no action to halt or mitigate this damage has been taken.

That such damage can occur when YAC has previously provided the DIA with information regarding these sites, is proof positive of the DIA's inability to effectively monitor or enforce the State's heritage protection regime, or stop FMG from desecrating and destroying highly significant heritage and religious sites.

The Yindjibarndi People have appealed to the Hon. Tony Burke (Minister for Sustainability, Environment, Water, Population and Communities) to use his power under the Aboriginal and Torres Strait Islander Heritage Protection Act to make an emergency declaration to stop FMG doing more irretrievable damage. "The sad thing is that every moment spent waiting for Mr Burke to act, means more destruction, more knowledge lost," said Yindjibarndi Aboriginal Corporation CEO, Michael Woodley.

LINK - application for emergency declaration <http://tiny.cc/j9qyf>

Fresh FMG legal threats against the WA Registrar of Aboriginal Sites, Kathryn Przywolnik, and a deepening crisis surrounding protection of Yindjibarndi heritage from FMG operations, makes Federal intervention more urgent than ever.

Registrar Przywolnik recently informed FMG that its latest section 18 Notice seeking ministerial consent to impact on Yindjibarndi heritage sites is "inadequate", legally unsafe and should be withdrawn. The Registrar's decision expresses no confidence in the heritage reporting of FMG in the strongest of terms, and confirms the grave doubts and objections consistently expressed by the YAC.

LINK - Przywolnik/Maher letters <http://tiny.cc/nafok>

In particular, Ms Przywolnik advised FMG that the ACMC would find it difficult to make recommendations or assess heritage values in the absence of cultural knowledge from relevant Traditional Owners, and that any ACMC recommendations made without inclusion of such knowledge risked the destruction of sites.

On 11 November, FMG Heritage Manager, Lisa Maher, responded: "*It is highly inappropriate for a decision-making body to recommend that an applicant withdraw an initiating notice [...] In my view, the reasons referred to in your letter are insufficient to affect the validity of the Notice. However, if you retain your view after receiving this letter, please advise me immediately and I will take the appropriate action. I foreshadow such action may include prerogative relief.*"

There is no guarantee that any caution issued by the Registrar will stop FMG from doing more damage. The last time the Registrar criticised an FMG section 18 application, FMG simply edited out unfavourable parts and resubmitted, and was duly given conditional consent by the Minister. Neither the Minister's conditions or provisions of the WA Aboriginal Heritage Act (AHA) have stopped FMG from launching into a destructive blasting program and mine development program in Yindjibarndi country.

In their application to Minister Burke, YAC have drawn attention to the 5 November letter from Eureka Heritage to the Registrar informing that FMG demanded the removal of critical parts of a heritage report submitted to the DIA in support of an FMG section 18 application.

LINK - Eureka Heritage letter to Registrar <http://tiny.cc/43vxs>

This report found that information provided by members of the 'breakaway' Wirlu-murra group (WMYAC) – a faction compliant to FMG – was "sketchy, lacking in specificity and far from comprehensive"; that "members possessed limited skills in the identification of archaeological resources", and a "lack of cultural knowledge of traditional life in the Firetail area." (Firetail is an area within the Solomon Project.)

Eureka Heritage said that FMG threatened to withhold payment of due invoices if the critical section was not removed, and then falsely justified the removal of this section by reason that it was not written by a suitably qualified heritage professional.



YAC have asked the Hon. Tony Burke to stop FMG bulldozing and blasting so as to allow the safe execution of comprehensive and independent ethnographic and archaeological field surveys to record the precise locations of Yindjibarndi sites and objects in the disturbance area so they can be properly protected. These surveys are scheduled to commence in early December 2011.

“We have been flooded with offers from archaeologists and anthropologists around Australia volunteering their time to work with us on world’s best practice heritage surveys.” said Mr Woodley. “Many of these people are motivated by a wish to rescue the reputation of their professions, which has been damaged by the behaviour of FMG, and by evidence of mining company sabotage of consultants’ independence.”

YAC have also informed the Minister that, in its dealings over a land access agreement, which will affect the entire Yindjibarndi people and all their country for the unlimited life of the ‘agreement’, FMG have deliberately sidelined YAC – the chosen representative, declared Prescribed Body Corporate and native title trustee of the Yindjibarndi People; and the officially appointed Agent for the Yindjibarndi #1 Claim, which underlays FMG’s Solomon Project. Instead FMG has set out to divide and conquer the Yindjibarndi community by disseminating false information and being duplicitous in their negotiations.

FMG has financed all the administrative and legal costs of the rogue WMYAC faction for the purpose of removing YAC and substituting the majority of Yindjibarndi #1 applicants, and has offered them inducements including a payment of \$500,000 within 14 days of the execution of the Agreement, and a \$3 million annual cash payment, despite the fact that this group has no statutory right or authority to negotiate such agreement.

Mr Woodley said that FMG’s threat to sue the Registrar, and their backing of vexatious litigation against the Yindjibarndi Aboriginal Corporation would not stop the Yindjibarndi fight for justice. “If FMG think the law is just for the rich, and they can break us with lawyers and bullying, they should think again. The Yindjibarndi people may be one of the poorest groups in the Australia, but by staying strong we stand to gain everything that is most precious. Our country and culture is our life and our future. By lying down for FMG we have a whole world to lose.”

CONTACT: Michael Woodley **0419 097 130**
Phil Davies – Anthropologist/Public Officer – **0429 110 451**

mwoodley@juluwarlu.com.au
pdavies@juluwarlu.com.au

For background & research materials please visit:
For media materials please contact:

www.yindjibarndi.org.au
media@juluwarlu.com.au

“MW-77”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 10 pages is the annexure marked “MW-77” referred to in the witness statement of Michael Woodley dated 5 June 2023.


YINDJIBARNDI ABORIGINAL CORPORATION RNTBC

21 Hampton Street (PO Box 111),
 Roebourne, WA 6718
 Tel: 08 9182 1497
 Fax: 08 9182 1035
 Ref: 120305_gmi

2 March 2012

Craig Patterson
 Acting Assistant Director
 Heritage and Wildlife Division
 Department of Sustainability, Environment, Water, Population and Communities
 GPO Box 787
 CANBERRA ACT 2601

By email only: Craig.Paterson@environment.gov.au

Dear Craig,

**Re: Application for Declaration under s 10 -
*Aboriginal and Torres Strait Islander Heritage Protection Act 1984***

I refer to our conversation on 29 February 2012 regarding the application under sections 9, 10 and 12 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the Act) made on 18 November 2011 (the Application), on behalf of Michael Woodley, Chief Executive Officer of the Yindjibarndi Aboriginal Corporation (YAC) and the YAC Directors: Stanley Warrie (Chairman), Thomas Jacobs, Pansy Sambo (nee Cheedy), Tootsie Daniels, Jane Cheedy, Bigali Hanlon, Joylene Warrie, Russell Sandy, Curtis Lockyer, Jean Norman, Angus Mack and Gabrielle Cheedy (the Applicants).

As I acknowledged in our conversation, the Application (at p. 11) originally sought a Declaration under s 10 to protect the two arms of the creek bed (the s 10 Area), in which sacred stones are found; and (ibid), a declaration under s 12 to protect all rock-shelters, caves and ochre sites situated in the area of Yindjibarndi country affected by five Mining Leases (M47/1409, M47/1411, M47/1413, M47/1431 and M47/1453) held by the Fortescue Metals Group (FMG) and a temporary declaration application under s 9 over the area, within Yindjibarndi country, covered by those mining leases (the Temporary Declaration Area).

The application for temporary protection was made in circumstances where there were (and remain) a number of pending applications made by (FMG) under s 18 of the *Aboriginal Heritage Act 1972* (WA) (the AHA) that concern various parcels of land associated with FMG's proposed Solomon Project in the vicinity of the s 10 Area. The aerial photograph, which was included as "Exhibit 03" in FMG's response to the s 9 Application, depicts the areas affected by all FMG's s 18 applications to date (Exhibit 3).

You may recall that, at the time when the Application was made, the State Minister for Indigenous Affairs had previously granted conditional consent, under s 18 of the AHA for FMG to carry out mining activities in an area described by FMG as the "*Firetail Priority Mining Area*" (situated in mining lease M47/1413); and, that two of the conditions attached to the Minister's consent (Conditions 4 and 5), in accordance with the recommendations of the Aboriginal Cultural Materials

Committee (ACMC) - the specialist body responsible under the AHA for determining the existence of Aboriginal sites and for assessing their importance and significance - required FMG, prior to the commencement of any mining activities in that area, to consult with representatives of YAC (to the satisfaction of the Registrar) so as to “clarify the status of heritage places on the Land and identify all heritage values associated with places on the Land”; and, to “provide the Registrar with information on the location and archaeological and ethnographic assessments of all rock-shelters and caves located on the Land which will include copies of all archaeological and anthropological reports over the Land”.

YAC took these conditions to mean that the Yindjibarndi people, who carry the knowledge for the country affected by the Minister’s consent, would have the opportunity (in the exercise of their traditional rights and interests) to access the *Firetail Priority Mining Area*; to carry out field survey work necessary to identify the precise location of the many sites known to exist in that area; and, to record the heritage values of those sites, including by way of the recording of religious ceremonies associated with particular sites. Reports, setting out the heritage values of those places could then be provided to the Registrar, in accordance with s 15 of the AHA; and those reports would enable the Registrar to exercise her power under s 16 of the AHA.

However, as noted in the Application (at p. 34), on 5 August 2011 FMG applied to the State Administrative Tribunal (SAT) for a review of the Minister’s decision and sought orders to, among other things, delete Conditions 4 and 5; and, as a result of mediation between the parties’ legal representatives, the SAT had invited the Minister to reconsider his decision. Although not a party to FMG’s SAT application, YAC was invited to make submissions to the SAT and the Minister, so the Minister could take them into account if he chose to reconsider his decision. The SAT invited the Minister to do so on or before 15 November 2011. However that period was extended and the Minister had not reconsidered his decision when the Application was made, on 18 November 2011.

The purpose, for which temporary protection was sought under s 9 of the Act, was to allow an opportunity (in the event that Conditions 4 and 5 were deleted; and, in the event that similar conditions were not attached to FMG’s pending s 18 applications) for the contemplated field survey work to be undertaken, so the locations of the known sites and objects in the Temporary Declaration Area could be included in the declarations sought under sections 10 and 12 of the Act. The Applicants were subsequently informed by the Department that s 12 applies only to “moveable” objects and thus could not be used in the way contemplated by the Application.

For reasons set out below, I am instructed by the Applicants to withdraw the applications made under sections 9 and 12 of the Act; and to request instead that the area of the s 10 Application be increased in size, so as to encompass a larger area than the creek bed depicted on the map you sent to me. This larger area contains hundreds of sites of significance to Yindjibarndi people, which will be destroyed in the near future unless protected. The area in question is embraced by the eight applications made by FMG under s 18 of the AHA as depicted in FMG’s Exhibit 3; namely:

1. the “*s 18 Firetail Priority Mining Area*”;
2. the “*s 18 Firetail Priority Infrastructure Area*”;
3. the “*s 18 Firetail Conveyors & Trinity Tailings Storage Facility*”;

4. the “s 18 Firetail West & Trinity”;
5. the “s 18 Firetail Central West and Rail Loop”;
6. the “s 18 Firetail West & Trinity Kings OPF”;
7. the “s 18 Conveyors & Infrastructure Phase 2”;
8. the “s 18 Firetail Central West and Rail Loop Firetail Laydown”;

For the sake of convenience FMG’s “Exhibit 3” is attached hereto as **Annexure 1**.

As you may know, on 13 December 2011, the State Minister reconsidered his s 18 decision over the *Firetail Priority Mining Area* and decided to delete Conditions 4 and 5. YAC’s application to be joined as a party to the SAT application (in order to prevent that outcome) was dismissed by the SAT on 25 January 2012. The outcome of the SAT proceeding is that the Minister’s reconsidered decision now stands as the decision under which consent is given to FMG for the mining activities (the Purpose) proposed by FMG in its s 18 application for that area.

On 27 January 2012, the Minister gave consent on another two of the pending s 18 applications depicted in Exhibit 3; namely, the “*Firetail Priority Infrastructure Area*”; and, the “*Firetail Conveyors & Trinity Tailings Storage Facility*”. Neither of these new decisions includes conditions similar to Conditions 4 and 5 - notwithstanding that the Aboriginal Cultural Materials Committee (ACMC), the specialist body responsible under the AHA for determining the existence of Aboriginal sites and for assessing their importance and significance, recommended that conditions, in the same terms as Conditions 4 and 5, be attached to the Minister’s consent for the *Firetail Priority Infrastructure Area*; and, that the Minister decline consent for the *Firetail Conveyors & Trinity Tailings Storage Facility*.

The s 18 application for the *Firetail Priority Infrastructure Area* was the subject of a decision of the ACMC, at its meeting on 1 June 2011 - the same meeting that considered the s 18 application for the *Firetail Priority Mining Area*. The s 18 application for *Firetail Conveyors & Trinity Tailings Storage Facility* was the subject of a decision of the ACMC, at its 13 October 2011 meeting. It appears the Minister delayed his decision on these two s 18 applications until after the SAT application was fully determined.

Documents provided to YAC on 20 February 2012, pursuant to an application made by YAC to the WA Department of Indigenous Affairs (DIA), under the *Freedom of Information Act 1992* (FOI Act), demonstrate that the DIA Heritage Officer, who provided advice and recommendations to the ACMC, in respect of the s 18 applications for the *Firetail Priority Mining Area*, the *Firetail Priority Infrastructure Area* and *Firetail Conveyors & Trinity Tailings Storage Facility*, was not at all satisfied that the information given by FMG in respect of these s 18 applications was sufficient to allow the ACMC to properly carry out its duty, under s 18 (2) of the AHA. A copy of the Minutes of the 1 June 2011 ACMC Meeting, which includes the Heritage Officer’s Assessment of the s 18 applications for the *Firetail Priority Mining Area*, the *Firetail Priority Infrastructure Area* is attached as **Annexure 2**; and, a copy of the Minutes of the 13 October 2011 ACMC Meeting, which attaches the Heritage Officer’s Assessment of the s 18 application for the *Firetail Conveyors & Trinity Tailings Storage Facility* is attached as **Annexure 3**.

As indicated in the Applicants previous submission (at 33), s 18(2) of the AHA stipulates that the ACMC must, in respect of each s 18 application, determine whether any Aboriginal sites exist on the Land, the subject of each s 18 application; and, if so, evaluate the importance and significance of each site on the Land (in accordance with criteria set out in s 39(2) and s 39(3) of the AHA) before making any recommendations to the Minister. Moreover, the proper fulfilment of this statutory duty is a precondition for the exercise of the Minister's power to give consent, under s 18(3), to use the Land for the purpose stipulated in each s 18 application. In the absence of sufficient information as to the existence of sites on the Land, the DIA Heritage Officer recommended that the ACMC defer making any recommendations to the Minister on each of these s 18 applications.

In advising the ACMC about the s 18 applications for the *Firetail Priority Mining Area* and the *Firetail Priority Infrastructure Area*, the DIA Heritage Officer stated:

"Copies of all heritage survey reports for surveys conducted on the Land since 2007 were requested by the Registrar. ... FMG has not provided the earlier reports as requested." (see: Assessment by Ryan Crawford in Annexure 2, at 6)

"FMG has not disputed the YAC claim of at least 250 rockshelters and caves on the Land subject to the two current Firetail FMG s 18 notices. (ibid)

"The information provided within the YAC report and the subsequent response from FMG casts doubt that all sites located on the Land have been identified and recorded sufficiently. The status of places on the Land is therefore unclear and it appears that [a] further heritage survey is necessary to properly assess, document and report on all places on the Land that may constitute a site under the AHA." (ibid, at 7)

"Information has not been provided about the places recorded since 2007 to assess the importance and significance of places on the land in relation to the surrounding cultural landscape. ... FMG has not made this information available to date. (ibid)

"The YAC consider the Land to be part of a religious and burial precinct. The YAC report provides a number of photographs of walled niches from local rockshelters as evidence of this. The results of the inspection of the walled niche, possibly containing skeletal remains...(located immediately to the north of the Land) may also support this. It is likely that the heritage values associated with the walled niche and possible skeletal remains (that are located very close to the Land) extend onto the Land surrounding the remains." (ibid, at 8)

"The Applicant [FMG] has stated that the Purpose will impact all sites located on the Land and result in the complete removal of cultural material. The YAC assert that this loss could also include the removal of a portion of a religious and burial precinct with ramifications to the spiritual and mental well being of the Yindjibarndi people, their country, heritage and culture." (ibid)

"The YAC Heritage report indicates that the areas of Land subject of the two current FMG Firetail section 18 Notices could contain at least 250 rockshelters and caves. Numerous other areas containing particular stones and ochre sources are also identified." (ibid)

“[L]ittle information has currently been provided regarding the nature and significance of the large number of other identified Aboriginal sites recorded between 2007 and 2010 which surround the Land. This lack of information means it is difficult to contextualise the nature and significance of the place and place features within the surrounding cultural landscape.” (ibid)

“It is difficult to assess how the impacts to heritage might be mitigated until the status of places on the land is made clear.” (ibid)

The DIA Heritage Officer’s proposed recommendation (ibid, at 10) was that the Committee defer consideration of the Firetail section 18 applications and refer them back to FMG along with a request to:

“Provide the latest version of heritage reports for all heritage surveys conducted across the Land since 2007 to the Registrar of Aboriginal Sites;

Clarify the status of places on the land by providing the Registrar of Aboriginal Sites with information regarding the location and assessments of all rockshelters and caves located on the Land;

Conduct heritage surveys of the Land with YAC representatives to ensure that all heritage values associated with places on the Land are identified, assessed and recorded sufficiently and culturally appropriate mitigation strategies are identified.”

The Heritage Officer (at 9) set out his reasons for the proposed recommendation, which included that *“the status of places on the Land is unclear”*; *“FMG has not provided information on the identification and heritage assessment of the rockshelters and caves located on the Land”*; and, the provision of such information *“would enable the ACMC to be confident that all Indigenous heritage values on the Land have been identified and sufficiently documented”*.

In its discussion of the section 18 applications, the ACMC noted the evidence in the affidavit sworn by Ned Cheedy in April 2011 (which was attached as Annexure 1 to the Application), and said that the heritage information provided by Mr Cheedy *“needed to be listened to by all groups”* (ACMC Minutes 1 June 2011, at 18). Mr Cheedy’s evidence corroborated the evidence of Michael Woodley, in his affidavit of 1 April 2011 (attached as Annexure 3 to the Application) a copy of which was included in the submissions given to the ACMC by YAC. The ACMC noted that the submissions regarding heritage from YAC were *“consistent with the affidavit from Ned Cheedy”* (ibid); and concluded that *“the status of sites on the Land remains unclear”* (ibid).

It is thus apparent, from the Minutes, that the ACMC was not in a position to perform the duty required by s 18(2) of the AHA; and, accordingly, the ACMC should, properly, have adopted the Heritage Officer’s proposed recommendation and referred the application back to FMG. Instead, the ACMC decided that *“the unclear nature of sites could be addressed using conditions”*; and, to this end, recommended attaching the conditions (including Conditions 4 and 5) that were subsequently modified or deleted in the Minister’s reconsidered decision of 13 December 2011.

It is also apparent, from the documents released under the FOI Act, that the Registrar’s subsequent attempts to get FMG to comply with Condition 4 (which required FMG to consult with

representatives of YAC to the satisfaction of the Registrar) were fiercely resisted by FMG. After several exchanges of correspondence involving the Registrar, YAC and FMG, the Registrar wrote to FMG's Heritage Manager, Lisa Maher, on 20 September 2011, stating:

"I am uncertain, based on correspondence on this issue to date, as to whether your company is willing to work with YAC to conduct the heritage surveys they believe are required. From your recent correspondence it appears that your company may not willing to work with YAC in this respect. Could you please confirm your company's position in relation to this point."

Ms Maher responded the following day, stating, *"FMG is not willing to work with YAC to conduct additional heritage surveys over the land."* (Copies of the relevant correspondence are attached as "Annexure 4".)

As indicated earlier, the Minister made his decision on the *Firetail Priority Infrastructure Area* some four months later, after the SAT dismissed YAC's Joinder Application; and, needless to say, Conditions 4 and 5, as recommended by the ACMC, were not attached to the Minister's consent.

The s 18 application for FMG'S *Firetail Conveyors and the Trinity TSF* was considered by the ACMC on 13 October 2011. Based on the advice given to the ACMC by the DIA Heritage Officer it is apparent that FMG still had not complied with the Registrar's earlier request for *"copies of all heritage survey reports for surveys conducted on the Land since 2007"*; since the Heritage Officer repeated what he said in respect of the applications for *Firetail Priority Mining Area* and the *Firetail Priority Infrastructure Area*:

"[L]ittle information has currently been provided regarding the nature and significance of the large number of other identified Aboriginal sites recorded between 2007 and 2010 which surround the Land. This lack of information means it is difficult to contextualise the nature and significance of the place and place features within the surrounding cultural landscape." (see: Assessment by Ryan Crawford in Annexure 3, at 8)

The Heritage officer noted that although the information provided by FMG identified 20 Aboriginal sites on the Land and two other potential sites, which needed further investigation, it was:

"...not clear whether all places on the Land which might constitute a site under the AHA have been identified, sufficiently assessed and reported on within the Notice and accompanying documentation. The potential impacts on heritage from the Purpose are therefore not clear. The Applicant [FMG] has stated that the purpose will fully impact all sites located on the Land". (ibid, at 7)

The Heritage officer observed that YAC complained that the reports on the archaeological and ethnographic surveys carried out on the Land for FMG, did not "adequately represent" but "grossly underestimated" the cultural heritage values in the Land (ibid, at 6); and, that YAC therefore wished to "conduct its own heritage surveys of the Land prior to the Minister making a decision" (ibid). The Heritage officer also noted that the surveys conducted for FMG included only members of the Wirilu-Murra Yindjibarndi Aboriginal Coporation (WMYAC), a sub-group of the Yindjibarndi People, and had not included the people who were said by YAC, the authorised representative body of the Yindjibarndi People, to be *"principal knowledge holders for the area"* (ibid, at 6). YAC's complaint on this issue corresponded with an observation that had been made

by anthropologist Brad Goode, in an ethnographic report produced for FMG; namely, that *“WMYAC representatives consistently stated that their history of dispossession has limited the group’s ability to ‘Know the Country’”* (ibid, at 5). The DIA Heritage Officer therefore concluded:

“Given that WMYAC representatives consistently indicated during ethnographic consultation that a history of dispossession has limited the group’s ability to ‘Know the Country’, there is a question as to whether all sites on the Land have been sufficiently identified and documented”. (at 8)

The Heritage Officer accordingly recommended the ACMC defer making any recommendation to the Minister, in order to allow YAC to conduct the proposed heritage surveys over the Land; and he noted that the prompt reporting of the results of those surveys would *“enable the ACMC to be confident that all Indigenous heritage values on the Land have been identified and sufficiently documented”.* (at 9)

The minutes of the ACMC’s meeting of 13 October 2012 demonstrate that ACMC did not address the Heritage Officer’s recommendation concerning YAC’s proposed heritage surveys. Instead, the ACMC focussed solely on the fact that there were two potential sites that needed further investigation and recommended the Minister decline to give consent, in order to allow those two potential sites to be further assessed. The Minister’s subsequent consent, given on 27 January 2012, attached conditions which accommodated the further investigation of those two potential sites but made no provision for further heritage surveys to identify any other sites in the area or to assess the importance and significance of those sites; notwithstanding that it is the duty of the Minister, under s 10 of the AHA, to *“ensure that so far as is reasonably practicable all places in Western Australia that are of traditional or current sacred, ritual or ceremonial significance to persons of Aboriginal descent are recorded and their relative importance evaluated”.*

Since meeting with the Minister in Canberra, in November 2011, YAC representatives have on two occasions attempted to gain access to these s 18 areas in order to identify the locations of known sites and to record their heritage values. On Tuesday 25 November 2011, Michael Woodley and his wife, Lorraine Coppin, in company with Angus Mack, Tom Jacobs and anthropologist Phillip Davies, travelled to the area, at the invitation of the WA Registrar of Aboriginal Sites. However, they were refused entry by FMG personnel, for “security reasons”, on the grounds that the YAC representatives had brought video equipment to record the heritage values of the sites they intended to visit.

On 9 December 2012 YAC representatives and six volunteer archaeologists from various parts of Australia attempted to access the area. Advance notice was given to FMG of this planned survey and FMG’s response was to impose conditions which limited access to *“YAC members in pursuance of a registered native title right when and where the visit does not impact upon the safety and security of personnel and operations”.* Other conditions, imposed by FMG, meant that any YAC members so visiting the area would be under constant surveillance by FMG personnel and that all their activities would be monitored and recorded. Not surprisingly, YAC rejected these conditions.

Since the planned heritage survey was over an area of unallocated Crown land (the subject of FMG’s mining lease M47/1413 and M47/1431) where, to YAC’s knowledge, no mining operations

were being conducted, the survey party decided to travel to the area and carry out the survey. Their progress was monitored; first by a light plane and then by a helicopter; and, before they could enter the M47/1413 lease area, a letter from Green Legal was hand-delivered, threatening that if the survey party entered the lease area, FMG would cease all operations in the Solomon area and then sue the individuals in the survey party for the millions of dollars in costs that would be thrown away by the delay. A letter to the Australian Association of Consulting Archaeologists, written on 22 December 2011 by one of the volunteer archaeologists, Dr Graham Knuckey, gives a full account of this event and is attached as “Annexure 5”.

The s 18 applications made by FMG for the *Firetail Priority Mining Area*, the *Firetail Priority Infrastructure Area* and the *Firetail Conveyors and the Trinity TSF*, identified no more than 30 Aboriginal sites. However, as was pointed out in the Application on 18 November 2011 (at 32), the co-ordinates of a further 22 sites were recorded by YAC’s anthropologist, Phillip Davies, during a brief field survey of one gully in the *Firetail Priority Mining Area*, in May 2011; and, as the DIA Heritage Officer observed:

FMG has not disputed the YAC claim of a least 250 rockshelters and caves on the Land subject to the two current Firetail FMG s 18 notices [i.e. the Firetail Priority Mining Area; and the Firetail Priority Infrastructure Area].

The Application (at 30) also referenced a database by the owner of Eureka Heritage, Sue Singleton, in which, based on field work dating back to 2007, Ms Singleton identifies the locations of 227 Yindjibarndi heritage sites situated in and around the area encompassed by the eight s 18 applications made to date by FMG. Ms Singleton’s database is attached as “Annexure 6”.

As Ms Singleton pointed out, in her letter to the Registrar dated 5 November 2011, the area embraced by, and surrounding, the s 18 applications made by FMG, is “*a rare find*” and has “*not yet been the subject of any substantive ethnographic survey; nor has it been the subject of a comprehensive archaeological report*”. The Reports compiled by Veritas and Eureka, which were submitted by FMG in support of its s 18 applications, describe this area as “*a last refuge*” which, “*until comparatively recently*” was occupied by “*Aboriginal people still living traditional lives*”. According to YAC and the Applicants, members of the Yindjibarndi People have occupied this area since time immemorial and its use and enjoyment by members of the Yindjibarndi People has never ceased.

Although members of the WMYAC sub-group have stated that, as a result of their experience of dispossession, they carry no ethnographic knowledge of this area, it is patently clear the same cannot be said about all members of the Yindjibarndi People. So much is apparent from the undisputed evidence of Ned Cheedy and Michael Woodley, given in the April 2011 Warden’s Court proceedings (as attached to the Application), which describes in detail the ongoing ethnographic relationship between this area of Yindjibarndi country and the Yindjibarndi People; from the undisputed affidavit evidence of Thomas Jacob, given in the recent SAT proceeding (a copy of which is attached as “Annexure 7”); and, from the many reports on heritage surveys carried out for FMG by Sue Singleton (Eureka Heritage), Phil Czerwinski (ACHM), Wayne Glendenning (Western Heritage) and Phillip Davies (Juluwarlu), between 2007 and 2009, which the Registrar requested from FMG, but did not receive. Copies of the reports on those surveys

were provided to YAC by FMG during the recent SAT proceeding and can be provided upon request.

A measure of the apparent contempt in which FMG holds the cultural inheritance of the Yindjibarndi People, was seen in a recent letter from FMG's Heritage Manager, Lisa Maher, who advised YAC that Yindjibarndi heritage sites will in future be managed by the "*Wirlu-Murra Tableland Heritage*" a new corporation, association or entity that has been established by FMG and is run, apparently, by members of the WMYAC sub-group who, on their own admission, do not know the country. A copy of Ms Maher's letter, of 7 February 2012, along with YAC's response, is attached as "**Annexure 8**".

A former employee of the legal firm Corser & Corser, Kyriakos ("Kerry") Savas, who represented the WMYAC sub-group until last month (when he was sacked for trying to explain the terms of the agreement FMG negotiated with that sub-group and for trying to reconcile the differences that have kept those members apart from YAC for the past 18 months), informs me that the Board, and the day to day operations, of WMYAC are entirely under the control of Michael Gallagher - a former long-term employee of FMG who is related to FMG's current Heritage Manager. According to Mr Savas, the majority of WMYAC Directors do not wish to continue the current legal dispute against YAC, in the Supreme Court, and against four members of the Applicant for the Yindjibarndi #1 claim in Federal Court, but are made to comply with FMG's strategy by Mr Gallagher. Mr Savas told me that Andrew Forrest has taken the dispute between FMG and YAC "personally, and is out to destroy YAC and Michael Woodley". An outline of an affidavit, drafted by Mr Savas is attached as "**Annexure 9**".

The hundreds of sites situated in the country covered by FMG's eight s 18 applications, comprise a significant and important part of the cultural record of the Yindjibarndi People; and, while some members of WMYAC may, as a result of misfortune and ignorance, agree to the obliteration of those sites, the Applicants do not. The State regime for the protection of Aboriginal heritage has in this case obviously failed; and, the consequence of that failure is that Yindjibarndi people who do 'Know the Country' - who carry the knowledge and the responsibility for the sites that will be destroyed and who sing the songs and perform the ceremonies at sites in that country, will be prevented from passing on to their children and grand-children the knowledge, songs and religious practices associated with those sites; and their children and grand-children will, in turn, be deprived of the enjoyment and confidence that comes from participating in the cultural activities and religious practices of one's own religious community. It is impossible to imagine any circumstance in which a law of Australia would, in order to facilitate the development of a mine, permit the destruction of an established church - irrespective of how many or how few worshippers still practiced their faith at that church.

In circumstances where, due to a single-human hair, it is now known that the migration out of Africa by the Indigenous peoples of Australia preceded the migration of the rest of humanity, by some 30,000 years; it is difficult to imagine how any mining company can be permitted to occupy the driver's seat of the Indigenous heritage protection regime in this State, particularly when there is clear evidence, according to one of FMG's consultant archaeologists, that the area targeted for mining contains "*datable information on human migration that is of international significance*" (P Czerwinski, ACHM July 2009 at 30) and equally compelling evidence that the mining company in question bullies heritage professionals into altering their reports; withholds reports

from State officials; and, arranges multiple heritage surveys over the same area, with different participants, until the desired outcome is achieved.

The Applicants respectfully ask the Minister for a declaration under s 10 Declaration, to protect the area covered by FMG's eight s 18 applications for such time as is reasonably necessary for YAC to properly, and privately, record the stories, songs and rituals associated with sites of significance in this important part of the ancient cultural domain of the Yindjibarndi People.

The completion of the desired comprehensive archaeological and ethnographic surveys will allow a proper assessment to be made of the relative cultural importance and significance of each of the sites in this cultural domain - an assessment YAC wishes to share with State and Commonwealth heritage officials - so that the most significant of these sites may be preserved for the benefit of all Australians.

Yours Sincerely,

George M Irving
Legal Services Director
Juluwarlu Group Aboriginal Corporation
Yindjibarndi Aboriginal Corporation In-House Counsel

“MW-78”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-78” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION RNTBC
 21 Hampton Street (PO Box 111),
 Roebourne, WA 6718
 Tel: 08 9182 1497; Fax: 08 9182 1035
 Ref: 120823

23 August 2012

Mr John Waters
 Barrister
 Sixth Floor,
 Windeyer Chambers
 225 Macquarie Street,
 SYDNEY, NSW, 2000

via email to: johnwaters@windeyerchambers.com.au

Dear Mr Waters,

Re: Report under section 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act* (“the Heritage Protection Act”) – Michael Woodley and Others – Yindjibarndi Aboriginal Corporation.

We refer to your letter of 22 June 2012 and thank you for allowing additional time in which to make these representations to you. We understand your task is to prepare a report for the Minister, which deals with the following matters:

- (a) the particular significance of the area to Aboriginals;
- (b) the nature and extent of the threat of injury to, or desecration of, the area;
- (c) the extent of the area that should be protected;
- (d) the prohibitions and restrictions to be made with respect to the area;
- (e) the effects the making of a declaration may have on the proprietary or pecuniary interests of persons other than the Aboriginal or Aboriginals on whose behalf the application was made;
- (f) the duration of any declaration; and
- (g) the extent to which the area is or may be protected by or under a law of a State or Territory, and the effectiveness of any remedies available under any such law

We wish to briefly address the first of those matters; however before doing so, we confirm that the area over which we seek protection under the Heritage Protection Act, is the area affected by eight applications, made by the Fortescue Metals Group (FMG) under s 18 of the *WA Aboriginal Heritage Act 1972* (“AHA”), for ministerial consent to destroy sites of significance to the Yindjibarndi People, which are situated within the combined area the subject of those applications; namely: the Firetail Priority Mining Area; the Firetail Priority Infrastructure Area; the Firetail Conveyors and Trinity Tailings Storage Facility; the Firetail West and Trinity; the Firetail Central West and Rail Loop; the Firetail West and Trinity and Kings OPF; the Conveyors and Infrastructure Phase 2; and, the Firetail Central West and Rail Loop Firetail Laydown (the “Area”).

We acknowledge that the task of assessing the particular significance of the Area is no longer an easy matter, in light of representations made by some members of the Yindjibarndi People; and we wish to address that issue.

Submissions have previously been made on our behalf, by YAC’s In-House Counsel, in letters dated 18 November 2011 and 2 March 2012, regarding the significance of the Area, under the traditional laws, customs and religious beliefs of the Yindjibarndi People; and we fully endorse and



adopt those submissions. In doing so, we believe we speak for the overwhelming majority of the Yindjibarndi People, both current and future generations, in whose best interests both YAC, as the Trustee of the Yindjibarndi People, and we, as Yindjibarndi lawmen, are obliged to act.

The submissions previously made on our behalf relied heavily on evidence given by the CEO of YAC, Michael Woodley, in proceedings before the National Native Title Tribunal and before the Wardens' Court. We have read each of the affidavits sworn by Mr Woodley in those proceedings, which concerned the grant of mining tenements in the Area to FMG, and we want you to know that we fully support and adopt Mr Woodley's evidence concerning the significance of the Area.

Michael Woodley's standing and authority to give that evidence was attested to by the late Mr Cheedy; and, in our opinion his standing and authority in Yindjibarndi law and society cannot properly be questioned. Michael Woodley worked tirelessly for more than twenty years to acquire his knowledge and understanding of Yindjibarndi law and culture; and, today, he is our cultural leader. This is why he continue to be the CEO of YAC.

The only people who question Mr Woodley's standing, and his authority to speak about Yindjibarndi country and about Yindjibarndi law and culture, are people who are paid money by FMG to assist in getting its Solomon Project up and running. Those people are breaking Yindjibarndi law in doing so and they should not be believed. They lied to the National Native Title Tribunal when they said Michael was not speaking the truth about the significance of the area and that he had not discussed the giving of evidence about our sacred stones and ochre with other lawmen; they lied to the Supreme Court when they said they had been excluded from YAC's decision-making processes; and, they have lied to the people who joined the corporation FMG set up for them, the Wirlu-Murra Yindjibarndi Aboriginal Corporation, when they told them it was a "health and community services organisation".

FARSIWAN CHEEDY

THOMAS JACOBS

MICHAEL BOONJAH (Middleton Cheedy)

Stanley Warrie

ASHTON CHEEDY

Angus Mack

Glen Lee (GLEN LEE)

TRAVIS HUBERT

SEBASTIAN COFKIN

HARRY MILLS

Hyden Moody Helms

TERRANCE WARRIE, TERRANCE WARRIE

“MW-79”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-79” referred to in the witness statement of Michael Woodley dated 5 June 2023.


YINDJIBARNDI ABORIGINAL CORPORATION RNTBC

21 Hampton Street (PO Box 111),
 Roebourne, WA 6718
 Tel: 08 9182 1497; Fax: 08 9182 1035
 Ref: 120823

24 August 2012

Mr John Waters
 Barrister
 Sixth Floor,
 Windeyer Chambers
 225 Macquarie Street,
 SYDNEY, NSW, 2000

via email to: johnwaters@windeyerchambers.com.au

Dear Mr Waters,

Re: Report under section 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act* (“the Heritage Protection Act”) – Michael Woodley and Others – Yindjibarndi Aboriginal Corporation.

We refer to your letter of 22 June 2012 and thank you for allowing additional time for us to make these representations to you. We understand your task is to prepare a report for the Minister, about our application for a declaration under the Heritage Protection Act, to protect sites and areas of significance to Yindjibarndi people, which are situated within the area the subject of FMG’s applications, under s 18 of the *WA Aboriginal Heritage Act 1972* (“AHA”), for the Firetail Priority Mining Area; the Firetail Priority Infrastructure Area; the Firetail Conveyors and Trinity Tailings Storage Facility; the Firetail West and Trinity; the Firetail Central West and Rail Loop; the Firetail West and Trinity and Kings OPF; the Conveyors and Infrastructure Phase 2; and, the Firetail Central West and Rail Loop Firetail Laydown (the “Area”).

We want to tell you why you should accept what Michael Woodley has previously said about the significance of that Area. Many of the sites in that Area are for mens’ business and under our law women can’t talk for those places; but we know about the evidence Michael Woodley gave to the National Native Title Tribunal in 2009 and 2010; we know about the evidence he gave to the Warden’s Court in 2011; and we know about the evidence that was given by Wirlu-Murra members against what Michael said in his evidence.

There are two important points we want to make to you. The first is that under Yindjibarndi law women cannot speak for Yindjibarndi country; only men can do that. The women Wirlu-Murra members who are doing the heritage surveys for FMG are breaking Yindjibarndi law. They shouldn’t even be on those surveys because when they are there it means the men can’t talk.

The second thing we want to say is that we are the grand-mothers, mothers and aunties for Michael and we are mothers and sisters for the Wirlu-Murra members who gave evidence against him. We attend and participate in Yindjibarndi Law ceremonies all the time and so we know who leads those ceremonies. They are not led by the Wirlu-Murra members; they are led by Michael because he is the one with the knowledge.

Michael Woodley and his partner, Lorraine Coppin, have worked very hard over the past twelve years to make sure that Yindjibarndi law and culture stays alive for our future generations. They have collected countless hours of recordings from our old people; they have organised trips out to

country with our old people to record the stories and songs for our country. They have created a television station and radio station so our grand-kids can see and hear our cultural activities in their own language; they have collected our artefacts and published beautiful books about Yindjibarndi country. They have created an immense archive of our language, law and culture, for the benefit of our future generations; and they deserve our praise for their hard work. What has been said about Michael by Wirilu-Murra members is shameful and wrong.

<i>M Cheedy</i>	MARION CHEEDY	<i>Walker</i> - LESLEY WALKER
<i>R Sambo</i>	PANSY SAMBO	Kaye Warrie - Kaye Warrie
<i>R Cheedy</i>	ROSIE CHEEDY	Gelissa Coppin
Alice	ALICE GUINNESS	GELISSA COPPIN
<i>Kasey Cheedy</i>	KASEY CHEEDY	
JANICE WARRIE	JANICE WARRIE	
<i>Rosemary Woodley</i>	ROSEMARY WOODLEY	
<i>Sonya Wilson</i>	SONTA WILSON	
<i>Jamie Guinness</i>	JANICE GUINNESS	
<i>Jane Cheedy</i>	JANE CHEEDY	
<i>Joyce Wilson</i>	JOYCE WILSON	
<i>Lyn Cheedy</i>	LYN CHEEDY	<i>Judith Coppin</i>
		JUDITH COPPIN
<i>R Norman</i>	RHONDA NORMAN	
<i>Wendy Warrie</i>	WENDY WARRIE	
<i>Jean Norman</i>	JEAN NORMAN	
<i>Daniel</i>	TOOTSIE DANIEL	<i>Lynda Ryder</i>
<i>Esther Pat</i>	ESTHER PAT	LYNDA RYDER nee JAMES
<i>Sharona Walker</i>	Sharona Walker	<i>Theresa Coppin</i> THERESA COPPIN

“MW-80”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 8 pages is the annexure marked **“MW-80”** referred to in the witness statement of Michael Woodley dated 5 June 2023.


YINDJIBARNDI ABORIGINAL CORPORATION RNTBC

21 Hampton Street (PO Box 111),
 Roebourne, WA 6718
 Tel: 08 9182 1497; Fax: 08 9182 1035
 Ref: gmi_121015

15 October 2012

Mr John Waters
 Barrister
 Sixth Floor,
 Windeyer Chambers
 225 Macquarie Street,
 SYDNEY, NSW, 2000

via email: johnwaters@windeyerchambers.com.au

Dear Mr Waters,

Re: Report under section 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act* (Heritage Protection Act) – Michael Woodley and Others – Yindjibarndi Aboriginal Corporation RNTBC (YAC).

I refer to your letter of 22 June 2012 and thank you for the additional time it has taken to make these representations. As is apparent from the attached chronology, the Heritage Protection Application made on 22 November 2011 by the directors and CEO of YAC (HPA-1), as amended on 12 March 2012 (HPA-2), arises in the context of a four-year impasse, between YAC and the Fortescue Metals Group (FMG), in negotiations concerning the exploitation of iron ore in the traditional country of the Yindjibarndi People.

One aspect of FMG's "*multi-faceted aggressive strategy*" for dealing with unyielding native title representative bodies and Prescribed Bodies Corporate (PBCs) involves undermining the native title groups' confidence in their legal representation by hitting their legal representatives with a "*barrage of litigation*" prosecuted at "*a gruelling pace*" in order to "*place them under immense pressure and impact their ability to organise themselves*".¹ To this end over the past three years, FMG has deployed against YAC no fewer than seven legal firms;² seven barristers;³ and a bevy of in-house lawyers to prosecute 25 court / tribunal hearings and 12 applications under s 18 of the *Aboriginal Heritage Act 1972* (AHA). With the exception of the Yindjibarndi appeal to the Full Court of the Federal Court, the burden of responding to, preparing for, and appearing in each of those matters has fallen to me alone, as has the large volume of other legal work, not involving FMG, which regularly confronts YAC, as the PBC and representative body for the Yindjibarndi People. It understates the situation to say there are not enough hours in a day to keep up.

This Heritage Protection Application constitutes the Applicants' last hope to record their distinct and precious cultural heritage in the area covered by their Application for the future generations of the Yindjibarndi People and it is therefore of the utmost importance to my clients that all relevant facts are put before you. This necessitated a careful perusal of the thousands of pages of documents that have accompanied each round of litigation and each s 18 application and has unfortunately suffered from frequent interruptions through the ongoing demands of the Wirru-Murra litigation (funded by FMG) and native title future acts where the default position, as always, remains the parcel-by-parcel obliteration of Aboriginal law and culture. I profoundly apologise for the delay and trust you will not attribute it to a want of care on the part of the Applicants or their advocate.

¹ see: Chronology at 01.09.2005

² Green Legal, Maxim Litigation Consultants, Lawton Lawyers, Corser & Corser, Eastwood Sweeney Law, Allion Legal and Integra Legal.

³ Mr J Karkar QC, Mr G Donaldson QC, Mr M Howard SC, Mr G McIntyre SC, Mr G Carter, Mr R Price and Mr A Papamatheos,

I understand your task is to prepare a report for the Minister dealing with eight issues; and I will address each of those, albeit briefly, since the facts upon which the Applicants rely are fully articulated in the attached chronology and are evidenced in the documents referred to therein. Electronic copies of all those documents (save for the published cases available through austlii) are on each of the four USB Flash Drives that accompany this letter. The documents are numbered; the first being an electronic copy of the Chronology; and the second, an index of the remaining documents. Before turning to those eight issues, I would like to offer a brief personal reflection on the circumstances of Yindjibarndi and Michael Woodley in particular.

Twenty years ago, inspired by the Labor Government's commitment to implement the *Native Title Act 1993* (NTA), I chose to dedicate my professional service to that endeavour. I have worked widely in the native title and indigenous heritage jurisdiction and have met many Aboriginal people, some of whom who still suffer the consequences of past injustices but, sadly, lack the depth and breadth of cultural knowledge necessary to satisfy the stringent requirements of the NTA. Michael Woodley is a young lawman who, through the bequest of his grandfathers, holds an encyclopaedic knowledge of traditional law and culture, such as I have not previously encountered. Every relevant research project demonstrates that the health and prosperity of Indigenous peoples in 'First World' democracies depends on their capacity to maintain their traditional cultural values and practices. Michael Woodley's commitment to the passing on of that bequest, and to doing so within a principled framework of human rights, is the reason I have attempted over the past four years, largely *pro bono* and without the resources usually available to native title applicants through Native Title Representative Bodies, to assist the Yindjibarndi People in their aspirations for self-determination.

Mr Woodley has been made the target of a sustained campaign of what Social Justice Commissioner Gooda identified as "lateral violence".⁴ His character has been falsely maligned by a small cohort of individuals whose motives are easily exposed as self-serving.⁵ FMG preyed upon these individuals and fostered within them a belief that their native title claim was hopeless; that YAC's stand for just compensation as a foundation for self-determination was doomed; and that their only hope was to accept a 'fishing rod', offered by Andrew Forrest, in the form of jobs and business 'opportunities'.⁶ Having thus secured their fealty, FMG now funds their action against YAC in the Supreme Court of Western Australia⁷ - an action predicated on false testimony⁸ - while FMG itself engages in an FOI campaign at all levels of government trying to find some foundation for yet another action, this time against Juluwarlu Group Aboriginal Corporation, the manager of YAC.⁹ FMG continues to pay these individuals handsomely to deny the ethnographic value of sacred sites and areas of significance in the land desired by FMG for its Solomon Project, even where some of those individuals have themselves previously identified ethnographically significant sites and areas;¹⁰ and, selectively commissions consultants and ex-employees to produce ethnographic reports that can be relied upon by FMG to defeat the Native Title claims of the Yindjibarndi People.¹¹ Such conduct falls squarely within the World Health Organisation's definition of 'violence', in that it constitutes the "*intentional use of power, threatened or actual against a person, group or community, which has a high likelihood of resulting in psychological harm, maldevelopment or deprivation*".¹²

The extent of the area that should be protected; and, the extent to which the Area is or may be protected by or under a law of the State:

I confirm that the area over which protection is sought under the Heritage Protection Act, is the unallocated Crown Land affected by eight applications, made by FMG under s 18 of the AHA, for ministerial consent to

⁴ see: AHRC Social Justice Report 2011, at 54-55

⁵ see: Doc 1, PJD Aff at [8.20]-[8.32]

⁶ see: Chronology at 10.03.2008; 11.06.2008; 08.03.2010; and 06.07.2010

⁷ see: Doc 1, PJD Aff at [12]

⁸ see: Doc 1, PJD Aff at [6], [8] and [9]

⁹ Juluwarlu Group Aboriginal Corporation (Juluwarlu) was founded by Michael Woodley and his partner Lorraine Coppin in 2000, and manages YAC in accordance with the terms of a written agreement (see: PJD Aff at [1]-[4]). Evidence of FMG's multiple FOI requests will be provided if necessary.

¹⁰ see further below; and, Chronology, at 04.04.2009; 28.04.2009; 10.07.2010; 03.11.2010; 27.06.2011; 19.07.2011; 05.09.2011; 08.12.2011.

¹¹ see: Chronology at 05.09.2011.

¹² see: AHRC Social Justice Report 2011, at 55, Text Box 2.1.

destroy sites of significance to the Yindjibarndi People, which are situated within the combined area the subject of those applications; namely: the Firetail Priority Mining Area; the Firetail Priority Infrastructure Area; the Firetail Conveyors and Trinity Tailings Storage Facility; the Firetail West and Trinity; the Firetail Central West and Rail Loop; the Firetail West and Trinity and Kings OPF; the Conveyors and Infrastructure Phase 2; and, the Firetail Central West and Rail Loop Firetail Laydown (the "Area"). FMG has since made further applications for ministerial consent under s 18 of the AHA, most recently pursuant to a "Notice for Mining and Infrastructure Phase 9";¹³ however, for reasons that are fully explained in submissions made on behalf of YAC to the WA Aboriginal Cultural Materials Committee (ACMC)¹⁴, the areas affected by that Notice are within in the Area. Those submissions, along with the representations previously made in HPA-2, also address the question of the extent to which the Area is or may be protected by or under a law of a State or Territory.¹⁵ In short, the State regime provides no protection.

The Particular Significance of the Area to Aboriginals:

The original application of 18 November 2011 (HPA-1) provides (at 3-9) a summary of the evidence given by Michael Woodley in respect of the significance of numerous sites in the Area, along with a summary of findings made by the National Native Title Tribunal and the Full Court of the Federal Court.

In light of submissions made previously by FMG, to the effect that the Wirlu-Murra were "*compelled to inform FMG and the NNTT that much of the evidence of Mr Woodley concerning ceremonies and sites... was incorrect*";¹⁶ and the sympathetic submissions made to the Minister by Wirlu-Murra Yindjibarndi Aboriginal Corporation (Wirlu-Murra); an organisation that is funded and directed by FMG;¹⁷ it is important to note that Mr Woodley's evidence, and his standing, right and authority to give that evidence, is corroborated by the affidavit of Ned Cheedy, sworn on 8 April 2011;¹⁸ the affidavit of Thomas Jacob, sworn 20 January 2012;¹⁹ the affidavit of Stanley Warrie affirmed 29 June 2012;²⁰ the letter signed by 12 Yindjibarndi lawmen on 23 August 2012;²¹ and, the letter signed by 24 Yindjibarndi women, on 24 August 2012.²² It should be noted also that for the reasons discussed in the NNTT determination (referred to in FMG's submissions), the filing by FMG of the three 'template' affidavits in that matter²³, variously affirmed by 16 Wirlu-Murra members, effectively denied any opportunity for corroborative evidence to be filed in response.²⁴ Moreover, there is a substantial body of evidence in reports of heritage surveys, conducted with Wirlu-Murra men, that also corroborates the evidence of Michael Woodley regarding the significance of the Area and the existence of many sites, of significance to Yindjibarndi People in accordance with their laws, customs and religious beliefs.

In April 2009 for example, in a heritage survey involving John Sandy, a rock-shelter described as an "*ochre source and potential occupation site*", was determined to be significant enough to warrant a "*proposed access track being abandoned*".²⁵

That heritage survey also identified a "*closed, Mens' business site*"; and, a "*creek bed [on Drill Line 302.5] where nine isolated artefacts were collected and stored for safekeeping*".²⁶ The artefacts collected from this creek bed

¹³ see: Doc 89

¹⁴ see Doc 92

¹⁵ On this issue, the 2009 decisions of the Supreme Court, in *Woodley -v- Minister for Indigenous Affairs* [2009] WASC 251; and, *Re Minister For Indigenous Affairs Ex Parte Woodley* [No2] [2009] WASC 296, are most instructive.

¹⁶ see FMG's submissions to the Minister, dated 20 December 2011 (at [13.12])

¹⁷ see: affidavit of Kyriakos Savas, attached to the affidavit of Philip James Davies (Doc 1) as Annexure PJD-19, in which Mr Savas deposes that "FMG through its employees and agent, Michael Gallagher, are the directing mind and will of the WMYAC

¹⁸ Doc 36A

¹⁹ Doc 21, at [2]

²⁰ Doc 2 at [11]-[16]

²¹ Doc 36B at 2

²² Doc 3 at 1-2

²³ see Chronology at 17.06.2011

²⁴ *ibid*

²⁵ see Chronology at 04.04.2009

by the Yindjibarndi men who participated in the survey are not described in the report²⁷ and the creek is not named; however, the coordinates given for Drill Line 302.5,²⁸ correspond with the coordinates for the creek that runs through the middle of FMG's mining lease M47/1413.²⁹ According to the sworn testimony of Michael Woodley, the name of that creek is "*Ganyjingarringunha*";³⁰ and it is from this creek's bed that sacred stones called "*Gandi*" are collected, for use in Yindjibarndi law ceremonies.³¹ The fact that nine 'artefacts' from this creek bed were "*collected and stored for safekeeping*" by those men demonstrates their acknowledgement of the continuing importance of the site.

The heritage survey undertaken with John Sandy also identified, a "*Pebble Mound Mouse site*" (subsequently labelled "YIN09-055"), which was described as an "*important dreaming entity*" and needed to be "*avoided by 25 metres*". That site was the subject of a further heritage survey, carried out by David Raftery in July 2010,³² which involved eight Wirlu-Murra men,³³ and, on that occasion it was described by them as "*a site designed to increase the incidence of local foodstuffs*", which "*is a specific responsibility of men*".³⁴

Another heritage survey carried out in late April 2009,³⁵ involving Ken Sandy, identified four Pebble Mound Mouse sites (including YIN09_03)³⁶ each of which was reported to be "*an ethnographic site that is culturally significant to Yindjibarndi People*".³⁷

That heritage survey with Ken Sandy also identified two rock-shelters (YIN_09_05 and YIN_09_06),³⁸ the walls of which were reported to "*consist of bands of red and white ochre, which is an important resource for Yindjibarndi people during ceremonial activities*"; and, an "*Ochre Source/Artefact Quarry*" (YIN_09_11) described as "*a large ochre source for red, yellow and white ochre, which is an important resource for Yindjibarndi people during ceremonial activity*".³⁹ These findings corroborate the ethnographic significance of ochre sources, as was attested to by Michael Woodley⁴⁰ and accepted by both the National Native Title Tribunal (Tribunal)⁴¹ and the Full Court of the Federal Court.⁴²

Notably, one of the "Daily Drill Site/Line Logs" for the survey conducted in late April 2009, which was signed by each of the survey participants, including Ken Sandy, records the fact that a particular area was not surveyed; and offers the following explanatory note: "*Need to discuss with M Woodley prior to survey*".⁴³ This corroborates what has been said by YAC members about the cultural leadership of Michael Woodley.⁴⁴

²⁶ The fact that the artefacts were "collected and stored for safekeeping" suggests they may well have been the sacred stones ("*Gandi*") that were the subject of Michael Woodley's evidence.

²⁷ i.e. Western Heritage - Preliminary Advice EXP Yin 026 (and Others) Firetail and Valley of the Queens Project Area - Doc 20A

²⁸ see Doc 20A at 7

²⁹ as depicted in FMG's map, attached as Doc 20B

³⁰ see: Chronology at 25.05.2009

³¹ *ibid*

³² see Chronology at 10.07.2010

³³ Jimmy Horace, Barry Phillips, Frank Jerrold, Mark Horace, Glen Toby, Francis Phillips, Rodney Adams and William Long

³⁴ see Doc 29 at 7. The generic Yindjibarndi term for so-called "increase" sites is "*Thalu*"; and, a detailed account of the ethnographic significance of other *Thalu* sites situated in the Area is to be found in the affidavit of Michael Woodley affirmed 4 April 2011: see Doc 37, at [10]; and the affidavit of Thomas Jacob, sworn 20 January 2012 (Doc 21, at [3]).

³⁵ see Chronology at 28.04.2009.

³⁶ YIN09_055 and YIN09_03 were the subject of an application by FMG for ministerial consent to destroy them (see Chronology at 18.02.2011 and 17.03.2011). That consent has been granted (see Chronology at 13.12.2011).

³⁷ *ibid*; and, see Doc 22 at 33, 49, 52 and 56

³⁸ These two ochre quarries were the subject of an application by FMG under s 18 of the *Aboriginal Heritage Act 1972* for Ministerial consent to destroy them (see Chronology at 18.09.2011); and, ministerial consent has now been granted (see Chronology at 27.01.2012)

³⁹ see Chronology at 28.04.2009

⁴⁰ see Doc 37 at [10.2] and [10.5]

⁴¹ see: Chronology at 31.07.2009, 13.08.2009 and 27.08.2009

⁴² see: Chronology at 12.08.2011

⁴³ see: Doc 22, ACHM Final Report Appendix 1 at 58

⁴⁴ see affidavit of Ned Cheedy, sworn on 8 April 2011 (Doc 36A), at [3]-[4]; affidavit of Thomas Jacob, sworn 20 January 2012 (Doc 21, at [2] and [3]); affidavit of Stanley Warrie affirmed 29 June 2012 (Doc 2) at [11]-[16]; letter signed by 12 senior Yindjibarndi lawmen on 23 August 2012 (Doc 36B, at 2); and, the letter signed by 24 senior Yindjibarndi women, on 24 August 2012 (Doc 3, at 1-2)

Michael Woodley's testimony about the ethnographic significance of the rock-shelters and caves ("Yamararra") containing the "physical remains of Yindjibarndi ancestors" and those that contain their "sacred gear";⁴⁵ which was accepted by the Tribunal and led to a finding that they "are areas of particular significance" to Yindjibarndi people,⁴⁶ was also corroborated by Ken Sandy and four other Yindjibarndi lawmen who are members of Wirlu-Murra,⁴⁷ during an ethnographic survey in the Area, conducted by anthropologist Brad Goode in late June 2011.⁴⁸ These men visited various rock-shelters in the Area, some of which contained walled niches;⁴⁹ and advised Mr Goode that the walled niches indicated possible storage places for ritual objects or skeletal remains.⁵⁰ The men are reported as saying, "If ritual objects or burials are found then the material should be left in situ and the mine plan should be modified to protect the site"; and, that this management arrangement should apply to all walled niches.⁵¹

The heritage survey carried out by Brad Goode with the five Wirlu-Murra men also included a visit to *Ganyjingarrinunha Yaayu Wundu* - the creek bed wherein, according to Michael Woodley's sworn testimony,⁵² and the findings of both the Tribunal and the Full Court of the Federal Court,⁵³ senior Yindjibarndi lawmen as a matter of religious observance find and collect sacred stones (*Gandi*) for use in Yindjibarndi law ceremonies. In the report of his survey Mr Goode states that the "eastern branch of the *Ganyjingarrinunha* [is] referred to by the current report as *Kangeenarina Creek*".⁵⁴ His report states that the Wirlu-Murra men advised him that the permanent pools along *Kangeenarina Creek* are "known to be of cultural significance".⁵⁵ Furthermore his report says that although the men could not themselves "detail any mythological narrative regarding the creation of the *Kangeenarina Creek*", they advised him that "there may be other Yindjibarndi people that have knowledge of mythological associations with the *Kangeenarina Creek*"; and, upon being shown a copy of the map of the Area, which had been included in the May 2011 YAC Heritage Report, "they did agree that a 50m protection zone should be established along the margins of the *Kangeenarina Creek*".⁵⁶

Michael Woodley's testimony about the ethnographic significance of *Ganyjingarrinunha* was again corroborated by Wirlu-Murra members, in December 2012, during a meeting with the ACMC Specialist Anthropologist, Michael Robinson. According to Mr Robinson the Wirlu-Murra representatives stated:

*"Kangeenarina Creek has a story associated and a song for it, which is part of traditions and customs central to the Yindjibarndi religious system"; and, that they "consider the creek should be protected and understood FMG had agreed to a 50m buffer zone around it."*⁵⁷

Although Mr Goode's report of his survey with the Wirlu-Murra men referred to YAC's Heritage Report,⁵⁸ Mr Goode's opinion was that YAC's Heritage Report suffered from a "failure to provide specific detail" about the sites and areas of significance mentioned therein.⁵⁹ Given that YAC's Heritage Report included a copy of Michael Woodley's affidavit sworn 4 April 2011, which provided 21 pages of specific detail about the sites of significance mentioned in YAC's Heritage Report, I telephoned Mr Goode on 10 October 2012 to ascertain whether his copy of the YAC Heritage Report included a copy of Mr Woodley's affidavit. Mr Goode said he did not have access to the affidavit but "was aware other Yindjibarndi people held knowledge about the mythological associations for

⁴⁵ see: Chronology at 25.05.2009

⁴⁶ see: Chronology at 13.08.2009

⁴⁷ Clifton Mack, Ricky Sandy, Donny Walker and Kenny Diamond; see Chronology at 27.06.2011 and Doc 43 at 1

⁴⁸ see: Chronology at 27.06.2011 and Doc 43 at 1

⁴⁹ see: Doc 43-44, sites designated: YIN_10_090, YIN_10_097, YIN_10_102, YIN_10_121, YIN_10_095,

⁵⁰ *ibid*

⁵¹ Doc 43 at 46

⁵² see Chronology at 25.05.2009

⁵³ see Chronology at 13.08.2009 and 12.08.2011

⁵⁴ Doc 43 at 31

⁵⁵ see: Chronology at 27.06.2011

⁵⁶ *ibid*

⁵⁷ see Chronology at 08.12.2011

⁵⁸ YAC's Heritage Report is Doc 38A

⁵⁹ see: Doc 43 at 31

Kangeenarina Creek because the Wirlu-Murra men told me so". In a written statement he forwarded on 15 October 2012, Mr Goode states:

"My tenure with FMG was not continued after producing my report. Michael Galagher and FMG's Heritage Manager, Lisa Maher (who is Michael Galagher's step-daughter) tried to pressure me into altering the report regards the significance of the Kangeenarina Creek. They provided me with marked up suggested changes and send it back to me for my acceptance, but I refused to accept their changes regard the creek. They were unhappy about the reference to other Yindjibarndi people possibly having specific mythological knowledge about Kangeenarina Creek, and about the proposed 50 metre exclusion zone. I believed the creek was likely to be an ethnographic site if a specific myth regards its creation could be determined. I certainly witnessed ritual proprietary take place when Yindjibarndi approached the water course. I was directly requested by the Yindjibarndi informants to advise FMG that a 50m protection buffer would be required to protect the cultural values of the creek. However FMG wanted it removed and the creek managed under the EPA legislation instead of the Aboriginal Heritage Act. They suggested strongly that I accept the changes and accused me of putting 'my own spin upon the statements made regards the creek' (Galagher per com 2011). To support their view they arranged a further meeting with the Wirlu-Murra in Wickham, to discuss my report, and then stage-managed another site visit to get what they wanted. After the meeting Michael Galagher came up to me with four of the men who'd been on the initial survey. Galagher asked the men to clarify the statements that were made during the initial survey regards the significance of Kangeenarina Creek. Galagher asked the men if the statements they had made had referred specifically to the Kangeenarina Creek or if they were about the whole of the Fortescue system. The men looked at the ground and said 'yes Michael', that is the statements referred broadly to the whole system as opposed to this creek. I was then asked by Galagher to make the changes requested. It was the worst, the most reprehensible experience I've ever had as an anthropologist. I went to uni with Michael Galagher's partner, Lilian Maher, and I always had great respect for her and her family but it appears to me that they have been bought by FMG. It is my view that Michael Galagher's work with Wirlu-Murra is to stage-manage what FMG wants."

Mr Goode's description of his experience with FMG resonates with that of Sue Singleton, the principal of Eureka Archaeology, who reported to the WA Registrar of Aboriginal sites, in November last year, that FMG had threatened to withhold payment of \$70,000 in invoiced costs if a section of the report she co-authored was not deleted.⁶⁰ The relevant section included the following reference to knowledge that might be held by other Yindjibarndi people:

"Michael Woodley states, in his second affidavit to the NNTT (in the Matter of a Future Act Determination Application No.WF09/1, sworn 3 June 2009) that he has 'heard people say that Yindjibarndi Law might have suffered for a while, after we were pushed off our country by the pastoralists, but I know that the Yindjibarndi kept our Law. We live under that law today in the same way as we always have. Yindjibarndi Law has never stopped'.

'These days, even though we live in town, we are in our country all the time: we hunt, we collect Yindjibarndi fruits and medicines; we camp where we want, whenever we want; we use the waters as we have always used them, for ceremony, for drinking, for swimming and for fishing; we drive all the Thalu; we collect what we need each year from the different Ngurra for Law ceremonies; and, more importantly for us, each year when we do our Law ceremonies, we sing every place in Yindjibarndi country, as we believe we must do under our Law and as we were taught to do by our old people and as they did before us' (Woodley 3 June 2009).

The relationship the Yindjibarndi have with their land is not about commercial exploitation of its vast resources. 'Rather at its core, [is] an innate conviction, a sense of its complete connection to complexities of life and existence' (Read and Coppin 1999:26). Yindjibarndi People don't just belong to the country, they are Yindjibarndi country: 'We do not see, or feel, ourselves as being separate from that country because we were put into that country and we remain in it' (Woodley 25 May 2009). More specifically, Woodley explains:

'Under Yindjibarndi Law we are responsible for everything that happens in that country and we are obliged to make sure that whatever happens, accords with Yindjibarndi Law. I am Ngurrara (kin) for that country and if something happens that is not right under Yindjibarndi Law, I will suffer; the country will grab me. It's the same for all Yindjibarndi'."

⁶⁰ see HPA-1 Annexure 11

Ms Singleton described the Area as “*an amazing resource into knowledge and discovery of the traditional life and practices of the Yindjibarndi*”;⁶¹ and, she and her co-author insisted that the Area should be made the subject of comprehensive ethnographic and archaeological surveys.⁶²

In the course of an ethnographic survey, undertaken by YAC in May 2011, along one ‘gully’ in the land the subject of FMG’s s 18 Notice for the Firetail Priority Mining Area, YAC documented the locations of 26 sites, which FMG had failed to identify in its Notice, and estimated the existence of a further 250 similar sites in the land covered by both that Notice and the Firetail Priority Infrastructure Area Notice.⁶³ Notably, FMG did not dispute the existence of any of these sites.⁶⁴ As previously submitted, however, FMG has on two subsequent occasions prevented YAC representatives from conducting comprehensive surveys to record the locations and significance of sites in the Area.⁶⁵

Michael Woodley’s sworn testimony as to the existence of a plethora of culturally significant sites⁶⁶ is based on his knowledge of the Area; the result of his visits to and use of the Area; and his encyclopaedic knowledge of the stories and songs for the Area, which he learned from his grandfathers. The existence of such sites in the Area is corroborated in the evidence discussed above. What Mr Woodley cannot provide, and what he cannot reasonably be expected to provide, in the absence of comprehensive surveys, is the precise location for every site of cultural significance situated in the Area. That he cannot do so, does not demonstrate that the sites to which he has testified do not exist, but merely that Aboriginal people who hold the knowledge for their traditional country do not need coordinates to visit sites and areas that are culturally significant.

The prohibitions and restrictions to be made with respect to the Area; the duration of any declaration; and the effects the making of a declaration may have on the proprietary or pecuniary interests of others:

In 2008, when YAC and the Applicants commenced negotiations with FMG about the grant of the mining leases FMG now holds, they were fully aware that “*the deck is stacked against native title holders*”⁶⁷ and that they would not be permitted to exercise a veto over FMG’s proposed Solomon project. Their position at the time, which was unanimously shared by all members of the Yindjibarndi community, including the Wirru-Murra members who now speak against it,⁶⁸ was that the area sought by FMG for the Solomon Project was an area of great significance to the Yindjibarndi People, as a society; not only by virtue of the many ethnographic and archaeological sites situated within it, which constitute the cultural record of their occupation, but also because it is the only area of their traditional country left untouched by the grant of adverse interests and was thus the only area where they could fully own their cultural inheritance and continue to freely practice all their cultural traditions without hindrance.⁶⁹ In return for the free prior and informed consent of the Yindjibarndi People to the grant of all tenements sought by FMG in that area, YAC and the Applicants sought a compensation package substantial enough to secure by alternative means the ongoing survival of their distinct society and culture.⁷⁰ In the event that FMG refused to agree to the compensation package they believed reasonable, they decided to wait until after the determination of their native title claim and seek appropriate just through the courts.⁷¹

Instead of respecting that position, FMG chose to coerce consent out of the Yindjibarndi People; first, by persuading a small cohort that the Yindjibarndi People would get no compensation at all if they did not accept the

⁶¹ HPA Annexure 11

⁶² see Chronology at 18.02.2011 and 17.03.2011

⁶³ see Chronology at 25.05.2011 and Doc 38A at 24-25

⁶⁴ see Chronology at 01.06.2011

⁶⁵ see HPA-2, at 7-8

⁶⁶ see Chronology at 25.05.2009 and 04.04.2011

⁶⁷ see: *Western Australia v Ward* [2002] HCA 28; per McHugh J at [561]

⁶⁸ see generally the entries in the Chronology between November 2007 and December 2009; and in particular, the entries at 10.03.2008 and 11.06.2008.

⁶⁹ The previous determination of native title made in favour of the Yindjibarndi People held that native title had been completely extinguished in more than 80% of the determination area and that the Yindjibarndi People retained only non-exclusive rights and interests in the balance (see *Moses v State of WA* [2007] FCAFC 78)

⁷⁰ see Doc 1 - affidavit of Philip James Davies, sworn 22 May 2012, annexure PJD-10 at 226-227

⁷¹ In this regard see comments of McKerracher J, in *NC (deceased) v State of Western Australia* [2012] FCA 773; at [23].

meagre compensation offered by FMG in negotiations;⁷² then by funding various legal firms to persuade that cohort to commence and maintain legal actions against YAC and the Applicant for the Yindjibarndi #1 native title claim (fully funded by FMG),⁷³ in order to secure for FMG the execution of an agreement that seeks to deprive YAC of the compensation that would be lawfully due, in respect of the loss of enjoyment of native title rights held by YAC in the Yindjibarndi Native Title Area, caused by FMG's project; and to defeat any possibility of a future compensation claim in respect of the loss of enjoyment of native title rights determined to exist in the Yindjibarndi #1 Claim Area.⁷⁴ Notably, senior counsel acting for Wirru-Murra, Greg McIntyre SC, has publicly stated that he "*could not recommend FMG's Agreement for execution by his clients in its present form*".⁷⁵

In light of the significant benefits that will be conferred on the State and the Commonwealth by the exploitation of the iron ore resource in the Area, the Applicants do not ask the Minister to grant a declaration providing permanent protection over the Area. What the Applicants seek is temporary protection for a period no longer than six months; sufficient to allow them a reasonable opportunity to make a record of all remaining sites in the Area, which have not already been destroyed by FMG; and to record the performance of the ceremonies and rituals associated with those sites for the benefit of all future generations of the Yindjibarndi People.

Yours Sincerely,



George M Irving
 Director of Legal Services
 Juluwarlu Group Aboriginal Corporation
 Solicitor & In-House Counsel
 Yindjibarndi Aboriginal Corporation RNTBC,
 for and on behalf of the Applicants

Tel: (08) 9294 4496
 Fax: (08) 9294 4499
 Mob: 0417 903 785
 Email: gmirving@tpg.com.au

⁷² see: Chronology at 10.03.2008; 08.03.2010 and 06.07.2010

⁷³ see Chronology at 16.03.2011, 30.03.2011, 25.05.2011, 17.06.2011, 02.09.2011, 08.01.2012, 13.01.2012, 17.01.2012, 08.02.2012, 10.02.2012 and 09.03.2012 and the documents referred to therein.

⁷⁴ see Chronology at 30.03.2011, 25.05.2011, 14 and 17.06.2011,; and 02.09.2011

⁷⁵ see Chronology at 21.03.2012

“MW-81”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “MW-81” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Mr Phillip Davies
General Manager, Culture and Heritage
Yindjibarndi Aboriginal Corporation
Phone: (08) 9182 1497 Email: pdavies@yindjibarndi.org.au

Dear Mr Davies

I am writing regarding the Yindjibarndi application under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the Act). The application relates to the unallocated Crown land in the area known to the Yindjibarndi people as “Ganyjingarringunha Ngurra” and the threat of injury or desecration from the “Firetail” mine by Fortescue Metals Group Ltd and its subsidiaries (collectively Fortescue).

On 22 June 2018, Mr Terry Bailey of O&G-Rosedale Pty Ltd was engaged by the former Department of Environment and Energy to prepare a report for the purposes of s.13(3) of the Act. The report related to the applications submitted under ss.9, 10 and 12 of the Act by Mr George Irving, Barrister, acting on behalf of the Yindjibarndi Aboriginal Corporation RNTBC (Yindjibarndi).

We acknowledge that given the complex and difficult relationship between Yindjibarndi and Fortescue over an extended period, little could be achieved through the mediation conducted by Mr Bailey in 2018. We acknowledge that since the application, the site has been impacted by mining operations undertaken by Fortescue, to the extent that it is not possible to protect the site by making a declaration.

We understand that, in July 2017, the applicant was awarded exclusive Native Title rights over an area of land near Fortescue mining and processing facilities, and that a compensation claim is currently being negotiated with Fortescue, following court proceedings concluded in 2020.

Given this situation, we write to seek your agreement to cease the ATSIHP Act application process.

If you believe that the department should continue to process your application, please write to us at ATSIHPA@environment.gov.au by 3 December 2021 with any submissions regarding the way in which the department should process your application. If we do not hear from you by cob 3 December 2021 we will deem the application to be at an end.

Yours sincerely

James Barker
Assistant Secretary
16 November 2021

“MW-82”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-82” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

16/11/11

Ms Alexa Morcombe
Land Access Manager

FMG Chichester Pty Ltd/The Pilbara Infrastructure Pty Ltd
Fortescue Metals Group (FMG)

CC: Ms Roberta Molson Heritage Approvals Superintendent, FMG
CC: Ms Lisa Maher Manager, Heritage, FMG
CC: Ms Kathryn Przywolnik Registrar for Indigenous Sites, DIA
CC: Mr James Cook DIA
CC: Mr Ryan Crawford DIA
CC: Mr Cesar Rodriguez DIA
CC: Mr Michael Woodley CEO, Yindjibarndi Aboriginal Corporation

RE: The Yindjibarndi Aboriginal Corporation will be conducting independent comprehensive ethnographic and archaeological heritage surveys within the area FMG describes as the 'Solomon Hub'

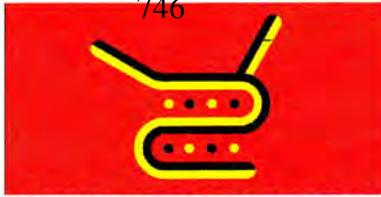
Dear Alexa,

The Yindjibarndi people associated with the Yindjibarndi Aboriginal Corporation (YAC) will be conducting independent comprehensive ethnographic and archaeological heritage surveys in the area known by the Yindjibarndi as *Ganyjingarringunha* in the coming months. The areas within which we will be working may be better known by Fortescue Metals Group (FMG) as tenements M47/1413, M47/1431, M47/1409, M47/1411, M47/1453, E47/1319, E47/1447, E47/1398, E47/1399, E47/1361, L47/350, L47/367, L47/302.

In December, we will commence setting up our base camp from Monday 05/12/11 and will be in the area until Tuesday 20/12/11. The area targeted for this period will be the section 18 areas that FMG have made application to the Minister to destroy and disturb, as well as other sites that have been identified as possessing highly significant cultural heritage values, but have been devalued by heritage consultants employed by FMG. All sites recorded and documented will be registered with the Department of Indigenous Affairs (DIA). We have already made arrangements for archaeologists and anthropologists to assist us with our surveys.

In January 2012, we plan to be within the areas mentioned during the period from Monday 16/01/12 to Monday 30/01/12.

We will advise you when we will be within the area in February and beyond when we are closer to the date.



YINDJIBARNDI ABORIGINAL CORPORATION

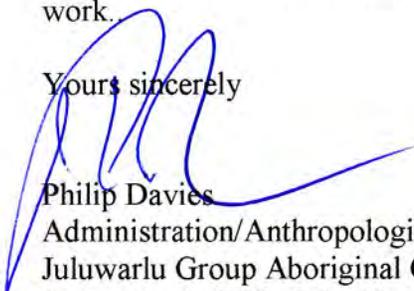
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

While we are carrying out the heritage surveys we ask that FMG personnel, employees and contractors vacate the areas, and do not blast, bulldoze or disturb ground, so that the members of our team can carry out our extremely important and vital research in a safe, transparent, accessible and uninhibited manner.

As previously raised with you and your team, the people represented by the Yindjibarndi Aboriginal Corporation have not given their consent to FMG's damage and destruction of Yindjibarndi sites within the area. The Yindjibarndi Aboriginal Corporation has provided evidence that FMG's heritage processes employed to identify and describe Yindjibarndi sites within the location have been contradictory, problematic, ill-advised and incomplete, and this has resulted in damage, disturbance and destruction to Yindjibarndi sites. The YAC will act via these surveys so that other significant sites that have not yet been damaged and/or destroyed can be protected.

We look forward to working cooperatively with you to complete this cultural heritage work.

Yours sincerely



Philip Davies

Administration/Anthropologist

Juluwarlu Group Aboriginal Corporation

For and on behalf of the Yindjibarndi Aboriginal Corporation

08 91821497 Phone

0429 110451 Mobile (Phil)

0419 097130 Mobile (Michael)

08 91821035 Fax

pdavies@juluwarlu.com.au

www.juluwarlu.pilbara.net

www.yindjibarndi.org.au

On behalf of the Chairperson, Directors, members and employees of the Juluwarlu Group Aboriginal Corporation

The Juluwarlu Vision - 'To enable Ngarda to sustain a cultural life in contemporary society

“MW-83”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “**MW-83**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Our Ref: LS-100-I-0686



Mr Phil Davies
Administration/Anthropologist
Yindjibarndi Aboriginal Corporation
PO Box 111
ROEBOURNEWA 6718

30 November 2011

Dear Phil

Thank you for your letter dated 16 November 2011.

As you are aware, Fortescue has 5 mining leases that make up the Solomon Project (M47/1413, M47/1431, M47/1453, M47/1409, M47/1411 as indicated on the attached map). These mining leases are now part of an active mine site. Please be aware that for safety and security reasons, entry to an operating mine site is strictly controlled, and people who access are subject to conditions of entry set by the Registered Manager.

Before we can respond to your request to access our mine site, please provide us with further details of where exactly you wish to visit, and who are the people who you wish to attend.

As you are no doubt aware, the safety of people is paramount on a mine site. Please confirm that you will not seek to enter any of the above mining leases, without our express consent.

We look forward to receiving further details from you in relation to this matter,

Yours sincerely

FORTESCUE METALS GROUP

ALEXA MORCOMBE

Group Manager Land Access

Enc: Map of Solomon Mining Leases

The New Force in Iron Ore
www.fmgj.com.au

Fortescue Metals Group Limited ABN 57 002 594 872 ACN 002 594 872
ADDRESS Level 2, 87 Adelaide Terrace, East Perth, Western Australia 6004
POSTAL ADDRESS PO Box 6915, East Perth, Western Australia 6892
TEL +61 8 6218 8888 FAX +61 8 6218 8880 EMAIL fmgj@fmgj.com.au

“MW-84”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

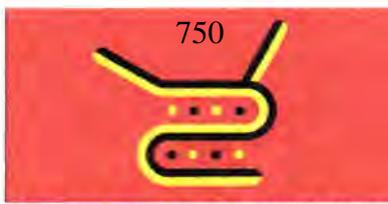
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 15 pages is the annexure marked “**MW-84**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

02/12/11

Ms Alexa Morcombe

Land Access Manager

FMG Chichester Pty Ltd/The Pilbara Infrastructure Pty Ltd

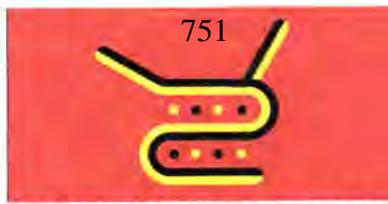
Fortescue Metals Group (FMG)

- CC: Ms Roberta Molson Heritage Approvals Superintendent, FMG
- CC: Ms Lisa Maher Manager, Heritage, FMG
- CC: Ms Kathryn Przywolnik Registrar for Indigenous Sites, DIA
- CC: Mr James Cook DIA
- CC: Mr Ryan Crawford DIA
- CC: Mr Cesar Rodriguez DIA
- CC: Mr Michael Woodley CEO, Yindjibarndi Aboriginal Corporation
- CC: Mr Stanley Warrie Chairperson, Yindjibarndi Aboriginal Corporation
- CC: The Minister for Sustainability, Environment, Water, Population and
Communities - the Honourable Mr Tony Burke
- CC: The Minister for Families, Housing, Community Services and Indigenous
Affairs - the Honourable Ms Jenny Macklin
- CC: The Senator, Ms Rachel Siewert
- CC: The WA Minister for Energy, Training and Workforce Development;
Indigenous Affairs - The Honourable Mr Peter Collier
- CC: The WA Premier and Minister for State Development - The Honourable Mr
Colin Barnett
- CC: The WA Minister for Police, Emergency Services and Road Safety - The
Honourable Mr Rob Johnson
- CC: The WA Member for the Mining & Pastoral Region - The Honourable Mr
Robin Chapple
- CC: Various members of the Australian and International Press

**RE: The conduct of Yindjibarndi Aboriginal Corporation independent
comprehensive ethnographic and archaeological heritage surveys within the area
FMG describes as the 'Solomon Hub'**

Dear Alexa,

As per my previous letter to you dated 18/11/11, the Yindjibarndi people associated with the Yindjibarndi Aboriginal Corporation (YAC) will be conducting independent comprehensive ethnographic and archaeological heritage surveys in the area known by the Yindjibarndi as *Ganyjingarringunha* in the coming months. The areas within which we will be working may be better known by Fortescue Metals Group (FMG) as tenements M47/1413, M47/1431, M47/1409, M47/1411, M47/1453, E47/1319, E47/1447, E47/1398, E47/1399, E47/1361, L47/350, L47/367, L47/302.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

At the Yindjibarndi Aboriginal Corporation Directors meeting held in Roebourne on Wednesday 30th of November the large group of Yindjibarndi Directors and members present voted unanimously as follows:

YAC Directors Meeting 30/11/11 - Resolution 4

The Yindjibarndi Aboriginal Corporation (YAC) Directors agree to conduct comprehensive ethnographic and archaeological heritage surveys in the area known by the Yindjibarndi as *Ganyjingarringunha* in the coming months to document, register and protect Yindjibarndi religious and cultural heritage sites, which are in danger of being permanently damaged and destroyed by the actions of Fortescue Metals Group (FMG). The areas within which we will be working may be better known by FMG as tenements M47/1413, M47/1431, M47/1409, M47/1411, M47/1453, E47/1319, E47/1447, E47/1398, E47/1399, E47/1361, L47/350, L47/367, L47/302. The YAC has never given consent to FMG to mine and/or destroy Yindjibarndi sites. This fact has been communicated many times to FMG and the Department of Indigenous Affairs (DIA). The Directors give their authority to the YAC heritage survey team to enter and document all Yindjibarndi cultural heritage values and sites within the area nominated above.

Moved: Stanley Warrie

Seconded: Thomas Jacob

Passed: Unanimously endorsed by all those Directors and members present at the meeting

As we have previously advised to you, Archaeologists and Anthropologists from around Australia have agreed to volunteer their time to assist the Yindjibarndi to conduct these heritage surveys. The first group of heritage professionals will be arriving in Karratha on Monday 05/12/11 and over the coming months various people will come and go as their individual schedules permit.

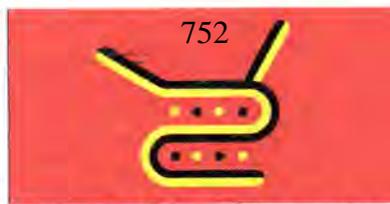
In December, the Yindjibarndi heritage team will be carrying out surveys between 06/12/11 and 19/12/11.

In January 2012, the Yindjibarndi heritage team will be carrying out surveys between 17/01/12 and 29/01/12.

The YAC will advise you of dates beyond January 2012 in January 2012.

Our heritage survey team will be arriving to pass through the FMG security gate has erected at what your organisation terms the 'Solomon Hub' at approximately 3pm on Tuesday 06/12/11. The Yindjibarndi team will include the heritage professionals as well as Yindjibarndi people who will also be present during the surveys.

As expressly contained within the attached advice, the Yindjibarndi people have the legal right to visit, engage with, document, protect and register with the DIA the



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

Yindjibarndi cultural heritage values and sites within the religious precinct. The Yindjibarndi request that FMG stop blasting and bulldozing Yindjibarndi country while we conduct our heritage surveys, so that the survey team can inspect the damage already caused by your organisation to the Yindjibarndi sites, and to document sites that FMG has not yet identified because of the contradictory, problematic, ill-advised and incomplete heritage methodology employed by FMG to date. The Yindjibarndi survey team will also reassess sites that have been identified as possessing highly significant cultural heritage values, but have been devalued by heritage consultants employed by FMG. The YAC will act via these surveys so that Yindjibarndi significant sites that have not yet been damaged and/or destroyed can be protected.

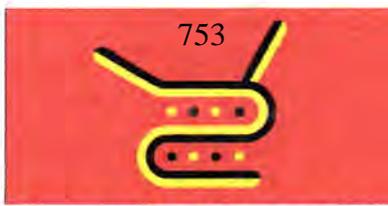
The areas targeted by the Yindjibarndi heritage survey team in December 2011 and January 2012 will include all burial sites within the Yindjibarndi portion of the 'Solomon Hub', all walled niche sites within the Yindjibarndi portion of the tenements M47/1413, M47/1411, M47/1409, M47/1431 and M47/1453, the areas of land that include the section 18 applications made to the DIA and the sites that have been the subject of DIA section 16 applications. We will also be documenting and registering the whole of the Yindjibarndi portion of the *Ganyjingarringunha* Wundu (creek).

The Yindjibarndi survey team will be setting up base camps within the area in the vicinity of the GPS coordinates 589400 E, 7556400 N (in the vicinity of the *Ganyjingarringunha* creek just north east of M47 1413) and 572800 E and 7557200 N (in the vicinity of the *Wirlumurrantha* creek). Coordinates are given in MGA 94, Zone 50. The team will have 5 mine equipped hire vehicles and as well as carrying normal camping gear, we will be towing two portaloos and two trailers.

The Yindjibarndi are willing to work with FMG in a cooperative and transparent way to successfully carry out the heritage surveys. Therefore we ask that your organisation does not obstruct or hinder any members of our team so that we can carry out our extremely important and vital research in a safe, accessible and professional manner.

If we are hindered or disrupted by the FMG team resulting in a way that does not allow the survey team to carry out the documentation, then we will request that the Minister for Sustainability, Environment, Water, Population and Communities, the Honourable Mr Tony Burke, to expressly consider invoking his emergency powers regarding the application made and presented to him in Canberra by the YAC on Wednesday 23/11/11. We have attached a map to this letter setting out the requested section 9 protection zone.

The Yindjibarndi people have been professionally documenting their sites now for many years, and our equipment contains all the necessary tools to professionally complete these tasks; our kit includes the presence and use of video/film cameras. It is Yindjibarndi policy to utilise filmed footage to document sites so as to record the associated personal biographies, stories, songs dance and language of the Yindjibarndi



YINDJIBARNDI ABORIGINAL CORPORATION

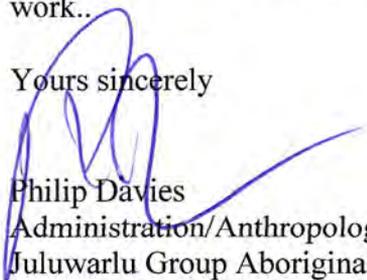
I.C.N. Number 4370

A.B.N. Number 97 456 543 455

people. Last Friday 25/11/11 a team of Yindjibarndi people went to the FMG area labelled by FMG as the 'Solomon Hub' to assist the WA Registrar with the documentation of sites, and were refused entry because we were carrying a video camera. Please be aware that we will be carrying video cameras and we will have a media team accompanying us to the area when we pass the FMG security gate next Tuesday 06/12/11.

We look forward to working cooperatively with you to complete this cultural heritage work..

Yours sincerely



Philip Davies

Administration/Anthropologist

Juluwarlu Group Aboriginal Corporation

For and on behalf of the Yindjibarndi Aboriginal Corporation

08 91821497 Phone

0429 110451 Mobile (Phil)

0419 097130 Mobile (Michael)

08 91821035 Fax

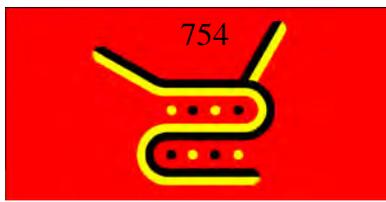
pdavies@juluwarlu.com.au

www.juluwarlu.pilbara.net

www.yindjibarndi.org.au

On behalf of the Chairperson, Directors, members and employees of the Juluwarlu Group Aboriginal Corporation

The Juluwarlu Vision - 'To enable Ngarda to sustain a cultural life in contemporary society



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

ATTACHMENT 1

Yindjibarndi Aboriginal Legal Advice

George M Irving
Legal Counsel for Yindjibarndi Aboriginal Council



PO Box 4031
Swan View
PERTH WA 6056
Telephone: (08) 9255 2891
Mobile: 0417 903 785

Memorandum of Advice

Date: 2 December 2011

To: The Chairman and Directors of Yindjibarndi Aboriginal Corporation

Re: Access to Ganyjingarringunha – to conduct Heritage Surveys

Introduction

I have been asked to provide written advice for the Directors of Yindjibarndi Aboriginal Corporation about whether members of the Yindjibarndi People are entitled to access, and carry out ethnographic and archaeological field surveys in, *Ganyjingarringunha* - an area of unallocated Crown land, situated in the Hamersley ranges. The purpose of the ethnographic and archaeological field surveys is to identify and record the significance of numerous sites, areas and objects, which are known to be situated in *Ganyjingarringunha* and are of particular significance to the Yindjibarndi People under their traditional laws, customs and religious beliefs. The first of these surveys is scheduled to take place between 6 and 19 December 2011, and the second survey is scheduled to take place between 17 January and 29 January 2012.

Status of the Land

According to findings made by the National Native Title Tribunal and upheld by the Full Court of the Federal Court, *Ganyjingarringunha* is unallocated Crown land where Yindjibarndi people have “*exercised their native title rights and interests without interference by the activities of others in the past or the present*” (see: *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011 FCAFC 690; at [31]).

Relevantly, the native title rights and interests of the Yindjibarndi People, in *Ganyjingarringunha*, include the right of the Yindjibarndi People to possess, occupy, use and enjoy the land and waters, to the exclusion of all others; the right to protect and care for sites and objects of significance to Yindjibarndi people, in accordance with their Traditions; and, the right to carry out religious rituals and ceremonies associated with such sites and objects. These rights are “registered” under Part 7 of the *Native Title Act* 1993 (the NTA).

Some of the unallocated Crown land in *Ganyjingarringunha* is now also the subject of mining leases held by Fortescue Metals Group Ltd (FMG). The relevant mining leases are: M47/1409, M47/1411, M47/1413 and M47/1431. FMG has also applied for, but has not yet been granted, a further mining lease;

namely, M47/1453. In the area that may, if granted, be covered by M47/1453, FMG currently holds an exploration licence, E47/1334.

The grant of a mining lease under the WA *Mining Act* 1978 (Mining Act) confers upon its holder the right to extract minerals and water from the land (see: Mining Act; s 85(1)); and, an entitlement to use, occupy and enjoy the land for mining purposes (see: Mining Act; s 85(2)). Section 85(3) of the Mining Act provides that these rights are “exclusive rights for mining purposes”. The rights conferred upon the holder of a mining lease, under s 85 of the Mining Act, are usually described as an “exclusive right to mine”, because the holder of a mining lease may by way of an injunction prevent anyone else from mining the land. The grant of an exclusive right to mine does not extinguish any other rights in the land, including native title rights or interests (see: *Western Australia v Ward* [2002] HCA 28, at [300]).

The grant of an exploration licence, under the Mining Act, confers upon its holder the right to enter the land the subject of the exploration licence - to explore for minerals; the right to extract prescribed amounts of minerals from the land; and, the right to use water (see: Mining Act s 66). Section 66 of the Mining Act does not confer any exclusive rights upon the holder of an exploration licence.

The co-existing rights of FMG and the Yindjibarndi People in the mining lease areas

As I understand it, the total area of FMG’s four mining leases (M47/1409, M47/1411, M47/1413 and M47/1431) is approximately 14,367 hectares. Since it is highly unlikely that FMG will be simultaneously blasting and carrying out mining activities over the whole of this area; and there may be some flexibility in the progression of the scheduled surveys, throughout the area, it would seem sensible for FMG to provide YAC with a copy of its proposed work program for the survey periods so as to avoid any potential conflicting use. This would also enable YAC to prioritise the areas to be surveyed.

The rights given under s 85 of the Mining Act do not entitle the holder of a mining lease to prevent the exercise of any other rights in the land, and the holders of such rights are entitled to exercise their rights - provided they do not in turn prevent the exercise of the miner’s rights. Thus, for example, a farmer or pastoralist may continue to enter, occupy, use and enjoy land covered by a mining lease, for farming or grazing purposes, provided such use does not prevent the holder of the mining lease from exercising the rights under the mining lease. Likewise, members of the Yindjibarndi People are entitled to continue to enter, occupy, use and enjoy the unallocated Crown land in *Ganyjingarringunha*, including the area covered by the mining leases - provided such entry, occupation, use or enjoyment does not prevent FMG mining the land. Under Australian law, given that the land remains “unallocated Crown land”, members of the public may also enter, use and enjoy the land - provided such entry, use or enjoyment does not prevent FMG mining the land.

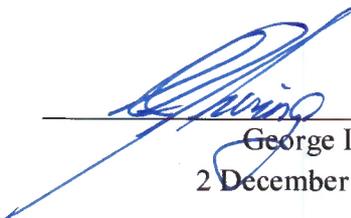
The Mining Act does not allow FMG to simply declare that 14,367 hectares of country is now “an operating mine site”; and, that “for safety and security reasons” the rights of the Yindjibarndi People or

anyone else may now be exercised only with the “express consent” of FMG and then only upon “conditions of entry set by the Registered Manager”.

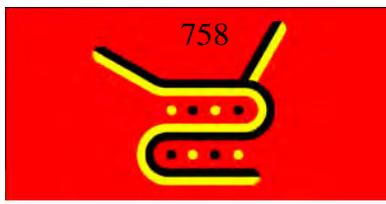
The Mining Act does not permit FMG (or the police) to prevent or restrain members of the Yindjibarndi People from exercising their native title rights in FMG’s four mining leases. In the event that the exercise of any ‘non-mining’ rights prevents, or threatens to prevent, the exercise of FMG’s mining rights, FMG’s only recourse is to apply to a Court for an injunction to restrain the exercise of those rights. In my opinion, however, it is highly unlikely FMG could satisfy any court that the continued exercise of rights by members of the Yindjibarndi People in some small part of an area comprising 14,367 hectares will somehow prevent FMG from exercising its right to mine in any other parts of that area.

In short, members of the Yindjibarndi People, and those assisting them in the proposed surveys to identify and protect areas, sites and objects of significance have an absolute right to enter any area within the four mining leases held by FMG which is not currently being used by FMG for mining purposes.

In closing, I note that FMG has not, as was suggested in the letter of Alexa Morecombe dated 30 November 2011, been granted mining lease M47/1453. Accordingly, in the area of this proposed mining lease FMG holds a mere licence to explore for minerals and cannot under any circumstances restrict access to, and the use and enjoyment of, that area by others.



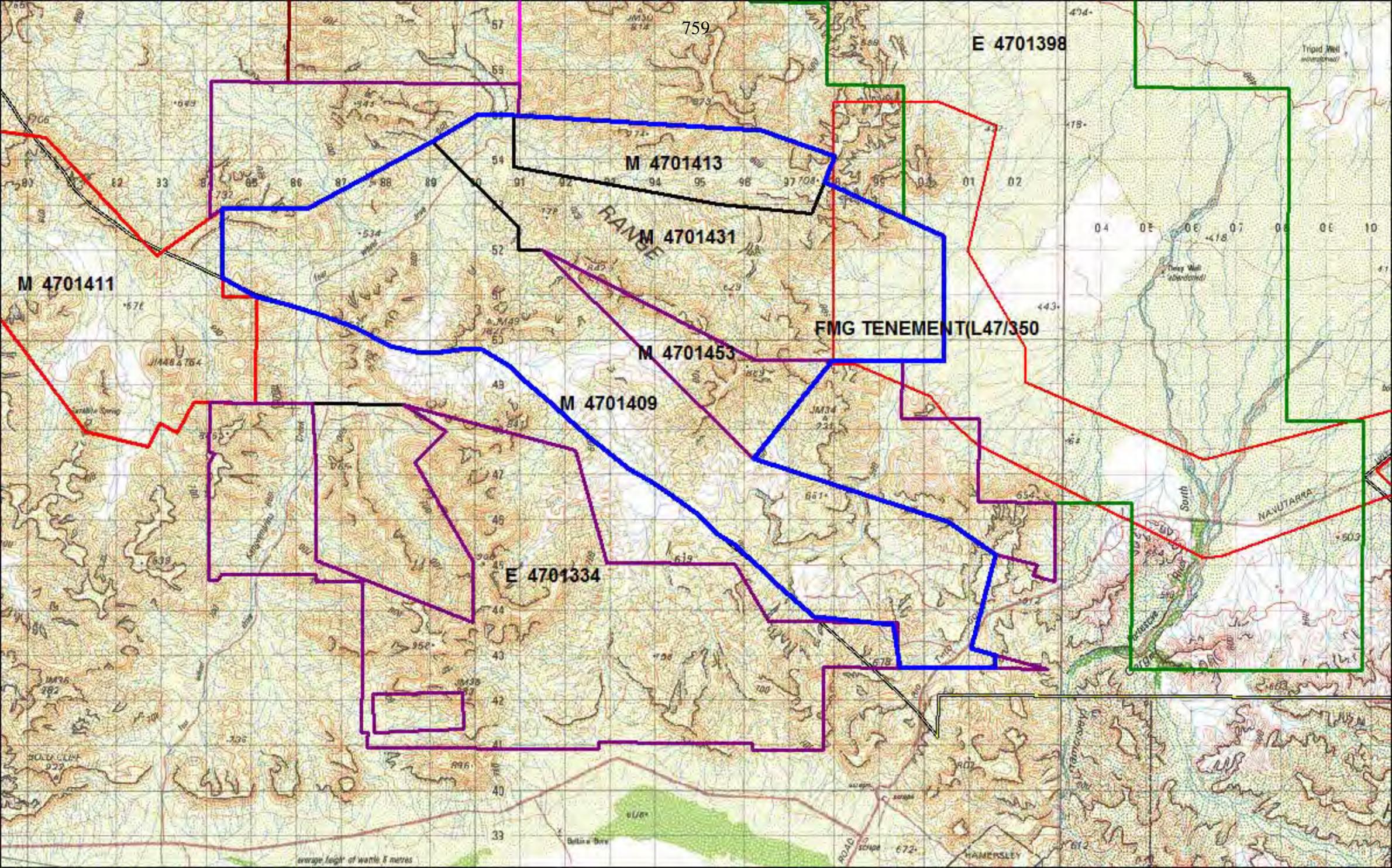
George Irving
2 December 2011



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

ATTACHMENT 2

**Section 9 Area Protection Area Applied for to the Minister for Sustainability,
Environment, Water, Population and Communities**



759

E 4701398

M 4701413

M 4701431

M 4701411

FMG TENEMENT(L47/350

M 4701453

M 4701409

E 4701334

RANGE

NAVUTARRA

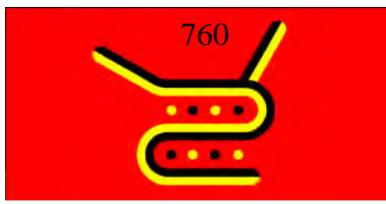
South

HAMERSLEY

ROAD 672

Bella's Bay

average height of water & metres



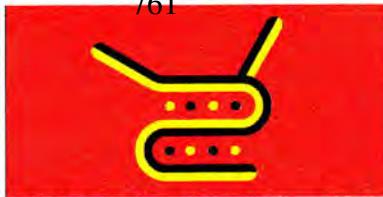
YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

ATTACHMENT 3

Letter to Ms Alexa Morcombe, FMG from YAC dated 16/11/11



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

16/11/11

Ms Alexa Morcombe
Land Access Manager

FMG Chichester Pty Ltd/The Pilbara Infrastructure Pty Ltd
Fortescue Metals Group (FMG)

CC: Ms Roberta Molson Heritage Approvals Superintendent, FMG
CC: Ms Lisa Maher Manager, Heritage, FMG
CC: Ms Kathryn Przywolnik Registrar for Indigenous Sites, DIA
CC: Mr James Cook DIA
CC: Mr Ryan Crawford DIA
CC: Mr Cesar Rodriguez DIA
CC: Mr Michael Woodley CEO, Yindjibarndi Aboriginal Corporation

RE: The Yindjibarndi Aboriginal Corporation will be conducting independent comprehensive ethnographic and archaeological heritage surveys within the area FMG describes as the 'Solomon Hub'

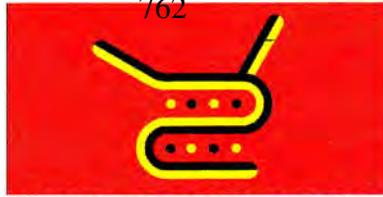
Dear Alexa,

The Yindjibarndi people associated with the Yindjibarndi Aboriginal Corporation (YAC) will be conducting independent comprehensive ethnographic and archaeological heritage surveys in the area known by the Yindjibarndi as *Ganyjingarringunha* in the coming months. The areas within which we will be working may be better known by Fortescue Metals Group (FMG) as tenements M47/1413, M47/1431, M47/1409, M47/1411, M47/1453, E47/1319, E47/1447, E47/1398, E47/1399, E47/1361, L47/350, L47/367, L47/302.

In December, we will commence setting up our base camp from Monday 05/12/11 and will be in the area until Tuesday 20/12/11. The area targeted for this period will be the section 18 areas that FMG have made application to the Minister to destroy and disturb, as well as other sites that have been identified as possessing highly significant cultural heritage values, but have been devalued by heritage consultants employed by FMG. All sites recorded and documented will be registered with the Department of Indigenous Affairs (DIA). We have already made arrangements for archaeologists and anthropologists to assist us with our surveys.

In January 2012, we plan to be within the areas mentioned during the period from Monday 16/01/12 to Monday 30/01/12.

We will advise you when we will be within the area in February and beyond when we are closer to the date.



YINDJIBARNDI ABORIGINAL CORPORATION

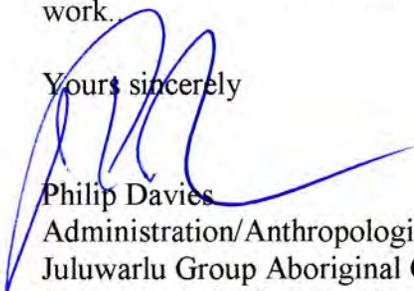
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

While we are carrying out the heritage surveys we ask that FMG personnel, employees and contractors vacate the areas, and do not blast, bulldoze or disturb ground, so that the members of our team can carry out our extremely important and vital research in a safe, transparent, accessible and uninhibited manner.

As previously raised with you and your team, the people represented by the Yindjibarndi Aboriginal Corporation have not given their consent to FMG's damage and destruction of Yindjibarndi sites within the area. The Yindjibarndi Aboriginal Corporation has provided evidence that FMG's heritage processes employed to identify and describe Yindjibarndi sites within the location have been contradictory, problematic, ill-advised and incomplete, and this has resulted in damage, disturbance and destruction to Yindjibarndi sites. The YAC will act via these surveys so that other significant sites that have not yet been damaged and/or destroyed can be protected.

We look forward to working cooperatively with you to complete this cultural heritage work.

Yours sincerely


Philip Davies

Administration/Anthropologist

Juluwarlu Group Aboriginal Corporation

For and on behalf of the Yindjibarndi Aboriginal Corporation

08 91821497 Phone

0429 110451 Mobile (Phil)

0419 097130 Mobile (Michael)

08 91821035 Fax

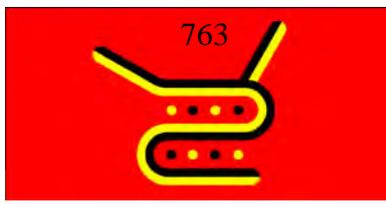
pdavies@juluwarlu.com.au

www.juluwarlu.pilbara.net

www.yindjibarndi.org.au

On behalf of the Chairperson, Directors, members and employees of the Juluwarlu Group Aboriginal Corporation

The Juluwarlu Vision - 'To enable Ngarda to sustain a cultural life in contemporary society



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

ATTACHMENT 4

Letter from Ms Alexa Morcombe, FMG to YAC dated 30/11/11

Our Ref: LS-100-I-0686



Mr Phil Davies
Administration/Anthropologist
Yindjibarndi Aboriginal Corporation
PO Box 111
ROEBOURNEWA 6718

30 November 2011

Dear Phil

Thank you for your letter dated 16 November 2011.

As you are aware, Fortescue has 5 mining leases that make up the Solomon Project (M47/1413, M47/1431, M47/1453, M47/1409, M47/1411 as indicated on the attached map). These mining leases are now part of an active mine site. Please be aware that for safety and security reasons, entry to an operating mine site is strictly controlled, and people who access are subject to conditions of entry set by the Registered Manager.

Before we can respond to your request to access our mine site, please provide us with further details of where exactly you wish to visit, and who are the people who you wish to attend.

As you are no doubt aware, the safety of people is paramount on a mine site. Please confirm that you will not seek to enter any of the above mining leases, without our express consent.

We look forward to receiving further details from you in relation to this matter,

Yours sincerely

FORTESCUE METALS GROUP

ALEXA MORCOMBE

Group Manager Land Access

Enc: Map of Solomon Mining Leases

The New Force in Iron Ore
www.fmgj.com.au

Fortescue Metals Group Limited ABN 57 002 594 872 ACN 002 594 872
ADDRESS Level 2, 87 Adelaide Terrace, East Perth, Western Australia 6004
POSTAL ADDRESS PO Box 6915, East Perth, Western Australia 6892
TEL +61 8 6218 8888 FAX +61 8 6218 8880 EMAIL fmgj@fmgj.com.au

“MW-85”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 11 pages is the annexure marked “**MW-85**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

05/12/11

Ms Alexa Morcombe

Land Access Manager

FMG Chichester Pty Ltd/The Pilbara Infrastructure Pty Ltd

Fortescue Metals Group (FMG)

- CC: Ms Roberta Molson Heritage Approvals Superintendent, FMG
CC: Ms Lisa Maher Manager, Heritage, FMG
CC: Ms Kathryn Przywolnik Registrar for Indigenous Sites, DIA
CC: Mr James Cook DIA
CC: Mr Ryan Crawford DIA
CC: Mr Cesar Rodriguez DIA
CC: Mr Michael Woodley CEO, Yindjibarndi Aboriginal Corporation
CC: Mr Stanley Warrie Chairperson, Yindjibarndi Aboriginal Corporation
CC: The Minister for Sustainability, Environment, Water, Population and
Communities - the Honourable Mr Tony Burke
CC: The Minister for Families, Housing, Community Services and Indigenous
Affairs - the Honourable Ms Jenny Macklin
CC: The Senator, Ms Rachel Siewert
CC: The WA Minister for Energy, Training and Workforce Development;
Indigenous Affairs - The Honourable Mr Peter Collier
CC: The WA Premier and Minister for State Development - The Honourable Mr
Colin Barnett
CC: The WA Minister for Police, Emergency Services and Road Safety - The
Honourable Mr Rob Johnson
CC: The WA Member for the Mining & Pastoral Region - The Honourable Mr
Robin Chapple
CC: Various members of the Australian and International Press

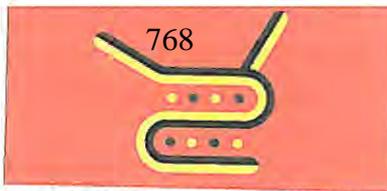
**RE: The conduct of Yindjibarndi Aboriginal Corporation independent
comprehensive ethnographic and archaeological heritage surveys within the area
FMG describes as the 'Solomon Hub'**

Dear Alexa,

Thanks for your letter dated 05/12/11 (attached).

The Yindjibarndi team will be conducting comprehensive ethnographic and archaeological heritage surveys, as described in our letter to you on 02/12/11, from tomorrow in the following targeted areas:

1. The three skeletal remains sites on the Yindjibarndi portion of the tenements.(map attached)
2. The whole of the FMG section 18 application area that was heard by the APMC on 01/06/11. For your information the FMG section 18 application



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

was headed 'Firetail Priority Mining Area'¹ and 'Firetail Priority Infrastructure Area'². Previously in a letter regarding this section 18 area from Lisa Maher, FMG, to the YAC (attached), dated 24/10/11, it was stated that:

'Contrary to the incorrect information provided by you to media outlets, this blasting is not occurring on the Firetail Priority Mining Section 18 Land, or in contravention of any Ministerial Conditions. Fortescue is very clear about our obligations under the Aboriginal Heritage Act. We have comprehensive procedures in place to ensure all our activities take place with the relevant approvals in place, this includes blasting'.

Therefore in light of the statement above we see no reason why FMG would refuse free and unfettered access to the section 18 application area.

3. The YAC will also be conducting heritage surveys along the Yindjibarndi portion of the *Ganyjingarringunha* Wundu (Creek).

The Yindjibarndi survey team will comprise five mine equipped vehicles and the team is prepared to register their names daily with FMG so that your team will know who is working with the Yindjibarndi people, and comply with any FMG safety requirements, in a workable and cooperative manner to undertake this important professional cultural documentation heritage work.

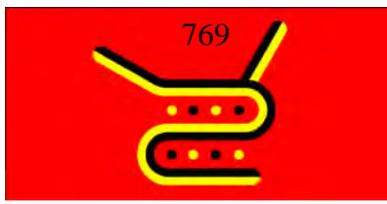
Yours sincerely
Philip Davjes
Administration/Anthropologist
Juluwarlu Group Aboriginal Corporation
For and on behalf of the Yindjibarndi Aboriginal Corporation
08 91821497 Phone
0429 110451 Mobile (Phil)/0419 097130 Mobile (Michael)
08 91821035 Fax
pdavies@juluwarlu.com.au/www.juluwarlu.pilbara.net/www.yindjibarndi.org.au

On behalf of the Chairperson, Directors, members and employees of the Juluwarlu Group Aboriginal Corporation

The Juluwarlu Vision - 'To enable Ngarda to sustain a cultural life in contemporary society

¹ 'Firetail Priority Mining Area' Section 18 Application - Tenement ID - M47/1413 - The application folder is dated February 2011 and contains a map establishing the section 18 application area within the tenement

² 'Firetail Priority Infrastructure Area' Section 18 Application - Tenement ID - E47/1447 - application folder is dated February 2011 and contains a map establishing the section 18 application area within the tenement



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

ATTACHMENT 1

Letter from Ms Alexa Morcombe, FMG, to Mr Phil Davies, YAC dated 05/12/11

Our Ref:
Your Ref:



5 December 2011

ATTENTION: MR STANLEY WARRIE

Chairperson
Yindjibarndi Aboriginal Corporation

BY FACSIMILE & EMAIL:	08 9182 1035
NO OF PAGES:	3

ATTENTION: MR PHILIP DAVIES

Administrator
Juluwarlu Group Aboriginal Corporation

BY FACSIMILE & EMAIL:	08 9182 1035
NO OF PAGES:	3

Dear Sirs

I acknowledge receipt of the email sent 2 December 2011 by Phil Davies. That email attached a letter dated 2 December 2011, prepared on the letterhead of Yindjibarndi Aboriginal Corporation ("YAC") and signed by Mr Philip Davies as *Administration/Anthropologist* of Juluwarlu Group Aboriginal Corporation ("Juluwarlu") as agent for YAC ("**Davies Letter**").

The Davies Letter advises that:

people associated with Yindjibarndi Aboriginal Corporation intend undertaking surveys over M47/1413, M47/1431, M47/1409, M47/1411, M47/1453 (Appln), E47/1319 (Appln), M47/1447, E47/1398, E47/1399, E47/1361, L47/350, L47/367, L47/302.

and that:

Our heritage team will be arriving to pass through the FMG security gate has erected [sic] at what your organisation terms the 'Solomon Hub at approximately 3pm on Tuesday 06/12/11.

You will appreciate the above named tenements cover approximately 864 square kilometres.

Fortescue does not have any objection to surveys being undertaken over a large portion of that area.

However, you will recall my letter dated 30 November 2011:

1. advised you that portions of M47/1413, M47/1431 and M47/1409 and M47/1411 comprise an active mine site and for safety and security reasons you will not be permitted to enter those portions ("**Controlled Areas**"); and

2. invited you to provide details of who intends to undertake the planned surveys, and where those surveys are planned to be undertaken.

The reason why I invited those details was so I could make the appropriate enquiries, and should it be possible, make the necessary arrangements to allow you to have access to, or through, those Controlled Areas.

The Davies Letter provides none of those requested details. Accordingly, I have been unable to make the relevant enquiries, let alone endeavour to make arrangements to allow you access to, or through, the Controlled Areas.

The reason why Fortescue has erected a number of *security gates* is because the road on which each *security gate* is situated leads directly to areas where Fortescue is actively undertaking operations. Those activities are primarily construction activities and involve the operation of large earth moving equipment, large construction equipment and on occasion blasting. There are frequent vehicle movements throughout that area and the risk of injury and accident is high. For safety and security reasons Fortescue cannot allow uncontrolled access beyond those *security gates*.

In the circumstances, I would be grateful for your confirmation before **3.00 pm on Monday, 5 December 2011** that no *people associated with Yindjibarndi Aboriginal Corporation* will enter the area of M47/1413, M47/1431 and M47/1409 and M47/1411 without prior authorisation from Fortescue.

I note your letter requests Fortescue to *stop blasting and bulldozing* and further requests that Fortescue *not obstruct or hinder any members of [YAC's] team so that we can carry out our extremely important and vital research in a safe, accessible and professional manner*.

Because the Davies Letter does not identify where surveys are proposed, I assume the request is for Fortescue to cease all activities within the Controlled Area.

It is likely that the letter's author misunderstands the scale of activities being undertaken within the Controlled Area. The cost of ceasing those activities to allow uncontrolled access to the Controlled Areas would be hundreds of millions of dollars. As you can now see, requesting Fortescue to cease activities within the Controlled Areas is quite impossible and perhaps a little foolish.

The advice by Mr Irving attached to the Davies Letter contains the following suggestion:

Since it is highly unlikely that FMG will be simultaneously blasting and carrying out mining activities over the whole of this area; and there may be some flexibility in the progression of the scheduled surveys, throughout the area, it would seem sensible for FMG to provide YAC with a copy of its proposed work program for the survey periods so as to avoid any potential conflicting use. This would also enable YAC to prioritise the areas to be surveyed.

It is apparent that Mr Irving does not understand the scale of activities being undertaken within the Controlled Area or the need for those activities to be co-ordinated, scheduled, and frequently re-scheduled.

However, the underlying logic is sound. If YAC could advise me of who intends to undertake surveys, and where those surveys are to be undertaken, then Fortescue is willing to consider whether access to the Controlled Areas is possible, and if so, subject to what constraints (if any).

The Davies Letter advises that:

[i]f we are hindered or disrupted by the FMG team resulting in a way that does not allow the survey team to carry out the documentation, then we will request that the Minister for Sustainability, Environment, Water, Population and Communities, the Honourable Mr Tony Burke, to expressly consider invoking his emergency powers regarding the application made and presented to him in Canberra by the YAC on Wednesday 23/11/11. We have attached a map to this letter setting out the requested section 9 protection zone

I note that the map attached to the Davies Letter does not identify any *section 9 protection zone*. However, rather than risk accident or injury to any person intending to undertake surveys (or indeed any Fortescue personnel) from uncontrolled access to the Controlled Areas, please feel welcome to provide this letter to Minister Burke as evidence that Fortescue does not intend allowing you to have uncontrolled access to the Controlled Areas.

I emphasise that the above statement is not made lightly or without consideration of the resulting position of Minister Burke. However, Fortescue believes the circumstances warrant such a statement, particularly as Fortescue is aware:

1. from previous YAC video footage that persons associated with YAC accessed Controlled Areas without Fortescue's authorisation exposing themselves, and potentially Fortescue personnel, to an unacceptable level of risk of injury and accident; and
2. that during a recent visit to Solomon, Mr Michael Woodley advised the Mine Manager that he:

"would not comply with the conditions of entry and he would have to [be] restrain[ed] in order to stop [him] entering the site".

Fortescue is currently planning new additional Aboriginal heritage surveys of areas outside the Controlled Areas, but otherwise over the tenements referred to at the commencement of this letter. As Fortescue had done regularly over the past three years, those *people associated with Yindjibarndi Aboriginal Corporation* are invited to participate in those additional surveys. If you would like to confirm their willingness to so participate, I will arrange for details of those future surveys to be provided to you as soon as they become available.

Should you have any questions arising from this letter, please do not hesitate to contact.

However, I reiterate, for safety and security reasons Fortescue cannot allow uncontrolled access into the Controlled Areas, including areas beyond *security gates*.

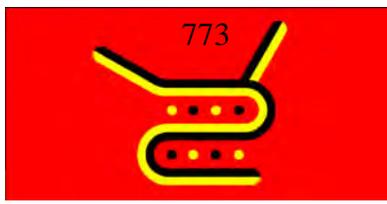
Yours sincerely

FORTESCUE METALS GROUP LTD



ALEX MORCOMBE

Manager, Heritage



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

ATTACHMENT 2

Map of three skeletal remains sites on the Yindjibarndi portion of the FMG tenements



LEGEND

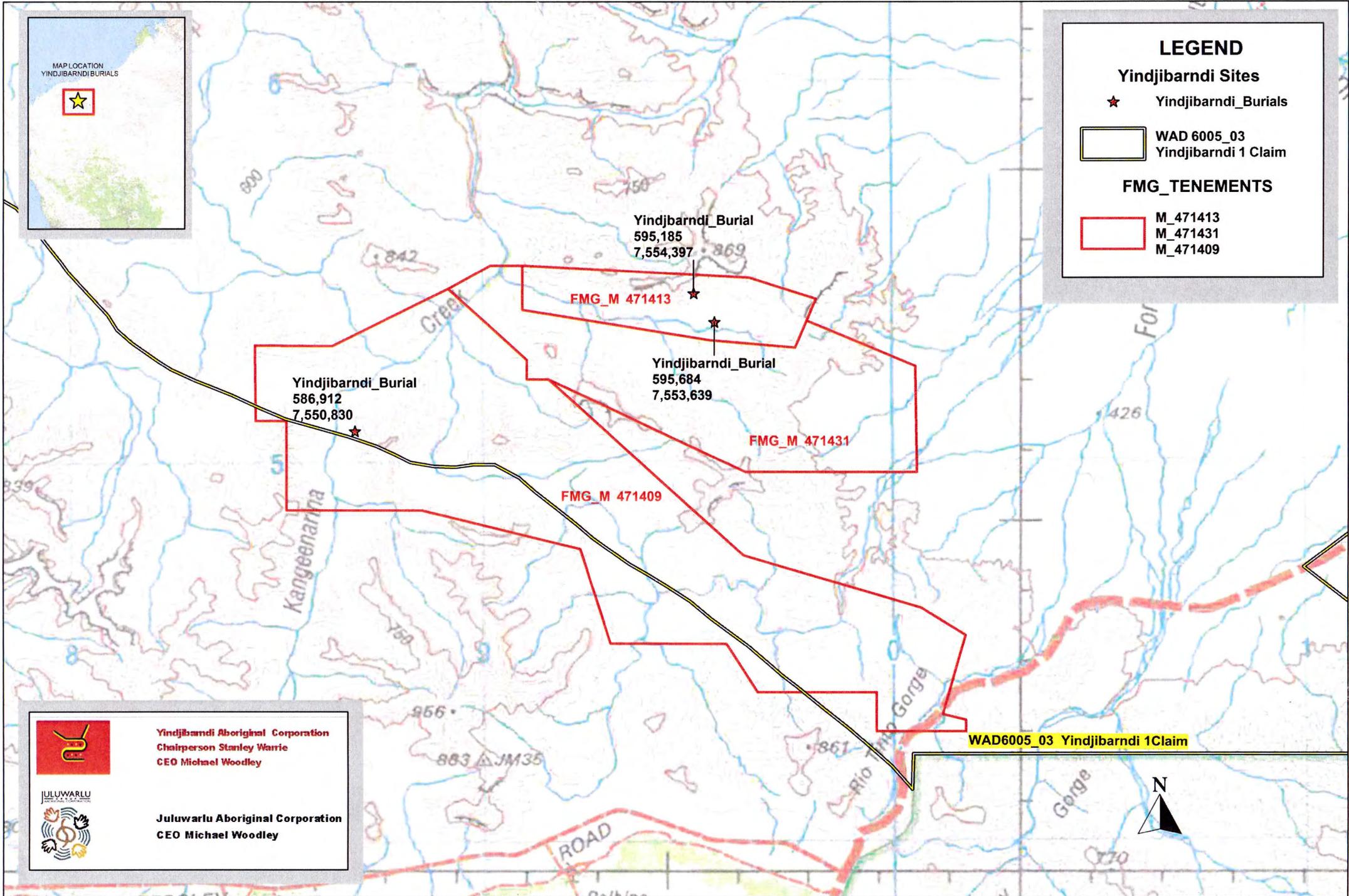
Yindjibarndi Sites

- ★ Yindjibarndi_Burials

WAD 6005_03
Yindjibarndi 1 Claim

FMG_TENEMENTS

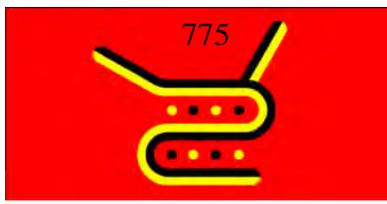
- M_471413
- M_471431
- M_471409



Yindjibarndi Aboriginal Corporation
Chairperson Stanley Warrie
CEO Michael Woodley

Juluwarlu Aboriginal Corporation
CEO Michael Woodley





YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

ATTACHMENT 3

Letter from Ms Lisa Maher, FMG, to Mr Philip Davies, YAC, dated 24/10/11



Our Ref: LS-100-I-0673

24 October 2011

ATTENTION: PHIL DAVIES

BY EMAIL

Yindjibarndi Aboriginal Corporation RNTBC

PO Box 111

ROEBOURNE WA 6718

Dear Mr Davies

REQUEST FOR INFORMATION ABOUT BLASTING

I refer to your email of 24 October 2011 (enclosed) requesting information about blasting in Firetail.

As per the advice provided to you on site yesterday we have commenced work within our Solomon project area, including blasting.

Contrary to the incorrect information provided by you to media outlets, this blasting is not occurring on the Firetail Priority Mining Section 18 Land, or in contravention of any Ministerial Conditions.

Fortescue is very clear about our obligations under the Aboriginal Heritage Act. We have comprehensive procedures in place to ensure all our activities take place with the relevant approvals in place, this includes blasting.

Yours sincerely

FORTESCUE METALS GROUP LTD

Lisa Maher

Manager, Heritage

From: [Phil Davies](#)
To: [Lisa Maher](#)
Cc: [Roberta Molson](#); [Alexa Morcombe](#); "[Michael Woodley](#)"; "[Ryan Crawford](#)"
Subject: Blasting being conducted at Firetail
Date: Monday, 24 October 2011 12:05:42 PM

24/10/11

Dear Lisa,

As I discussed on the phone this morning with Roberta, and I understand she has passed onto you, when I was at the Solomon Hub site yesterday, amongst other things, I was told that blasting was being conducted at Firetail and that we wouldn't recognise Firetail because there had been so much work completed there in the last couple of months.

I asked Roberta if she knew whether blasting is and has been occurring at Firetail; she said that she didn't know, so said that she would pass me onto you because you are the Heritage Manager. After Roberta told me you were busy, I gave Roberta my mobile phone number which is 0429 110451, and she said you would call me back. Roberta also suggested I send you this email.

Would you please confirm whether blasting is being carried out at Firetail.

We would appreciate your immediate reply to this question because the Yindjibarndi people regard their Aboriginal sites with the utmost importance, and are very concerned if their sites are being damaged by blasting.

We look forward to your immediate reply.

Yours sincerely

Philip Davies
Administration/Anthropologist
Juluwarlu Group Aboriginal Corporation
For and on behalf of the Yindjibarndi Aboriginal Corporation
08 91821497 Phone
0429 110451 Mobile (Phil)
0419 097130 Mobile (Michael)
08 91821035 Fax
pdavies@juluwarlu.com.au
www.juluwarlu.pilbara.net
www.yindjibarndi.org.au

On behalf of the Chairperson, Directors, members and employees of the Juluwarlu Group Aboriginal Corporation

The Juluwarlu Vision - 'To enable Ngarda to sustain a cultural life in contemporary society

“MW-86”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “MW-86” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Our Ref:



5 December 2011

ATTENTION: MR STANLEY WARRIE

Chairperson
Yindjibarndi Aboriginal Corporation

BY FACSIMILE	08 9182 1035
& EMAIL:	
NO OF PAGES:	

ATTENTION: MR PHILIP DAVIES

Administrator
Juluwarlu Group Aboriginal Corporation

BY FACSIMILE	08 9182 1035
& EMAIL:	
NO OF PAGES:	

Dear Sirs

I refer to your letter dated 5 December 2011, received via email at 3.02pm.

For safety and security reasons Fortescue categorically and specifically must refuse YAC authority or permission to enter the mining leases in order to access the locations mentioned in your letter in the manner you outline. These areas are either subject to active mining, or can only be accessed by traversing areas that are subject to active mining.

Should you wish to access parts of the mining leases (M47/1413, M47/1431 and M47/1409 and M47/1411) that are outside of Controlled Areas, we would be pleased to consider such a request. Any access to those parts of the mining leases would need to be subject to Fortescue's safety and security requirements.

I reiterate, for safety and security reasons Fortescue cannot allow uncontrolled access into the Controlled Areas, including areas beyond security gates.

Yours sincerely

FORTESCUE METALS GROUP LTD

ALEXA MORCOMBE
Group Manager, Land Access

“MW-87”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 4 pages is the annexure marked “MW-87” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Minutes for the
Yindjibarndi Aboriginal Corporation Directors Meeting with FMG
At the Juluwarlu Office
Wednesday the 07th of December 2011

Meeting Started 12.15 pm

Present

Yindjibarndi Directors

Angus Mack, Pansy Cheedy/Sambo, Jean Norman, Tom Jacobs, Jane Cheedy, Curtis Lockyer, Tootsie Daniels, Joyce Hubert

Yindjibarndi Community Members

Lorraine Coppin, Jasmine Mack, Marion Cheedy, Lesley Walker, Emmalyn Smith, Lyn Cheedy, Finola Woodley, Margaret Read, Elizabeth Coppin

Yindjibarndi Aboriginal Corporation

Michael Woodley (Chief Executive Officer)

Yindjibarndi Support Team

Philip Davies (minutes), Kate Wilson

FMG Team

Blair McGlew, Tom Weaver

Apologies

No apologies were delivered

12.25am - The meeting commenced

Michael Woodley (MW) - just want to put it on the record that Blair and I have agreed that this meeting will not be filmed or recorded

Tom Weaver (TW) - Access to the mine site shall not be restricted for native title holders except for safety and security reasons - how can we make this process work where everyone is safe

MW - these entry conditions are not fair and reasonable - we are asking to be conducted by FMG to the areas that we have targeted

TW - are your concerns about the timing or the process

MW - this is very poor from you - we have already told you where we want to go - you are saying that we can't go there - we were hoping to be on site tomorrow - we will abide by the safety conditions - but we have an issue with FMG controlling what is filmed and photographed - this is our country - we have the right to go where we targeted - the areas

we have targeted are not mining areas - they should be quarantined from FMG's mining activities - we state on record now that we will abide by the safety requirements

MW - we find that these conditions are a dictatorship

MW - we are going to an area that is not a mine site - and you want to film all of our activities and control of the photographs and filming

BM - if your ultimate concern is to document your sites then we will be able to do that for us - that should address your issue

MW - the rights of Indigenous people are being abused - what is so concerning about us filming what we are doing

BM - we want to protect our mining methods from the public - we are not taking away your rights

LC - why don't we have our guys doing our filming and you guys doing your filming

TW - that has already happened - there is already vision out there of a commercially sensitive nature - we don't let our competitors know what we are doing

LC - you have had other Yindjibarndi people on the country

TW - you have been invited every single time

Pansy Sambo - what are our legal rights

MW - the mining act doesn't restrict traditional owners from being on country - but what they are saying is that they are doing so revolutionary about digging a hole in the ground

BM - no that is not exactly what we are saying - we can do these things quickly and we don't want our competitors to know what we are doing

MW - we want to get access to our land quickly

MW - this is about agreeing to terms

TW - we can have a chat to the Mine Manager if you have a talk together about the conditions

BM - why is the two days a problem

MW - because we have a schedule - we want to be on site tomorrow

MW - you are putting these conditions on at the eleventh hour - well we would like to be on country tomorrow

BM - isn't Tom trying to make this happen - why is there a problem with the schedule

The FMG people came back at 1.40pm

TW - one of the we won't release any film unless

MW - we have a fundamental problem with your document - we feel our rights are being infringed - but we won't give up our rights

TW - what are your rights that we will be infringing

MW - we won't allow ourselves to become Indigenous people who will be controlled

TW - then I guess we have hit a bit of an impasse because we are talking about a mine site

MW - and what we want to do is to visit and survey the quarantined areas

MW - your position is you want to limit our access to our country - we are not going to give up our rights - we have some hope that the you will uphold the DRIP

TW - well the DRIP is not law

TW - what we want to do is allow you to exercise those rights

TW - we see these conditions as being central to our safety and security

BM - we have gone to some lengths

MW - we want access - we will comply with all your safety requirements - we will have security drive us to the sites - Kathryn Przywolnik drove - put an FMG person in front of the convoy and at the end of the convoy

BM - where are we going here?

TW - do you want to put an amended document

MW - let's look at the document

MW - we want the same conditions that the Registrar of Indigenous Sites had two weeks ago

BM - these conditions are the conditions of the Registered Manager - we have asked ourselves the question what is unreasonable about these - and we don't see anything unreasonable

TW - we can't give you the same conditions as the Registrar of Indigenous sites because your organisation is a higher risk

PD - so is that the issue you have - you are treating this group as a 'special group of people'

BM - what the Registered Manager has said to us - what are these people going to do - there has certainly been opportunity to go there

MW - the fundamental issue here is that FMG is supporting Yindjibarndi people who don't know the country

BM - so are you saying that these Wirru-Murra people don't know anything

MW - Yes absolutely that is what I am saying

MW - timing is everything for us - so can you tell us if we will be allowed onto site tomorrow

TW - no we can't tell you that

Meeting finished at about 2.15pm

tweaver@fmgl.com.au - Native Title Manager - Tom's phone number is 0417 684712

“MW-88”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked “MW-88” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Phil Davies

From: Blair McGlew [bmcglew@fmgl.com.au]
Sent: Wednesday, 7 December 2011 3:39 PM
To: mwoodley@juluwarlu.pilbara.net; Phil Davies
Cc: Tom Weaver
Subject: Draft access process and conditions

Dear Michael

Thanks to you and the other attendees for meeting with us today to discuss access arrangements for YAC members.

Tom and I agreed to provide you with an electronic copy of the process and conditions as we discussed in the meeting. Please find them in the body of this email below.

We acknowledge that you have not agreed to all of these matters and look forward to your amendments.

We trust that until these discussions have concluded to the satisfaction of all parties, you will refrain from accessing the Fortescue mining area without prior authorisation.

regards

Blair

DRAFT ACCESS AUTHORISATION PROCESS AND ENTRY CONDITIONS

PROCESS

1. Yindjibarndi Aboriginal Corporation members wishing to visit the Solomon mine site must lodge an official "Access Authorisation Request" (AAR) with the Fortescue Land Access Group Manager.
2. An AAR must include:
 - a. the precise areas the native title party wishes to visit, including a map showing these locations in detail;
 - b. the number of vehicles that will be used to transport visitors to site;
 - c. full names of all visitors, including the organisations they represent;
 - d. the proposed duration of the visit; and
 - e. the purpose/s for which you seek to visit the areas.
3. The Fortescue Land Access Group Manager will advise in writing (by letter) whether the Fortescue Registered Manager has determined that either:
 - a. the AAR can be accommodated in a safe and secure manner; or
 - b. a portion of the AAR can be accommodated in a safe and secure manner; or
 - c. the AAR cannot be accommodated due to safety or security concerns.

In the usual course of events, the Fortescue Land Access Group Manager will provide advice within 2 business days following receipt of the AAR. However, this time may be extended if required, due to operational constraints or the scale of the AAR.

4. Any authorisation will be subject to standard conditions (below) as well as any special conditions that may be necessary in order to accommodate the visit in a safe and secure manner.
5. Any authorisation will advise the people, dates and times for which the authorisation is valid.
6. Any authorisation letter shall be endorsed by a representative of YAC and returned to the Fortescue Land Access Group Manager, including the expected time of arrival at site, prior to departure to site.
7. Authorisation will only be granted to members of the Yindjibarndi Aboriginal Corporation in pursuance of a registered native title right when and where the visit does not impact upon the safety and security of personnel and operations.

CONDITIONS

1. Authorisation is only valid for the people, dates and times advised by the Fortescue Land Access Group Manager
2. Only native title holders shall be permitted to enter the mine site – minors shall not be admitted to site.
3. Authorised visitors shall complete Fortescue's relevant basic safety induction on site.
4. Fortescue shall provide, and the native title party shall wear, personal protective clothing (PPE) while on the mining lease. Visitors are required to wear long pants and steel caps boots and if visitors cannot supply their own equipment, they are to notify the site manager at the time of lodgement of the AAR.
5. Authorised visitors shall not be permitted to bring onto nor use on the mining leases any cameras or photographic equipment. Fortescue will provide, at its cost, photographic and video services as required. Fortescue will provide at no cost electronic copies of all requested photographs / videos.
6. Authorised visitors will be required to travel in Fortescue vehicles driven by a Fortescue employee (who is appropriately trained and accredited).
7. Fortescue reserves the right to record (sound and vision) the movements and activities of visitors while on the mining lease.
8. Access to the Controlled Areas of the mining leases (those areas that are too dangerous to visit due to operational activities) will be restricted. Please note that Controlled Areas are subject to change at any time
9. All visitors are subject to Fortescue's health and safety policies (copies to be provided).
10. Prior to departure on both the forward and return journeys, YAC is to advise the mine security gate:
 - a. Estimated time of departure and arrival;
 - b. The route of the journey;
 - c. The make, model and number plate of all vehicles; and
 - d. The names of all vehicle occupants.

Blair McGlew

Fortescue Metals Group Ltd

Office: +61 8 6218 8820

Mobile: +61 407 082 282

Fortescue House

Level 2 / 87 Adelaide Terrace / East Perth / W.A. 6004

“MW-89”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-89” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Green Legal

(An Incorporated Legal Practice)

Director
KENNETH GREEN
BJuris, LLB, BCom, Grad Dip Comp Studs

Green Legal Pty Ltd
ABN 41 105 334 763

Suite 2, Level 4
 The BGC Centre
 28 The Esplanade
 Perth, Western Australia

Postal: GPO Box 2522
PERTH WA 6001

Phone: (08) 9261 6192
 Fax: (08) 9414 1851

E-mail: admin@greenlegal.com.au

8 December 2011

ATTENTION: MR STANLEY WARRIE

Chairperson
 Yindjibarndi Aboriginal Corporation

BY FACSIMILE & EMAIL:	08 9182 1035
NO OF PAGES:	2

ATTENTION: MR PHILIP DAVIES

Administrator
 Juluwarlu Group Aboriginal Corporation

BY FACSIMILE & EMAIL:	08 9182 1035
NO OF PAGES:	2

COPY: MR GEORGE IRVING

PO Box 4031
 SWAN VIEW WA 6056

BY FACSIMILE:	(08) 9481 7169
NO OF PAGES:	2

Dear Sirs

UNAUTHORISED ACCESS TO CONTROLLED AREAS AT SOLOMON MINE SITE (M47/1413, M47/1431 and M47/1409 and M47/1411)

I act for FMG Pilbara Pty Ltd ("**FMG**").

By letters dated 30 November 2011 and 5 December 2011, FMG advised YAC that portions of M47/1413, M47/1431 and M47/1409 and M47/1411 ("**Mining Leases**") comprise an active mine site and that access to those portions is controlled for safety and security reasons ("**Controlled Areas**").

I am instructed that on 7 December 2011, representatives of FMG met with Michael Woodley, Philip Davies and other persons associated with YAC) and discussed how FMG might be able to accommodate YAC's desire to visit certain places on and surrounding the Mining Leases, including possibly Controlled Areas.

YAC has now advised by letter dated 7 December 2011 that:

1. it rejects any further discussions with FMG concerning access to places on and surrounding the Mining Leases;

GREEN LEGAL

Yindjibarndi Aboriginal Corporation

2

8 December 2011

2. some *Yindjibarndi People* ("**Travelling Group**") intend to *journey to and through Ganyjingarringunha over the next few days* .

The letter from YAC dated 16 November 2011, confirms that *Ganyjingarringunha* includes the following mining tenements held by FMG: M47/1413, M47/1431, M47/1409, M47/1411, M47/1453, E47/13 19, E47/1447, E47/1398, E47/1399, E47/1361, L47/350, L47/367, L47/302;

3. *YAC has previously identified for FMG the areas in Ganyjingarringunha which area of immediate interest to the Traveling Group; and*
4. *as FMG has failed to identify precise locations of any currently mining activity, such as blasting and on that basis Yindjibarndi People are entitled to assume, and have so assumed, there is no risk to personal safety by visiting Ganyjingarringunha.*

Such assumption is incorrect.

To avoid any doubt on the matter, I am instructed that to the extent that any of the above areas lie within the Mining Leases:

1. **they are, or will involve travel through or adjacent to, areas of current mining activity (ie Controlled Areas); and**
2. **Yindjibarndi People (including the Travelling Group) are not authorised to enter those areas without FMG's prior authorisation.**

As demonstrated on 7 December 2011, FMG is willing to discuss how it can accommodate or facilitate the Traveling Group visiting certain places on and surrounding the Mining Leases. However, the Traveling Group cannot have uncontrolled access to the above areas within the Mining Leases, including possibly Controlled Areas.

I would accordingly be grateful for your confirmation by not later than 3.00 pm today, that no member of the Traveling Group will, without further notice, enter the Mining Leases. Failure to provide such confirmation may necessitate FMG seeking injunctive relief and related costs against on or more of YAC, Juluwarlu and the Traveling Group.

Yours faithfully



KEN GREEN

“MW-90”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 5 pages is the annexure marked “**MW-90**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

14/12/11

To the Aboriginal Cultural Material Committee

The Department of Indigenous Affairs (DIA)

FMG Notice under S 18 and S 16 of the AHA
for the following applications

1 x s18 for 'For consent to use Land for construction of roads, ore processing facility, tailings storage facility and infrastructure at Fortescue Metals Group's Solomon Project, Western Australia'

1 x s16 for 'Application under section 16 of the Aboriginal Heritage Act 1972 to investigate 4 sites at Fortescue's Solomon Project'

to be considered by the ACMC on December 14, 2011

- CC: The WA Minister for Energy, Training and Workforce Development;
Indigenous Affairs - The Honourable Mr Peter Collier
- CC: Mr James Cook DIA
- CC: Mr Ryan Crawford DIA
- CC: Mr Cesar Rodriguez DIA
- CC: Mr Michael Woodley CEO, Yindjibarndi Aboriginal Corporation
- CC: Mr Stanley Warrie Chairperson, Yindjibarndi Aboriginal Corporation
- CC: The WA Member for the Mining & Pastoral Region - The Honourable Mr Robin Chapple
- CC: The WA Shadow Minister for Environment; Climate Change; Lands;
Indigenous Affairs; Youth, the Honourable Dr Sally Talbot
- CC: The Senator, Ms Rachel Siewert

DEAR ACMC COMMITTEE MEMBERS

In our most recent letter to you dated 04/12/11, the Yindjibarndi Aboriginal Corporation (YAC) request that the ACMC defer its decision on the FMG section 18 application, and reject the FMG section 16 application, that are before the committee to be considered today.

The YAC also urge that all section 18 applications made by FMG for consideration by the ACMC, that have not been the subject to Ministerial consent, continue to be deferred for decision because of the following reasons:

1. It would not be prudent to make decisions regarding the destruction of Yindjibarndi heritage sites within the areas because the DIA has launched an inquiry into the actions of FMG with regard to the collection and reporting of heritage data, sites and values within their 'Solomon Hub' project.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

2. FMG continues to refuse access to the YAC to the section 18 and section 16 areas. Therefore it is impossible for the YAC to reveal, document and register all Aboriginal sites, and deliver an accurate assessment of the cultural heritage values, to the ACMC, so the committee can make a fully informed decision on the destruction of sites.

YAC Refused Access to all areas within FMG's 'Solomon Hub'

As reported to you in the letter to your committee on 04/12/11, the YAC's intention was to visit and record Yindjibarndi heritage sites and assess the cultural heritage values within the area the Yindjibarndi term *Ganyjingarringunha*, and FMG term their 'Solomon Hub' project.

The YAC had planned to travel to *Ganyjingarringunha* on Tuesday 06/12/11 to begin the heritage surveys with Archaeologists and Anthropologists who had arrived in Karratha on Monday 05/12/11 from around Australia to assist the YAC with the documentation.

However, at the request of Mr Blair McGlew, FMG Pilbara Projects Manager, which was made to the YAC on Tuesday morning (06/12/11), the YAC delayed its trip because Mr McGlew and Mr Tom Weaver (FMG Native Title Manager), asked to meet with the YAC in person in Roebourne on Wednesday 07/12/11, to negotiate conditions of access. A negotiated access was and still is the preferred option for the YAC.

Unfortunately, the parties were not able to agree on the conditions of access. This issue was the subject of a press release made by the YAC to the public on Friday 09/12/11 (attached).

During discussions, the YAC told FMG that it would accept the same 'conditions' that FMG afforded Ms Kathryn Przywolnik, WA Registrar for Indigenous Sites, when she and her team visited the areas during the week of Tuesday 22/11/11 to Saturday 26/11/11. These access 'conditions' meant that the YAC would not utilise film or video to document their sites. However, FMG rejected this compromise position because they said that YAC were a 'special' group of people who could not be *trusted* by FMG. This was particularly disappointing for the YAC because when we met with Ms Kathryn Przywolnik at the FMG security gate (after being refused access) on Friday 25/11/11, we agreed with Kathryn that we hoped that YAC would be afforded the same access and entry conditions as her team, when we came to the area with the independent YAC ethnographic and archaeological team.

Following the meeting, in a letter to Mr McGlew, dated 07/12/11 (attached), the YAC made it plain to FMG that it intended to visit the sites within the section 18 areas, because it had the legal right to do so..

In response, a letter was delivered by FMG's Site Manager to the Yindjibarndi's campsite on Thursday evening 08/12/11 (attached). The letter threatens the Yindjibarndi people that if they stepped into any of FMG's (undefined) 'controlled'



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

areas then they would be sued personally; in addition, YAC and Juluwarlu Group Aboriginal Corporation would also be sued.

When the Yindjibarndi heritage team drove the short distance from their camp to enter the FMG tenements to commence the documentation and assessment heritage survey process on the morning of Friday 09/12/11, it found the track blocked by a barricade and FMG security guards.



Figure 1: The YAC was blocked entry by a barricade and FMG security guards. Photo taken at 590541 E, 7555115 N Zone 50 MGA 94

The FMG Site Manager was then called; in due course he arrived for a discussion, and during the ensuing conversation, FMG trucks continued to dump soil on, and deliberately block, the track, to ensure that the YAC could not enter. The FMG Site Manager absolutely refused entry to the YAC and said that if we did enter he would be forced to close the whole operation down and we would be liable for all costs FMG incurred.

The YAC made the decision that even though FMG were illegally barring our way; that it is Yindjibarndi country that FMG is destroying; and that we had the legal right to enter the area to inspect and assess our religious and cultural precinct in a way that would not interfere with any of the FMG operations, we would take a conservative approach at this time and not pass the barricade or run the gauntlet of trucks and security guards.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

While the majority of the YAC team conducted surveys outside of the barred zone, several of our party scouted along the M47/1413 tenement boundary in a way that did not interfere with any FMG 'operations' and took photos and film of the FMG activities that have been occurring within M47/1413 and M47/1409. It appears that since 28/10/11 when we were there last, FMG in fact, has done very little in the way of extra earthworks, and they have not touched any of the Section 18 areas.



Figure 2: Photo of section 18 area in tenement M47/1413. Photo taken from 593723 E, 7554704 N Zone 50 MGA 94 looking west on a bearing of 260 degrees - the area remains in situ and untouched by FMG - there would be absolutely no interference of FMG's operations if YAC was to conduct heritage surveys in this location.

On Friday 09/12/11 and Saturday 10/12/11 the YAC team were constantly placed under surveillance by a FMG helicopter which was highly intimidating and intruded upon the activities of the YAC team.

Conclusion

Once again we ask that the ACMC defer any decisions on FMG section 18 applications and reject all FMG section 16 applications until the YAC is allowed to document and register our religious precincts that contain Aboriginal sites and



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

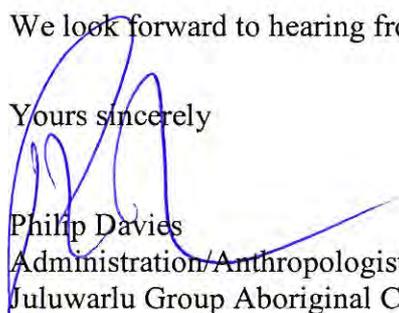
cultural heritage values that lie within those zones that have not yet been revealed or identified to the committee or the Registrar.

We also make the same request until the recommendations or conclusions of the inquiry by the DIA into FMG's antics and actions is fully reported upon.

We have film and photographs of all the discussions that took place on country and they are available for your committee if you would like to have copies of, view, or consider them.

We look forward to hearing from you on this matter.

Yours sincerely


Philip Davies
Administration/Anthropologist
Juluwarlu Group Aboriginal Corporation
For and on behalf of the Yindjibarndi Aboriginal Corporation
08 91821497 Phone
0429 110451 Mobile (Phil)
0419 097130 Mobile (Michael)
08 91821035 Fax
pdavies@juluwarlu.com.au
www.juluwarlu.pilbara.net
www.yindjibarndi.org.au

On behalf of the Chairperson, Directors, members and employees of the Juluwarlu Group Aboriginal Corporation

The Juluwarlu Vision - 'To enable Ngarda to sustain a cultural life in contemporary society

“MW-91”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 4 pages is the annexure marked “MW-91” referred to in the witness statement of Michael Woodley dated 5 June 2023.

LR-100-3-0267



Hon Peter Collier MLC
Minister for Energy; Training and Workforce Development; Indigenous Affairs

Our Ref: 34-13307

Mr Grant Preller
Heritage Approvals Superintendent
FMG Pilbara Pty Ltd
Level 2, 87 Adelaide TCE
EAST PERTH WA 6004

Dear Mr Preller

I refer to the section 18 notice ("the Notice") dated 18 February 2011 submitted by FMG Pilbara Pty Ltd ("the Landowner") to the Aboriginal Cultural Material Committee ("ACMC") pursuant to section 18(2) of the *Aboriginal Heritage Act 1972* ("AHA"). The Notice was considered at the 1 June 2011 ordinary ACMC meeting.

The Notice advised that you wish to use the land described in Item 4 of the Notice as portion of Tenement M47/1413, as described on map 3 Dwg No: SO_PE_HE_0048, by S. Hendricksen, dated 17 February 2011 in Appendix 3 of the Notice ("the Land"), for the purpose described in Item 6 of the Notice as the construction and operation of a mining area and associated infrastructure known as the "Firetail Priority Mining Area" ("the Purpose").

In accordance with my powers under section 18(3) of the AHA and following consideration of recommendations from the ACMC, I hereby grant consent to the use of the Land for the Purpose subject to the conditions set out below.

I am advised that based on current knowledge the Purpose will impact upon eight Aboriginal sites within the meaning of section 5 of the AHA ("Sites") on the Land. The Sites are DIA 28947 (YIN 07-03), DIA 28948 (YIN 07-04), DIA 28949 (YIN 08-32), DIA 28951 (YIN 09-47), DIA 28954 (YIN 09-57), DIA 29766 (YIN 10-64), DIA 28952 (YIN 09-55), DIA 28950 (YIN 09-03).

Conditions of Consent

That the Landowner:

1. Avoid all Sites that contain Aboriginal human remains.

2. Invite two people (one from each group) nominated by the Yindjibarndi Aboriginal Corporation and the Wirlu-Murra Yindjibarndi Aboriginal Corporation at any one time (on a rotational basis) to monitor all and any activities related to the Purpose that involve disturbance to the surface of the Land or any part of the Land in the following situations:
 - a) where the Purpose disturbs the surface of the Land for the first time or what appears to be the first time; and
 - b) where any heritage consultant engaged in respect of the Purpose has indicated that there is a likelihood of finding any objects within the meaning of section 6 of the AHA ("Objects") during the carrying out of the Purpose.
3. Prior to conducting the Purpose engage appropriately qualified archaeologists to work cooperatively with the Aboriginal people identified in the Notice ("the Consultants") to undertake, using best practice methods, that include the salvage method recommendations for each site within the Tickle 2010 report, and are to the satisfaction of the Registrar of Aboriginal Sites ("the Registrar"), the following:
 - a) archaeological salvage of artefact assemblages located within sites on the Land and the thorough recording and archiving of each collected artefact assemblage, including a record of the intra-site spatial distributions of collected cultural materials; and
 - b) detailed analysis (including usewear and residue analysis where appropriate) of all salvaged Aboriginal cultural material by qualified archaeologists with suitable experience in lithic analysis.
4. Prior to conducting the Purpose consult with representatives of the Yindjibarndi Aboriginal Corporation and the Wirlu-Murra Yindjibarndi Aboriginal Corporation, to the satisfaction of the Registrar, to clarify the status of heritage places on the Land and identify all heritage values associated with places on the Land.
5. Prior to conducting the Purpose provide the Registrar with information on the location and archaeological and ethnographic assessments of all rockshelters and caves located on the Land which will include copies of all archaeological and anthropological reports over the Land.
6. Relocate all collected materials to a safe keeping place satisfactory to the Consultants and report to the Registrar on the location and condition of the collected materials.
7. Provide all reports resulting from Conditions 1 and 2 to the Registrar on completion of the salvage and analysis.

8. Immediately cease carrying out the Purpose if human skeletal remains ("Remains") are found and report the matter to the Western Australia Police and the Registrar. Where it is determined that the Remains are Aboriginal in origin and not a police matter, they must remain *in situ* and undisturbed until the Registrar makes a decision about how to proceed in respect of the Remains. The Landowner must at its expense manage the Remains in accordance with the Registrar's decision and notify the whereabouts of the Remains to the Registrar.
9. Provide to the Registrar annually, or at the completion of the Purpose if the Purpose is completed within one year, a written report advising the Registrar whether and to what extent the Purpose has impacted on all or any Sites or Objects that may be located on the Land and to assist the ACMC to reassess the status of the Sites. This report is to include a detailed description of:
 - a. whether such Sites or Objects have been partially or entirely impacted by the Purpose;
 - b. the level, type and effect of any such impact (including, where possible, the provision of photographs taken during and after the impact);
 - c. where Sites or Objects have been salvaged, when and how such salvage took place, who was present at the salvage and, subject to issues of cultural confidentiality, to where the material was re-located.

This condition should not be construed as preventing the proponent from advising the Registrar in writing of all or any of the matters outlined above at any time prior to the completion of the Purpose. The Registrar and the ACMC welcome the provision of comprehensive and ongoing information about Sites and Objects in Western Australia.

Failure to comply with these conditions may constitute an offence under section 55 of the AHA. The Department of Indigenous Affairs ("DIA") carries out routine checks on compliance with conditions of Ministerial consents.

Requests and Advice

The following information has been provided by the ACMC for the information and guidance of the Landowner (or authorised Agent) and does not constitute a condition of consent.

The ACMC requests that the Landowner (or authorised Agent) give due consideration to requests made by the Aboriginal people consulted about the Purpose regarding the protection of Aboriginal heritage and the recognition of Aboriginal culture and history. For example, recognition of Aboriginal heritage values, beliefs and prior occupation of the area

may be conveyed through interpretive signage, street naming or murals.

In addition, the Landowner (or authorised Agent) should make all persons employed or engaged in respect of the Purpose aware of their obligations under the AHA. The Landowner (or authorised Agent) should insert into all and any relevant contracts, project plans, scopes of works, tenders and other similar documents, a requirement that such persons should examine relevant information on the DIA website at:

- <http://www.dia.wa.gov.au/Heritage--Culture/>

Right of Review of Decision

Where the Landowner (or authorised Agent) is aggrieved by a decision of the Minister made under section 18(3) of the AHA, the Landowner may apply to the State Administrative Tribunal for a review of the decision. The Tribunal's website is www.sat.justice.wa.gov.au.

Other Matters

This consent can only be relied upon by the Landowner (or authorised Agent). Any subsequent owner of the land within the meaning of the AHA must make their own application under the AHA.

Copies of the AHA, the *Aboriginal Heritage Regulations 1974* and the *State Administrative Tribunal Act 2004* may be viewed and downloaded from the website of the State Law Publisher at www.slp.wa.gov.au.

If you have any queries in relation to your application, please contact Mr Ryan Crawford, DIA Senior Heritage Officer, on 9235 8117.

Kind regards



Hon Peter Collier MLC
**MINISTER FOR ENERGY;
TRAINING AND WORKFORCE DEVELOPMENT; INDIGENOUS AFFAIRS**

30 JUN 2011

“MW-92”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 5 pages is the annexure marked “MW-92” referred to in the witness statement of Michael Woodley dated 5 June 2023.



STATE SOLICITOR'S OFFICE

Our ref: Land Claims/Trevor Creewel
SSO
Direct line: 9264-1192

Westralia Square
141 St George's Tce
Perth, Western Australia 6000

GPO Box B83 Perth 6838
Telephone: (08) 9264 1888
Fax (08) 9481-7169
DX 175

14 December 2012

<p>State Administrative Tribunal Fax: - 9325-5099</p>	<p>Green Legal Attention: Mr Green kgreen@greenlegal.com.au</p>
<p>Yindjibarndi Aboriginal Corporation c/- Mr George Irving gmirving@tpg.com.au</p>	<p>Wirlu Murra Yindjibarndi Aboriginal Corporation c/- Corsers Attention: Mr Ron Bower ronald.bower@corsers.com.au</p>

re: DR 271/2011 – FMG PILBARA PTY LTD v MINISTER FOR INDIGENOUS AFFAIRS – REVIEW APPLICATION IN STATE ADMINISTRATIVE TRIBUNAL

Pursuant to Order 2 made on 18 November 2011, attached please find a copy of the Respondent's reconsidered decision in this matter.

A copy has also been posted to all parties by the Respondent's office.

Yours faithfully

Trevor Creewel
**SENIOR ASSISTANT STATE SOLICITOR
LAND CLAIMS**



Hon Peter Collier MLC
Minister for Energy; Training and Workforce Development; Indigenous Affairs

Our Ref: 34-13307

Mr Grant Preller
Heritage Approvals Superintendent
FMG Pilbara Pty Ltd
Level 2, 87 Adelaide TCE
EAST PERTH WA 6004

Dear Mr Preller

I refer to the section 18 notice (the Notice) dated 18 February 2011 submitted by FMG Pilbara Pty Ltd (the Landowner) to the Aboriginal Cultural Material Committee (ACMC) pursuant to section 18(2) of the *Aboriginal Heritage Act 1972* (AHA). The Notice was considered at the 1 June 2011 ordinary ACMC meeting.

The Notice advised that you wish to use the land described in Item 4 of the Notice as portion of Tenement M47/1413, as described on map 3 Dwg No: SO_PE_HE_0048, by S. Hendricksen, dated 17 February 2011 in Appendix 3 of the Notice (the Land), for the purpose described in Item 6 of the Notice as the construction and operation of a mining area and associated infrastructure known as the "Firetail Priority Mining Area" (the Purpose).

On 30 June 2011, in accordance with my powers under section 18(3) of the AHA and following consideration of recommendations from the ACMC, I granted consent to the use of the Land for the Purpose subject to conditions. As a result of mediation, I have been invited to reconsider my decision pursuant to section 31 of the *State Administrative Tribunal Act 2004* and hereby grant consent subject to the conditions set out below.

I am advised that based on current knowledge the Purpose will impact upon eight Aboriginal sites within the meaning of section 5 of the AHA (Sites) on the Land. The Sites are DIA 28947 (YIN 07-03), DIA 28948 (YIN 07-04), DIA 28949 (YIN 08-32), DIA 28951 (YIN 09-47), DIA 28954 (YIN 09-57), DIA 29766 (YIN 10-64), DIA 28952 (YIN 09-55), DIA 28950 (YIN 09-03).

Conditions of Consent

That the Landowner:

1. Invite two people (one from each group) nominated by the Yindjibarndi Aboriginal Corporation and the Wirru-Murra Yindjibarndi Aboriginal Corporation at any one time (on a rotational basis) to monitor all and any activities related to the Purpose that involve disturbance to the surface of the Land or any part of the Land in the following situations:
 - a) where the Purpose disturbs the surface of the Land for the first time or what appears to be the first time; and
 - b) where any heritage consultant engaged in respect of the Purpose has indicated that there is a likelihood of finding any objects within the meaning of section 6 of the AHA (Objects) during the carrying out of the Purpose.
2. Prior to disturbing an Aboriginal site referred to in the Tickle 2010 report, engage at least one suitably qualified archaeologist to work cooperatively with the Aboriginal people identified in the Notice (the Consultants) to undertake, using best practice methods that include the salvage recommendations, archaeological salvage of artifact assemblages located within the Aboriginal site and the thorough recording and archiving of each collected artifact assemblage, including a record of the intra-site spatial distributions of collected cultural materials.
3. Report to the Registrar any Site or possible Site that may be identified while undertaking the Purpose pursuant to section 15 of the AHA.
4. Relocate all collected materials to a safe keeping place satisfactory to the Consultants and report to the Registrar on the location and condition of the collected materials.
5. Provide all reports resulting from Conditions 1 and 2 to the Registrar on completion of the salvage and analysis.
6. Upon discovery of any human skeletal remains (Remains) on the Land when undertaking the Purpose, the Landowner must:
 - a. report the discovery to the Western Australia Police;
 - b. report the discovery to the Registrar;
 - c. subject to paragraph (d), ensure that the Remains stay in situ and are undisturbed, including taking all necessary and reasonable proactive steps to protect the Remains; and
 - d. after the Coroner makes a determination about whether the Remains evidence or may evidence a "reportable death" under the *Coroners Act 1996*:
 - i. if the Remains are not Aboriginal remains, remove the Remains prior to any impact and report the whereabouts of the Remains to the Registrar;
 - ii. if the Remains are Aboriginal remains, comply with any direction given by the Registrar during the 90 day period following the Coroner's determination about:
 - where the Remains are to be removed; and/or

- the circumstances in which the Remains are to be removed so far as it is reasonably within the control of the Landowner to do so, but if no direction is given within that 90 day period, remove the remains prior to any impact and report the whereabouts of the Remains to the Registrar.
7. Provide to the Registrar annually, or at the completion of the Purpose if the Purpose is completed within one year, a written report advising the Registrar whether and to what extent the Purpose has impacted on all or any Sites or Objects that may be located on the Land and to assist the ACMC to reassess the status of the Sites. This report is to include a detailed description of:
- a. whether such Sites or Objects have been partially or entirely impacted by the Purpose;
 - b. the level, type and effect of any such impact (including, where possible, the provision of photographs taken during and after the impact); and
 - c. where Sites or Objects have been salvaged, when and how such salvage took place, who was present at the salvage and, subject to issues of cultural confidentiality, to where the material was re-located.

This condition should not be construed as preventing the proponent from advising the Registrar in writing of all or any of the matters outlined above at any time prior to the completion of the Purpose. The Registrar and the ACMC welcome the provision of comprehensive and ongoing information about Sites and Objects in Western Australia.

Failure to comply with these conditions may constitute an offence under section 55 of the AHA. The Department of Indigenous Affairs (DIA) carries out routine checks on compliance with conditions of Ministerial consents.

Requests and Advice

The following information has been provided by the ACMC for the information and guidance of the Landowner (or authorised Agent) and does not constitute a condition of consent.

The ACMC requests that the Landowner (or authorised Agent) give due consideration to requests made by the Aboriginal people consulted about the Purpose regarding the protection of Aboriginal heritage and the recognition of Aboriginal culture and history. For example, recognition of Aboriginal heritage values, beliefs and prior occupation of the area may be conveyed through interpretive signage, street naming or murals.

In addition, the Landowner (or authorised Agent) should make all persons employed or engaged in respect of the Purpose aware of their obligations under the AHA. The Landowner (or authorised Agent) should insert into all and any relevant contracts, project plans, scopes of works, tenders and other similar documents, a requirement that such persons should examine relevant information on the DIA website at:

- <http://www.dia.wa.gov.au/en/Section-18-Applications/Application-process/>

Right of Review of Decision

Where the Landowner (or authorised Agent) is aggrieved by a decision of the Minister made under section 18(3) of the AHA, the Landowner may apply to the State Administrative Tribunal for a review of the decision. The Tribunal's website is www.sat.justice.wa.gov.au.

Other Matters

This consent can only be relied upon by the Landowner (or authorised Agent). Any subsequent owner of the land within the meaning of the AHA must make their own application under the AHA.

Copies of the AHA, the *Aboriginal Heritage Regulations 1974* and the *State Administrative Tribunal Act 2004* may be viewed and downloaded from the website of the State Law Publisher at www.slp.wa.gov.au.

If you have any queries in relation to your application, please contact Mr Cesar Rodriguez, DIA Senior Heritage Officer, on 9235 8024.

Kind regards



**Hon Peter Collier MLC
MINISTER FOR ENERGY;
TRAINING AND WORKFORCE DEVELOPMENT; INDIGENOUS AFFAIRS**

13 DEC 2011

“MW-93”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-93” referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

FXAXED
TO SAT
1:15 PM
19/12/11

19/12/11

The State Administrative Tribunal
Level 4
12 St Georges Terrace
Perth, WA, 6000

Fax: 93255099

CC: Mr Ken Green

Green Legal Pty Ltd, FMG

Fax: 94141851

CC: Mr Trevor Creewel

State Solicitor's Office

Fax: 94817169

RE: STATE ADMINISTRATIVE TRIBUNAL
MATTER: DR 271 of 2011

Dear Sirs,

The Yindjibarndi Aboriginal Corporation (YAC) was advised, on 14 December 2011, that the Minister has reconsidered his decision of 30 June 2011 and has decided to delete three conditions, which were attached to his consent and were, as previously advised, of particular significance to YAC; namely, conditions 1, 4 and 5. On 15 December, YAC received correspondence via fax from Mr Ken Green, of Green Legal, with the reference FMGLTD094, advising that FMG wishes to withdraw the SAT proceedings by consent and inviting YAC to confirm that YAC does not object to the proceedings being withdrawn.

I advise that YAC does object to the proceedings being withdrawn. As indicated in the previous submissions of YAC, the conditions attached to the Minister's consent on 30 June 2011 are of critical importance to YAC because they require comprehensive ethnographic and archaeological surveys to be conducted on the land to allow a proper assessment to be made about the significance of ethnographic and archaeological sites which are located in the Land and were identified in evidence given by YAC to the ACMC.

YAC told the ACMC that the National Native Title Tribunal had held that "*the areas where the ochre quarries and Gandi are located within the proposed lease [M47/1413]...are areas of particular significance to the native title party*"¹; and, that the numerous caves and rock-shelters are also "*sites of particular significance to the native title party*"². The Full Court noted that the land in question is unallocated Crown land where, as the Tribunal had observed, "*the appellants had exercised their*

¹ *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia*, [2009] NNTTA 91 at [74]

² *Ibid.* at [72]



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

*native title rights and interests without interference by the activities of others in the past or the present*³. The Full Court also noted⁴ that:

“The appellants’ case was considered by the Tribunal and the primary judge on the basis that the appellants’ use of ochre and gandi are religious practices. This approach has not been contested by the State or FMG. Further, if the ochre and gandi sites are dug up in the process of mining iron ore, the appellants will be prevented from continuing to access the ochre and gandi.”

The *gandi*, ochre and rock-shelter sites are, as YAC insisted to the ACMC, located in the Land that is the subject of the Minister’s consent. In this regard, the Tribunal had further observed:

*It is a defence to a prosecution under the AHA if the person charged can prove that he or she did not know, and could not reasonably be expected to have known, that the place was a site covered by it (s 62). Obviously, this defence would not be available to [FMG].*⁵

The Aboriginal Heritage Act requires that these sites be identified and their significance assessed. The Minister’s decision overlooked these sites; and the conditions attached to the Minister’s consent on 30 June 2011, provided the last opportunity for such identification and assessment. The failure to carry out that identification and assessment will seriously damage interests of Yindjibarndi people. YAC attempted to carry out its own archaeological and ethnographic survey of the Land, the week before last, with a group of volunteer archaeologists who had travelled from various parts of Australia to assist YAC; but we were denied access to the Land for what was said by FMG to be safety and security reasons.

YAC should be provided with an opportunity, under the SAT Act, equal to the opportunity given to FMG, to argue for the protection of those sites and areas of significance through conditions which ensure the proper identification and assessment of them in accordance with the terms of the AHA. The above matters directly affect the right of Yindjibarndi people right to protect and enjoy their religious freedoms.

Yours sincerely

Michael Woodley
Chief Executive Officer
Yindjibarndi Aboriginal Corporation

³ Cheedy on behalf of the Yindjibarndi People v State of Western Australia [\[2011\] FCAFC 100](#) , at [31]

⁴ Ibid, at [86]

⁵ FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia, [\[2009\] NNTA 91](#) at [77]-[78]

“MW-94”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 69 pages is the annexure marked **“MW-94”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



ABN 52 300 944 909
 PO Box 111, Roebourne WA 6718
 Tel 08 9182 1497 or 08 9182 1141
 Fax: 08 9182 1035
 Website: www.juluwarlu.pilbara.net



FAXED
 Letter only faxed to
 Minister Collier's office
 2:57 pm Wednesday
 21/12/11


21/12/11

The WA Minister for Energy, Training and Workforce Development; Indigenous Affairs - The Honourable Mr Peter Collier

RE: Altered conditions for FMG Section 18 area for the FMG Pilbara Pty Ltd February 2011 Section 18 Application for the 'Firetail Priority Mining Area'

Dear Minister Collier,

On 30 June 2011, in response to a section 18 application made by FMG Pilbara Pty Ltd which had been considered by the Aboriginal Cultural Material Committee (ACMC) on 01 June 2011, you gave conditional consent for FMG Pilbara Pty Ltd to destroy sites within that section 18 area. The conditional consent contained 9 conditions (your letter is attached), which if fulfilled by FMG Pilbara Pty Ltd, could permit them to destroy all Aboriginal cultural heritage values and sites within the section 18 area, except for those sites that contain Aboriginal human remains.

The Yindjibarndi Aboriginal Corporation (YAC) also provided evidence, reports and made a presentation to the ACMC (attached), on 01 June 2011. The YAC supplied the committee with GPS coordinates and a brief description for 21 previously unrecorded Aboriginal sites which are located in one small gully within the section 18 application area. The YAC brought the existence of these sites to the committee's attention because it is an example of the grossly underestimated, incomplete, substandard and ill-advised heritage procedures implemented by FMG Pty Ltd which resulted in their application. In fact the YAC stated that there are at least 250 other rock shelters and caves, as well as Gandi, ochre, water sources, burial chambers and other significant cultural features, that are present within the section 18 area, rather than the 8 identified by you in your conditional consent (as informed to you by FMG Pilbara Pty Ltd).

Wisely, your 30 June 2011 conditional consent included conditions 1, 4 and 5. This meant that the concerns raised by the YAC on 01 June 2011 expressed above, were in some small way addressed. Condition 1 necessitated FMG Pilbara Pty Ltd to avoid all sites that contain Aboriginal human remains. Condition 4 required that FMG Pilbara Pty Ltd consult with the YAC, to the satisfaction of the Registrar, to 'clarify the status of heritage places on the Land and identify all heritage values associated with places on the land'. Condition 5 determined that FMG Pilbara Pty Ltd had to 'provide the Registrar with information on the location and archaeological assessments of all rockshelters and caves located on the Land ...'. Even though the YAC had opposed the section 18 application made by FMG Pilbara Pty Ltd, the YAC were of the opinion that their religious precinct would at least be afforded some security because of conditions 1, 4 and 5, as long as the Registrar respected and adequately considered the views and advice of the Yindjibarndi knowledge holders associated with the YAC.

Subsequent to your 30 June conditional consent, a letter dated 05/11/11 (attached), emerged from whistleblower Archaeologist Sue Singleton, which made very serious allegations against FMG Pilbara Pty Ltd. These concern FMG Pilbara Pty Ltd's heritage methodologies and practices, but more specifically relate to the way data was compiled and reported to the ACMC for the section 18 application upon which you based your 30 June 2011 conditional consent.

On 8 November 2011 in the WA Parliament, you responded to a question from the Honourable Robin Chapple concerning Sue Singleton's allegations. You stated, "the Department of Indigenous Affairs has initiated an investigation into the matter, and the outcome of the investigation will determine any future action taken" (copy of Hansard attached).

Meanwhile, FMG Pilbara Pty Ltd had appealed your 30 June 2011 decision (re conditional consent) to the State Administrative Tribunal (SAT). The appeal involved a mediation process between FMG Pilbara Pty Ltd, your representatives from the Department of Indigenous Affairs and the State Solicitors Office. The YAC was not considered a party to the procedure and so was locked out of the mediation.

As an outcome of this mediation, you altered and deleted the 30 June 2011 conditional consent. You specified a new set of conditions in your letter to FMG Pilbara Pty Ltd dated 13 December 2011 (letter attached). Importantly you have deleted the original conditions 1, 4 and 5. We have attached a table that compares the original 30 June 2011 conditions to your amended conditions dated 13 December 2011.

To keep you informed, the YAC has applied to become a party to the SAT hearing even though your representatives and FMG Pilbara Pty Ltd have already agreed to vacate the proceedings following your mediation process. We have applied to become a party because we believe that the altered conditions to which you have agreed are ill-advised and unjust, and that they will result in the destruction of Yindjibarndi religious and cultural heritage values and sites for which you and your team have been previously alerted. The YAC will be appearing before the State Administrative Tribunal this Friday 23 June 2011.

The events outlined above raise some serious questions that we would like you to answer.

The YAC ask you and seek a response regarding the following:

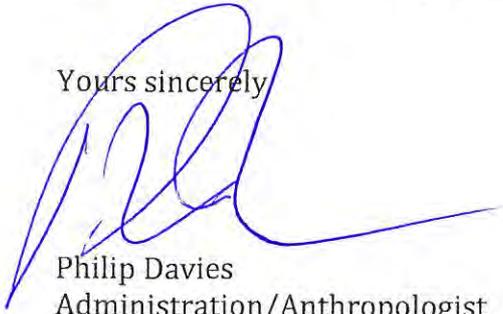
1. Via your altered 13 December conditional consent, why do you allow Yindjibarndi cultural heritage values and sites to be destroyed by FMG Pilbara Pty Ltd without any reference to, or consultation with, the cultural knowledge holders associated with the YAC. Please be aware that condition 1 of your 13 December 2011 altered condition does not protect Yindjibarndi heritage, it simply allows for a YAC representative to monitor the destruction of Yindjibarndi sites.
2. Why do you ignore and not consider the heritage sites and cultural heritage value information brought before you by the YAC, especially with regard to the information presented at the ACMC hearing on 01/06/11?
3. Why did you delete conditions 1, 4 and 5 from your 30/06/11 conditional consent?
4. What is the status of the investigation instigated by you into the DIA as stated by you in Parliament on 08 November 2011?

5. Who is conducting the investigation?
6. When is the investigation team due to report?
7. Why hasn't the DIA asked the YAC for any information regarding the investigation mentioned in point 4 above? The YAC has film footage, archival heritage information and an enormous store of current cultural heritage knowledge about that area, all of which we have previously told the DIA is available for them.
8. Will the findings of the investigation be made public?
9. Why did you alter the conditions regarding the destruction of cultural heritage values and sites within the section 18 area, when you have announced an investigation into the compilation and reporting of heritage data in the very same area to which the section 18 area applies?
10. Is it improper to alter the conditional consent conditions for the FMG Pilbara Pty :Ltd section 18 area while also conducting an investigation into the way that that very same heritage data, upon which your conditions are founded, were compiled and reported?
11. As has previously been advised to you and the DIA in various correspondence, to which we have not received a reply, the YAC has been attempting to carry out professional ethnographic and archaeological heritage within the section 18 areas so that we can report, identify and register previously unidentified heritage values and sites within that area. Why do you ignore the fact that the YAC has been physically denied access to the section 18 area in question by FMG Pilbara Pty Ltd, which we regard as illegal (letter to the ACMC dated 14/12/11 attached)? Does this action of FMG Pilbara Pty Ltd worry you? Can you act to assist the YAC to carry out these surveys?
12. Why did you alter the 30 June 2011 conditions by 13 December 2011; was it to appease FMG Pilbara Pty Ltd's timetable for their proposed date to ship the first iron ore from the M47/1413 by March 2013?
13. Are you unduly influenced by your friendship and the advice you have publicly admitted taking from Mr Andrew Forrest, Chairman of FMG Pilbara Pty Ltd? (Radio Interview on RTRFM - 29 May 2011).
14. Does your friendship with Mr Andrew Forrest mean that you make decisions in favour of FMG Pilbara Pty Ltd rather than the Yindjibarndi people associated with the Yindjibarndi Aboriginal Corporation?
15. What is the rush to destroy sites that may be potentially up to 35,000 years old?
16. Would it be possible for you to use your influence to bring all the parties together so that all can work together to complete comprehensive and detailed ethnographic and archaeological heritage surveys that accurately assess the cultural heritage values and sites that exist on the land within the section 18 area?
17. Would it be possible for you to use your influence to work towards a mediation between all the parties associated with the compilation of heritage data and

assessment at M47/1413 and the surrounding FMG tenements that are situated on Yindjibarndi land?

We look forward to hearing from you.

Yours sincerely



Philip Davies
Administration/Anthropologist
Juluwarlu Group Aboriginal Corporation
For and on behalf of the Yindjibarndi Aboriginal Corporation
08 91821497 Phone
0429 110451 Mobile (Phil)
0419 097130 Mobile (Michael)
08 91821035 Fax
pdavies@juluwarlu.com.au
www.juluwarlu.pilbara.net
www.yindjibarndi.org.au

On behalf of the Chairperson, Directors, members and employees of the Juluwarlu Group Aboriginal Corporation

The Juluwarlu Vision - 'To enable Ngarda to sustain a cultural life in contemporary society

CC: Ms Kathryn Przywolnik Registrar for Indigenous Sites, DIA
CC: Mr James Cook DIA
CC: Mr Ryan Crawford DIA
CC: Mr Cesar Rodriguez DIA
CC: Mr Michael Woodley CEO, Yindjibarndi Aboriginal Corporation
CC: Mr Stanley Warrie Chairperson, Yindjibarndi Aboriginal Corporation
CC: The Minister for Sustainability, Environment, Water, Population and Communities - the Honourable Mr Tony Burke
CC: The Minister for Families, Housing, Community Services and Indigenous Affairs - the Honourable Ms Jenny Macklin
CC: The Senator, Ms Rachel Siewert
CC: The WA Premier and Minister for State Development - The Honourable Mr Colin Barnett
CC: The WA Member for the Mining & Pastoral Region - The Honourable Mr Robin Chapple
CC: Various members of the Australian and International Press

ATTACHMENT ONE:

**Section 18 Ministerial Conditional Consent made to FMG Pilbara Pty Ltd on 30
June 2011**

LR-100-3-0267



Hon Peter Collier MLC
Minister for Energy; Training and Workforce Development; Indigenous Affairs

Our Ref: 34-13307

Mr Grant Preller
Heritage Approvals Superintendent
FMG Pilbara Pty Ltd
Level 2, 87 Adelaide TCE
EAST PERTH WA 6004

Dear Mr Preller

I refer to the section 18 notice ("the Notice") dated 18 February 2011 submitted by FMG Pilbara Pty Ltd ("the Landowner") to the Aboriginal Cultural Material Committee ("ACMC") pursuant to section 18(2) of the *Aboriginal Heritage Act 1972* ("AHA"). The Notice was considered at the 1 June 2011 ordinary ACMC meeting.

The Notice advised that you wish to use the land described in Item 4 of the Notice as portion of Tenement M47/1413, as described on map 3 Dwg No: SO_PE_HE_0048, by S. Hendricksen, dated 17 February 2011 in Appendix 3 of the Notice ("the Land"), for the purpose described in Item 6 of the Notice as the construction and operation of a mining area and associated infrastructure known as the "Firetail Priority Mining Area" ("the Purpose").

In accordance with my powers under section 18(3) of the AHA and following consideration of recommendations from the ACMC, I hereby grant consent to the use of the Land for the Purpose subject to the conditions set out below.

I am advised that based on current knowledge the Purpose will impact upon eight Aboriginal sites within the meaning of section 5 of the AHA ("Sites") on the Land. The Sites are DIA 28947 (YIN 07-03), DIA 28948 (YIN 07-04), DIA 28949 (YIN 08-32), DIA 28951 (YIN 09-47), DIA 28954 (YIN 09-57), DIA 29766 (YIN 10-64), DIA 28952 (YIN 09-55), DIA 28950 (YIN 09-03).

Conditions of Consent

That the Landowner:

1. Avoid all Sites that contain Aboriginal human remains.

2. Invite two people (one from each group) nominated by the Yindjibarndi Aboriginal Corporation and the Wirlu-Murra Yindjibarndi Aboriginal Corporation at any one time (on a rotational basis) to monitor all and any activities related to the Purpose that involve disturbance to the surface of the Land or any part of the Land in the following situations:
 - a) where the Purpose disturbs the surface of the Land for the first time or what appears to be the first time; and
 - b) where any heritage consultant engaged in respect of the Purpose has indicated that there is a likelihood of finding any objects within the meaning of section 6 of the AHA ("Objects") during the carrying out of the Purpose.
3. Prior to conducting the Purpose engage appropriately qualified archaeologists to work cooperatively with the Aboriginal people identified in the Notice ("the Consultants") to undertake, using best practice methods, that include the salvage method recommendations for each site within the Tickle 2010 report, and are to the satisfaction of the Registrar of Aboriginal Sites ("the Registrar"), the following:
 - a) archaeological salvage of artefact assemblages located within sites on the Land and the thorough recording and archiving of each collected artefact assemblage, including a record of the intra-site spatial distributions of collected cultural materials; and
 - b) detailed analysis (including usewear and residue analysis where appropriate) of all salvaged Aboriginal cultural material by qualified archaeologists with suitable experience in lithic analysis.
4. Prior to conducting the Purpose consult with representatives of the Yindjibarndi Aboriginal Corporation and the Wirlu-Murra Yindjibarndi Aboriginal Corporation, to the satisfaction of the Registrar, to clarify the status of heritage places on the Land and identify all heritage values associated with places on the Land.
5. Prior to conducting the Purpose provide the Registrar with information on the location and archaeological and ethnographic assessments of all rockshelters and caves located on the Land which will include copies of all archaeological and anthropological reports over the Land.
6. Relocate all collected materials to a safe keeping place satisfactory to the Consultants and report to the Registrar on the location and condition of the collected materials.
7. Provide all reports resulting from Conditions 1 and 2 to the Registrar on completion of the salvage and analysis.

8. Immediately cease carrying out the Purpose if human skeletal remains ("Remains") are found and report the matter to the Western Australia Police and the Registrar. Where it is determined that the Remains are Aboriginal in origin and not a police matter, they must remain *in situ* and undisturbed until the Registrar makes a decision about how to proceed in respect of the Remains. The Landowner must at its expense manage the Remains in accordance with the Registrar's decision and notify the whereabouts of the Remains to the Registrar.
9. Provide to the Registrar annually, or at the completion of the Purpose if the Purpose is completed within one year, a written report advising the Registrar whether and to what extent the Purpose has impacted on all or any Sites or Objects that may be located on the Land and to assist the ACMC to reassess the status of the Sites. This report is to include a detailed description of:
 - a. whether such Sites or Objects have been partially or entirely impacted by the Purpose;
 - b. the level, type and effect of any such impact (including, where possible, the provision of photographs taken during and after the impact);
 - c. where Sites or Objects have been salvaged, when and how such salvage took place, who was present at the salvage and, subject to issues of cultural confidentiality, to where the material was re-located.

This condition should not be construed as preventing the proponent from advising the Registrar in writing of all or any of the matters outlined above at any time prior to the completion of the Purpose. The Registrar and the ACMC welcome the provision of comprehensive and ongoing information about Sites and Objects in Western Australia.

Failure to comply with these conditions may constitute an offence under section 55 of the AHA. The Department of Indigenous Affairs ("DIA") carries out routine checks on compliance with conditions of Ministerial consents.

Requests and Advice

The following information has been provided by the ACMC for the information and guidance of the Landowner (or authorised Agent) and does not constitute a condition of consent.

The ACMC requests that the Landowner (or authorised Agent) give due consideration to requests made by the Aboriginal people consulted about the Purpose regarding the protection of Aboriginal heritage and the recognition of Aboriginal culture and history. For example, recognition of Aboriginal heritage values, beliefs and prior occupation of the area

may be conveyed through interpretive signage, street naming or murals.

In addition, the Landowner (or authorised Agent) should make all persons employed or engaged in respect of the Purpose aware of their obligations under the AHA. The Landowner (or authorised Agent) should insert into all and any relevant contracts, project plans, scopes of works, tenders and other similar documents, a requirement that such persons should examine relevant information on the DIA website at:

- <http://www.dia.wa.gov.au/Heritage--Culture/>

Right of Review of Decision

Where the Landowner (or authorised Agent) is aggrieved by a decision of the Minister made under section 18(3) of the AHA, the Landowner may apply to the State Administrative Tribunal for a review of the decision. The Tribunal's website is www.sat.justice.wa.gov.au.

Other Matters

This consent can only be relied upon by the Landowner (or authorised Agent). Any subsequent owner of the land within the meaning of the AHA must make their own application under the AHA.

Copies of the AHA, the *Aboriginal Heritage Regulations 1974* and the *State Administrative Tribunal Act 2004* may be viewed and downloaded from the website of the State Law Publisher at www.slp.wa.gov.au.

If you have any queries in relation to your application, please contact Mr Ryan Crawford, DIA Senior Heritage Officer, on 9235 8117.

Kind regards



Hon Peter Collier MLC
**MINISTER FOR ENERGY;
TRAINING AND WORKFORCE DEVELOPMENT; INDIGENOUS AFFAIRS**

30 JUN 2011

ATTACHMENT TWO:

**Yindjibarndi Aboriginal Corporation presentation made to the Aboriginal
Cultural Material Committee (ACMC) on 01 June 2011**



YINDJIBARNDI ABORIGINAL CORPORATION

YINDJIBARNDI

HERITAGE REPORT

FOR THE

**ABORIGINAL CULTURAL MATERIAL
COMMITTEE (ACMC)**

IN RESPONSE TO

FMG PILBARA PTY LTD'S

February 2011

**SECTION 18 APPLICATION AT
'FIRETAIL PRIORITY MINING AREA AND FIRETAIL
PRIORITY INFRASTRUCTURE AREA'**

Prepared by:

JULUWARLU GROUP ABORIGINAL CORPORATION

for and on behalf of the

YINDJIBARNDI ABORIGINAL CORPORATION

(as Trustee for the Yindjibarndi People)

May 2011

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YAC INTELLECTUAL PROPERTY STATEMENT

The Yindjibarndi Aboriginal Corporation (A.B.N. 97 456 543 455) holds the copyright, intellectual and property rights for all cultural information that is contained within this report. Individuals, communities or corporate entities cannot utilise any of the information contained within this report without the express written permission of the Yindjibarndi Aboriginal Corporation (YAC). Any person or corporation deemed to have utilised information contained within this report without the prior written authorisation of the YAC will be prosecuted.

EXECUTIVE SUMMARY

This heritage report is prepared in response to the FMG Pilbara Pty Ltd February 2011 Section 18 Application for the 'Firetail Priority Mining Area'¹ and 'Firetail Priority Infrastructure Area'² presented to the Aboriginal Cultural Material Committee (ACMC) at the Department of Indigenous Affairs Office, which is located at 197 St George's Terrace in Perth, on May 4 2011. The Yindjibarndi Aboriginal Corporation (YAC) made a written³ and oral presentation at that meeting and this report adds further to those presentations. The ACMC decided to defer⁴ "making any recommendation to the Minister in relation to the Notices until further information is provided to the ACMC" (Przywolnik, DIA: letter to Michael Woodley, 06/05/11). The YAC understands that this 'YAC Heritage report in response'⁵ will be considered with reference to FMG Pty Ltd's application at the next ACMC meeting to be held on June 1 2011.

¹ 'Firetail Priority Mining Area' Section 18 Application - Tenement ID - M47/1413 - The application folder is dated February 2011 and contains a map establishing the section 18 application area within the tenement

² 'Firetail Priority Infrastructure Area' Section 18 Application - Tenement ID - E47/1447 - application folder is dated February 2011 and contains a map establishing the section 18 application area within the tenement

³ Document is titled 'To the Aboriginal Cultural Materials Committee: Outline of Submissions of the Yindjibarndi Aboriginal Corporation (YAC) - for and on behalf of the Yindjibarndi people'. This document is located at Attachment 1 of this report.

⁴ Letter to Michael Woodley, Juluwarlu Group Aboriginal Corporation, from Kathryn Przywolnik, Registrar for Aboriginal Sites, dated 6 May 2011. This document is located within this report at Attachment 2.

⁵ This YAC Heritage report dated May 2011 presented and to be considered by the for ACMC their forthcoming meeting to be held on 1 June 2011 will be referred to as the 'YAC Heritage report in response' throughout this document.

The importance of ensuring that the archaeology and anthropology conducted by FMG for this section 18 application is logical, credible and able to withstand rigorous scrutiny, accompanies the statement made within the FMG Section 18 archaeological report (located at Appendix Four of that report) by Veritas Archaeology and History Service⁶ at part 6.6 (under the heading Field Survey and Site Recording on page 6.1), which describes that, "there will be no Aboriginal sites remaining within the survey area upon completion of the project" (Veritas, March 2011: 6.1)

In this report the YAC challenges the research methods implemented by the FMG Archaeologist and the FMG Anthropologist when gathering and examining the archaeological and ethnographic heritage data, which have resulted in the conclusions drawn for their respective reports, ultimately recommending that all sites within the section 18 application areas can be destroyed. The YAC does not agree with the recommendations made within this section 18 application. The doubts over the veracity of the archaeological and ethnographic information presented to the ACMC at the meeting held on May 4 2011 by FMG Pilbara Pty Ltd arise for the following reasons:

1. The absence of any Yindjibarndi Heritage consultants being present for 3 archaeological heritage surveys conducted by Veritas Archaeology and History Service during the period commencing 28 November 2009 to 06 February 2010.
2. That the Archaeologist relies upon archaeological surveys carried out by Western Heritage Research Pty Ltd which were conducted in June, August and September/October 2008 during which there was an absence of any Yindjibarndi Heritage consultants.
3. That the 'block' archaeological survey area conducted on behalf of FMG Pilbara Pty Ltd by Western Heritage Research Pty Ltd from 22 September 2008 to 3 October 2008, without Yindjibarndi participation, was erroneously considered and recorded by FMG Pilbara Pty Ltd to be both archaeological and ethnographic, and included on their heritage

⁶ Veritas Archaeology and History Service 'Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area', Final Report, March 2011.

maps as a large yellow⁷ 'cleared' block in the Firetail section 18 application area from that point. Each subsequent FMG Pilbara Pty Ltd heritage map has included this inappropriately 'cleared' area and is relied upon by Veritas Archaeology and History Service for this application.

4. That all archaeological heritage surveys completed for the area except four (details provided at Point 4 below), have only been carried out to site avoidance⁸ standard, which is not to the site identification standard that is required for section 18 purposes, resulting in a grossly underestimated number of Aboriginal sites listed for destruction.
5. The YAC argues that the onus is with the section 18 applicant to reach a heritage agreement with the interested traditional owners so that culturally appropriate, robust and comprehensive archaeological and ethnographic heritage data is obtained for the project.

The YAC actively and positively participates in cultural heritage surveys, via signed heritage agreements with other industry proponents in the Pilbara, which work extremely well. The YAC is of the opinion that FMG Pilbara Pty Ltd is not serious about reaching a mutually acceptable heritage agreement with the YAC. A current heritage agreement⁹ between YAC and RTIO is facilitating positive and constructive Yindjibarndi heritage surveys. The first page of the YAC/RTIO Heritage Protocol has been included with this Report at Attachment Four.

6. The YAC represents large numbers of Yindjibarndi people¹⁰ who hold a cultural and specific interest in this area and they strongly object to the destruction of Aboriginal sites in the section 18 area. Specifically, the YAC authority structure respects those

⁷ The 'Scope of Works' provided by FMG for the YAC heritage survey conducted between 28/04/09 to 07/05/09 contains the large block clearance completed by Western Heritage Research Pty Ltd without any Yindjibarndi participation - document attached at Attachment 3.

⁸ Reference for the type of archaeological surveys conducted is located at point 1.1.1 to 1.1.6 and 2.4.1 of the FMG archaeological report provided by the Veritas Archaeology and History Service 'Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area', Final Report, March 2011.

⁹ The 'Yindjibarndi and RTIO Cultural Heritage Protocol', which provides a framework for cultural heritage engagement between the parties was agreed in December 2010. The first page of the Agreement is attached to this report at Attachment 4.

¹⁰ See Point 6 within this 'YAC Heritage report in response' regarding the Yindjibarndi people the YAC represents.

Yindjibarndi people who are committed to their culture and the protection of their individual and communal spiritual and cultural knowledge and country. The leader of the YAC is Ned Cheedy.

Mayinbungu (Ned Cheedy - Yindjibarndi Elder and Law man) is the *Nyarmbali* (boss) for the Yindjibarndi people. At approximately 105 years of age *Mayinbungu* is the most knowledgeable Yindjibarndi person. Ned walked the area of the section 18 application area when he used to travel from the place of his birth where he worked on *Winjawarrinha* (Hooley Station) to the law ground at *Weelumurra*. Ned knows this place as *Ganyjingarringunha* which is also the name of the permanent creek that flows just east of the section 18 application area, and into which *Ganyjingarringunha's* tributaries, that lie within the section 18 application, empty. The bores sunk by FMG Pilbara Pty Ltd provide evidence of the shallow water table within the section 18 application area. Juluwarlu Group Aboriginal Corporation has conducted many interviews with *Mayinbungu* and his family over the years testifying to the activities that have taken place within the section 18 application area. *Mayinbungu* camped in the caves with his family and later on with his colleague Long Mack while traveling through the area.

The YAC is extremely angry and disappointed that the Yindjibarndi people who have joined the Wirlu-Murra group have disrespected *Mayinbungu* by ignoring the information he has provided and have not consulted him when they have told agents of FMG Pilbara Pty Ltd that there is nothing of cultural significance within the application area¹¹.

7. The YAC strongly rejects the information given by those Yindjibarndi people represented by the Wirlu-Murra group that have agreed for this section 18 application to go ahead and who have informed the FMG Archaeological and Ethnographic teams that there are no Aboriginal sites of value to protect within the application area.

The fact that there is undeniable contemporary and colonial history, evidence of occupation, stories held by Yindjibarndi families associated with this place, burial sites,

¹¹ Reported at page 14, Conclusions and Recommendations: "Report of a Section 18 Ethnographic Survey and consultations regarding archaeological sites at FMG's Firetail Priority Mining and Infrastructure Area (M47/1431 and M47/1413) completed by David Raftery, December 2010.

rock shelters and caves containing cultural materials, water sources, artefacts and grinding stones, named locations, supplies of ochre and Gandi, all of which is incorporated into the natural environment illustrate that the Wirlu-Murra group members are not interested in highlighting the Yindjibarndi cultural values inherent within the section 18 application area for their own personal reasons.

8. The YAC strongly rejects the Ethnographic Report produced by David Raftery for the section 18 application. The YAC agrees with the opinion of the FMG Archaeologist, Veritas Archaeology and History Service as expressed at point 4.3 in the December 2010 Final¹² Archaeological Report where the Anthropologist's Ethnographic work regarding cultural significance is described as "sketchy, lacking in specificity and far from comprehensive ... [and that] further ethnographic heritage assessment needs to be undertaken in the area of the Solomon Project" (Veritas, 2010: 4.24).

The December 2010 Ethnographic Report completed by Raftery is contradictory in that it states that "no ethnographic sites were recorded during the survey ... nor any added ethnographic significance to previously recorded archaeological sites" (Raftery, 2010: 3). However, Raftery then goes on to document the Pebble Mouse Mounds YIN 09-003 and YIN 09-055 saying it was suggested to him "that the area could be fenced with bright tape placed around it" (Raftery, 2010: 11). If there was no ethnographic significance then why would someone suggest it could be fenced? It appears that Raftery has no concept of what a section 18 application means when he states at Recommendation One that, "the section 18 processes that FMG intends to apply to the Firetail PMI area proceeds" (Raftery, 2010: 15), however mentions nothing about the contradictory evidence relating to the Pebble Mouse Mounds, but then goes on to document that the Yindjibarndi "should be involved with appropriate strategies for the ongoing management of archaeological sites" (Raftery, 2010: 15).

If all sites are destroyed within the section 18 application area then the Yindjibarndi won't have any sites to manage.

¹² Veritas Archaeology and History Service 'Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area', Final Report, December 2010.

The comments made by Veritas at section 4.3 (labelled Ethnographic Context¹³) in the December 2010 'Final' Archaeological Report are relevant because even though Veritas omitted the criticisms from the subsequent March 2011 'Final' Archaeological Report, the Ethnographic Report completed by Raftery, upon which Veritas was remarking, is identical, indicating that no additional ethnographic field work for the section 18 application area was undertaken post December 2010.

9. The YAC rejects the notion that Veritas Archaeology and History Service or FMG Pilbara Pty Ltd speak for Yindjibarndi country. The YAC questions the consultation methodology associated with how Veritas and/or FMG Pilbara Pty Ltd have selected nine particular Aboriginal sites to investigate via a Section 16 application¹⁴ prior to them being destroyed. The YAC reserves the right to manage all Aboriginal sites, cultural heritage materials, information and knowledge networks that are associated with and lie within the Yindjibarndi determination¹⁵ and application¹⁶ areas.
10. The YAC considers the section 18 application area a religious precinct¹⁷.
11. The YAC considers that the archaeological and ethnographic reports supplied for the section 18 application do not provide evidence that all rock shelters and caves have been investigated to section site identification 18 standard. The YAC estimates that there are at least 250 rock shelters and caves that currently exist within the section 18 application area, some of which provide evidence of walled niches and rock shelter ochre sources. It is unclear how many of these significant cultural areas have been thoroughly investigated

¹³ Section 4.3: Ethnographic Context at page 4.21 located in the Veritas Archaeology and History Service 'Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area', Final Report, December 2010.

¹⁴ Veritas Archaeology and History Service 'Application for a research permit under the provisions of Section 16 of the Aboriginal Heritage Act 1972 for Aboriginal Sites'.

¹⁵ For further details refer to the document titled 'To the Aboriginal Cultural Materials Committee: Outline of Submissions of the Yindjibarndi Aboriginal Corporation (YAC) - for and on behalf of the Yindjibarndi people'.

¹⁶ Ibid

¹⁷ For further details refer to the affidavit of Michael Woodley, Yindjibarndi Law man, sworn on 1 April 2011 and submitted to the Warden's Court, for Objections to Miscellaneous Licence applications KR 102/090, KR 201/090, KR 232/090, KR 233/090, KR 253/090, KR 254/090, KR 133/101, KR 128/090, KR 207/090 and KR 270/090 included with this report at Attachment 9.

via the heritage process, and none of which, apart from the nine listed for further research, appear to be highlighted or protected by this application.

The YAC considers this section 18 application area to be a burial ground precinct because of the terrain, the large number of suitable funerary chambers and the location on the edge of traditional territories. Such a place was contemplated by Worms¹⁸ "Aboriginal people everywhere have endeavoured to place the final abode of the dead as far away as possible from that of the living ... for this reason the places where the souls of the dead congregate are thought to be in deep caves at the furthest end of tribal territories" (Worms, 1986: 197).

The Department of Indigenous Affairs (DIA) notified the YAC on the 15 March 2011 that skeletal remains had been uncovered via archaeologists employed by FMG Pilbara Pty Ltd within the section 18 application area. Given that all sites within the area are to be destroyed then the YAC is very concerned for the spiritual and mental health of the country and the Yindjibarndi people who are intricately linked and interdependent. The DIA will be accompanying YAC representatives to the burial site in the next few weeks.

12. The YAC details its own cultural information which is specific to the section 18 application area which includes:
- a. *Gurdi*: The Pebble Mouse "is only a little fella but he has a big name in the *Burndud (Law)*"¹⁹ (Thomas Jacobs, statement made 07/03/11).
 - b. *Yamararra*: Rock Shelters, Caves and Burials
 - c. *Gandi* – The Yindjibarndi men have specifically identified sacred stone areas that they and their ancestors have visited and interacted with over space and time that fall within the section 18 application area.
 - d. *Ochre* – The Yindjibarndi people know of significant ochre sites within the section 18 application area.

¹⁸ Worms, E.A. 1986 *Australian Aboriginal Religions* (translated by M.J. Wilson, et al.). Nelen Yubu Missiological Unit, Kensington (New South Wales).

¹⁹ Yindjibarndi Law man, Thomas Jacobs, describing the Pebble Mouse to Philip Davies, Juluwarlu Anthropologist, on 07/03/11.

- e. *Ngiyalunha, Murda Ngarli, Nhuga Ngarli, Juna Ngarli, Barri Ngarli, Wanda Ngarli and Marlunghu* - Yindjibarndi spirits inhabit the rocks, caves, watercourses and hills encompassed by the survey request areas. The Yindjibarndi urge that these ancestral beings be respected according to Yindjibarndi Law
- f. *Wundu, Bawa and Jinbi* – Rivers, water and springs are highly significant as one of our Yindjibarndi’s main natural resources essential for maintaining Yindjibarndi culture, heritage, diversity and religious beliefs.
- g. *Warndangarli* – This represents all trees in Yindjibarndi country – as part of cultural sustainability, the Yindjibarndi depend highly on these elements to maintain a cultural existence in contemporary society.

The following points from 1 - 12 provide further information regarding the 12 points outlined in the Executive Summary.

1. VERITAS HERITAGE SURVEYS

ABSENCE OF YINDJIBARNDI PARTICIPANTS

1. The YAC do not accept that Yindjibarndi heritage archaeological and ethnographic heritage surveys can be thoroughly and professionally conducted without Yindjibarndi Heritage consultants. Yindjibarndi Heritage consultants were not present for 3 archaeological heritage surveys conducted by Veritas Archaeology and History Service during the period commencing 28 November 2009 to 06 February 2010, despite advice given to FMG Ltd by Ms Pam Thorley, Registrar of Sites for the DIA in letters dated 4 March 2008²⁰ and 14 May 2009²¹. Both letters urge FMG to reach agreement with the

²⁰ Letter from Ms Pam Thorley, Registrar of Sites for the DIA, to Mr Blair McGlew, dated 4 March 2008 - included with this report at Attachment 5.

Yindjibarndi so that heritage can be conducted and without "evidence of appropriate consultation, the ACMC may not be able to assess the significance of sites, and the notice may be referred back to the proponent for further consultation" (Thorley, DIA: letter to Mr Blair McGlew, 04/03/08).

2. WESTERN HERITAGE RESEARCH SURVEYS ABSENCE OF YINDJIBARNDI PARTICIPANTS

2. The section 18 application Archaeological Report relies upon archaeological surveys carried out by Western Heritage Research Pty Ltd in June, August and September/October 2008 whereby there was an absence of Yindjibarndi Heritage consultants. This is despite the advice provided by Ms Pam Thorley, Registrar of Sites for the DIA in the letter dated 14 May 2009 to Ms Jane Pemberton, FMG, regarding a complaint made by the YAC over a 'block' heritage survey conducted by Western Heritage whereby a 'block' archaeological and ethnographic clearance was given without Yindjibarndi participation. The letter states,

"any form of ethnographic survey should have made attempts to consult with YAC in order to work out the potential ethnographic values of the area ... failure to adequately consult with the Yindjibarndi people over the proposed drill hole locations has the potential to result in activities that may breach the Aboriginal Heritage Act 1972" (Thorley, DIA: letter to Ms Jane Pemberton, 14/05/09).

It is the opinion of the YAC that the research conducted by Western Heritage Research is flawed. This was put to Ms Jane Pemberton by Mr Michael Woodley in a letter dated April 16 2009²², in which Mr Woodley stated that that the YAC strongly oppose heritage surveys being conducted without any Yindjibarndi participation and that the YAC would

²¹ Letter from Ms Pam Thorley, Registrar of Sites for the DIA, to Ms Jane Pemberton, dated 14 May 2009 - included with this report at Attachment 6.

²² Letter to Ms Jane Pemberton from Mr Michael Woodley on 16 April 2009. Included in this report at Attachment 7.

not perform any 'block' surveys, but would assist FMG Pilbara Pty Ltd with their exploration drilling as they had previously agreed.

3. WESTERN HERITAGE RESEARCH SURVEYS INVALID 'BLOCK' HERITAGE SURVEY

3. The block archaeological survey area conducted on behalf of FMG Pilbara Pty Ltd by Western Heritage Research Pty Ltd from 22 September 2008 to 3 October 2008, without Yindjibarndi participation, was considered by FMG to be both archaeological and ethnographic and included on their heritage maps as a large yellow²³ (cleared) block in the Firetail section 18 application area from that point. The YAC does not see any evidence from the information presented within this section 18 application that this false and inappropriate data has been corrected. In fact it seems this data has been relied upon by Veritas Archaeology and History Service for the final March 2011 report presented to the ACMC on 4 May 2011.

The YAC had undertaken heritage surveys with FMG in the hope that the parties could reach a heritage and land use agreement, however it became clear that FMG was taking a belligerent, 'take it or leave it' position whereby they were using every means possible to force the Yindjibarndi into signing an agreement.

The 'block' survey conducted by Western Heritage Research Pty Ltd is another example of the way that FMG Pilbara Pty Ltd has implemented their Yindjibarndi consultations with little consideration for cultural heritage that lies within the section 18 application area.

As indicated by the map attached at Attachment 3, the invalid 'block' survey is a key part of the heritage precinct that makes up this section 18 application area. The application in this area is founded upon invalid and disrespectful archaeological and ethnographic heritage investigations.

²³ The 'Scope of Works' provided by FMG for the YAC heritage survey conducted between 28/04/09 to 07/05/09 contains the large block clearance completed by Western Heritage Research Pty Ltd without any Yindjibarndi participation - document attached at Attachment 3.

4. VERITAS - RELIANCE ON SITE AVOIDANCE HERITAGE SURVEYS

4. Part 2.4.1 of the Archaeologist's Report reveals that all archaeological surveys conducted within the section 18 application area since 2007, relied upon by the Archaeologist for the section 18 application area, have only been heritage surveyed according to site avoidance investigation level except for:
 - a. FMG Survey Request 29 over DIA site 17338
 - b. Survey Request 33 over the Trial Pit
 - c. Parts of Survey Request 41 for Aboriginal sites that were nominated by FMG
 - d. Western Heritage Research Pty Ltd Archaeological Survey conducted from 22 September 2008 to 3 October 2008 was supposedly to site identification standard however this survey did not have any Yindjibarndi people participating and is the subject of YAC concerns in points 2 and 3 above.

The YAC contends that because the majority of heritage surveys overseen by FMG in the section 18 applications areas are to site avoidance enquiry only, that the majority of Aboriginal sites within the area will have been avoided and not brought to the attention of the archaeologists, therefore leaving them undisturbed and not investigated.

The YAC contends that the ten sites highlighted within the section 18 applications represent only a fraction of the number of Aboriginal sites present. Such a position is untenable for the applicant because of the nature of the works proposed whereby the whole of the section 18 application area will be taken up for mining with all sites destroyed.

5. ONUS ON SECTION 18 APPLICANT FOR COMPREHENSIVE CULTURAL MATERIALS

5. The YAC argues that the onus is with the section 18 applicant to reach a heritage agreement with the traditional owners so that culturally appropriate, robust, interrogative archaeological and ethnographic heritage data is obtained for the project. This context is highlighted within the two letters from Pam Thorley, the Registrar of Sites, written to FMG in 2008 and 2009. It is not the responsibility of the Traditional Owners to volunteer culturally specific information that belongs to them personally and/or may be held by their community for someone else's project they do not agree with. The Yindjibarndi undertook 5 work area clearance heritage surveys with FMG from July 2007 to May 2009 in the hope that a culturally appropriate heritage and land access agreement could be reached.

The YAC declined to participate in heritage surveys within the section 18 application area following the fifth heritage survey conducted by them with FMG Pilbara Pty Ltd which concluded on May 7 2009. It had become clear to the YAC that FMG Pilbara Pty Ltd were not serious about reaching a mutually beneficial heritage or land use agreement.

6. YAC REPRESENTS ALL YINDJIBARNDI

6. The YAC represents the current population of the Yindjibarndi people which is "estimated to be about 1500 people"²⁴ (Particulars of Objection KR102/090, 2011: 1.4). Since the breakdown in heritage agreement negotiations between the YAC and FMG Pilbara Pty Ltd, the YAC and Juluwarlu Group Aboriginal Corporation have conducted several independent field trips and many interviews with Yindjibarndi people with an interest in, and who wish to protect, the area to which the section 18 application applies. These

²⁴ Particulars of Objection KR102/090 to the application for Miscellaneous Licence L47/350 by FMG Pilbara Pty Ltd in the Wardens Court, May 2011. Document attached at Attachment 8.

people all strongly object to the destruction of Yindjibarndi sites which will be the result if the ACMC recommends the approval of the section 18 application.

An indicative list of 274 Yindjibarndi people who support the YAC position is attached to this report at Attachment 10.

The most recent field trip with between 35 and 40 people was conducted between Wednesday 11 May and Friday 13 May following the recent ACMC May 4 2011 hearing. This field trip reconfirmed the views of the Yindjibarndi people represented by the YAC that they do not agree with the destruction of Aboriginal sites within the section 18 application area.

7. YAC REJECTS WIRLU-MURRA INFORMATION

7. The YAC strongly rejects the information given by those Yindjibarndi people represented by the Wirlu-Murra group that have agreed for this section 18 application to go ahead and who have informed the FMG Archaeological and Ethnographic teams that there are no Aboriginal sites of value to protect within the application area.

8. YAC REJECTS SECTION 18 ETHNOGRAPHIC REPORT

8. The YAC strongly rejects the Ethnographic Report produced by David Raftery for the section 18 application. The YAC agrees with the opinion of the FMG Archaeologist, Veritas Archaeology and History Service as expressed at point 4.3 in the December 2010 Final²⁵ Archaeological Report where the Anthropologist's Ethnographic work regarding cultural significance is described as "sketchy, lacking in specificity and far from comprehensive ... [and that] further ethnographic heritage assessment needs to be undertaken in the area of the Solomon Project" (Veritas, 2010: 4.24).

²⁵ Veritas Archaeology and History Service 'Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area', Final Report, December 2010.

The December 2010 Ethnographic Report completed by Raftery is contradictory in that it states that "no ethnographic sites were recorded during the survey ... nor any added ethnographic significance to previously recorded archaeological sites" (Raftery, 2010: 3). However, Raftery then goes on to document the Pebble Mouse Mounds YIN 09-003 and YIN 09-055 saying it was suggested to him "that the area could be fenced with bright tape placed around it" (Raftery, 2010: 11). If there was no ethnographic significance then why would someone suggest it could be fenced? It appears that Raftery has no concept of what a section 18 application means when he states at Recommendation One that, "the section 18 processes that FMG intends to apply to the Firetail PMI area proceeds" (Raftery, 2010: 15), however mentions nothing about the contradictory evidence relating to the Pebble Mouse Mounds, but then goes on to document that the Yindjibarndi "should be involved with appropriate strategies for the ongoing management of archaeological sites" (Raftery, 2010: 15).

If all sites are destroyed within the section 18 application area then the Yindjibarndi won't have any sites to manage.

The comments made by Veritas at section 4.3 (labelled Ethnographic Context²⁶) in the December 2010 'Final' Archaeological Report are relevant because even though Veritas omitted the criticisms from the subsequent March 2011 'Final' Archaeological Report, the Ethnographic Report completed by Raftery, upon which Veritas was remarking, is identical, indicating that no additional ethnographic field work for the section 18 application area was undertaken post December 2010.

²⁶ Section 4.3: Ethnographic Context at page 4.21 located in the Veritas Archaeology and History Service 'Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area', Final Report, December 2010.

9. YAC SPEAKS FOR COUNTRY - NOT VERITAS AND/OR FMG PILBARA PTY LTD

9. The YAC rejects the notion that Veritas Archaeology and History Service or FMG Pilbara Pty Ltd speak for Yindjibarndi country. The YAC questions the consultation methodology associated with how Veritas and/or FMG Pilbara Pty Ltd has selected nine particular Aboriginal sites to investigate via a Section 16 application²⁷ prior to them being destroyed. The YAC reserves the right to manage all Aboriginal sites, cultural heritage materials, information and knowledge networks that are associated with and lie within the Yindjibarndi determination²⁸ and application²⁹ areas.

10. YINDJIBARNDI RELIGIOUS PRECINCT

10. The YAC considers the section 18 application area a religious precinct³⁰.

11. YINDJIBARNDI BURIAL GROUND PRECINCT

11. The YAC considers that the archaeological and ethnographic reports supplied for the section 18 application do not provide evidence that all rock shelters and caves have been investigated to section site identification 18 standard. The YAC estimates that there are at least 250 rock shelters and caves that currently exist within the section 18 application

²⁷ Veritas Archaeology and History Service 'Application for a research permit under the provisions of Section 16 of the Aboriginal Heritage Act 1972 for Aboriginal Sites

²⁸ For further details refer to the document titled 'To the Aboriginal Cultural Materials Committee: Outline of Submissions of the Yindjibarndi Aboriginal Corporation (YAC) - for and on behalf of the Yindjibarndi people'.

²⁹ Ibid

³⁰ For further details refer to the affidavit of Michael Woodley, Yindjibarndi Law man, sworn on April 4 2011 and submitted to the Warden's Court, for Objections to Miscellaneous Licence applications KR 102/090, KR 201/090, KR 232/090, KR 233/090, KR 253/090, KR 254/090, KR 133/101, KR 128/090, KR 207/090 and KR 270/090 - Included with this Report at Attachment 9.

area, some of which provide evidence of walled niches and rock shelter ochre sources. It is unclear how many of these significant cultural areas have been thoroughly investigated via the FMG Pilbara Pty Ltd heritage process, and none of which, apart from the nine listed for further research, appear to be highlighted or protected by this application.

The YAC provides further evidence regarding these caves and rock shelters at point 12 b below.

The YAC considers this section 18 application area to be a burial ground precinct because of the terrain, the large number of suitable funerary chambers and the location on the edge of traditional territories. Such a place was contemplated by Worms³¹ "Aboriginal people everywhere have endeavoured to place the final abode of the dead as far away as possible from that of the living ... for this reason the places where the souls of the dead congregate are thought to be in deep caves at the furthest end of tribal territories" (Worms, 1986: 197).

The Department of Indigenous Affairs (DIA) notified the YAC on the 15 March 2011³² that skeletal remains had been uncovered via archaeologists employed by FMG Pilbara Pty Ltd within the section 18 application area. Given that all sites within the area are to be destroyed then the YAC is very concerned for the spiritual and mental health of the country and the Yindjibarndi people who are intricately linked and interdependent. The DIA will be accompanying YAC representatives to the burial site in the next few weeks.

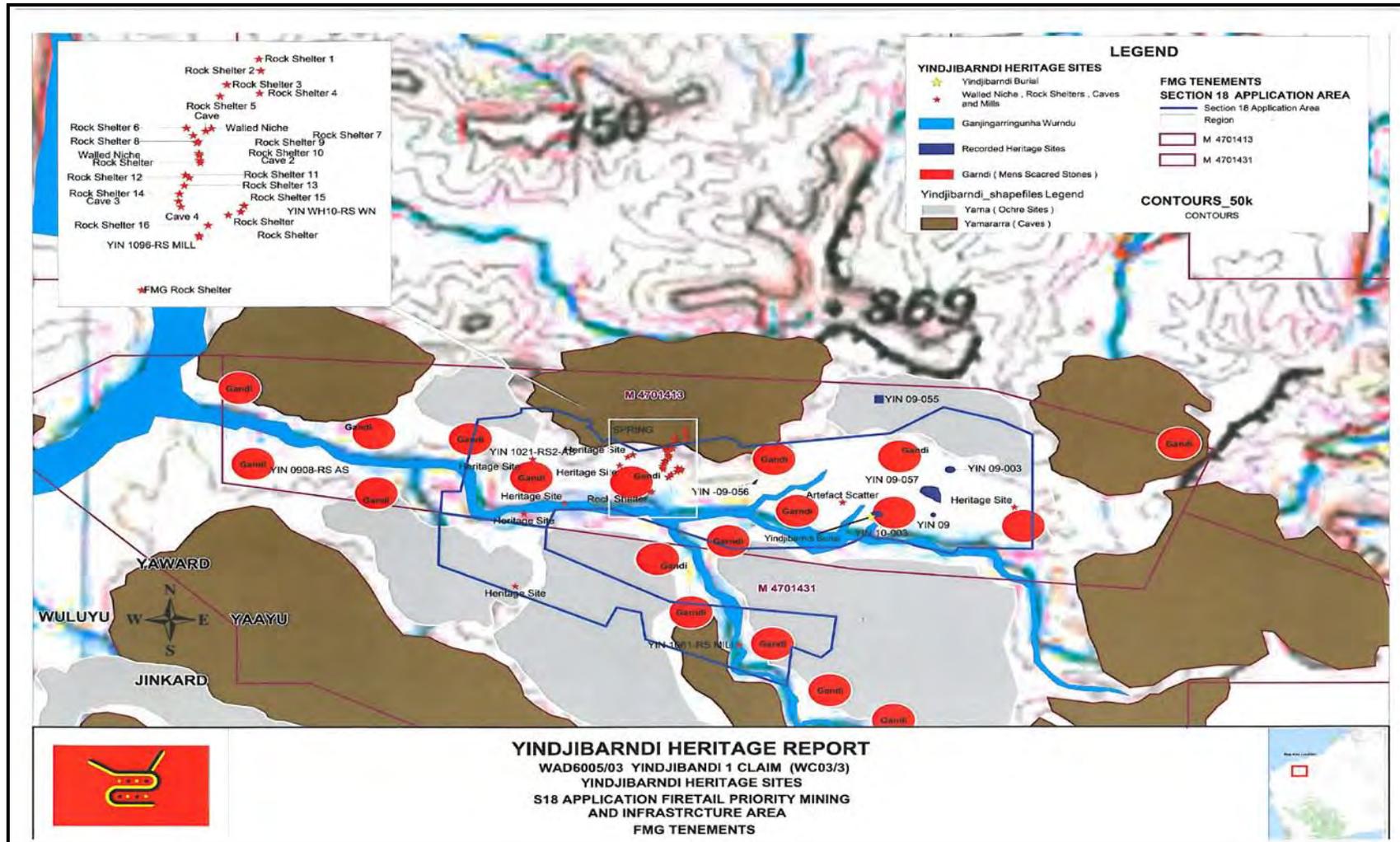
12. YINDJIBARNDI CULTURAL INFORMATION

12. The YAC details its own cultural information which is specific to the section 18 application area which includes:

Please find a map of the locations to be discussed on the next page. Hard copies of A3 or A1 Maps can be provided to the APMC if requested.

³¹ Worms, E.A. 1986 *Australian Aboriginal Religions* (translated by M.J. Wilson, et al.). Nelen Yubu Missiological Unit, Kensington (New South Wales).

³² Letter to Mr Michael Woodley from Ms Kathryn Przywolnik dated May 12 2011 - included with this report at Attachment 11.



Map 1: The top left map inset illustrates the density of rock shelters and caves in the area highlighted which is close to YIN WH10.

- a. ***Gurdi***: The Pebble Mouse "is only a little fella but he has a big name in the *Burndud* (Law)"³³ (Thomas Jacobs, statement made 07/03/11).

This information is relevant to the application for YIN 09-03 and YIN 09-47.

This information about *Gurdi*, the Pebble Mound Mouse, was told by Ned Cheedy.

Gurdi is sung in the *Burndud* which is the ancient Yindjibarndi song cycle sung every year.

The words are:

Gurdi thulma thulma

Gurdi wirri thalayi

Gurdi thulma thulma

Mouse awareness in the eyes

Mouse moving in the night

Mouse awareness in the eyes

In the *Ngurranyjunggamu* times (when the world was soft) *Gurdi* was travelling through the Yindjibarndi country, and as *Gurdi* travelled he heard the passionate singing of the *Gurdi Burndud* song. *Gurdi* was attracted and captivated by the song and now *Gurdi* is everywhere in the Yindjibarndi country making his home. The Yindjibarndi sing this *Gurdi Burndud* every year in the *Burndud* song cycle when young boys are put through Yindjibarndi *Birdarra* Law.

The *Gurdi* is related to all Yindjibarndi via the *Galharra* relationship system which incorporates all living entities within a structured framework of reciprocal roles and responsibilities.

The YAC are extremely concerned that the members of the Wirlu-Murra group who accompanied both the FMG Archaeologist and Anthropologist ignored their cultural responsibilities and did not bother recognising and requesting that all significant Yindjibarndi heritage sites, including the *Gurdi*'s, be protected.

³³ Yindjibarndi Law man, Thomas Jacobs, describing the Pebble Mouse to Philip Davies, Juluwarlu Anthropologist, on 07/03/11.



Photo 1: *Gurdi* mound – home of the pebble mound mouse. Photo taken on fifth and final Yindjibarndi/FMG heritage survey on May 6 2009.

b. **Yamararra:** Rock Shelters, Caves and Burials

As mentioned earlier in this report the YAC has conducted its own independent heritage surveys to the section 18 application area. For the reasons already put, the YAC considers that FMG Pilbara Pty Ltd have not conducted thorough archaeological and ethnographic investigations in the section 18 area, something which is revealed by the respective reports provided by the applicant to the ACMC on May 4 2011.

The Section 18 application location is riddled with rock shelter and caves.



Photo 2: View of the terrain within the section 18 application area.



Photo 3: View of the gully near YIN WH10

For this Heritage Report the YAC provides cultural material for one gully that is situated within a radius of 250 metres of YIN WH10 which is described within the Archaeologist's Section 16 Report³⁴ as "a rock shelter with a walled niche" (Veritas, 2010: 18) with the centroid GPS coordinates being given as E594311 N7554070. The YAC have identified 4 caves and 22 rock shelters (including 2 with walled niches and 2 with ochre sources) all within the one gully and within a 250 metre radius of YIN WH10. Five of these rock shelters marked from one to five on Map 1 fall just outside the northern portion of the section 18 application area (as is described on Map 1).

It is clear to the YAC that detailed and exhaustive archaeological and ethnographic investigations have not been carried out within this location because of the evidence that is revealed within the rock shelters and caves which are within very close proximity to YIN WH10. This imprecise method is indicative of the approach taken by FMG Pilbara Pty Ltd and the consultants they direct for the whole of the section 18 application area.

Walled niches and sources of ochre are highly significant cultural features that need to be managed in a culturally appropriate way, allowing for comprehensive dialogue between the people who have knowledge of, and can speak for, the country responsibly.

The YAC do not accept that Veritas and FMG Pilbara Pty Ltd can select some rock shelters with walled niches over others without the advice and active involvement of YAC representatives. The YAC estimates that there are at least 250 rock shelters and caves that currently exist within the section 18 application area. The question the YAC puts is how does Veritas and FMG Pilbara Pty Ltd

³⁴ Veritas Archaeology and History Service 'Application for a research permit under the provisions of Section 16 of the Aboriginal Heritage Act 1972 for Aboriginal Sites'.

justify their selection of nine rock shelters and/or caves when there are so many that should be further identified, investigated, managed and protected?

The cave site where the skeletal remains have been revealed is also marked on the map. The YAC do not accept that FMG Pilbara Pty Ltd and/or the Wirlu-Murra group have the skills, cultural knowledge or the concern to adequately manage the *Yamararra* within the section 18 application area.

GPS coordinates of Rock Shelters & Caves within close proximity to YIN WH10
GPS Projection is GDA 94 - MGA Zone 50

<i>Map 1</i>	<i>Site ID</i>	<i>mE</i>	<i>mN</i>
1	Walled Niche 1	+594250.2159	+7554273.239
2	Rock Shelter 5	+594267.9122	+7554351.510
3	Rock Shelter 3	+594282.1106	+7554379.764
4	Rock Shelter 1	+594348.4049	+7554443.019
5	Rock Shelter 2	+594352.6653	+7554413.879
6	Rock Shelter 4	+594349.8578	+7554358.656
7	YIN WH10	+594310.9891	+7554070.069
8	Rock Shelter 6	+594198.4411	+7554274.436
9	Rock Shelter 7	+594212.3589	+7554255.976
10	Cave	+594238.3147	+7554266.780
11	Rock Shelter 8	+594219.8842	+7554237.997
12	Rock Shelter 7	+594223.2035	+7554241.077
13	Rock Shelter 9	+594224.1660	+7554212.399
14	Walled Niche 2	+594225.1682	+7554207.522
15	Cave 1	+594226.2258	+7554194.675
16	Rock Shelter 10	+594227.0191	+7554189.356
17	Rock Shelter 11	+594196.2043	+7554159.541
18	Rock Shelter 12	+594203.9025	+7554153.185
19	Rock Shelter 13	+594193.6772	+7554133.763
20	Rock Shelter	+594183.9650	+7554113.895
21	Cave 3	+594181.6886	+7554095.532
22	Cave 4	+594186.8694	+7554082.217
23	Rock Shelter 16	+594284.8432	+7554061.923
24	Rock Shelter 15	+594317.9870	+7554084.529
25	Rock Shelter 17	+594243.2262	+7554036.823
26	Rock Shelter 18	+594223.9960	+7554012.252
27	Rock Shelter	+594105.1926	+7553878.794



Photo 4: Cave with walled niche: lies directly under a drill hole and track at E594250 N7554273



Photo 5: Walled Niche of cave above at Photo 4.



Photo 6: Walled Niche at E594225 N7554207

- c. ***Gandi*** – The Yindjibarndi men have identified sacred stone areas that they and their ancestors have visited and interacted with over space and time that fall within the section 18 application area³⁵.

Map 1 identifies buffered zones for *Gandi*. As detailed in Michael Woodley's affidavit (Attachment 9) *Gandi* is men's business that is not usually discussed in open forums. The affidavit has been put because the heritage process requires Indigenous groups to provide evidence of their religious understandings, ceremonies and artefacts so they can be 'protected'.

³⁵ For further details refer to the affidavit of Michael Woodley, Yindjibarndi Law man, sworn on 1 April 2011 and submitted to the Warden's Court, for Objections to Miscellaneous Licence applications KR 102/090, KR 201/090, KR 232/090, KR 233/090, KR 253/090, KR 254/090, KR 133/101, KR 128/090, KR 207/090 and KR 270/090 included with this report at Attachment 9.

The YAC will not identify anything further on *Gandi* other than what is already offered via the maps and affidavit, unless requested and upon agreement being reached on the nature of the arrangements.

- d. **Ochre** – The Yindjibarndi people represented by the YAC know of significant ochre sites within the section 18 application area. These have not been identified within the heritage surveys because the surveys were based upon clearing areas for drill holes and tracks. The Wirilu-Murra group have not identified any of these locations during their heritage surveys.

- e. **Ngivalunha, Murda Ngarli, Nhuga Ngarli, Juna Ngarli, Barri Ngarli, Wanda Ngarli and Marlunghu** - are all Yindjibarndi spirits that inhabit the rocks, caves, watercourses and hills encompassed within the section 18 application area. The YAC is concerned for the future of the country and the reflection that brings to Yindjibarndi culturally appropriate heritage management is not in place for the section 18 application area.

- f. **Wundu, Bawa and Jinbi** – Rivers, water and springs are highly significant as one of our Yindjibarndi's main natural resources essential for maintaining Yindjibarndi culture, heritage, diversity and religious beliefs.

As detailed at Map 1 the eastern branch of *Ganyjingarringunha* runs through the section 18 application area. River courses and creek beds feature significantly in the cultural lives of the Yindjibarndi, giving life and operating as freeways for the old people who used to walk and camp in the area.

- g. *Warndangarli* – This represents all trees in Yindjibarndi country – as part of cultural sustainability, the Yindjibarndi depend highly on these elements to maintain a cultural existence in contemporary society.

CONCLUSIONS

The YAC considers that, if allowed to proceed, the Section 18 application brought before the ACMC on May 4 2011 by FMG Pilbara Pty Ltd will undeniably damage and destroy Yindjibarndi country, culture and heritage within the allocated precinct, to the detriment of the Yindjibarndi people. To facilitate such an extreme act the ACMC needs to be absolutely certain that all Aboriginal archaeological and ethnographic sites within the area have been located, researched, examined and surveyed via the site identification process, and that all Aboriginal persons with an interest in that location have been able to shape and inform the process so that they are able to protect and engage with their Aboriginal sites and cultural heritage now and into the future, as they have always done.

This report documents and demonstrates that the heritage work completed and presented by FMG Pilbara Pty Ltd to the ACMC for recommendation to the Minister does not achieve the standard necessary to allow for the destruction of all Yindjibarndi Aboriginal sites within the section 18 application area. It also illustrates that the members of the Wirilu-Murra group are ignoring their cultural heritage responsibilities, which only adds to the discrimination and disadvantage of all current and future generations of Yindjibarndi people.

In the YAC's opinion, at the very least, the recommendation should be made that FMG Pilbara Pty Ltd must engage with, and reach agreement on, a mutually beneficial Cultural

Heritage Management Plan (CHMP) with the Yindjibarndi Aboriginal Corporation, prior to any further ground disturbing work within the section 18 application area.

This conclusion is in addition to the submissions made by the YAC at the May 4 ACMC hearing described via the oral arguments and contained within the written document titled, 'To the Aboriginal Cultural Materials Committee: Outline of Submissions of the Yindjibarndi Aboriginal Corporation (YAC) - for and on behalf of the Yindjibarndi people' (included in this document at Attachment 1).

The YAC reserves the right to manage all Aboriginal sites, cultural heritage materials, information and knowledge networks that are associated with and lie within the Yindjibarndi determination³⁶ and application³⁷ areas.

Acknowledgements

The Yindjibarndi/Juluwarlu team would like to acknowledge all the Yindjibarndi people represented by the Chairperson, Directors and members of the Yindjibarndi Aboriginal Corporation, and the Chairperson, Directors and members of the Juluwarlu Group Aboriginal Corporation, and all others who have contributed their knowledge to complete this survey and report.

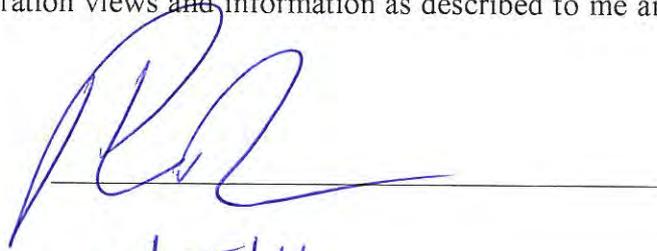
³⁶ For further details refer to the document titled 'To the Aboriginal Cultural Materials Committee: Outline of Submissions of the Yindjibarndi Aboriginal Corporation (YAC) - for and on behalf of the Yindjibarndi people'.

³⁷ Ibid

Signed for and on behalf of the Juluwarlu Group Aboriginal Corporation:

I state that this 'Heritage Report in response' is a true and accurate reflection of the Yindjibarndi Aboriginal Corporation views and information as described to me and which is the subject of this report.

Signed



Date

20/05/11

FULL NAME (PRINT)

PHILIP JAMES DAVIES

Philip Davies

Anthropologist

B. Soc.Science (Anthropology and Sociology), B. Arts Honours (Anthropology)

Juluwarlu Group Aboriginal Corporation

ATTACHMENT THREE:

**Letter from Sue Singleton making allegations against FMG Pilbara Pty Ltd
dated 5 November 2011**



NORTHERN TABLELANDS
 641 Balala Road URALLA NSW 2358
NEWCASTLE AND THE HUNTER
 20 Joppa Street NIAGARA PARK NSW 2250

5 November 2011

Registrar of Aboriginal Sites
 Department of Indigenous Affairs
 Level 1, Governor Stirling Tower
 196 St Georges Terrace
 PERTH WA 6000

Attention: The Registrar

By email: kathryn.przywolnik@dia.wa.gov.au; ryan.crawford@dia.wa.gov.au;
cesar.rodriguez@dia.wa.gov.au

Dear Kathryn

Re: Veritas and Eureka Heritage Survey Reports - Firetail and Solomon Project Area

I am the principal archaeologist for Eureka Heritage (Eureka) and co-author with Rob Tickle, the principal of Veritas Archaeology and History Service (Veritas) of various reports, notices and applications which relate to Archaeological surveys conducted in the Firetail mining lease (M47/1413) and the surrounding area (the Study Area) for Fortescue Metals Group Limited (FMGL).

In October 2011, I became aware of correspondence forwarded from FMGL to the Registrar of Aboriginal Sites at the DIA, in relation to a s18 notice that Eureka and Veritas had prepared in December 2010. Eureka wishes to clarify some issues in relation to the information provided by FMGL in support of a revised version of the report dated March 2011.

Eureka considers that the following comments, excerpted from FMGL's letter to the Registrar of 15 March 2011, require clarification:

"Fortescue make it a policy not to interfere or dictate outcomes of reports prepared by consultants, however in this instance Fortescue can confirm that as Mr Tickle does not have any ethnographic training, he has been requested to remove these ethnographic assessments from the report as they easily mislead the reader to believe only minimal consultation and ethnographic assessment was undertaken for the purpose of these Notices.

Postal Address "Eureka" | 641 Balala Road | URALLA NSW 2358
Mobile Phone 0416 027 417 (with message service) | **ABN** 82 774 672 616

Fortescue is confident that the ethnographic significance of all areas has been adequately addressed and that no sites of significance have been identified on the Land due to the fact that there is no verified knowledge of any sites with ethnographic significance in this specific valley”.

Eureka was engaged by FMGL, independently of Veritas, to work collaboratively with Veritas to coordinate and conduct desktop research and field surveys. Information on the identification of Aboriginal cultural heritage sites was presented in reports for the purpose of notices made by FMGL for ministerial consent under section 18 and applications under section 16 of the Aboriginal Heritage Act 1972. The purpose of these reports was to provide sufficient information to assist the officers of the Department of Indigenous Affairs (DIA) and the Aboriginal Cultural Materials Committee (ACMC) in its task of assessing the cultural significance of the Study Area.

In July 2010, at the time of Eureka’s engagement by FMGL, it was agreed that a team of appropriately qualified personnel would be assembled to carry out the tasks necessary for the preparation of anticipated s18 notices and s16 applications during 2011, and to collaborate with Veritas in report preparation.

To this end, I sub-contracted colleague Kath Beech to carry out background ethnographic research on the Study Area and to report on the ethnographic work that had been carried out for the purpose of the s18 notice preparation. Kath is a qualified anthropologist and holds a Masters degree in the field of anthropology and development. In addition, a number of other archaeologists offered to sub-contract to Eureka in order to fulfill s16 investigative excavation, on-going survey work and archaeological management during project works.

In December 2010, Veritas and Eureka produced a report entitled: “*Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area*”. This was a “Final Report”, and was dated “December 2010” (the “December 2010 Report”). This report was submitted to the DIA in support of a s18 notice and underwent review by the Registrar. It is now our understanding that FMGL did not carry out an internal review of this version of the report prior to its submission to the DIA.

The December 2010 Report, Section 4.3 - Ethnographic Context, contained the results of background research into the historical and contemporary ethnographic evidence relevant to the Study Area, and an analysis of the ethnographic work undertaken by anthropologist David Raftery. This section was compiled and written by Kath Beech, and not Rob Tickle, as stated by FMGL in their letter of 15 March 2011, Point 10. The Raftery reports to which this section referred were made available by FMGL on request by Veritas/Eureka. It was our understanding, at the time of reporting, that there were no further ethnographic reports available or in planning.

The ethnographic research undertaken by Kath Beech found that sworn evidence given to the Native Title Tribunal clearly demonstrated that there are members of the Yindjibarndi People who belong to the YAC and who are connected to the Study Area. These YAC members claim to hold relevant ethnographic information that would be material in the assessment of cultural heritage significance. In contrast David Raftery’s reports on consultation with the members of Wiru-murra Yindjibarndi Aboriginal Corporation demonstrated that they held little, if any ethnographic knowledge about the Study Area. Pointing out the deficiencies in consultation was intended to assist the ACMC in determining any requirement for further ethnographic investigation.

In addition to the DIA guideline requirements for ethnographic enquiry, we considered it our professional responsibility to ensure that all relevant ethnographic information was documented

and available to the Registrar, and the ACMC, in order that they were best equipped to make a fully informed decision on the level of significance attached to the Study Area. Part of this responsibility is to point out information gaps.

On 3 March 2011, Veritas informed Eureka that FMGL had terminated our services as they considered a 'local' archaeological firm could better provide the services (outcomes) required by them. On 4 March 2011, the Registrar wrote to FMGL regarding the December 2010 notice and report, expressing a number of issues and concerns to be addressed. I was subsequently advised by Rob Tickle that FMGL had contacted him and that he had received a request to edit the December 2010 Report. These requests included the deletion of Section 4.3 – Ethnographic Context. FMGL's primary concerns with this section were expressed in an email to Veritas as:

- the ethnographic context was not part of the brief to prepare a s18 notice (contrary to our understanding of the DIA guidelines);
- ethnographic context does not contribute to an understanding of the archaeology on the land;
- the section contained opinion and commentary, and this was considered prejudicial to FMGL; and
- it was not the role of Veritas/Eureka to report about, comment on or assess the ethnographic aspects of the study area.

Veritas and Eureka were both very concerned with the request; and at first refused to comply. However it soon became very clear that, if we did not comply, FMGL would withhold payment of our previous, outstanding and well overdue invoices on the basis that FMGL could not be expected to pay for a report that they could not use. At the time there were a number of invoices that were already overdue for payment, amounting, in Eureka's case to \$70,000.00.

Having already been dismissed from further work, Eureka considered there was little option other than to agree to the requested changes. We also considered that the remaining contents of the report still communicated (although not as explicitly) the issues with the ethnography. The amended report bore the same title as the December 2010 Report, but was dated "March 2011" (the "March 2011 Report").

In addition, FMGL specified that the FMGL Heritage Department would take responsibility for reporting all sites to the Registrar, as required under s 15 of the Act. However, I am very concerned that this may not have happened as site cards were requested by the Registrar on submission of both a s16 application and the December s18 notice.

A substantial body of detailed recording, carried out in preparation for s18 notices and s16 applications, was performed by Veritas and Eureka. Due to the discontinuation of our services, this information has not been reported. FMGL has now engaged other archaeologists to re-survey, re-record and re-asses areas we surveyed and as a result, I am concerned that the information we acquired about sites will not be reported, and that this may put Eureka in breach of s 15 of the Act.

As a result of misleading information provided by FMGL, I am also now very concerned that the deleted aspects of the December 2010 Report may have led the Committee into making a decision that does not accurately reflect the overall significance of the area.

It is Eureka's opinion that the information and analysis contained in the ethnographic section of the December 2010 Report is current. The ethnographic content was written by a qualified

anthropologist who was acknowledged in the authorship declaration of the report. At no stage did FMGL seek to clarify the author of the ethnographic content.

The details of FMGL's letter were not disclosed or known to Eureka until October 2011. Eureka is concerned that FMGL's justification for the change in the December 2010 Report is flawed and misleading.

I am also concerned that Eureka is bound by the terms and conditions relating to intellectual property and confidentiality clauses as set out in FMGL's Vendor Agreement.

In light of the above Eureka does not share FMGL's confidence "that the ethnographic significance of all areas has been adequately addressed". In fact, the case may well be that identified Aboriginal cultural heritage sites with significant ethnographic connections have been overlooked in the course of recent surveys in the Firetail area.

In the course of our consultancy, Veritas and Eureka expressed concerns to FMGL heritage personnel about the inadequacy of the ethnographic studies and the lack of consultation with YAC. The Study Area is a rare find; and, as we reported in the December 2010 Report, it has not yet been the subject of any substantive ethnographic survey; nor has it been the subject of a comprehensive archaeological report which takes into account all the information we compiled from our work in the area and which needs to be assessed as a whole.

It is quite ironic that a project that has facilitated the discovery of such an amazing resource into knowledge and discovery of the traditional life and practices of the Yindjibarndi will now also facilitate its destruction. In this light, I respectfully urge the DIA to inquire further into the levels of ethnographic enquiry carried out by FMGL and ensure that an appropriate and acceptable level of cultural heritage management is carried out before the opportunity is forever lost due to the total destruction of the resource.

Please note that this letter has been written in consultation and in collaboration with Kath Beech. As a side note, I would also like to explain that I feel so passionately about this issue that this letter has been composed on the eve of my wedding day.

Yours faithfully



Sue Singleton
ARCHAEOLOGIST

Mobile: 0416 027 417 (message service)

cc Yindjibarndi Aboriginal Corporation

ATTACHMENT FOUR:

**Hansard copy of the exchange between the Honourable Robin Chapple and
Minister Collier dated 08 November 2011**

FORTESCUE METALS GROUP — YINDJIBARNDI LAND

990. Hon ROBIN CHAPPLE to the Minister for Indigenous Affairs:

My question is with regard to the Fortescue Metals Group Firetail and Solomon Hub projects on Yindjibarndi land.

- (1) Is the minister aware of a letter via email, dated 5 November 2011, from archaeologist Sue Singleton to the Registrar of Aboriginal Sites that raises concerns about information provided by FMG in the section 18 application process?
- (2) Will the minister establish an inquiry into the conduct of FMG in this matter?
- (3) If no to (2), why not?
- (4) How is the minister responding to the serious allegations raised in the letter?
- (5) Will the minister commence prosecution for unlawful damage or alteration of an Aboriginal site?
- (6) If no to (5), why not; and, how is the minister responding to the complaint of unlawful damage to an Aboriginal site?

Hon PETER COLLIER replied:

I thank the honourable member for some notice of the question.

- (1) Yes.
- (2)–(6) The Department of Indigenous Affairs has initiated an investigation into the matter, and the outcome of the investigation will determine any future action taken.

ATTACHMENT FIVE:

**Copy of the altered Section 18 Ministerial Conditional Consent made to FMG
Pilbara Pty Ltd dated 13 December 2011**



STATE SOLICITOR'S OFFICE

Our ref: Land Claims/Trevor Creewel
SSO
Direct line: 9264-1192

Westralia Square
141 St George's Tce
Perth, Western Australia 6000

GPO Box B83 Perth 6838
Telephone: (08) 9264 1888
Fax (08) 9481-7169
DX 175

14 December 2012

State Administrative Tribunal Fax: - 9325-5099	Green Legal Attention: Mr Green <u>kgreen@greenlegal.com.au</u>
Yindjibarndi Aboriginal Corporation c/- Mr George Irving <u>gmirving@tpg.com.au</u>	Wirlu Murra Yindjibarndi Aboriginal Corporation c/- Corsers Attention: Mr Ron Bower <u>ronald.bower@corsers.com.au</u>

**re: DR 271/2011 – FMG PILBARA PTY LTD v MINISTER FOR INDIGENOUS
AFFAIRS – REVIEW APPLICATION IN STATE ADMINISTRATIVE TRIBUNAL**

Pursuant to Order 2 made on 18 November 2011, attached please find a copy of the Respondent's reconsidered decision in this matter.

A copy has also been posted to all parties by the Respondent's office.

Yours faithfully

Trevor Creewel
**SENIOR ASSISTANT STATE SOLICITOR
 LAND CLAIMS**



Hon Peter Collier MLC
Minister for Energy; Training and Workforce Development; Indigenous Affairs

Our Ref: 34-13307

Mr Grant Preller
 Heritage Approvals Superintendent
 FMG Pilbara Pty Ltd
 Level 2, 87 Adelaide TCE
 EAST PERTH WA 6004

Dear Mr Preller

I refer to the section 18 notice (the Notice) dated 18 February 2011 submitted by FMG Pilbara Pty Ltd (the Landowner) to the Aboriginal Cultural Material Committee (ACMC) pursuant to section 18(2) of the *Aboriginal Heritage Act 1972* (AHA). The Notice was considered at the 1 June 2011 ordinary ACMC meeting.

The Notice advised that you wish to use the land described in Item 4 of the Notice as portion of Tenement M47/1413, as described on map 3 Dwg No: SO_PE_HE_0048, by S. Hendricksen, dated 17 February 2011 in Appendix 3 of the Notice (the Land), for the purpose described in Item 6 of the Notice as the construction and operation of a mining area and associated infrastructure known as the "Firetail Priority Mining Area" (the Purpose).

On 30 June 2011, in accordance with my powers under section 18(3) of the AHA and following consideration of recommendations from the ACMC, I granted consent to the use of the Land for the Purpose subject to conditions. As a result of mediation, I have been invited to reconsider my decision pursuant to section 31 of the *State Administrative Tribunal Act 2004* and hereby grant consent subject to the conditions set out below.

I am advised that based on current knowledge the Purpose will impact upon eight Aboriginal sites within the meaning of section 5 of the AHA (Sites) on the Land. The Sites are DIA 28947 (YIN 07-03), DIA 28948 (YIN 07-04), DIA 28949 (YIN 08-32), DIA 28951 (YIN 09-47), DIA 28954 (YIN 09-57), DIA 29766 (YIN 10-64), DIA 28952 (YIN 09-55), DIA 28950 (YIN 09-03).

Conditions of Consent

That the Landowner:

1. Invite two people (one from each group) nominated by the Yindjibarndi Aboriginal Corporation and the Wirru-Murra Yindjibarndi Aboriginal Corporation at any one time (on a rotational basis) to monitor all and any activities related to the Purpose that involve disturbance to the surface of the Land or any part of the Land in the following situations:
 - a) where the Purpose disturbs the surface of the Land for the first time or what appears to be the first time; and
 - b) where any heritage consultant engaged in respect of the Purpose has indicated that there is a likelihood of finding any objects within the meaning of section 6 of the AHA (Objects) during the carrying out of the Purpose.
2. Prior to disturbing an Aboriginal site referred to in the Tickle 2010 report, engage at least one suitably qualified archaeologist to work cooperatively with the Aboriginal people identified in the Notice (the Consultants) to undertake, using best practice methods that include the salvage recommendations, archaeological salvage of artifact assemblages located within the Aboriginal site and the thorough recording and archiving of each collected artifact assemblage, including a record of the intra-site spatial distributions of collected cultural materials.
3. Report to the Registrar any Site or possible Site that may be identified while undertaking the Purpose pursuant to section 15 of the AHA.
4. Relocate all collected materials to a safe keeping place satisfactory to the Consultants and report to the Registrar on the location and condition of the collected materials.
5. Provide all reports resulting from Conditions 1 and 2 to the Registrar on completion of the salvage and analysis.
6. Upon discovery of any human skeletal remains (Remains) on the Land when undertaking the Purpose, the Landowner must:
 - a. report the discovery to the Western Australia Police;
 - b. report the discovery to the Registrar;
 - c. subject to paragraph (d), ensure that the Remains stay in situ and are undisturbed, including taking all necessary and reasonable proactive steps to protect the Remains; and
 - d. after the Coroner makes a determination about whether the Remains evidence or may evidence a "reportable death" under the *Coroners Act 1996*:
 - i. if the Remains are not Aboriginal remains, remove the Remains prior to any impact and report the whereabouts of the Remains to the Registrar;
 - ii. if the Remains are Aboriginal remains, comply with any direction given by the Registrar during the 90 day period following the Coroner's determination about:
 - where the Remains are to be removed; and/or

- the circumstances in which the Remains are to be removed so far as it is reasonably within the control of the Landowner to do so, but if no direction is given within that 90 day period, remove the remains prior to any impact and report the whereabouts of the Remains to the Registrar.
7. Provide to the Registrar annually, or at the completion of the Purpose if the Purpose is completed within one year, a written report advising the Registrar whether and to what extent the Purpose has impacted on all or any Sites or Objects that may be located on the Land and to assist the ACMC to reassess the status of the Sites. This report is to include a detailed description of:
- a. whether such Sites or Objects have been partially or entirely impacted by the Purpose;
 - b. the level, type and effect of any such impact (including, where possible, the provision of photographs taken during and after the impact); and
 - c. where Sites or Objects have been salvaged, when and how such salvage took place, who was present at the salvage and, subject to issues of cultural confidentiality, to where the material was re-located.

This condition should not be construed as preventing the proponent from advising the Registrar in writing of all or any of the matters outlined above at any time prior to the completion of the Purpose. The Registrar and the ACMC welcome the provision of comprehensive and ongoing information about Sites and Objects in Western Australia.

Failure to comply with these conditions may constitute an offence under section 55 of the AHA. The Department of Indigenous Affairs (DIA) carries out routine checks on compliance with conditions of Ministerial consents.

Requests and Advice

The following information has been provided by the ACMC for the information and guidance of the Landowner (or authorised Agent) and does not constitute a condition of consent.

The ACMC requests that the Landowner (or authorised Agent) give due consideration to requests made by the Aboriginal people consulted about the Purpose regarding the protection of Aboriginal heritage and the recognition of Aboriginal culture and history. For example, recognition of Aboriginal heritage values, beliefs and prior occupation of the area may be conveyed through interpretive signage, street naming or murals.

In addition, the Landowner (or authorised Agent) should make all persons employed or engaged in respect of the Purpose aware of their obligations under the AHA. The Landowner (or authorised Agent) should insert into all and any relevant contracts, project plans, scopes of works, tenders and other similar documents, a requirement that such persons should examine relevant information on the DIA website at:

- <http://www.dia.wa.gov.au/en/Section-18-Applications/Application-process/>

Right of Review of Decision

Where the Landowner (or authorised Agent) is aggrieved by a decision of the Minister made under section 18(3) of the AHA, the Landowner may apply to the State Administrative Tribunal for a review of the decision. The Tribunal's website is www.sat.justice.wa.gov.au.

Other Matters

This consent can only be relied upon by the Landowner (or authorised Agent). Any subsequent owner of the land within the meaning of the AHA must make their own application under the AHA.

Copies of the AHA, the *Aboriginal Heritage Regulations 1974* and the *State Administrative Tribunal Act 2004* may be viewed and downloaded from the website of the State Law Publisher at www.slp.wa.gov.au.

If you have any queries in relation to your application, please contact Mr Cesar Rodriguez, DIA Senior Heritage Officer, on 9235 8024.

Kind regards



**Hon Peter Collier MLC
MINISTER FOR ENERGY;
TRAINING AND WORKFORCE DEVELOPMENT; INDIGENOUS AFFAIRS**

13 DEC 2011

ATTACHMENT SIX:

**Table compiled by the Yindjibarndi Aboriginal Corporation comparing the
FMG Pilbara Pty Ltd section 18 Ministerial consents from 30 June 2011 and 13
December 2011**

TABLE
ORIGINAL MINISTERIAL CONDITIONS OF SECTION 18 CONSENT
 – & –
SUBSEQUENT AMENDMENTS AND DELETIONS

On 30 June 2011 the Minister responsible for protection of Aboriginal heritage in WA, Peter Collier, gave FMG consent to commence mining in Yindjibarndi country at the Solomon Project, but attached several fundamental conditions, recommended to him by the Aboriginal Cultural Materials Committee (ACMC), which gave some assurance Yindjibarndi heritage would be kept safe.

These conditions obliged FMG to work with Yindjibarndi custodians, represented by the Yindjibarndi Aboriginal Corporation (YAC), to carry out comprehensive ethnographic and archaeological surveys – before commencing massive ground disturbance. Most importantly, these conditions required FMG to “provide the Registrar with information on the location and archaeological and ethnographic assessments of all rockshelters and caves located on the land.”

FMG did not want to comply with these conditions and so applied to the State Administrative Tribunal (SAT) seeking an order to have some amended and others deleted.

The following TABLE shows:

Column 1	Conditions of original s18 Consent of Minister Collier 30-06-11
Column 2	Amendments & deletions Sought by FMG 08-09-11
Column 3	Grounds given by FMG for amendments & deletions 08-09-11
Column 4	Minister Collier’s amendments & deletions of Conditions 13-12-11

LINK Original conditions

<http://tiny.cc/qzkxj>

LINK FMG Applic for Amendment of s18 Conditions

<http://tiny.cc/6us5k>

LINK Revised conditions

<http://tiny.cc/r77cj>

It is the DELETION of conditions 1, 4 and 5 that is most consequential.

(Note: These conditions refer to the FMG Section 18 notice in respect of portion of Tenement M47/1413 (17 February 2011), for the Purpose of the construction and operation of a mining area and associated infrastructure known as the “Firetail Priority Mining Area”.)

	1	2	3	4
Original Condition Number	Conditions of original s18 Consent of Minister Collier 30-06-11	Amendments & deletions Sought by FMG 08-09-11	Grounds given by FMG for amendments & deletions 08-09-11	Minister Collier's Amendments & deletions of Conditions 13-12-11
1	Avoid all sites that contain Aboriginal human remains.	Delete	1. Condition 1 is not a correct and preferable decision. Particulars (1) There was no evidence before the Minister that any of DM 28947 (YIN 07-03), DIA 28948 (YIN 07-04), DM 28949 (YIN 08-32), DIA 28951 (YIN 09-47), DIA 28954 (YIN 09-57), DIA 20786 (YIN 10-64), DM 28052 (YIN 09-66), DIA 28950 (YIN 09-03) contained any the The Condition (2) The imposed Condition 1 is Inconsistent with the Imposed Condition 8.	DELETED
2	Invite two people (one from each group) nominated by the Yindjibarndi Aboriginal Corporation and the Wirlu-Murra Yindjibarndi Aboriginal Corporation at any one time (on a rotational basis) to monitor all and any activities related to the Purpose that involve disturbance to the surface of the Land or any part of the Land in the following situations: a) where the Purpose disturbs the surface of the Land for the first time or what appears to be the first time; and b) where any heritage consultant	Delete	2. Condition 2 is not a correct and preferable decision. Particulars (1) No heritage consultant engaged in respect of the Purpose has Indicated that there Is a likelihood of finding any objects within the meaning of section 6 of the Aboriginal Heritage Act 1978 (WA) ("Act"), during the carrying out of the Purpose.	UNCHANGED

	engaged in respect of the Purpose has indicated that there is a likelihood of finding any objects within the meaning of section 6 of the AHA ("Objects") during the carrying out of the Purpose.			
3	<p>Prior to conducting the Purpose engage appropriately qualified archaeologists to work cooperatively with the Aboriginal people identified in the Notice ("the Consultants1") to undertake, using best practice methods, that include the salvage method recommendations for each site within the Tickle 2010 report, and are to the satisfaction of the Registrar of Aboriginal Sites ("the Registrar"), the following:</p> <p>a) archaeological salvage of artefact assemblages located within sites on the Land and the thorough recording and archiving of each collected artefact assemblage, including a record of the intra-site spatial distributions of collected cultural materials; and</p> <p>b) detailed analysis (including usewear and residue analysis where appropriate) of all salvaged Aboriginal cultural material by qualified archaeologists with suitable experience in lithic analysis.</p>	<p>Amend: That Condition 3 Imposed by the Reviewable Decision be amended to the following form:</p> <p>(a) Prior to disturbing an Aboriginal site referred to in the Tickle 2010 report, engage at least one suitably qualified archaeologist to work cooperatively with the Aboriginal people identified in the Notice ("the Consultants") to undertake, using best practice methods, that include the salvage method recommendations archaeological salvage of artefact assemblages located within the Aboriginal site and the thorough recording and archiving of each collected artefact assemblage, including a record of the intra-site spatial distributions of collected cultural materials.</p> <p>(b) Engage at least one qualified archaeologist with suitable experience in lithic analysis to undertake a detailed analysis (Including usewear and residue analysis</p>	<p>3. Condition 3 is an invalid and/or improper exercise of the Minister's powers under s18(3) of the Act, alternatively Is not a correct and preferable decision.</p> <p>Particulars</p> <p>(1) The Condition purports to prohibit the Applicant from undertaking any works on any portion of the Land (as referred to in the Decision) regardless of whether that portion contains an Aboriginal site as referred to in s5 of the Act. The Minister is not empowered by the Act to do so.</p> <p>(2) The discretion conferred upon the Registrar is not a valid exercise of the Respondent's discretion.</p> <p>(3) The Condition requires the Applicant to undertake best practice archaeological salvage, and further requires the Applicant to do so to the satisfaction of the Registrar. The requirement to do so to <i>the</i> satisfaction of the Registrar is unnecessary, and causes additional delay and cost to the Applicant.</p>	<p>AMENDED</p> <p>Prior to disturbing an Aboriginal site referred to in the Tickle 2010 report [*], engage at least one suitably qualified archaeologist to work cooperatively with the Aboriginal people identified in the Notice (the Consultants) to undertake, using best practice methods that include the salvage recommendations, archaeological salvage of artifact assemblages located within the Aboriginal site and the thorough recording and archiving of each collected artifact assemblage, including a record of the intra- site spatial distributions of collected cultural materials</p> <p>[* text in red indicates changes of text]</p>

		where appropriate) of representative samples of all Aboriginal cultural material salvaged In accordance with (a) above.		
				Report to the Registrar any Site or possible Site that may be identified while undertaking the Purpose pursuant to section 15 of the AHA.
4	Prior to conducting the Purpose consult with representatives of the Yindjibarndi Aboriginal Corporation and the Wirlu-Murra Yindjibarndi Aboriginal Corporation, to the satisfaction of the Registrar, to clarify the status of heritage places on the Land and identify all heritage values associated with places on the Land.	Delete	<p>4. Condition 4 is an Invalid and/or improper exercise of the Minister's powers under s18(3) of the Act, alternatively is not a correct and preferable decision.</p> <p>Particulars</p> <p>(1) The Condition purports to prohibit the Applicant from undertaking any works on any portion of the Land (as referred to in the Decision) regardless of whether that portion contains an Aboriginal site as referred to In s5 of the Act. The Minister Is not empowered by the Act to do so.</p> <p>(2) The discretion conferred upon the Registrar Is not a valid exercise of the Respondent's discretion.</p> <p>(3) The Condition serves no purpose. The Act does not refer to heritage places or heritage values. Nothing arises upon the requisite "clarification" having been achieved.</p> <p>(4) The Aboriginal Cultural</p>	DELETED

			Materials Committee has already identified all Aboriginal sites on the Land, including (their importance and significance.	
5	Prior to conducting the Purpose provide the Registrar with information on the location and archaeological and ethnographic assessments of all rockshelters and caves located on the Land which will include copies of all archaeological and anthropological reports over the Land.	Delete	<p>Condition 5 is an invalid and/or improper exercise of the Minister's powers under s18(3) of the Act, alternatively is not a correct and preferable decision.</p> <p>Particulars</p> <p>The Condition purports to prohibit the Applicant from undertaking any works on any portion of the Land (as referred to in the Decision) regardless of whether that portion contains an Aboriginal site as referred to in s5 of the Act. The Minister Is not empowered by the Act to do so. The Condition is uncertain as to whether the Applicant Is obliged to:</p> <p>(a) provide information informally held by the Applicant (including copies of all archaeological and anthropological reports over the Land); or</p> <p>(b) provide Information held by third parties;</p> <p>(c) undertake a physical investigation of every rock shelter and cave on the Land and provide the results of such investigation to the Registrar;</p> <p>(d) undertake some other research to ascertain every rock shelter and</p>	DELETED

			<p>cave on the Land and provide the results of such investigation to the Registrar.</p> <p>(3)The Aboriginal Cultural Materials Committee has already identified all Aboriginal sites on the Land, including their Importance and significance.</p>	
6	Relocate all collected materials to a safe keeping place satisfactory to the Consultants and report to the Registrar on the location and condition of the collected materials.			UNCHANGED
7	Provide all reports resulting from Conditions 1 and 2 to the Registrar on completion of the salvage and analysis.	Amend: to an appropriate form	<p>6. Condition 7 Is an invalid and/or improper exercise of the Minister's powers under s18(3) of the Act, alternatively Is not a correct and preferable decision.</p> <p>Particulars</p> <p>(1) The Condition contains an obvious error. it refers to "reports resulting from Conditions 1 and 2", yet Imposed Condition 1 does not contemplate the preparation of any report.</p>	UNCHANGED
8	<p>Immediately cease carrying out the Purpose if human skeletal remains ("Remains") are found and report the matter to the Western Australia Police and the Registrar.</p> <p>Where it is determined that the Remains are Aboriginal in origin and not a police matter, they must</p>	Amend: That Condition 8 Imposed by the Reviewable Decision be amended to the following form: Upon discovery of any human skeletal remains on the Land when undertaking the Purpose, the landowner must:	<p>7. Condition 8 is an invalid and/or Improper exercise of the Minister's powers under s18(3) of the Act, alternatively Is not a correct and preferable decision.</p> <p>Particulars</p> <p>(1) The Condition purport to prohibit the Applicant from</p>	AMENDED Upon discovery of any human skeletal remains (Remains) on the Land when undertaking the Purpose, the Landowner must: a. report the discovery to the Western Australia Police; b. report the discovery to the Registrar;

	<p>remain in <i>situ</i> and undisturbed until the Registrar makes a decision about how to proceed in respect of the Remains. The Landowner must at its expense manage the Remains in accordance with the Registrar's decision and notify the whereabouts of the Remains to the Registrar.</p>	<p>(1) report the discovery to the Western Australian Police; (2) report the discovery to the Registrar; (3) subject to paragraph (4), ensure that the remains stay in situ and are undisturbed, including taking all necessary and reasonable proactive steps to protect the remains; and (4) after the Coroner makes a determination about whether the remains evidence or may evidence a "reportable death" under the Coroners Act 1996: (a) if the remains are not Aboriginal remains, remove the remains prior to any impact and report the whereabouts of the remains to the Registrar; (b) If the remains are Aboriginal remains, comply with any direction given by the Registrar during the 90 day period following the Coroner's determination about: (i) where the remains are to be removed; and/or ii) the circumstances in which the remains are to be removed so far as it is reasonably within the control of the landowner to do so, but if no direction is given within</p>	<p>carrying out the Purpose (as referred to in the Reviewable Decision) on any portion of the Law regardless of whether that portion has any proximity to the human skeletal remains referred to in the Condition. (2) The discretion conferred upon the Registrar Is not a valid exercise of the Respondent's discretion.</p>	<p>c. subject to paragraph (d), ensure that the Remains stay in situ and are undisturbed, including taking all necessary and reasonable proactive steps to protect the Remains; and d. after the Coroner makes a determination about whether the Remains evidence or may evidence a "reportable death" under the Coroners Act 1996: i if the Remains are not Aboriginal remains, remove the Remains prior to any impact and report the whereabouts of the Remains to the Registrar; ii.if the Remains are Aboriginal remains, comply with any direction given by the Registrar during the 90 day period following the Coroner's determination about:</p> <ul style="list-style-type: none"> • where the Remains are to be removed; and/or • the circumstances in which the Remains are to be removed so far as it is reasonably within the control of the Landowner to do so, but if no direction is given within that 90 day period, remove the remains prior to any impact and report the whereabouts of the Remains to the Registrar.
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		that 90 day period, remove the remains prior to any impact and report the whereabouts of the remains to the Registrar.		
9	<p>Provide to the Registrar annually, or at the completion of the Purpose if the Purpose is completed within one year, a written report advising the Registrar whether and to what extent the Purpose has impacted on all or any Sites or Objects that may be located on the Land and to assist the ACMC to reassess the status of the Sites.</p> <p>This report is to include a detailed description of:</p> <ul style="list-style-type: none"> a. whether such Sites or Objects have been partially or entirely impacted by the Purpose; b. the level, type and effect of any such impact (including, where possible, the provision of photographs taken during and after the impact); c. where Sites or Objects have been salvaged, when and how such salvage took place, who was present at the salvage and, subject to issues of cultural confidentiality, to where the material was re-located. 			UNCHANGED

ATTACHMENT SEVEN:

Letter to the ACMC from YAC dated 14/12/11



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

14/12/11

To the Aboriginal Cultural Material Committee

The Department of Indigenous Affairs (DIA)

FMG Notice under S 18 and S 16 of the AHA
for the following applications

1 x s18 for 'For consent to use Land for construction of roads, ore processing facility, tailings storage facility and infrastructure at Fortescue Metals Group's Solomon Project, Western Australia'

1 x s16 for 'Application under section 16 of the Aboriginal Heritage Act 1972 to investigate 4 sites at Fortescue's Solomon Project'

to be considered by the ACMC on December 14, 2011

- CC: The WA Minister for Energy, Training and Workforce Development;
Indigenous Affairs - The Honourable Mr Peter Collier
- CC: Mr James Cook DIA
- CC: Mr Ryan Crawford DIA
- CC: Mr Cesar Rodriguez DIA
- CC: Mr Michael Woodley CEO, Yindjibarndi Aboriginal Corporation
- CC: Mr Stanley Warrie Chairperson, Yindjibarndi Aboriginal Corporation
- CC: The WA Member for the Mining & Pastoral Region - The Honourable Mr Robin Chapple
- CC: The WA Shadow Minister for Environment; Climate Change; Lands;
Indigenous Affairs; Youth, the Honourable Dr Sally Talbot
- CC: The Senator, Ms Rachel Siewert

DEAR ACMC COMMITTEE MEMBERS

In our most recent letter to you dated 04/12/11, the Yindjibarndi Aboriginal Corporation (YAC) request that the ACMC defer its decision on the FMG section 18 application, and reject the FMG section 16 application, that are before the committee to be considered today.

The YAC also urge that all section 18 applications made by FMG for consideration by the ACMC, that have not been the subject to Ministerial consent, continue to be deferred for decision because of the following reasons:

1. It would not be prudent to make decisions regarding the destruction of Yindjibarndi heritage sites within the areas because the DIA has launched an inquiry into the actions of FMG with regard to the collection and reporting of heritage data, sites and values within their 'Solomon Hub' project.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

2. FMG continues to refuse access to the YAC to the section 18 and section 16 areas. Therefore it is impossible for the YAC to reveal, document and register all Aboriginal sites, and deliver an accurate assessment of the cultural heritage values, to the APMC, so the committee can make a fully informed decision on the destruction of sites.

YAC Refused Access to all areas within FMG's 'Solomon Hub'

As reported to you in the letter to your committee on 04/12/11, the YAC's intention was to visit and record Yindjibarndi heritage sites and assess the cultural heritage values within the area the Yindjibarndi term *Ganyjingarringunha*, and FMG term their 'Solomon Hub' project.

The YAC had planned to travel to *Ganyjingarringunha* on Tuesday 06/12/11 to begin the heritage surveys with Archaeologists and Anthropologists who had arrived in Karratha on Monday 05/12/11 from around Australia to assist the YAC with the documentation.

However, at the request of Mr Blair McGlew, FMG Pilbara Projects Manager, which was made to the YAC on Tuesday morning (06/12/11), the YAC delayed its trip because Mr McGlew and Mr Tom Weaver (FMG Native Title Manager), asked to meet with the YAC in person in Roebourne on Wednesday 07/12/11, to negotiate conditions of access. A negotiated access was and still is the preferred option for the YAC.

Unfortunately, the parties were not able to agree on the conditions of access. This issue was the subject of a press release made by the YAC to the public on Friday 09/12/11 (attached).

During discussions, the YAC told FMG that it would accept the same 'conditions' that FMG afforded Ms Kathryn Przywolnik, WA Registrar for Indigenous Sites, when she and her team visited the areas during the week of Tuesday 22/11/11 to Saturday 26/11/11. These access 'conditions' meant that the YAC would not utilise film or video to document their sites. However, FMG rejected this compromise position because they said that YAC were a 'special' group of people who could not be *trusted* by FMG. This was particularly disappointing for the YAC because when we met with Ms Kathryn Przywolnik at the FMG security gate (after being refused access) on Friday 25/11/11, we agreed with Kathryn that we hoped that YAC would be afforded the same access and entry conditions as her team, when we came to the area with the independent YAC ethnographic and archaeological team.

Following the meeting, in a letter to Mr McGlew, dated 07/12/11 (attached), the YAC made it plain to FMG that it intended to visit the sites within the section 18 areas, because it had the legal right to do so..

In response, a letter was delivered by FMG's Site Manager to the Yindjibarndi's campsite on Thursday evening 08/12/11 (attached). The letter threatens the Yindjibarndi people that if they stepped into any of FMG's (undefined) 'controlled'



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

areas then they would be sued personally; in addition, YAC and Juluwarlu Group Aboriginal Corporation would also be sued.

When the Yindjibarndi heritage team drove the short distance from their camp to enter the FMG tenements to commence the documentation and assessment heritage survey process on the morning of Friday 09/12/11, it found the track blocked by a barricade and FMG security guards.



Figure 1: The YAC was blocked entry by a barricade and FMG security guards. Photo taken at 590541 E, 7555115 N Zone 50 MGA 94

The FMG Site Manager was then called; in due course he arrived for a discussion, and during the ensuing conversation, FMG trucks continued to dump soil on, and deliberately block, the track, to ensure that the YAC could not enter. The FMG Site Manager absolutely refused entry to the YAC and said that if we did enter he would be forced to close the whole operation down and we would be liable for all costs FMG incurred.

The YAC made the decision that even though FMG were illegally barring our way; that it is Yindjibarndi country that FMG is destroying; and that we had the legal right to enter the area to inspect and assess our religious and cultural precinct in a way that would not interfere with any of the FMG operations, we would take a conservative approach at this time and not pass the barricade or run the gauntlet of trucks and security guards.



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I.C.N. Number 4370

A.B.N. Number 97 456 543 455

While the majority of the YAC team conducted surveys outside of the barred zone, several of our party scouted along the M47/1413 tenement boundary in a way that did not interfere with any FMG 'operations' and took photos and film of the FMG activities that have been occurring within M47/1413 and M47/1409. It appears that since 28/10/11 when we were there last, FMG in fact, has done very little in the way of extra earthworks, and they have not touched any of the Section 18 areas.



Figure 2: Photo of section 18 area in tenement M47/1413. Photo taken from 593723 E, 7554704 N Zone 50 MGA 94 looking west on a bearing of 260 degrees - the area remains in situ and untouched by FMG - there would be absolutely no interference of FMG's operations if YAC was to conduct heritage surveys in this location.

On Friday 09/12/11 and Saturday 10/12/11 the YAC team were constantly placed under surveillance by a FMG helicopter which was highly intimidating and intruded upon the activities of the YAC team.

Conclusion

Once again we ask that the ACMC defer any decisions on FMG section 18 applications and reject all FMG section 16 applications until the YAC is allowed to document and register our religious precincts that contain Aboriginal sites and



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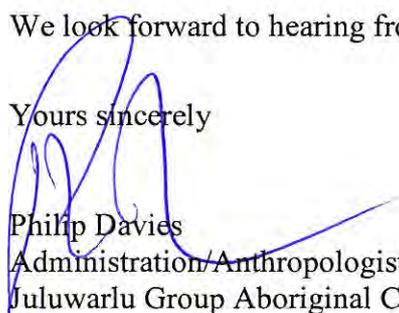
cultural heritage values that lie within those zones that have not yet been revealed or identified to the committee or the Registrar.

We also make the same request until the recommendations or conclusions of the inquiry by the DIA into FMG's antics and actions is fully reported upon.

We have film and photographs of all the discussions that took place on country and they are available for your committee if you would like to have copies of, view, or consider them.

We look forward to hearing from you on this matter.

Yours sincerely


Philip Davies
Administration/Anthropologist
Juluwarlu Group Aboriginal Corporation
For and on behalf of the Yindjibarndi Aboriginal Corporation
08 91821497 Phone
0429 110451 Mobile (Phil)
0419 097130 Mobile (Michael)
08 91821035 Fax
pdavies@juluwarlu.com.au
www.juluwarlu.pilbara.net
www.yindjibarndi.org.au

On behalf of the Chairperson, Directors, members and employees of the Juluwarlu Group Aboriginal Corporation

The Juluwarlu Vision - 'To enable Ngarda to sustain a cultural life in contemporary society

“MW-95”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 4 pages is the annexure marked **“MW-95”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

Letter Faxed
11:10 AM 22/12/11
TO MINISTER
COLLIER'S OFFICE

22 December 2011

The Honourable Peter Collier
Minister for Indigenous Affairs
Parliament House
PERTH WA 6000

Dear Minister

RE: Altered conditions of consent under Section 18 of the Aboriginal Heritage Act 1972 for FMG's 'Firetail Priority Mining Area'

We refer to your decisions of 30 June 2011 and 13 December 2011, under which conditional consent was granted to FMG Pilbara Pty Ltd (FMG), in accordance with s 18(3) of the *Aboriginal Heritage Act 1972* (the AHA), to develop an area of unallocated Crown land that is the subject of an Application in the Federal Court of Australia (Federal Court reference No: WAD 6005 of 2003) for a determination recognising the traditional rights and interests held by Yindjibarndi people under their traditional system of law, customs and religious beliefs (the Yindjibarndi #1 Native Title Determination Application).

As you may know, Yindjibarndi Aboriginal Corporation (YAC) acts as agent for the Applicant in the Yindjibarndi #1 Native Title Determination Application, pursuant to a Notice of Appointment signed by all members of the Applicant and filed in the Federal Court on 23 February 2008.

As you may also know, a determination of native title, which formally recognised the Yindjibarndi People as a group of Aboriginal persons who continue to acknowledge and observe their traditional laws and customs, was made by the Federal Court in May 2005¹; and, on 21 January 2008, the Office of Native Title advised YAC that the State of Western Australia:

... concedes, for the purposes of the Yindjibarndi #1 Claim, that there is a Yindjibarndi society which has continued to exist since sovereignty as a body united by its acknowledgement and observance of laws and customs of a normative system referral back to a pre-sovereignty society.

On this basis, we believe Yindjibarndi people are entitled to the benefit of s. 7(1) of the AHA, which provides that where a group of Aboriginal persons “usually lives subject to Aboriginal customary law”, the AHA “shall not be construed so as to take away or restrict any right or interest held or enjoyed in respect to any place or object to which this Act applies, in so far as that right or interest is exercised in a manner that has been approved by the Aboriginal possessor or custodian of that place or

¹ *Daniel v State of Western Australia* [2005] FCA 536



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

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object and is not contrary to the usage sanctioned by the Aboriginal tradition relevant to that place or object”.

The land which is the subject of your conditional consent forms part of the mining lease (M47/1413), which was granted to FMG, without the free prior and informed consent of the Yindjibarndi People, after the Federal Court dismissed our appeal against the determination of the National Native Title Tribunal (Tribunal) that allowed the State to grant M47/1413. The land in question has been identified, by FMG as the “Firetail Priority Mining Area”.

Relevantly, in the Tribunal hearing, evidence was given by Michael Woodley about the existence of a number of Aboriginal sites (as defined in the AHA) which are situated within the “Firetail Priority Mining Area”. These sites include:

- ochre quarries;
- numerous caves and rock-shelters (“*Yamararra*”), traditionally used as burial chambers for Yindjibarndi people and as storerooms - for their “sacred gear”; and,
- an ancient creek bed where senior Yindjibarndi lawmen lawmen ritually collect sacred stones (“*Gandi*”) for use in religious ceremonies.

Although the Tribunal decided to allow the State to grant M47/1413, the Tribunal determined that “*the areas where the ochre quarries and Gandi are located within the proposed lease [M47/1413]...are areas of particular significance to the native title party*”²; and, that the numerous caves and rock-shelters are also “*sites of particular significance to the native title party*”³.

The judgment of the Full Federal Court noted the Tribunal’s observation that, in the unallocated Crown land in question, Yindjibarndi people have “*exercised their native title rights and interests without interference by the activities of others in the past or the present*”⁴. And the Full Court also noted⁵ that:

“The appellants’ case was considered by the Tribunal and the primary judge on the basis that the appellants’ use of ochre and gandi are religious practices. This approach has not been contested by the State or FMG. Further, if the ochre and gandi sites are dug up in the process of mining iron ore, the appellants will be prevented from continuing to access the ochre and gandi.”

² *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2009] NNITA 91 at [74]

³ *Ibid*, at [72]

⁴ *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011] FCAFC 100 , at [31]

⁵ *Ibid*, at [86]



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The Full Court ultimately upheld the decisions of the Tribunal and the primary judge on the ground that:

“a number of steps are necessary before that outcome will eventuate. The future act determinations by the Tribunal were one step. But they alone will not prevent the appellants continuing their religious practices. FMG will only have authority to mine if the State exercises its power under the Mining Act to grant the mining leases. Western Australian State law also provides for yet a further step, namely, an application under the AHA for authority to excavate or disturb an aboriginal site. Only if FMG obtains authority to interfere with the ochre and gandi sites would the appellants be prevented from continuing to observe those religious practices”⁶.

In this regard, it is noted also that the Tribunal further observed:

“It is a defence to a prosecution under the AHA if the person charged can prove that he or she did not know, and could not reasonably be expected to have known, that the place was a site covered by it (s 62). Obviously, this defence would not be available to [FMG]. Whilst the Register of Sites kept under the AHA does not identify any sites on or in the vicinity of the proposed lease, the grantee party submitted three archaeological site survey reports commissioned by them (GP57, 59 and 60) and a map of the proposed lease (GP61) which locates the 13 rockshelter sites identified by the reports within the proposed lease. Furthermore, the first affidavit of Michael Woodley identifies a further site or sites within the proposed lease – notably the area containing the Gandi or sacred stones which are central to the native title party’s ceremonial obligations and are utilised by the native title party each year. The standard endorsement on mining leases draws the grantee party’s attention to the AHA and if imposed, the second and third extra conditions proposed by the Government party would require the grantee party to give to the native title party a copy of its proposal to undertake developmental/productive mining or construction activity and a plan showing the location of the proposed mining operations and related infrastructure, including proposed access routes; and requires notice of any s 18 application. The native title party would be in a position at this point to consider their attitude to the proposal and decide to support or oppose it, check that it is in conformity with previous understandings, inform the grantee party of any areas of concern and make submissions to the ACMC.”⁷

FMG’s application for your consent under s 18 of the AHA failed to identify the ochre and gandi sites, which were determined by the Tribunal to be sites of particular significance to the Yindjibarndi People; and it failed to identify many of the numerous caves and rock-shelters, which the Tribunal also determined are sites of particular significance which should be protected by the AHA. YAC advised the Aboriginal Cultural Materials Committee (the ACMC) of the existence of these sites within the “Firetail Priority Mining Area”; and, made submissions as to the importance and significance of these sites to Yindjibarndi people. Although we have not yet been able to ascertain whether or not the ACMC expressly identified these sites in the written recommendation made to you, as required by s 18(2) of the AHA; the conditions that were attached to your consent of 30 June 2011, at least mandated a process whereby these and other Yindjibarndi sites would be identified and protected.

⁶ Ibid

⁷ *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2009] NNTTA 91 at [77]



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I.C.N. Number 4370

A.B.N. Number 97 456 543 455

In this regard we refer specifically to conditions 1, 4 and 5, which in effect required FMG, respectively, to:

- a. avoid all sites that contain human remains;
- b. consult with representatives of YAC, to the satisfaction of the Registrar (before commencing any mining activities) so as to “*clarify the status of heritage places on the Land and identify all heritage values associated with places on the Land*”; and,
- c. prior to the commencement of any mining activities, “*to provide the Registrar with information on the location and archaeological and ethnographic assessments of all rock-shelters and caves located on the Land which will include copies of all archaeological and anthropological reports over the Land*”.

YAC discussed the above conditions with the Yindjibarndi people who are particularly associated with the sites discussed above and formed the view that they were prepared to live with those conditions on the understanding that:

- upon the proper identification and recording of the significance of those sites, they would be protected under s 16 of the AHA, which provides that the Registrar, on the advice of the ACMC, may authorise the entry upon and excavation of any site so identified, or the examination and removal of anything on or under the site, in such manner and subject to such conditions as the Committee may advise; and,
- in considering whether, and if so upon what conditions, such entry upon and excavation of any of our sites should be permitted, the ACMC would have regard to s 7(1) of the AHA, as referred to above.

Given the importance attributed to those conditions by the relevant Yindjibarndi people, YAC respectfully requests that you furnish written reasons for the deletion of each of those conditions in the s 18 consent provided by you to FMG, on 13 December 2011, in respect of the “Firetail Priority Mining Area”.

Yours sincerely

Stanley Warrie
Chairman

“MW-96”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 18 pages is the annexure marked **“MW-96”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

Office Use Only:	Application	
	Year	Number

Section 18 Notice: Mining and Infrastructure Phase 8

NOTICE UNDER SECTION 18 OF THE *ABORIGINAL HERITAGE ACT 1972*
APPLICATION FOR 'Consent to certain uses'

1. Statement of Notice

To the Aboriginal Cultural Material Committee.

I, Mark Thomas, as an authorised representative of FMG Pilbara Pty Ltd (a wholly owned subsidiary of Fortescue Metals Group Ltd), give notice under section 18 of the *Aboriginal Heritage Act 1972* (the Act) that I require to use the Land, as described in Item 5, for the purpose described in Item 6 below.

2. Contact details of Applicant

Contact Name	Roberta Molson				
Position	Heritage Approvals Superintendent				
Organisation Name	FMG Pilbara Pty Ltd				
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth, WA 6004				
Phone	08 9230 1275	Mobile	0420 552 542	Fax	6218 8880
E-mail	rmolson@fmgl.com.au				

Heritage Consultant	Jodie Mitchell				
Organisation Name	Alpha Archaeology Pty Ltd				
Mailing Address	Suite 107, 10 Elizabeth St, Kensington, Vic 3031				
Phone	03 9372 3350	Mobile		Fax	03 9372 3353
E-mail	jodie.mitchell@alphaarc.com				

3. Landowner's Authorisation

Land Parcels 1 – 2

Landowner's Full Name	FMG Pilbara Pty Ltd				
Organisation Name					
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth 6004				
Phone	08 6218 8888	Mobile		Fax	08 6218 8880
E-mail	n/a				

See **Appendix 1** for FMG Pilbara Pty Ltd company details.

4. The Land subject to the s18 Notice

Land Parcel 1

Certificate of Title	Vol		Folio		Diagram / plan /	
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Department of Indigenous Affairs

					deposit plan no.	
Lot Number and location of subject lot	Lot No. Part			Location		
Reserve No (if applicable)						
Street Number and Name						
Town / Suburb				Postcode		
Tenement ID	M47/1413					
Land Zoning	Vacant Crown Land					
Geographical Coordinates (GDA94)	597,000mE 7,553,510mN					
Other						

Land Parcel 2

Certificate of Title	Vol		Folio		Diagram / plan / deposit plan no.	
Lot Number and location of subject lot	Lot No. Part			Location		
Reserve No (if applicable)						
Street Number and Name						
Town / Suburb				Postcode		
Tenement ID	M47/1431					
Land Zoning	Vacant Crown Land					
Geographical Coordinates (GDA94)	593,740mE 7,553,474mN					
Other						

Land Parcel 3

Certificate of Title	Vol		Folio		Diagram / plan / deposit plan no.	
Lot Number and location of subject lot	Lot No. Part			Location		
Reserve No (if applicable)						
Street Number and Name						
Town / Suburb				Postcode		
Tenement ID	M47/1409					
Land Zoning	Vacant Crown Land					
Geographical Coordinates (GDA94)	589,245mE 7,550,805mN					
Other						

See **Appendix 2** for tenement reports.

5. Map(s) of the Land

Appendix 3: General location of the Land subject to this Notice.

- Appendix 4:** Mining and Infrastructure Phase 8 map displaying s18 boundary and sites (the subject of this application), previously submitted s18 boundaries, tenements and archaeologically-surveyed areas.
- Appendix 5:** Mining and Infrastructure Phase 8 map displaying s18 boundary and sites (the subject of this application), tenements and ethnographic-surveyed areas.
- Appendix 6:** Overview Section 16 / Section 18 map of the Solomon project area.

6. The Purpose of the use of the Land

Item	Applicant's description
Concise description (10 words or less)	Construction and operation of Mining Pits, ROM Pad, Ore Stockpiling, Haulage Access Ramp, Roads and Associated Infrastructure at Fortescue's Solomon Project.
General description of purpose	<p>Fortescue Metals Group Limited's (Fortescue) Solomon Project is an expansion of its current iron ore mining and export operations in the Pilbara region of Western Australia. The Solomon Project is located on the central Hamersley Ranges, and situated approximately 60km north of Tom Price, Western Australia.</p> <p>The 'Purpose' for which the 'Land' subject to this Notice is to be used, is for the construction and operation of Mining Pits, ROM Pad, Ore Stockpiling, Haulage Access Ramp, Roads and Associated Infrastructure in the Firetail and Valley of the Kings areas, at Fortescue's Solomon Project.</p> <p>Refer to the Map in Appendix 4 for an overview of proposed infrastructure placement.</p>
Processing inputs, discharges	<p>The Kings OPF, conveyor and related infrastructure are expected to produce 20 million tonnes of product ore each year following completion.</p> <p>Processing inputs and discharges for the Solomon Project such as water, diesel and oil will be managed as outlined in Fortescue's Construction Environmental Management Plan. Refer to Appendix 7 for relevant documentation.</p>
Bulk material source	Any bulk materials (such as gravel and borrow material) that are required to be sourced at the Solomon Project will be extracted under approvals issued by the Department of Mining and Petroleum (DMP) and the Minister for the Environment from within the project area.

Department of Indigenous Affairs

Associated infrastructure	<p>The Solomon Project will include the establishment and operation of mining operations at the Firetail and Kings iron ore deposits as well as the construction and operation of the Solomon railway line.</p> <p>Associated infrastructure to support the Solomon Project includes: an airstrip; access roads; accommodation camps; offices, ablution and change house facilities; a power station; and communications infrastructure.</p> <p>Once the mine is operational, the processed iron ore will be transported along the Solomon railway line linking onto the existing Port Hedland to Cloudbreak railway line at chainage 175 to Fortescue's existing Herb Elliot Port facilities in Port Hedland for export.</p>
New or existing project, approvals & associated dates	<p>The key approvals received for the construction of the mining area include:</p> <ul style="list-style-type: none"> • Approval under Part IV of the <i>Environmental Protection Act 1986</i>, obtained in April 2011; • Approval under the <i>Environment Protection and Biodiversity Conservation Act 1999</i>, obtained in April 2011; • Approval under Part V of the <i>Environmental Protection Act 1986</i>, obtained in March 2012; • Approvals under Section 18 of the <i>Aboriginal Heritage Act 1972</i>. • Approval under the <i>Mining Act 1978</i>, obtained in June 2011; <p>Fortescue will also be seeking further approvals under the following acts for the development of the mining area:</p> <ul style="list-style-type: none"> • <i>Environmental Protection Act 1986</i> (Part V) • <i>Rights in Water and Irrigation Act 1914</i> • <i>Mining Act 1978</i>
Relation to other proposals	n/a
Timeframe for development, staging	<p>Construction of the Firetail Mining Area commenced in September 2011. Site avoidance is to continue, in line with the Solomon <i>Cultural Heritage management Plan</i>, within the Land subject to this Notice, until such time as Ministerial Consent is received and sites are salvaged accordingly.</p> <p>Construction timing for commencement of associated infrastructure within the proposed mining area is as follows:</p> <ul style="list-style-type: none"> • ROM Pad – Q2 2012 • Access Ramp – Q4 2012
Extent of activity (m2)	The Land subject to this notice comprises a total area of 3,185,000 m ² (318.5 hectares).

Department of Indigenous Affairs

Previous s18 Notices regarding the Land	<p>To date Fortescue has submitted eight (8) Section 18 applications for land adjacent to the Land subject to this Notice:</p> <ol style="list-style-type: none"> 1. Solomon Airport, Camps and Admin – ministerial consent received 13 May 2011 (DIA ref: 34-11556). 2. Firetail Priority Mining Area – ministerial consent received 30 June 2011 (DIA ref: 34-13307). 3. Firetail Priority Infrastructure Area – ministerial consent received 30 June 2011 (DIA ref: 34-13307). 4. Firetail Conveyors and Trinity TSF – ministerial consent received 27 January 2012 (DIA ref: 34-15205). 5. Firetail Central, West and Rail Loop – ministerial consent received 27 January 2012 (DIA ref: 34-15627). 6. Firetail Trinity and West – ministerial consent received 7 February 2012 (DIA ref: 34-16218). 7. Conveyor and infrastructure Phase 2 – ministerial consent received 2 April 2012 (DIA ref: 34-16867). 8. Mining and Infrastructure Phase 7 – ministerial consent received 24 April 2012 (DIA ref: 34-17907).
Other	n/a

7. Summary of applicant consultation with relevant Aboriginal people and other stakeholders

Consultation	Description
Process of consultation and informant selection	<p>History of consultation between Fortescue and Yindjibarndi</p> <p>In 2007, when Fortescue sought the grant of its initial licences to carry out exploration work in the Solomon area, it initiated a consultation process with the Native Title Claimants for the area, The Yindjibarndi People.</p> <p>Since 2007 the process of consultation undertaken by Fortescue has been driven by the relationship between the parties. This relationship has on some levels been problematic – primarily due to a failure of the parties to reach an agreement over financial compensation for mining.</p> <p>In July 2007, Fortescue negotiated a heritage agreement with the Yindjibarndi People to cover exploration activities. Five months after the signing of this agreement, the Yindjibarndi People advised Fortescue that, until the conclusion of a Land Access Agreement Yindjibarndi People would no longer participate in Heritage Surveys with Fortescue. Yindjibarndi's proposed Land Access Agreement included a prohibitive remuneration package in excess of any amount previously agreed to within the mining industry.</p> <p>Fortescue continued to seek the participation of Yindjibarndi People in heritage surveys and in consultation over heritage matters. Fortescue's attempts at consultation included meetings and discussions with the Yindjibarndi Aboriginal Corporation (YAC) through Juluwarlu Aboriginal Corporation (JAC), Yindjibarndi's chosen heritage representatives. In addition, on all occasions Fortescue requested Yindjibarndi to continue surveys while the Land Access Agreement negotiations continued.</p> <p>Fortescue continued to keep DIA informed of these matters and outlined its concerns about Yindjibarndi's refusal to participate in heritage surveys. Fortescue has also sought advice from DIA on how best to meet its obligations under the <i>Aboriginal Heritage Act 1972</i> (AHA) in these circumstances. In addition Fortescue requested that the DIA assist in the facilitation of consultation between the parties.</p> <p>In July 2010 Fortescue was approached by senior Yindjibarndi claimants wanting to engage in heritage matters to protect their country. Fortescue therefore arranged a site visit to the Solomon Project Area, offering the Yindjibarndi participants an opportunity to see the project area and consult over proposed mining plans.</p> <p>On 23 November 2010, members of the Yindjibarndi People,</p>

dissatisfied with the approach of the JAC and YAC, registered the Wirilu-Murra Yindjibarndi Aboriginal Corporation (WYAC).

Furthermore, at a community meeting held on 16 March 2011, a majority of the Yindjibarndi People voted in favour of executing a Land Access Agreement with Fortescue. Subsequent to this positive response, Fortescue have continued to engage with the Yindjibarndi People via the WYAC representative body in the development and execution of a Land Access Agreement.

On 17 June 2011 the National Native Title Tribunal (NNTT) passed a decision granting a number of Fortescue's mining and exploration tenements in the Solomon Project area. This decision supported Fortescue's position that they had negotiated in good faith with the Yindjibarndi People. In addition, the decision supported Fortescue's approach to dealing with both representative bodies (YAC & WYAC) with regard to Yindjibarndi land. The NNTT decision as well as a summary of key points, is included as **Appendix 8**.

Fortescue's position with regard to consultation with the Yindjibarndi People has been further supported by receipt of ministerial consent for to seven previously submitted Section 18 submissions over land in Yindjibarndi country. Refer to Section 6 of this Notice for an overview of previous Section 18 submissions.

Since July 2010, regular consultation between WYAC and Fortescue has seen Yindjibarndi Traditional Owners participating in heritage surveys on an ongoing basis.¹ Also, a number of Yindjibarndi Heritage Monitors have been engaged, who play a key role in the management and monitoring of heritage sites on Yindjibarndi country.

Positive consultation with WYAC has also resulted in the development of a *Cultural Heritage Management Plan* (CHMP) for Solomon Project, which provides an important procedural framework for ongoing collaboration over a range of heritage matters. A presentation on the CHMP development, discussed with WYAC on 8 June 2011, is included as **Appendix 9**. The resulting CHMP is included as **Appendix 10**.²

A copy of the Solomon Project CHMP was forwarded to the YAC on 26 May 2011 inviting input and comment; however Fortescue has not yet received a response. This correspondence is included at **Appendix 11**.

Throughout this period, and continuing through 2012, Fortescue has consistently extended invitations to the YAC to participate in heritage surveys and provide comment on known heritage sites on the Land. Following recent developments within the WYAC, this invitation was

¹ This is expected to continue ongoing with two groups of 6-8 Yindjibarndi Traditional Owners working regular survey swings.

² Fortescue Metal's Group Limited, *Cultural Heritage Management Plan for Solomon project area in the Pilbara region of WA*, FMG, Perth, July 2011.

again extended to the YAC to confirm that YAC would be copied in to all Heritage Work Instructions forwarded to WYAC, with YAC invited to nominate participants for such heritage work. This correspondence is included as **Appendix 12**.

YAC have constantly ignored or declined Fortescue's invitations to engage in heritage matters.

Additional consultation relating directly to the Land

Fortescue formally notified the Yindjibarndi People on 17 February 2012 of its intention to submit a Section 18 Notice on 23 March 2012. For various reasons, the application was delayed, and an updated/revised notification was subsequently sent on 23 March 2012, outlining Fortescue's intention to submit on 27 April 2012. This correspondence is included as **Appendix 13**.

Fortescue then met with the WYAC Heritage Sub-Committee, on 20 April 2012 in Roebourne. Amongst other matters, this Section 18 application was discussed in detail. This included discussion on sites to be impacted by the Purpose and confirmation that the group was satisfied with the level of consultation over the Land. A copy of the presentation is included in **Appendix 14**.

Although the problematic relationship with the YAC has impacted on the process for consultation, significant progress has been made since 2011 through regular and detailed consultation with Yindjibarndi Traditional Owners from the WYAC membership. Despite the YAC's persistent refusal to engage in positive negotiations or in heritage surveys, Fortescue has continued to provide YAC with documentation and the opportunity to provide information about heritage places and related values on the Land. Heritage Work Instructions (HWIs) for Sites, the subject of this Notice, were sent through to WYAC and YAC. This correspondence is included in **Appendix 15**.

The above summary and related documents demonstrate that Fortescue has undertaken extensive consultation with Yindjibarndi People over the Solomon Project area and the Land the subject of this Notice. Fortescue submits that the information provided to the ACMC is sufficient to establish the existence of sites on the Land and the significance of those sites.

Archaeological Surveys

Throughout the extensive history of archaeological surveys over the Land, all areas on the Land have been accessed for inspection during pedestrian surveys. Most sections of the Land have been surveyed more than once through drill line surveys then subsequent block surveys. In 2011 Alpha Archaeology was engaged to conduct heritage surveys in the Solomon Project area and this included most of the Land the subject of this notice. Alpha Archaeology also

conducted assessments of all sites on the Land to a Section 18 level. Alpha's report, detailing the results of surveys and Section 18 level recording of sites on the Land is included as **Appendix 16**.

All surveys conducted prior to the engagement of Alpha Archaeology are analysed reported on, between pages 11 and 15 in Alpha Archaeology's report in **Appendix 16**.

The archaeologists and Traditional Owners who participated in the surveys covering the Land are listed in Table 1 below:

Department of Indigenous Affairs

Table 1: Archaeologists & Yindjibarndi Traditional Owners involved in archaeological surveys over the Land

Survey date	Archaeologists	Yindjibarndi Representatives
13 March – 23 March 2012	Gerard Niemoller, David Tutchener, Kate Duca, Alexander Moss, Craig Reid	Ricky Sandy, Jeffery Gilby, Kieran Long, Wesley Munda, Junior Larry, Charles Sandy
27 February – 9 March 2012	Brian Armstrong, Helen Melville, Lian Flannery, Mark Dowdell, Sandra Stjokovic, Shane Willis	Frances Phillips, Ken Sandy, Kiefer Long, Robert Tody, Stephen Hubert, William Long
15 August – 26 August 2011	Alana Corbert, Elizabeth McFarlane, Lian Flannery, Mark Williams, Phillip Roberts, Roark Muhlen-Schulte	Aidan Hughes, Christian Moody, Curtis Allan, Dwayne Toby, Edmund Sandy, Ricky Sandy, Robert Toby
1 August – 12 August 2011	Alexander Timms, Bruce Numode, Craig Reid, Nick Ellis, Phoebe Heddell-Stevens	Brian Phillips, Charlie Sandy, Clarence Woodley, Ethan Sandy, Glen Aubrey, Wesley Munda
4 July – 15 July 2011	Alexander Timms, Bruce Numode, Mark Williams, Nick Ellis, Pauline Hams, Rebecca Yit	Andrew James, Bobbie Willis, Jeffrey Adams, Stephen Adams, Ricky Sandy, William James
14 May, 4 June & 21 September – 26 September 2010	Rob Tickle, Terry Moore, Sue Singleton, Phil Williamson	Jimmy Horace, Shaun Derschow, Isaac Guinness, Keiren Long, Robert Mather, Bobby Willis, Ken Sandy
20 January – 13 February 2010	Rob Tickle, Terry Moore, Trudy White	Yindjibarndi representatives were invited to participate but declined to do so
18 August – 19 August 2009	Rob Tickle, Terry Moore	Yindjibarndi representatives were invited to participate but declined to do so
10 July – 20 July 2009	Rob Tickle, Terry Moore	Yindjibarndi representatives were invited to participate but declined to do so
5 July – 9 July 2009	Rob Tickle, Terry Moore	Yindjibarndi representatives were invited to participate but declined to do so
28 April 2009 – 6 May 2009	Phil Czerwinski, Guadalupe Cincunegui	Angus Mack, Thomas Jacobs, David Woodley, Darren Jacobs, Ken Sandy, Bobby Willis, David Jerrold, Middleton Cheedy
30 September – 2 October 2008	Wayne Glendenning, Jim Dawson	Yindjibarndi representatives were invited to participate but declined to do so
14 August – 17 August 2008	Wayne Glendenning, Mark Cooney	Yindjibarndi representatives were invited to participate but declined to do so
1-2 July 2008	Wayne Glendenning, Mark Cooney	Yindjibarndi representatives were invited to participate but declined to do so
30 June – 5 July 2008	Wayne Glendenning, Mark Cooney	Yindjibarndi representatives were invited to participate but declined to do so
15 April – 22 April 2008	Viviene Brown, Sean Winter	Angus Mack, Clifton Mack, Tom Jacobs, Steven Hubert, Glen Toby, Rowan Davies, Jonathan Watson
6 July – 17 July 2007	Ian Ryan, Trish Thom	Ricky Sandy, Stanley Warrie, Barry Patt, Lawrence Woodley, Daniel True, Devon Woodley, Glenn Toby, Allan Mack, Harry Mills, Bruce Woodley, Lyle Wally

	<p><u><i>Ethnographic surveys</i></u></p> <p>An ethnographic survey was undertaken covering the Land subject to this notice. Details of this survey, reporting no ethnographic sites, are presented in the Brad Goode and Associates Report (August 2011)³ – see Appendix 17. A subsequent visit seeking ethnographic comment on archaeological sites within the Land was conducted by Heritage WA. See (April 2012)⁴ report, included in Appendix 18.</p> <p>Table 2: Anthropologists & Yindjibarndi Traditional Owners involved in ethnographic surveys over the Land</p> <table border="1" data-bbox="450 683 1350 922"> <thead> <tr> <th>Survey</th> <th>Survey dates</th> <th>Anthropologists</th> <th>Traditional Owners</th> </tr> </thead> <tbody> <tr> <td>Yin_070, YIN_071</td> <td>27 June 2011 – 1 July 2011</td> <td>Brad Goode</td> <td>Ken Sandy, Clifton Mack, Ricky Sandy, Don Walker and Kenny Diamond</td> </tr> <tr> <td>YIN_116</td> <td>19 April 2012</td> <td>Phil Czerwinski</td> <td>Ken Sandy, Stephen Adams, Rodney Adams, Glen Aubrey, Jayne Ranger, Berry Malcolm, Dianna Smith, Jill Tucker</td> </tr> </tbody> </table>	Survey	Survey dates	Anthropologists	Traditional Owners	Yin_070, YIN_071	27 June 2011 – 1 July 2011	Brad Goode	Ken Sandy, Clifton Mack, Ricky Sandy, Don Walker and Kenny Diamond	YIN_116	19 April 2012	Phil Czerwinski	Ken Sandy, Stephen Adams, Rodney Adams, Glen Aubrey, Jayne Ranger, Berry Malcolm, Dianna Smith, Jill Tucker
Survey	Survey dates	Anthropologists	Traditional Owners										
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YIN_116	19 April 2012	Phil Czerwinski	Ken Sandy, Stephen Adams, Rodney Adams, Glen Aubrey, Jayne Ranger, Berry Malcolm, Dianna Smith, Jill Tucker										
List of stakeholder s consulted	As listed in Tables 1 & 2 and as detailed in Alpha Archaeology's archaeological report referenced above (see Appendices 16) and ethnographic reports (see Appendices 17 & 18).												
Aboriginal people's issues and/or concerns	Please refer to full details of the consultation process and outcomes with the Yindjibarndi People in the above sections.												
Issues / problems encountered during consultation process	Please refer to full details of the consultation process and outcomes with the Yindjibarndi People in the above sections.												
Outcomes of consultation	<p>Following on from Fortescue's consultation (as detailed in above sections), a letter was received on 27 April 2012 from WYAC's legal representatives confirming the Yindjibarndi People's 'non-objection' to this application. This letter is included at Appendix 19.</p> <p>At the time of submission, Fortescue had not received any response from YAC regarding their position in relation to this Notice. If any such correspondence is received, it will be forwarded to the DIA upon receipt.</p>												

³ Goode, B., *A Report of an Ethnographic Aboriginal Heritage Survey of the Solomon Project in the Eastern Pilbara Region of Western Australia*, Brad Good & Associates, Dunsborough, August 2011, page 4.

⁴ Czerwinski, P., *Ethnographic Consultation report for a Section 18 Application Covering 23 Aboriginal Sites, FMG Solomon Mine Site, Pilbara, WA*, Heritage WA, April 2012.

8. Summary of potential effects on Aboriginal sites and possible management responses

Heritage Impact	Description																																																																																																
<p>Sites to be impacted by the activities undertaken as described in the Purpose</p>	<p>Fortescue require to impact 23 Aboriginal sites located within the Land. A map showing the sites subject to this Section 18 is included in this notice as Appendix 4. These sites are:</p> <table border="1" data-bbox="512 600 1294 1753"> <thead> <tr> <th>Site ID</th> <th>Site Type</th> <th>Significance</th> <th>Level of Impact</th> </tr> </thead> <tbody> <tr><td>AS02-007</td><td>Artefact scatter</td><td>Moderate</td><td>Full</td></tr> <tr><td>YIN-WH05</td><td>Artefact scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN-WH06</td><td>Artefact scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN08-024</td><td>Artefact scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN08-025</td><td>Artefact scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN09-004</td><td>Artefact scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-016</td><td>Rockshelter, Walled Niche</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-114</td><td>Rockshelter, Artefact Scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-116</td><td>Rockshelter, Walled Niche, Artefact Scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-120</td><td>Rockshelter, Artefact Scatter</td><td>Moderate</td><td>Full</td></tr> <tr><td>YIN11-011</td><td>Rockshelter, Grind Stone, Stone Arrangement</td><td>Low</td><td>Full</td></tr> <tr><td>YIN11-012</td><td>Rockshelter, Artefact Scatter, Chert Quarry</td><td>Moderate</td><td>Full</td></tr> <tr><td>YIN11-013</td><td>Rockshelter, Grind Stone, Artefact Scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN11-014</td><td>Rockshelter, Walled Niches, Ochre Quarry, Artefact Scatter</td><td>Moderate to High</td><td>Full</td></tr> <tr><td>YIN11-015</td><td>Rockshelter, Artefact Scatter</td><td>Moderate</td><td>Full</td></tr> <tr><td>YIN11-016</td><td>Rockshelter, Walled Niche</td><td>Low</td><td>Full</td></tr> <tr><td>YIN11-017</td><td>Rockshelter, Grind Stone</td><td>Low</td><td>Full</td></tr> <tr><td>YIN11-026</td><td>Rockshelter, Grind Stone</td><td>Low</td><td>Full</td></tr> <tr><td>YIN11-027</td><td>Rockshelter, Artefact Scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN11-028</td><td>Rockshelter, Artefact Scatter, Grind Stone</td><td>Low</td><td>Full</td></tr> <tr><td>YIN11-029</td><td>Rockshelter, Grind Stone</td><td>Low</td><td>Full</td></tr> <tr><td>YIN11-030</td><td>Rockshelter, Artefact Scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN11-031</td><td>Rockshelter, Walled Niche</td><td>Low</td><td>Full</td></tr> </tbody> </table> <p>Full details of the sites on the Land are provided in the Alpha Archaeology Report in Appendix 16 (April 2012).⁵</p>	Site ID	Site Type	Significance	Level of Impact	AS02-007	Artefact scatter	Moderate	Full	YIN-WH05	Artefact scatter	Low	Full	YIN-WH06	Artefact scatter	Low	Full	YIN08-024	Artefact scatter	Low	Full	YIN08-025	Artefact scatter	Low	Full	YIN09-004	Artefact scatter	Low	Full	YIN10-016	Rockshelter, Walled Niche	Low	Full	YIN10-114	Rockshelter, Artefact Scatter	Low	Full	YIN10-116	Rockshelter, Walled Niche, Artefact Scatter	Low	Full	YIN10-120	Rockshelter, Artefact Scatter	Moderate	Full	YIN11-011	Rockshelter, Grind Stone, Stone Arrangement	Low	Full	YIN11-012	Rockshelter, Artefact Scatter, Chert Quarry	Moderate	Full	YIN11-013	Rockshelter, Grind Stone, Artefact Scatter	Low	Full	YIN11-014	Rockshelter, Walled Niches, Ochre Quarry, Artefact Scatter	Moderate to High	Full	YIN11-015	Rockshelter, Artefact Scatter	Moderate	Full	YIN11-016	Rockshelter, Walled Niche	Low	Full	YIN11-017	Rockshelter, Grind Stone	Low	Full	YIN11-026	Rockshelter, Grind Stone	Low	Full	YIN11-027	Rockshelter, Artefact Scatter	Low	Full	YIN11-028	Rockshelter, Artefact Scatter, Grind Stone	Low	Full	YIN11-029	Rockshelter, Grind Stone	Low	Full	YIN11-030	Rockshelter, Artefact Scatter	Low	Full	YIN11-031	Rockshelter, Walled Niche	Low	Full
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<p>Strategies to</p>	<p>When planning project operations, Fortescue's policy is to minimise the impact to cultural heritage and the</p>																																																																																																

⁵ Rowland, M., Timms, A., *Section 18 Report for Mining and Infrastructure Phase 8, Solomon Mining and Infrastructure Project*, Western Australia, Alpha Archaeology Pty Ltd, Kensington VIC, December 2011.

Department of Indigenous Affairs

minimise or avoid identified sites	environment. Refer to section 1.4 of the Solomon Hub Cultural Heritage Management Plan (CHMP) in Appendix 10 . ⁶
Management commitments to sustainable heritage protection	
Local, regional or cumulative impacts	

9. Applicant Response to Recommendation

Recommendations from Consultation / Heritage Survey Report (s)	Applicant Response to Recommendations
<p><u>Archaeological Report</u></p> <p>It is recommended that FMGL ensure that its employees and contractors (as appropriate) are:</p> <ul style="list-style-type: none"> • Advised of the revised boundaries and site types of all Aboriginal sites within the Section 18 land. • Informed that sites listed in Table 39 and detailed in Sections 12 and 13 constitute Aboriginal archaeological sites to which the Act applies. • DIA should be advised of the existence of these site places through the formalised Aboriginal Cultural Materials Committee site registration process. • Advised that subsurface excavations should be undertaken at YIN11-015 prior to further development 	<p>Fortescue agrees with all recommendations.</p>

⁶ Fortescue Metal's Group Limited, Cultural Heritage Management Plan for Solomon project area in the Pilbara region of WA, FMG, Perth, July 2011.

<p>proceeding.</p> <ul style="list-style-type: none"> Advised that salvage of artefactual material present within AS02-007, YIN11-012 and YIN11-014 should be undertaken for further analysis. 	
<p><u><i>Ethnographic Reports</i></u></p> <p><u>Brad Goode and Associates⁷</u></p> <ul style="list-style-type: none"> As a result of the above survey it is recommended that as no new ethnographic sites of significance, as defined by section 5 of the AHA, were identified within survey request areas: Yin_070 Fire Tail North, YIN_071 Fire Tail West, Trinity TSF & Conveyors and Yin_072 Solomon Rail Loop, that the proposed mining and infrastructure development should proceed as planned. It is recommended that FMG provide the WYAC heritage subcommittee with regular information regarding water management procedures as the project proceeds. It is recommended that FMG temporarily store all salvaged archaeological material until an adequate place can be found in country to repatriate the material. The final 'in country' repository should be decided by the WYAC once the mine plan is finalised and the archaeologists have consulted with the Yindjibarndi group about the options and potential locations for artefact storage. 	<p>Fortescue agrees with all recommendations.</p>

⁷ Recommendations related only to The Land outlined in this Section 18.

Heritage WA

This report therefore makes the following recommendations:

- There are no ethnographic concerns regarding impacts to the twenty-three Aboriginal sites that are the basis for the ethnographic consultation.
- WMYAC do not object to a Section 18 application over these sites.
- WMYAC representatives are involved in any archaeological salvage and/or archaeological excavation work associated with the FMG Section 18 application.

Fortescue agrees with all recommendations.

10. Attachments

Attachments	Description
Appendix 1:	- FMG Pilbara Pty Ltd company details
Appendix 2:	- Tenement reports
Appendix 3:	- General location of the Land subject to this Notice
Appendix 4:	- Mining and Infrastructure Phase 8 map displaying s18 boundary and sites (the subject of this application), previously submitted s18 boundaries, tenements and <u>archaeologically-surveyed</u> areas
Appendix 5:	- Mining and Infrastructure Phase 8 map displaying s18 boundary and sites (the subject of this application), tenements and <u>ethnographic-surveyed</u> areas
Appendix 6:	- S16 / S18 overview map of Solomon Project
Appendix 7:	- Fortescue's Construction Environmental Management Plan approved by the Department of Environment and Conservation (DEC)
Appendix 8:	- The NNTT decision plus summary of key points
Appendix 9:	- Presentation on the CHMP development, discussed with WYAC on 8 June 2011
Appendix 10:	- Cultural Heritage Management Plan (CHMP) for Solomon Project
Appendix 11:	- Letter to YAC regarding comment / input on CHMP
Appendix 12:	- Letter to YAC notifying WMYH to manage heritage survey work
Appendix 13:	- Letters to YAC and WYAC regarding notification to submit Section 18
Appendix 14:	- 20 April 2012 presentation to WYAC on Section 18 application
Appendix 15:	- Correspondence provided to YAC outlining field work requirements for 'Mining and Infrastructure Phase 8'
Appendix 16:	- Alpha Archaeology, Archaeology report
Appendix 17:	- Goode, B., August 2011 Ethnographic Report
Appendix 18:	- Czerwinski, P., April 2012 Ethnographic Report
Appendix 19:	- WYAC letter of non-objection

11. Copyright

Copyright	<i>I licence the Department of Indigenous Affairs, the ACMC and their representatives to use the contents of the Notice and any attachments for any purpose, to reproduce, to modify and adapt the Notice or attachments (including converting them into different formats), and to communicate the Notice or attachments to the public (including via a public web site). I confirm that I have obtained all licences and consents necessary to grant this licence.</i>
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12. Declaration

I declare that I have completed all sections of the Notice and declare that I have read and understood the information submitted and the recommendations I put to the ACMC.

Name (Full name of applicant. Please print)	<i>MARK THOMAS COMPANY SECRETARY FMA PILBARA PTY LTD</i>		
Signature		Date	<i>27/4/2012</i>

“MW-97”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

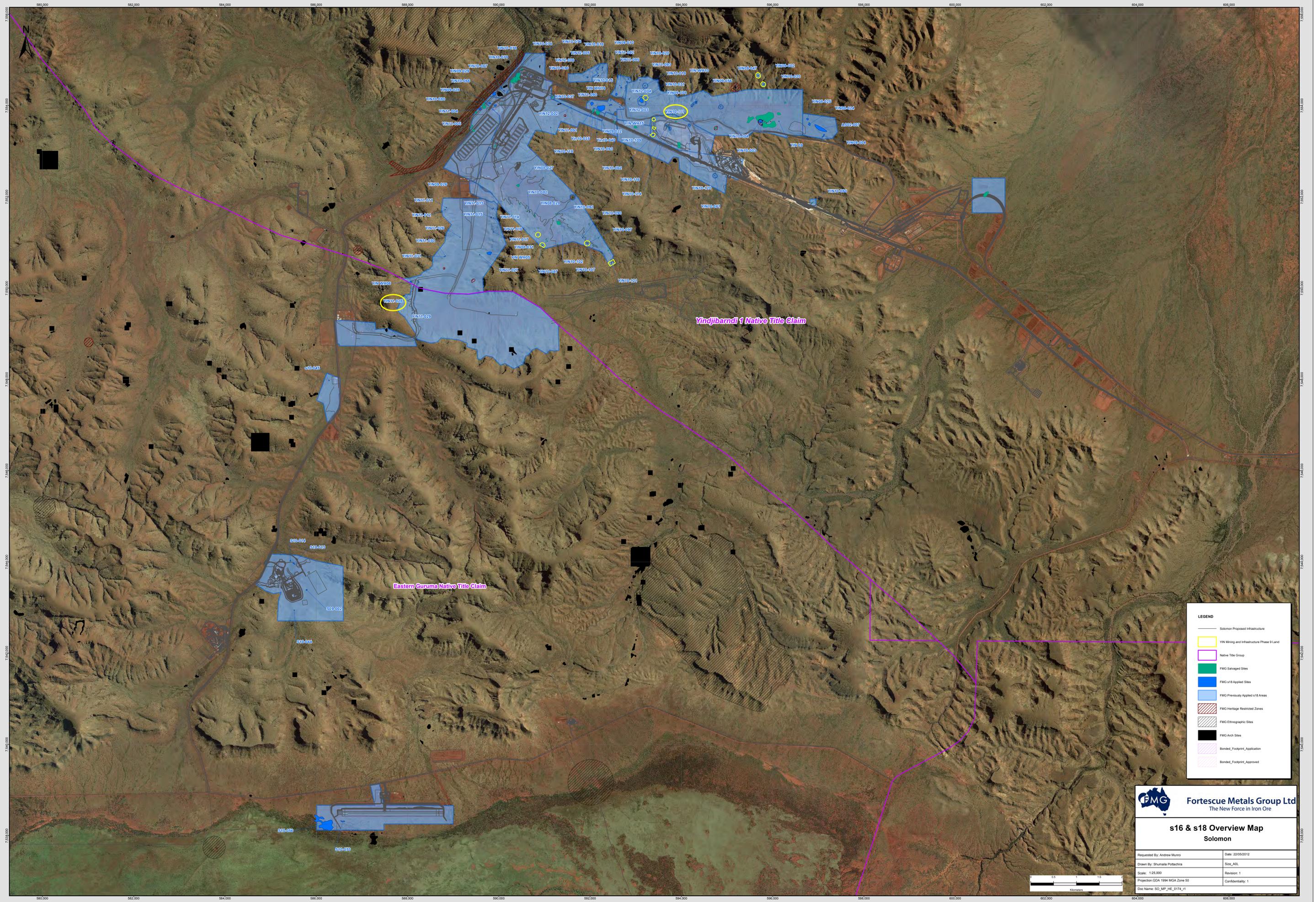
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “MW-97” referred to in the witness statement of Michael Woodley dated 5 June 2023.



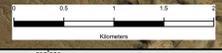
LEGEND

- Solomon Proposed Infrastructure
- YIN Mining and Infrastructure Phase 0 Land
- Native Title Group
- FMG Salvaged Sites
- FMG s18 Applied Sites
- FMG Previously Applied s18 Areas
- FMG Heritage Restricted Zones
- FMG Ethnographic Sites
- FMG Arch Sites
- Bonded_Footprint_Application
- Bonded_Footprint_Approved

Fortescue Metals Group Ltd
The New Force in Iron Ore

s16 & s18 Overview Map
Solomon

Requested By: Andrew Munro	Date: 22/05/2012
Drawn By: Shumala Pottachira	Site: All
Scale: 1:25,000	Revision: 1
Projection: GDA 1994 MGA Zone 50	Confidentiality: 1
Doc Name: SO_MP_JHE_0174_J1	



“MW-98”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “MW-98” referred to in the witness statement of Michael Woodley dated 5 June 2023.



25 May 2012

The Chairperson
Aboriginal Cultural Materials Committee
Level 1, 97 St Georges Terrace
PERTH WA 6000

Dear Sir

NOTICE UNDER SECTION 18 OF THE ABORIGINAL HERITAGE ACT 1972 – FMG PILBARA PTY LTD (“FMGP”) – APPLICATION FOR CONSENT TO USE LAND FOR FMGP’S SOLOMON MINE PROJECT: MINING & INFRASTRUCTURE PHASE 9

I confirm that this firm acts for the Wirlu-murra Yindjibarndi Aboriginal Corporation (ICN 7483). (“WMYAC”).

Membership of WMYAC comprises in excess of 250 members of the Yindjibarndi #1 native title application (WAD 6005/03, WC WC03/3). WMYAC has the authority of its board members and ordinary members to determine heritage matters relating to their interest in the Yindjibarndi #1 native title claim.

We refer to the above Notice and Application to be lodged by FMGP.

I am instructed that on 20 April 2012, FMGP formally notified the WMYAC of its intention to make submissions as referred to above in relation to Land in FMGP’s Solomon Mine Project.

In addition, the board of directors and members of WMYAC, including members of WMYAC Heritage Sub-Committee (“HSC”) met with FMGP representatives on 17 May 2012 at the Solomon Mine Site to further discuss FMGP’s plans to submit a Section 18 Notice over a portion of Land the subject of the Yindjibarndi #1 claim. During the meeting, FMGP and the WMYAC HSC discussed a number of matters in relation to the proposed Notice and Application including:

1. the sites that could not be avoided by proposed works and requested consent from the WMYAC HSC to submit the Section 18 Notice on Friday 25 May 2012;
2. the avoidance or mitigation of disturbance (including salvage or recording) to any Aboriginal Cultural Heritage including FMGP confirming that all investigation work under Section 16 Permits will take place prior to further impact, with results presented to the WMYAC HSC and the APMC (as outlined in Alpha Archaeology’s Recommendations).

I am instructed that WMYAC acknowledge that FMGP is applying to use the Land the subject of the Notice, which will impact on the following sites:

Site ID	Site Type	Level of Impact
YIN08-031	Rockshelter, Manuport	Full
YIN09-002	Rock shelter, Artefact scatter	Full
YIN10-021	Rock shelter, Artefact scatter	Full
YIN10-023	Rock shelter, Walled niche	Full
YIN10-062	Rock shelter, Artefact scatter	Full
YIN10-087	Rock shelter, Artefact scatter	Full
YIN10-107	Rock shelter, Artefact scatter	Full
YIN10-109	Rock shelter, Artefact scatter	Full
YIN10-111	Rock shelter, Artefact scatter	Full
YIN10-121	Rock shelter, Walled niche	Full

Upon consideration of the information made available to WMYAC, I am instructed that WMYAC do not object to the Section 18 application for consent to use the Land the subject of the Notice, with consideration of the following recommendations:

1. That FMGP follow the recommendations included in the final archaeological report relating to sites to be impacted;
2. That FMGP follow the recommendations included in the final ethnographic report relating to the sites to be impacted;
3. That FMGP salvage the sites to be impacted, prior to the commencement of works and in accordance with recommendations included in the final archaeological report, using archaeologists agreed to by WMYAC with the participation of Yindjibarndi People.
4. That salvaged materials be stored in a place suitable to the WMYAC.

The WMYAC respectfully request that a copy of the recommendations to the Minister of Indigenous Affairs by the Aboriginal Cultural Materials Committee (ACMC) is forward to them. We also respectfully request that ACMC forward a copy of the Ministerial decision upon receipt.

Yours faithfully
INTEGRA LEGAL



Janette Tavelli
0417926155
jtavelli@integralelegal.com.au

“MW-99”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 18 pages is the annexure marked “**MW-99**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Office Use Only:	Application	
	Year	Number

Section 18 Notice: Mining and Infrastructure Phase 9

NOTICE UNDER SECTION 18 OF THE *ABORIGINAL HERITAGE ACT 1972*
APPLICATION FOR 'Consent to certain uses'

1. Statement of Notice

To the Aboriginal Cultural Material Committee.

I, Mark Thomas, as an authorised representative of FMG Pilbara Pty Ltd (a wholly owned subsidiary of Fortescue Metals Group Ltd), give notice under section 18 of the *Aboriginal Heritage Act 1972* (the Act) that I require to use the Land, as described in Item 5, for the purpose described in Item 6 below.

2. Contact details of Applicant

Contact Name	Roberta Molson				
Position	Heritage Approvals Superintendent				
Organisation Name	FMG Pilbara Pty Ltd				
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth, WA 6004				
Phone	08 9230 1275	Mobile	0420 552 542	Fax	6218 8880
E-mail	rmolson@fmgl.com.au				

Heritage Consultant	Jodie Mitchell				
Organisation Name	Alpha Archaeology Pty Ltd				
Mailing Address	Suite 107, 10 Elizabeth St, Kensington, Vic 3031				
Phone	03 9372 3350	Mobile		Fax	03 9372 3353
E-mail	jodie.mitchell@alphaarc.com				

3. Landowner's Authorisation

Land Parcels 1 – 2

Landowner's Full Name	FMG Pilbara Pty Ltd				
Organisation Name					
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth 6004				
Phone	08 6218 8888	Mobile		Fax	08 6218 8880
E-mail	n/a				

See **Appendix 1** for FMG Pilbara Pty Ltd company details.

4. The Land subject to the s18 Notice

Land Parcel 1

Certificate of Title	Vol		Folio		Diagram / plan /	
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Department of Indigenous Affairs

					deposit plan no.	
Lot Number and location of subject lot	Lot No. Part			Location		
Reserve No (if applicable)						
Street Number and Name						
Town / Suburb				Postcode		
Tenement ID	M47/1413					
Land Zoning	Vacant Crown Land					
Geographical Coordinates (GDA94)	593,209mE 7,555,163mN					
Other						

Land Parcel 2

Certificate of Title	Vol		Folio		Diagram / plan / deposit plan no.	
Lot Number and location of subject lot	Lot No. Part			Location		
Reserve No (if applicable)						
Street Number and Name						
Town / Suburb				Postcode		
Tenement ID	M47/1431					
Land Zoning	Vacant Crown Land					
Geographical Coordinates (GDA94)	593,386mE 7,553,357mN					
Other						

Land Parcel 3

Certificate of Title	Vol		Folio		Diagram / plan / deposit plan no.	
Lot Number and location of subject lot	Lot No. Part			Location		
Reserve No (if applicable)						
Street Number and Name						
Town / Suburb				Postcode		
Tenement ID	M47/1409					
Land Zoning	Vacant Crown Land					
Geographical Coordinates (GDA94)	590,853mE 7,551,172mN					
Other						

See **Appendix 2** for tenement reports.

5. Map(s) of the Land

Appendix 3: General location of the Land subject to this Notice.

- Appendix 4:** Mining and Infrastructure Phase 9 map displaying s18 boundary and sites (the subject of this application), previously submitted s18 boundaries, tenements and archaeologically-surveyed areas.
- Appendix 5:** Mining and Infrastructure Phase 9 map displaying s18 boundary and sites (the subject of this application), tenements and ethnographic-surveyed areas.
- Appendix 6:** Overview Section 16 / Section 18 map of the Solomon project area.

6. The Purpose of the use of the Land

Item	Applicant's description
Concise description (10 words or less)	Construction and operation of Mining Pits, ROM Pad, Tailings Storage Facility, Roads and Associated Infrastructure at Fortescue's Solomon Project.
General description of purpose	<p>Fortescue Metals Group Limited's (Fortescue) Solomon Project is an expansion of its current iron ore mining and export operations in the Pilbara region of Western Australia. The Solomon Project is located on the central Hamersley Ranges, and situated approximately 60km north of Tom Price, Western Australia.</p> <p>The 'Purpose' for which the 'Land' subject to this Notice is to be used, is for the construction and operation of Mining Pits, ROM Pad, Tailings Storage Facility, Roads and Associated Infrastructure, at Fortescue's Solomon Project.</p> <p>Refer to the Map in Appendix 4 for an overview of proposed infrastructure placement.</p>
Processing inputs, discharges	<p>The Kings and Firetail OPFs, conveyors and related infrastructure are expected to produce 60 million tonnes of product ore each year following completion.</p> <p>Processing inputs and discharges for the Solomon Project such as water, diesel and oil will be managed as outlined in Fortescue's Construction Environmental Management Plan. Refer to Appendix 7 for relevant documentation.</p>
Bulk material source	Any bulk materials (such as gravel and borrow material) that are required to be sourced at the Solomon Project will be extracted under approvals issued by the Department of Mining and Petroleum (DMP) and the Minister for the Environment from within the project area.
Associated infrastructure	<p>The Solomon Project will include the establishment and operation of mining operations at the Firetail and Kings iron ore deposits as well as the construction and operation of the Solomon railway line.</p> <p>Associated infrastructure to support the Solomon Project includes: an airstrip; access roads; accommodation camps; offices, ablution and change house facilities; a power station; and communications infrastructure.</p> <p>Once the mine is operational, the processed iron ore will be transported along the Solomon railway line linking onto the existing Port Hedland to Cloudbreak railway line at chainage 175 to Fortescue's existing Herb Elliot Port facilities in Port Hedland for export.</p>

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New or existing project, approvals & associated dates	<p>The key approvals received for the construction of the mining area include:</p> <ul style="list-style-type: none"> • Approval under Part IV of the <i>Environmental Protection Act 1986</i>, obtained in April 2011; • Approval under the <i>Environment Protection and Biodiversity Conservation Act 1999</i>, obtained in April 2011; • Approval under Part V of the <i>Environmental Protection Act 1986</i>, obtained in March 2012; • Approvals under Section 18 of the <i>Aboriginal Heritage Act 1972</i>. • Approval under the <i>Mining Act 1978</i>, obtained in October 2011; <p>Fortescue will also be seeking further approvals under the following acts for the development of the mining area:</p> <ul style="list-style-type: none"> • <i>Rights in Water and Irrigation Act 1914</i> • <i>Mining Act 1978</i>
Relation to other proposals	n/a
Timeframe for development, staging	<p>Construction of the Firetail Mining Area commenced in September 2011. Site avoidance is to continue, in line with the Solomon <i>Cultural Heritage Management Plan</i>, within the Land subject to this Notice, until such time as Ministerial Consent is received and sites are salvaged accordingly.</p> <p>Construction timing for commencement of associated infrastructure within the proposed mining area is as follows:</p> <ul style="list-style-type: none"> • ROM Pad – Q2 2012 • Tailings Storage Facility – Q3 2012
Extent of activity (m2)	The Land subject to this notice comprises a total area of 82,258 m2 (82 hectares).
Previous s18 Notices regarding the Land	<p>To date Fortescue has submitted nine (9) Section 18 applications for land adjacent to the Land subject to this Notice:</p> <ol style="list-style-type: none"> 1. Solomon Airport, Camps and Admin – ministerial consent received 13 May 2011 (DIA ref: 34-11556). 2. Firetail Priority Mining Area – ministerial consent received 30 June 2011 (DIA ref: 34-13307). 3. Firetail Priority Infrastructure Area – ministerial consent received 30 June 2011 (DIA ref: 34-13307). 4. Firetail Conveyors and Trinity TSF – ministerial consent received 27 January 2012 (DIA ref: 34-15205). 5. Firetail Central, West and Rail Loop – ministerial consent received 27 January 2012 (DIA ref: 34-15627). 6. Firetail Trinity and West – ministerial consent received 7 February 2012 (DIA ref: 34-16218). 7. Conveyor and infrastructure Phase 2 – ministerial consent received 2 April 2012 (DIA ref: 34-16867).

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	<ol style="list-style-type: none">8. Mining and Infrastructure Phase 7 – ministerial consent received 24 April 2012 (DIA ref: 34-17907).9. Mining and Infrastructure Phase 8 – pending 13 June ACMC meeting.
Other	n/a

7. Summary of applicant consultation with relevant Aboriginal people and other stakeholders

Consultation	Description
<p>Process of consultation and informant selection</p>	<p>History of consultation between Fortescue and Yindjibarndi</p> <p>In 2007, when Fortescue sought the grant of its initial licences to carry out exploration work in the Solomon area, it initiated a consultation process with the Native Title Claimants for the area, The Yindjibarndi People.</p> <p>Since 2007 the process of consultation undertaken by Fortescue has been driven by the relationship between the parties. This relationship has on some levels been problematic – primarily due to a failure of the parties to reach an agreement over financial compensation for mining.</p> <p>In July 2007, Fortescue negotiated a heritage agreement with the Yindjibarndi People to cover exploration activities. Five months after the signing of this agreement, the Yindjibarndi People advised Fortescue that, until the conclusion of a Land Access Agreement Yindjibarndi People would no longer participate in Heritage Surveys with Fortescue. Yindjibarndi’s proposed Land Access Agreement included a prohibitive remuneration package in excess of any amount previously agreed to within the mining industry.</p> <p>Fortescue continued to seek the participation of Yindjibarndi People in heritage surveys and in consultation over heritage matters. Fortescue’s attempts at consultation included meetings and discussions with the Yindjibarndi Aboriginal Corporation (YAC) through Juluwarlu Aboriginal Corporation (JAC), Yindjibarndi’s chosen heritage representatives. In addition, on all occasions Fortescue requested Yindjibarndi to continue surveys while the Land Access Agreement negotiations continued.</p> <p>Fortescue continued to keep DIA informed of these matters and outlined its concerns about Yindjibarndi’s refusal to participate in heritage surveys. Fortescue has also sought advice from DIA on how best to meet its obligations under the <i>Aboriginal Heritage Act 1972</i> (AHA) in these circumstances. In addition Fortescue requested that the DIA assist in the facilitation of consultation between the parties.</p> <p>In July 2010 Fortescue was approached by senior Yindjibarndi claimants wanting to engage in heritage matters to protect their country. Fortescue therefore arranged a site visit to the Solomon Project Area, offering the Yindjibarndi participants an opportunity to see the project area and consult over proposed mining plans.</p> <p>On 23 November 2010, members of the Yindjibarndi People,</p>

dissatisfied with the approach of the JAC and YAC, registered the Wirlu-Murra Yindjibarndi Aboriginal Corporation (WYAC).

Furthermore, at a community meeting held on 16 March 2011, a majority of the Yindjibarndi People voted in favour of executing a Land Access Agreement with Fortescue. Subsequent to this positive response, Fortescue have continued to engage with the Yindjibarndi People via the WYAC representative body in the development and execution of a Land Access Agreement.

On 17 June 2011 the National Native Title Tribunal (NNTT) passed a decision granting a number of Fortescue's mining and exploration tenements in the Solomon Project area. This decision supported Fortescue's position that they had negotiated in good faith with the Yindjibarndi People. In addition, the decision supported Fortescue's approach to dealing with both representative bodies (YAC & WYAC) with regard to Yindjibarndi land. The NNTT decision as well as a summary of key points, is included as **Appendix 8**.

Fortescue's position with regard to consultation with the Yindjibarndi People has been further supported by receipt of ministerial consent for to seven previously submitted Section 18 submissions over land in Yindjibarndi country. Refer to Section 6 of this Notice for an overview of previous Section 18 submissions.

Since July 2010, regular consultation between WYAC and Fortescue has seen Yindjibarndi Traditional Owners participating in heritage surveys on an ongoing basis.¹ Also, a number of Yindjibarndi Heritage Monitors have been engaged, who play a key role in the management and monitoring of heritage sites on Yindjibarndi country.

Positive consultation with WYAC has also resulted in the development of a *Cultural Heritage Management Plan* (CHMP) for Solomon Project, which provides an important procedural framework for ongoing collaboration over a range of heritage matters. A presentation on the CHMP development, discussed with WYAC on 8 June 2011, is included as **Appendix 9**. The resulting CHMP is included as **Appendix 10**.²

A copy of the Solomon Project CHMP was forwarded to the YAC on 26 May 2011 inviting input and comment; however Fortescue has not yet received a response. This correspondence is included at **Appendix 11**.

Throughout this period, and continuing through 2012, Fortescue has consistently extended invitations to the YAC to participate in heritage surveys and provide comment on known heritage sites on the Land. Following recent developments within the WYAC, this invitation was

¹ This is expected to continue ongoing with two groups of 6-8 Yindjibarndi Traditional Owners working regular survey swings.

² Fortescue Metal's Group Limited, *Cultural Heritage Management Plan for Solomon project area in the Pilbara region of WA*, FMG, Perth, July 2011.

again extended to the YAC to confirm that YAC would be copied in to all Heritage Work Instructions forwarded to WYAC, with YAC invited to nominate participants for such heritage work. This correspondence is included as **Appendix 12**.

YAC have constantly ignored or declined Fortescue's invitations to engage in heritage matters.

Additional consultation relating directly to the Land

Fortescue formally notified the Yindjibarndi People on 20 April 2012 of its intention to submit a Section 18 Notice on 25 May 2012. This correspondence is included as **Appendix 13**.

Fortescue then met with the WYAC Heritage Sub-Committee, on 17 May 2012 at Fortescue's Solomon Site. Amongst other matters, this Section 18 application was discussed in detail. This included discussion on sites to be impacted by the Purpose and confirmation that the group was satisfied with the level of consultation over the Land. A copy of the presentation is included in **Appendix 14**.

Although the problematic relationship with the YAC has impacted on the process for consultation, significant progress has been made since 2011 through regular and detailed consultation with Yindjibarndi Traditional Owners from the WYAC membership. Despite the YAC's persistent refusal to engage in positive negotiations or in heritage surveys, Fortescue has continued to provide YAC with documentation and the opportunity to provide information about heritage places and related values on the Land. Heritage Work Instructions (HWIs) for ethnographic surveying of sites the subject of this Notice were sent to both WYAC and YAC. This correspondence is included in **Appendix 15**.

The above summary and related documents demonstrate that Fortescue has undertaken extensive consultation with Yindjibarndi People over the Solomon Project area and the Land the subject of this Notice. Fortescue submits that the information provided to the APMC is sufficient to establish the existence of sites on the Land and the significance of those sites.

Archaeological Surveys

Throughout the extensive history of archaeological surveys over the Land, all areas on the Land have been accessed for inspection during pedestrian surveys. Most sections of the Land have been surveyed more than once through drill line surveys then subsequent block surveys. In 2011 Alpha Archaeology was engaged to conduct heritage surveys in the Solomon Project area and this included most of the Land the subject of this notice. Alpha Archaeology also conducted assessments of all sites on the Land to a Section 18 level. Alpha's report, detailing the results of surveys and Section 18 level recording of sites on the Land is included as **Appendix 16**.

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All surveys conducted prior to the engagement of Alpha Archaeology are analysed and reported on in pages 9 and 10 in Alpha Archaeology's report in **Appendix 16**.

The archaeologists and Traditional Owners who participated in the surveys covering the Land are listed in Table 1.

Table 1: Archaeologists & Yindjibarndi Traditional Owners involved in archaeological surveys over the Land

Survey date	Archaeologists	Yindjibarndi Representatives
23 April – 4 May 2012	Brian Armstrong, Sandra Stjokovic, Shane Willis, Lian Flannery, Nick Ellis	Bruce Dodd, Noel Aubrey, Robert Mather, Curtis Allen, David Jerrald
10 April – 20 April 2012	Gerard Niemoeller, Kate Duca, Craig Reid, Lucy, david Tutchener	Ricky Sandy, Corey Adams, Brayden Mills, Burchell Munda, Anthony Munda, Stephen Adams
26 September – 6 October 2011	Phillip Roberts, Craig Reid, Nick Ellis, Allison Isepy, Kate Duca, Elizabeth McFarlane	Ken Sandy, Paul Aubrey, Robert Toby, William Long, Duncan Aubrey, Terrance Sandy
1 August – 12 August 2011	Alexander Timms, Bruce Numode, Craig Reid, Nick Ellis, Phoebe Heddell-Stevens	Brian Phillips, Charlie Sandy, Clarence Woodley, Ethan Sandy, Glen Aubrey, Wesley Munda
20 June – 1 July 2011	Rebecca Yit, Elizabeth McFarlane, Phoebe Heddell-Stevens, Allison Isepy, Kate Duca, Alana Colbert	Brian Phillips, David Gerald, Kieran Long, Christian Sandy, Edmund Sandy, Payden Sandy, Kendall Nannup, Robert Mather
6 June – 14 June 2011	Alexander Timms, Allison Isepy, Bruce Numode, Nick Ellis	Clarence Woodley, Johnny King, Lester Mather, Garth Ranger, Malcolm Hubert, Terrance Sandy, Burchell Mundy, Kenny Diamond
28 July – 6 August, 24 August, 27 August – 1 September & 25 September – 27 September 2010	Rob Tickle, Terry Moore, Sue Singleton, Phil Williamson	Wiru-murra Yindjibarndi Aboriginal Corporation – varying Traditional Owners for various dates
14 February – 20 February 2010	Rob Tickle, Terry Moore, Trudy White	Yindjibarndi representatives were invited to participate but declined to do so
11 September – 18 September 2009	Rob Tickle	Yindjibarndi representatives were invited to participate but declined to do so
5 July – 9 July 2009	Rob Tickle, Terry Moore	Yindjibarndi representatives were invited to participate but declined to do so
28 April 2009 – 6 May 2009	Phil Czerwinski, Guadalupe Cincunegui	Angus Mack, Thomas Jacobs, David Woodley, Darren Jacobs, Ken Sandy, Bobby Willis, David Jerrold, Middleton Cheedy
30 June – 5 July 2008	Wayne Glendenning, Mark Cooney	Yindjibarndi representatives were invited to participate but declined to do so
15 April – 22 April 2008	Vivienne Brown, Sean Winter	Angus Mack, Clifton Mack, Tom Jacobs, Steven Hubert, Glen Toby, Rowan Davies, Jonathan Watson

Ethnographic surveys

An ethnographic survey was undertaken covering the Land subject to this notice. Details of this survey, reporting no ethnographic sites, are presented in the Brad Goode and Associates Report (August 2011)³ – see **Appendix 17**. A subsequent visit seeking ethnographic comment on archaeological sites within the Land was conducted by Heritage WA. See (May 2012)⁴ report, included in **Appendix 18**.

Table 2: Anthropologists & Yindjibarndi Traditional Owners involved in ethnographic surveys over the Land

Survey	Survey dates	Anthropologists	Traditional Owners
Yin_070, YIN_071	27 June 2011 – 1 July 2011	Brad Goode	Ken Sandy, Clifton Mack, Ricky Sandy, Don Walker and Kenny Diamond
YIN_119	17 May 2012	Jim Birkhead	Ken Sandy, Jimmy Horace, Cheryl Toby, Donna Willis, Eileen Sandy, Karen Toby, Jayne Ranger

List of stakeholder s consulted

As listed in Tables 1 & 2 and as detailed in Alpha Archaeology's archaeological report referenced above (see **Appendices 16**) and ethnographic reports (see **Appendices 17 & 18**).

Aboriginal people's issues and/or concerns

Please refer to full details of the consultation process and outcomes with the Yindjibarndi People in the above sections.

Issues / problems encountered during consultation process

Please refer to full details of the consultation process and outcomes with the Yindjibarndi People in the above sections.

Outcomes of consultation

Following on from Fortescue's consultation (as detailed in above sections), a letter was received on 25 May 2012 from WYAC's legal representatives confirming the Yindjibarndi People's 'non-objection' to this application. This letter is included at **Appendix 19**.

At the time of submission, Fortescue had not received any response from YAC regarding their position in relation to this Notice. If any such correspondence is received, it will be forwarded to the DIA upon receipt.

³ Goode, B., *A Report of an Ethnographic Aboriginal Heritage Survey of the Solomon Project in the Eastern Pilbara Region of Western Australia*, Brad Good & Associates, Dunsborough, August 2011, page 4.

⁴ Czerwinski, P & Birkhead, J., *Ethnographic Consultation report for a Section 18 Application Covering 10 Aboriginal Sites, FMG Solomon Mine Site, Pilbara, WA*, Heritage WA, April 2012.

8. Summary of potential effects on Aboriginal sites and possible management responses

Heritage Impact	Description																																				
Sites to be impacted by the activities undertaken as described in the Purpose	<p>Fortescue require to impact 8 Aboriginal sites located within the Land. A map showing the sites subject to this Section 18 is included in this notice as Appendix 4. These sites are:</p> <table border="1"> <thead> <tr> <th>Site ID</th> <th>Site Type</th> <th>Significance</th> <th>Level of Impact</th> </tr> </thead> <tbody> <tr> <td>YIN10-021</td> <td>Rock shelter, Artefact scatter</td> <td>Moderate</td> <td>Full</td> </tr> <tr> <td>YIN10-023</td> <td>Rockshelter, Walled niche</td> <td>Moderate</td> <td>Full</td> </tr> <tr> <td>YIN10-062</td> <td>Rock shelter, Artefact scatter</td> <td>Moderate</td> <td>Full</td> </tr> <tr> <td>YIN10-087</td> <td>Rock shelter, Artefact scatter</td> <td>Moderate</td> <td>Full</td> </tr> <tr> <td>YIN10-107</td> <td>Rock shelter, Artefact scatter</td> <td>Moderate</td> <td>Full</td> </tr> <tr> <td>YIN10-109</td> <td>Rockshelter, Artefact Scatter</td> <td>Low</td> <td>Full</td> </tr> <tr> <td>YIN10-111</td> <td>Rock shelter, Artefact scatter</td> <td>High</td> <td>Full</td> </tr> <tr> <td>YIN10-121</td> <td>Rockshelter, Walled niche</td> <td>Moderate</td> <td>Full</td> </tr> </tbody> </table> <p>Full details of the sites on the Land are provided in the Alpha Archaeology Report (including Addendum) in Appendix 16 (May 2012).⁵</p>	Site ID	Site Type	Significance	Level of Impact	YIN10-021	Rock shelter, Artefact scatter	Moderate	Full	YIN10-023	Rockshelter, Walled niche	Moderate	Full	YIN10-062	Rock shelter, Artefact scatter	Moderate	Full	YIN10-087	Rock shelter, Artefact scatter	Moderate	Full	YIN10-107	Rock shelter, Artefact scatter	Moderate	Full	YIN10-109	Rockshelter, Artefact Scatter	Low	Full	YIN10-111	Rock shelter, Artefact scatter	High	Full	YIN10-121	Rockshelter, Walled niche	Moderate	Full
Site ID	Site Type	Significance	Level of Impact																																		
YIN10-021	Rock shelter, Artefact scatter	Moderate	Full																																		
YIN10-023	Rockshelter, Walled niche	Moderate	Full																																		
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YIN10-107	Rock shelter, Artefact scatter	Moderate	Full																																		
YIN10-109	Rockshelter, Artefact Scatter	Low	Full																																		
YIN10-111	Rock shelter, Artefact scatter	High	Full																																		
YIN10-121	Rockshelter, Walled niche	Moderate	Full																																		
Strategies to minimise or avoid identified sites	When planning project operations, Fortescue's policy is to minimise the impact to cultural heritage and the environment. Refer to section 1.4 of the Solomon Hub Cultural Heritage Management Plan (CHMP) in Appendix 10 . ⁶																																				
Management commitments to sustainable heritage protection	Fortescue engages a number of heritage management principles to ensure that every reasonable effort is made to protect and manage Aboriginal heritage sites. Refer to section 4 of the Solomon Hub CHMP (see Appendix 10).																																				
Local, regional or cumulative impacts	n/a																																				

9. Applicant Response to Recommendation

Recommendations from Consultation /	Applicant Response to
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⁵ Rowland, M., Timms, A., *Section 18 Report for Mining and Infrastructure Phase 9, Solomon Mining and Infrastructure Project, Western Australia*, Alpha Archaeology Pty Ltd, Kensington VIC, May 2012.

⁶ Fortescue Metal's Group Limited, *Cultural Heritage Management Plan for Solomon project area in the Pilbara region of WA*, FMG, Perth, July 2011.

Heritage Survey Report (s)	Recommendations
<p><u>Archaeological Report</u></p> <p>1. It is recommended that FMGL ensure that its employees and contractors (as appropriate) are:</p> <p>a) Advised of the boundaries and site types of all Aboriginal sites within the Section 18 land;</p> <p>b) Informed that the sites listed in Table 2 and Section 7 constitute Aboriginal archaeological sites to which the Act applies;</p> <p>c) Advised that work authorised under Section 16 permit No. 506, has been completed at sites YIN10-021, YIN10-087 and YIN10-107;</p> <p>d) Advised that work authorised under Section 16 permit No. 500, has been completed at sites YIN10-062, YIN10-111 and YIN10-121;</p> <p>e) Advised that work authorised under Section 16 permit No. 503, has been completed at site YIN10-023;</p> <p>f) Advised that work authorised under Section 16 permits No. 506 has been completed at site YIN08-031. However, further excavation is recommended to investigate the possible hearth feature;</p> <p>g) Advised that work authorised under Section 16 permits No. 503 has been completed at site YIN09-002. However, further excavation is recommended to investigate the two possible hearth features.</p> <p>2. It is recommended that Consent under Section 18 of the AHA be granted to sites YIN08-031 and YIN09-002 on the conditions that prior to disturbance for these sites FMGL facilitate:</p> <p>a) additional test excavation and analysis</p>	<p>Fortescue agrees with all recommendations and confirm that any excavation/investigation results will be provided to the Yindjibarndi People prior to salvage taking place.</p>

Department of Indigenous Affairs

<p>to be undertaken in accordance with the recommendations in Section 7.1 and 7.2; and</p> <ol style="list-style-type: none"> i. consult with WMYAC representatives about the site's archaeological significance and its management; ii. provide WMYAC representatives with the right to request protection of the site; and iii. Should disturbance be acceptable to WMYAC representatives, consult with WMYAC about the possible salvage, display and storage of the cultural material. <p>3. It is recommended that Consent under Section 18 of the AHA be granted to sites YIN10-021, YIN10-023, YIN10-062, YIN10-087, YIN10-107, YIN10-111, YIN10-121 on the conditions that:</p> <ol style="list-style-type: none"> a) Disturbance at this site is acceptable to the relevant Yindjibarndi Traditional Owners. 	
<p><u><i>Ethnographic Reports</i></u></p> <p><u>Brad Goode and Associates⁷</u></p> <ul style="list-style-type: none"> • As a result of the above survey it is recommended that as no new ethnographic sites of significance, as defined by section 5 of the AHA, were identified within survey request areas: Yin_070 Fire Tail North, YIN_071 Fire Tail West, Trinity TSF & Conveyors and Yin_072 Solomon Rail Loop, that the proposed mining and infrastructure development should proceed as planned. • It is recommended that FMG provide the WYAC heritage subcommittee with regular information regarding water management procedures as the project proceeds. 	<p>Fortescue agrees with all recommendations.</p>

⁷ Recommendations related only to The Land outlined in this Section 18.

- It is recommended that FMG temporarily store all salvaged archaeological material until an adequate place can be found in country to repatriate the material. The final 'in country' repository should be decided by the WYAC once the mine plan is finalised and the archaeologists have consulted with the Yindjibarndi group about the options and potential locations for artefact storage.

Heritage WA

This report therefore makes the following recommendations.

- There are no ethnographic concerns regarding impacts to the ten Aboriginal sites that are the basis for the ethnographic consultation.
- WMYAC do not object to a Section 18 application over these sites.
- WMYAC representatives are involved in any archaeological salvage and/or archaeological excavation work associated with the FMG Section 18 application.
- That archaeological best practice methods be employed in the excavation and salvage of these sites, and that excavation should be thorough and complete for each site; especially with regard to walled niches and what they may enclose.
- If human burials or other human remains are found, that

Fortescue agrees with all recommendations.

Department of Indigenous Affairs

these not be disturbed or removed without prior consultation with Yindjibarndi Traditional Owners.

10. Attachments

Attachments	Description
Appendix 1:	- FMG Pilbara Pty Ltd company details
Appendix 2:	- Tenement reports
Appendix 3:	- General location of the Land subject to this Notice
Appendix 4:	- Mining and Infrastructure Phase 9 map displaying s18 boundary and sites (the subject of this application), previously submitted s18 boundaries, tenements and <u>archaeologically-surveyed</u> areas
Appendix 5:	- Mining and Infrastructure Phase 9 map displaying s18 boundary and sites (the subject of this application), tenements and <u>ethnographic-surveyed</u> areas
Appendix 6:	- S16 / S18 overview map of Solomon Project
Appendix 7:	- Fortescue's Construction Environmental Management Plan approved by the Department of Environment and Conservation (DEC)
Appendix 8:	- The NNTT decision plus summary of key points
Appendix 9:	- Presentation on the CHMP development, discussed with WYAC on 8 June 2011
Appendix 10:	- Cultural Heritage Management Plan (CHMP) for Solomon Project
Appendix 11:	- Letter to YAC regarding comment / input on CHMP
Appendix 12:	- Letter to YAC notifying WMYH to manage heritage survey work
Appendix 13:	- Letter to YAC and WYAC regarding notification to submit Section 18
Appendix 14:	- 17 May 2012 presentation to WYAC on Section 18 application
Appendix 15:	- Correspondence provided to YAC outlining field work requirements for 'Mining and Infrastructure Phase 9'
Appendix 16:	- Alpha Archaeology, Archaeology report (including Addendum)
Appendix 17:	- Goode, B., August 2011 Ethnographic Report
Appendix 18:	- Czerwinski, P. & Birckhead, J., May 2012 Ethnographic Report
Appendix 19:	- WYAC letter of non-objection

11. Copyright

Copyright	<i>I licence the Department of Indigenous Affairs, the ACMC and their representatives to use the contents of the Notice and any attachments for any purpose, to reproduce, to modify and adapt the Notice or attachments (including converting them into different formats), and to communicate the Notice or attachments to the public (including via a public web site). I confirm that I have obtained all licences and consents necessary to grant this licence.</i>
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12. Declaration

I declare that I have completed all sections of the Notice and declare that I have read and understood the information submitted and the recommendations I put to the ACMC.

Name (Full name of applicant. Please print)	<i>MARK THOMAS COMPANY SECRETARY</i>		
Signature		Date	<i>18/6/2012</i>

“MW-100”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

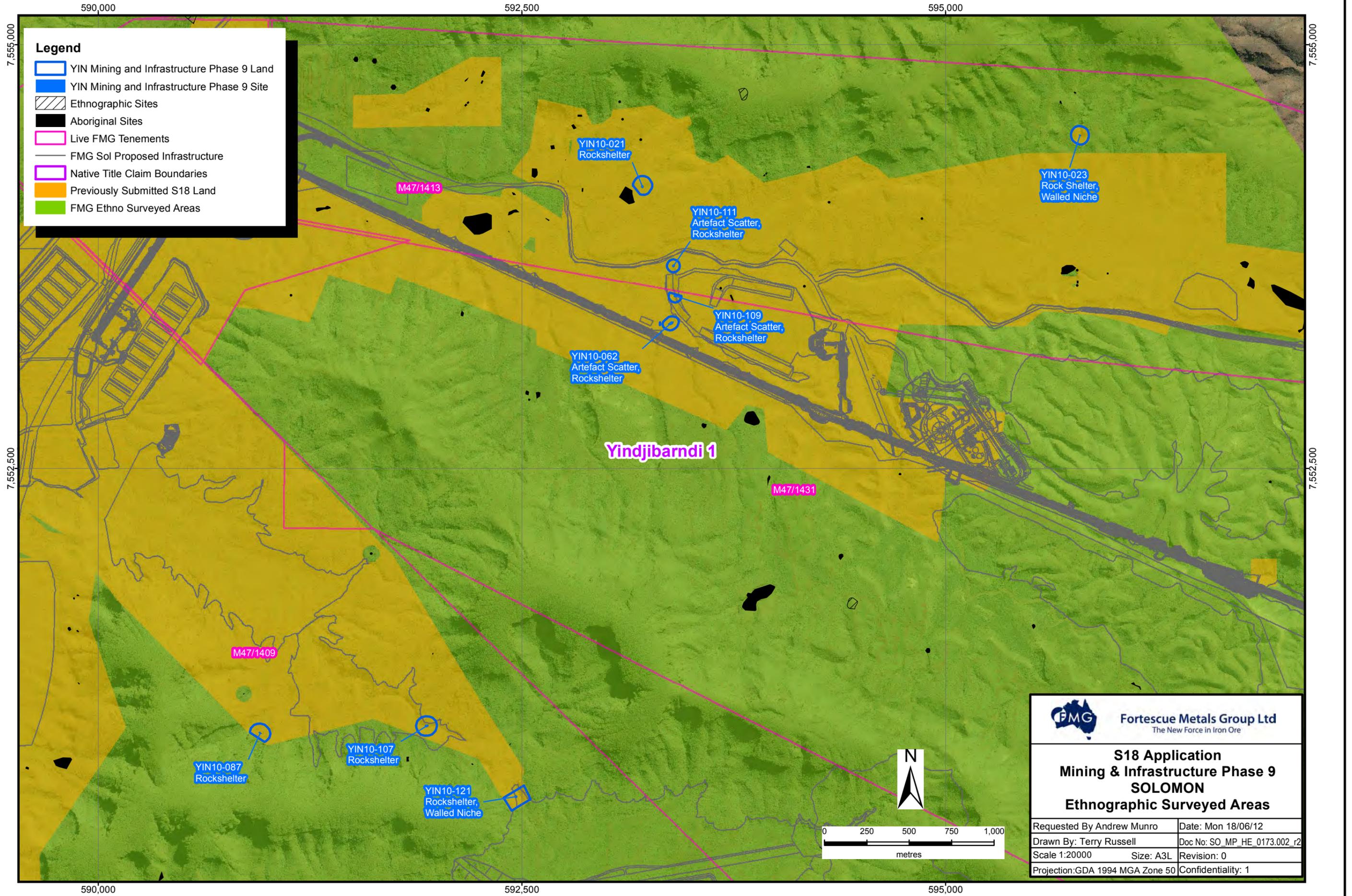
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-100”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



“MW-101”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

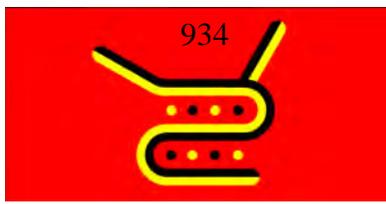
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 5 pages is the annexure marked **“MW-101”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

YAC INTELLECTUAL PROPERTY STATEMENT

The Yindjibarndi Aboriginal Corporation (A.B.N. 97 456 543 455) holds the copyright, intellectual and property rights for all cultural information that is contained within this statement. Individuals, communities or corporate entities cannot utilise any of the information contained within this statement without the express written permission of the Yindjibarndi Aboriginal Corporation (YAC). Any person or corporation deemed to have utilised information contained within this statement without the prior written authorisation of the YAC will be prosecuted.

THIS LETTER IS MARKED CONFIDENTIAL

02/07/12

To the Aboriginal Cultural Material Committee (ACMC)
The Department of Indigenous Affairs (DIA)

FMG Notice under S 18 of the AHA

for the following applications

Section 18 Application for 'Mining and Infrastructure Phase 9, Solomon Mining and Infrastructure Project, Western Australia

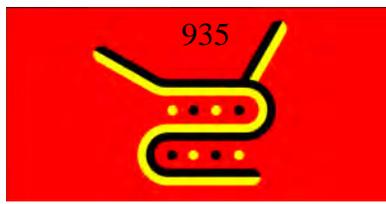
to be considered by the ACMC on July 11, 2012

This submission is made on behalf of the Yindjibarndi Aboriginal Corporation

Yindjibarndi Aboriginal Corporation (YAC) refers to the section 18 application made by Fortescue Metals Group (FMG), which is to be considered by the Aboriginal Cultural Material Committee (Committee) on Wednesday 11 July 2012, and submits that the ACMC should refuse to make any recommendation to the Minister on the following grounds:

1. the Committee cannot be certain that all sites in the land have been identified; and,
2. the Committee cannot be certain that the sites that have been identified, in the materials provided by FMG, have been properly assessed and accurately reported upon, in a context that includes an assessment of sites in the surrounding environment, so as to allow the Committee to properly assess the significance of the sites the subject of the application.

YAC and YAC members have made several representations to the ACMC both personally and in writing since the 16th of June 2010, in relation to FMG's applications under sections 16 and 18 of the *Aboriginal Heritage Act 1972* (the Act)



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

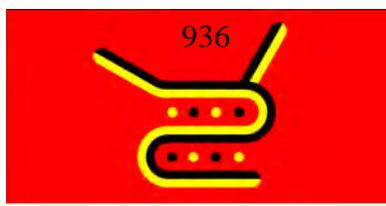
A.B.N. Number 97 456 543 455

which relate to sites in the 'Firetail' area and the greater 'Solomon' project area. No doubt the Committee is familiar with the foundation of YAC's opposition to FMG's applications under the Act; but to reiterate, FMG is destroying Yindjibarndi sites, and the cultural record of the Yindjibarndi People, without the free prior and informed consent of the Yindjibarndi People; and is preventing members of the Yindjibarndi People from freely practicing their religious observances at sites that are destroyed.

In respect of FMG's previous applications under the Act, DIA Heritage Officers have stated that the Committee can have no confidence in the accuracy of the information being supplied by FMG in support of its applications; they have reported FMG's consistent failure to comply with reasonable requests, by the Registrar, to provide copies of all reports on heritage surveys undertaken in the Solomon project area since 2007; and, they have highlighted the fact that the members of the Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC), who participate in FMG's heritage surveys have admitted that their "prior history of dispossession has left them with little or no knowledge" of the sites and areas they are clearing for destruction. The Committee itself has consistently found, as a result of FMG's refusal to comply with the requests of the Registrar and FMG's refusal to consult with YAC, that it is not possible to be certain that all sites in the land, the subject of FMG's applications, have been identified or properly assessed, as required by the Act.

As demonstrated below, the same must be said of FMG's current application; and, once again YAC puts the Committee on notice that there are a large number of significant sites in the land, which have not been identified by FMG; and that the sites that have been identified in the materials supplied by FMG have not been properly assessed for significance. FMG and its heritage consultants have again failed to consult with the Yindjibarndi people who hold cultural knowledge for those sites and have again failed to provide any meaningful context, in terms of sites in the surrounding environment, which would allow the Committee to properly assess the significance of the identified sites in the land.

YAC is unable to provide details of the precise locations of the unidentified sites in the land; and, is unable to provide the Committee with a report that properly assesses the significance of the identified sites because FMG has steadfastly refused YAC's reasonable requests for access to the area by YAC members and YAC's heritage professionals under conditions of privacy that are essential to enable a proper assessment to be made. A precondition for access to many sites in the land and the surrounding environment is the performance of religious rituals by the Yindjibarndi people who are responsible for those sites; and they are not prepared to perform those rituals under the constant supervision demanded by FMG as a condition of access. FMG physically blocked previous attempts, made by YAC members and heritage professionals, to access the 'Solomon' project area; and, in the event that YAC members and heritage professionals seek to access the project area without FMG's written permission and constant supervision, FMG has threatened to stop all work on the Solomon project (even if such access does not involve a work area) and then take legal action against every individual concerned, to recover the enormous amount of money that would be lost by any such stoppage.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

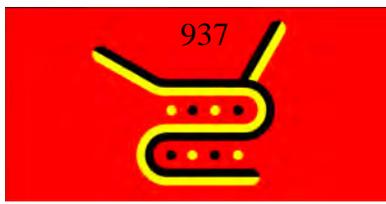
A.B.N. Number 97 456 543 455

FMG has good reason to be worried about what independent heritage professionals might identify and report. The archaeological report submitted by FMG in support of its current application indicates the existence of at least one site, YIN09-002, which, it is reported, may be up to 46,000 years old. However, the oral advice given to YAC by highly qualified archaeologists who have read that report, is that a finding of up to 46,000 years, based on the dating technique that was employed (known as “14C”) makes it highly likely that the site is in fact much older, since the 14C technique “*becomes increasingly unreliable beyond 40,000 years*”; accordingly, it is their collective view that more sophisticated (and thus more expensive) dating techniques “*may well demonstrate a date that goes beyond 46,000 years, potentially making this, and other sites in the vicinity, as old as any known site in Australia*”.

The members of the Wirilu-Murra Yindjibarndi Aboriginal Corporation (WYMAC), who were consulted by FMG’s heritage consultants and who support FMG’s s. 18 application, admitted that they hold no knowledge of any cultural significance in the land the subject of the application; and this explains why they were apparently prepared to clear the land of all heritage value without actually visiting the sites identified by FMG in the s 18 materials. However, the fact that those individuals hold no knowledge of any cultural significance in the land does not mean that the land has no cultural significance or that other Yindjibarndi people hold no such knowledge. The site identified as “YIN 023” contains evidence of a grave burial ceremony; and, according to Yindjibarndi men who do hold knowledge for that area, YIN 023, YIN09-002 and the many surrounding sites, which have been ignored in the materials submitted by FMG, are irreplaceable and precious components of the cultural record of the Yindjibarndi People and are thus sites that hold significant ethnographic value.

Although FMG ‘invited’ YAC members to participate in heritage surveys of the land, that invitation was not made in good faith and should be given no weight in the Committee’s consideration of FMG’s application. FMG knows that YAC members will not participate in heritage surveys in the absence of a written agreement; and the only written agreement currently in existence is the agreement FMG secretly negotiated with WMYAC members, in late 2010. Significantly, WMYAC’s own Barrister, Greg McIntyre SC (whose services are paid for by FMG) stated publicly at YAC’s AGM on 21 March 2012, that he “*could not recommend that agreement to his clients for execution*”.

As previously submitted, the hundreds of caves and rock-shelters that continue to be deliberately ignored in FMG’s s. 18 applications and which have yet to be comprehensively, professionally and independently investigated, hold significant ethnographic and archaeological data, burial chambers, skeletal remains, artefacts and other evidence, which forms an important part of the cultural record of the Yindjibarndi People; and, may well hold the key to understanding the first human migration out of Africa and the first occupation of Australia by Indigenous peoples, as well as the identity, demography, migration and history of those peoples. The cultural record that is contained within the caves and rock-shelters situated on the land is thus highly significant, not just for the Yindjibarndi People, but for the Australian nation and the international community.



YINDJIBARNDI ABORIGINAL CORPORATION

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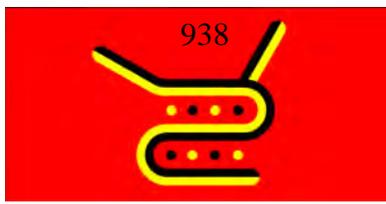
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FMG's Solomon project is driven by an artificial timeline that is concerned solely with making as much money as possible, as soon as possible. These precious cultural sites that stand in the way and are being deliberately ignored by FMG as this guarantees they will be destroyed before their cultural significance is revealed; and such revelation may impede the progress of FMG's timeline or worse may result in FMG being denied access to a body of iron ore. The approach of FMG to the cultural heritage of the Yindjibarndi People is unconscionable and shameful; and the lost opportunity to fully realise and appreciate the significance of that cultural heritage will be a national and a human tragedy.

The election of the YAC Board at the YAC AGM, held on 24 March 2012, took place with the full participation of Yindjibarndi people who are members of WMYAC; in fact, 58 of the votes cast to elect the YAC Board were cast by members and directors of WMYAC, who were represented at the AGM by Greg McIntyre SC. The outcome of that vote, 108 to 15, demonstrates the support in the Yindjibarndi community for YAC's position, vis-à-vis FMG's project; and demonstrates the hollowness of what has been put to the Committee on behalf of WMYAC, about the position of the Yindjibarndi People concerning FMG's 18 applications. The reality is that the small cohort that actually controls WMYAC has no legitimate basis to claim to be speaking on behalf of the Yindjibarndi People. The strength of the support for YAC's position, among the Yindjibarndi People, was again demonstrated at the Yindjibarndi community meeting on Saturday 24 March 2012, which authorised a new set of applicants for the Yindjibarndi #1 native title claim. That meeting was attended by the WMYAC directors and a large number of WMYAC members along with Greg McIntyre SC and other WMYAC representatives, including Janette Tavelli from Integra Legal. However, the overwhelming majority of the 180 Yindjibarndi adults at the meeting voted to remove Aileen Sandy and Sylvia Allan, from their position as applicants and to replace them with 12 Yindjibarndi people who support YAC's position.

CONCLUSION AND RECOMMENDATION

The Act requires the Committee to be satisfied that all sites on the land have been identified; and, the Committee has no power to make any recommendation to the Minister if the Committee remains uncertain about whether all sites have been identified. The course adopted by the Committee in respect of previous applications made by FMG, which recommended that the Minister give consent but that he attach conditions requiring FMG to provide copies of the earlier heritage reports to the Registrar and consult with YAC to identify and properly assess all sites in the land, and provide copies of those reports to the Registrar is contrary to the requirements of the Act. This is why, upon the application by FMG for a review of the Minister's decisions in the State Administrative Tribunal, the Minister has agreed to delete those conditions. YAC thus makes this urgent plea to the Committee: if on the basis of what has been said above, you have any doubt about whether all sites in the land have been identified; or if you are unsure about the significance of sites identified by FMG because you have a doubt about the accuracy or completeness of FMG's materials, then please do not allow yourselves to be persuaded into taking the same approach



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

again, since the outcome can only be, as it was before, the destruction of sites you suspect may exist and the ongoing obliteration of the cultural record of the Yindjibarndi People.

YAC submits that the appropriate course is for the Committee to postpone the consideration of FMG's application, until such time as there has been a thorough investigation of YIN 023, YIN09-002 and the many surrounding sites, which have been ignored in the materials submitted by FMG, by an independent team of archaeologists, such as might be found in the University of Western Australia or in Flinders University, in South Australia.

Signed for and on behalf of the Juluwarlu Group Aboriginal Corporation:

I state that this letter is a true and accurate reflection of the Yindjibarndi Aboriginal Corporation views and information as described to me and which is the subject of this submission.

Signed:

Date: 02/07/12

FULL NAME (PRINT) PHILIP JAMES DAVIES

Philip Davies

Anthropologist

B. Soc.Science (Anthropology and Sociology), B. Arts Honours (Anthropology)

Juluwarlu Group Aboriginal Corporation

“MW-102”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 4 pages is the annexure marked **“MW-102”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

Our Ref: 100-HE-0152



Wirlu-Murra Yindjibarndi Aboriginal Corporation

PO Box 249

Roebourne

WA 6718

(by Post and email)

Yindjibarndi Aboriginal Corporation

PO Box 3054

East Perth

WA 6892

(by Post and email)

6 November 2013

Dear Yindjibarndi Representatives,

NOTIFICATION OF PROPOSED NOTICE UNDER SECTION 18 OF THE ABORIGINAL HERITAGE ACT (1972) AT FORTESCUE'S SOLOMON MINE PROJECT: MINING AND INFRASTRUCTURE PHASE 16

Fortescue hereby gives notice of its intention to make an application under Section 18 of the *Aboriginal Heritage Act 1972* to use the Land herein referred to as '**Mining and Infrastructure Phase 16**'. The Land is proposed for the Purpose of construction of mining infrastructure, including waste dump associated with Solomon Kings Mining.

A copy of the Section 18 Notice will be forwarded to you once all reports and related information has been collated. The final Notice will be submitted to the Department of Aboriginal Affairs ("DAA") on the 13 December 2013, in preparation for the APMC meeting proposed on 12 February 2014.

Fortescue reiterate previous and regular invitations to Yindjibarndi Aboriginal Corporation to participate in the ongoing heritage survey program that is currently underway in project areas on Yindjibarndi Country. These surveys include both archaeological and ethnographic assessments of the Land, conducted in collaboration with Yindjibarndi People, as represented by the Wirlu-Murra Yindjibarndi Aboriginal Corporation.

Alternately, Fortescue request that the Yindjibarndi Aboriginal Corporation provide any information relating to Aboriginal heritage sites known to exist on the Land.

Please feel free to contact me if you have any further queries.

Yours sincerely

FORTESCUE METALS GROUP

SHARAN BHASKAR

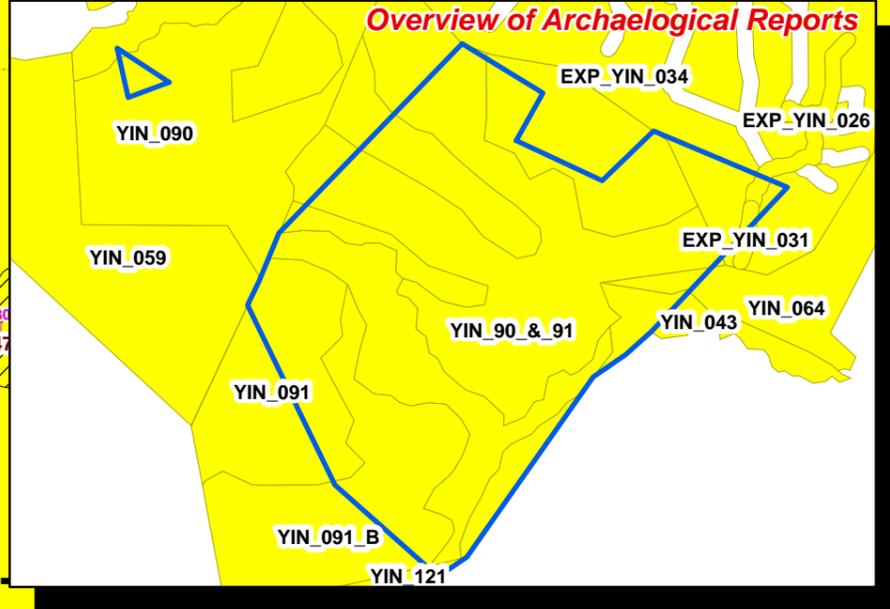
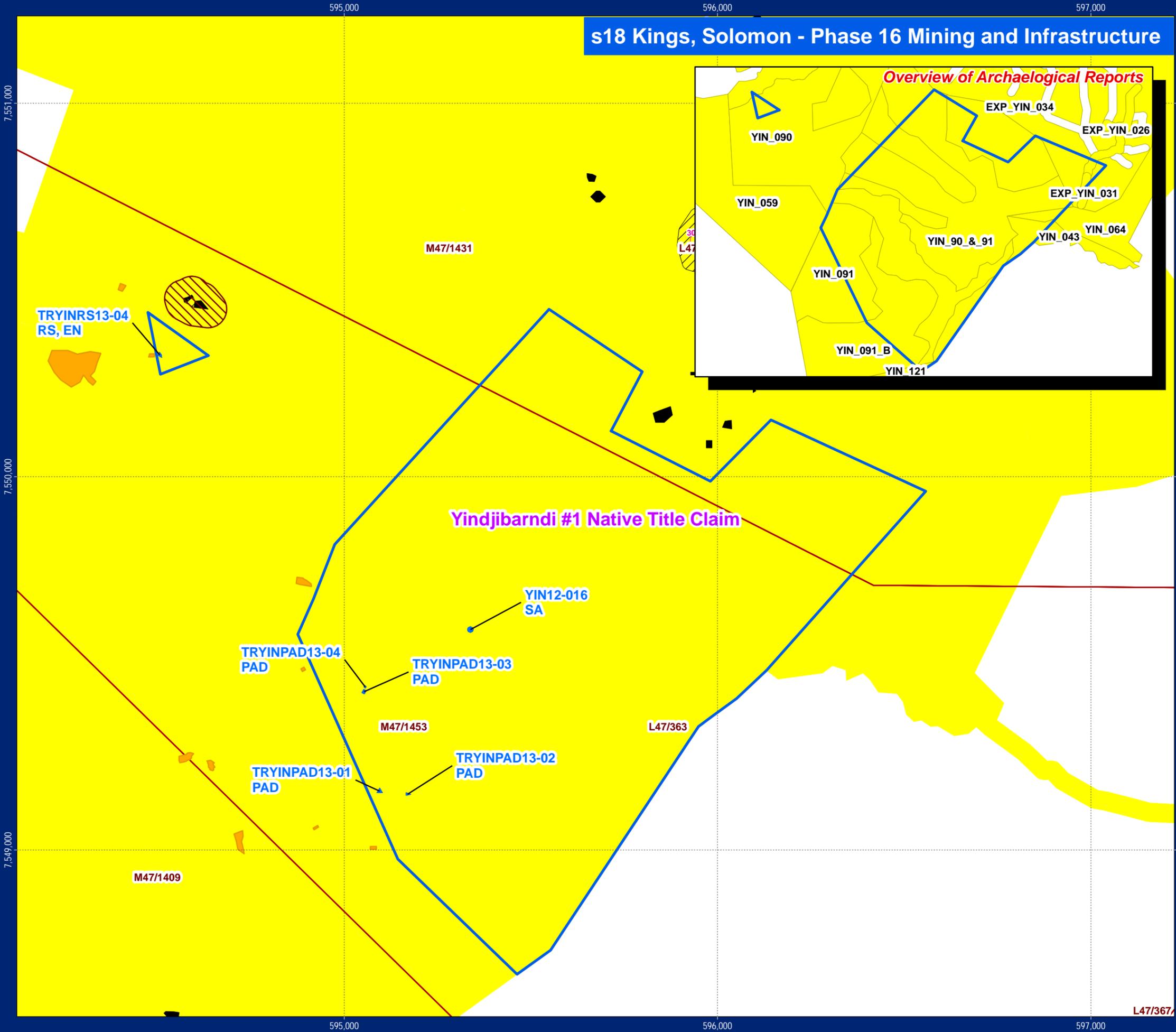
HERITAGE APPROVALS COORDINATOR

Enc.

Attachment 1 Map of Section 18 Mining & Infrastructure Phase 16 Sites and Land

Attachment 2 Map of Section 18 Mining & Infrastructure Phase 16 Location Overview

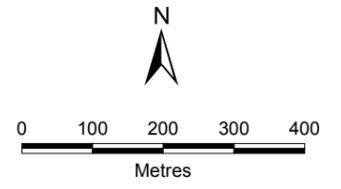
s18 Kings, Solomon - Phase 16 Mining and Infrastructure



LEGEND

- s18_Land
- Sites To be Impacted as part of s18
- GOV DIA Sites
- Ethnographic Sites
- Arch Sites
- Native Title Claim
- FMG Live Tenements
- FMG Heritage Survey Area

Data Source(s):
 Tenements: DMP, 2013
 Native Title Claim, DIA Sites: DAA, 2013



Mining and Infrastructure Phase 16 Kings, Solomon Archaeological Overview

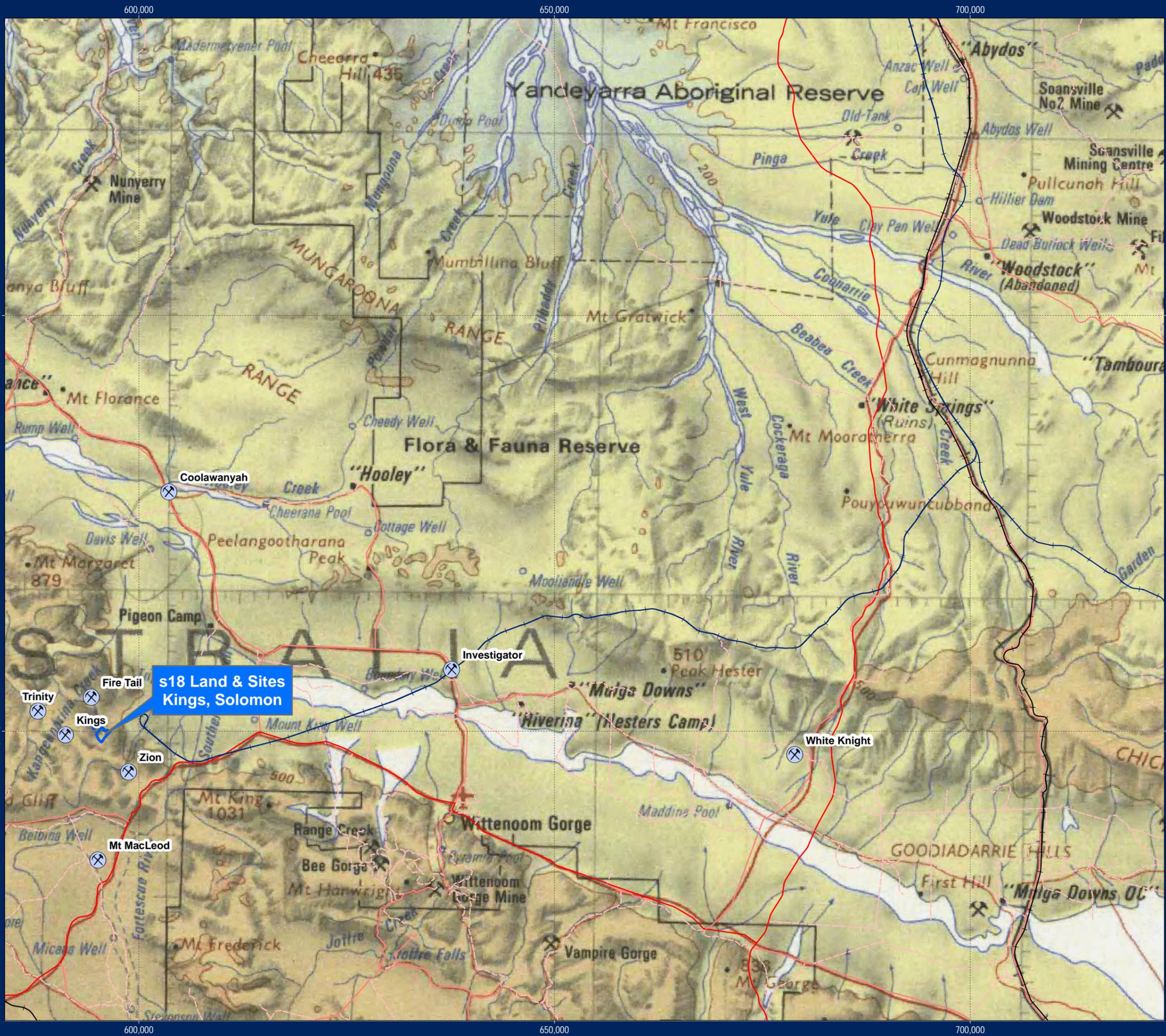
Requested By: S Bhaskar	Date: 6/11/2013
Drawn By: R Maconachie	Size: A3L
Revised By: rmaconachie	Revision: 0
Approved By: JT	Confidentiality: 1
Scale: 1:10,000	
Coordinate System: GDA 1994 MGA Zone 50	
Document Name: SO_MP_HE_0221.001_r0	

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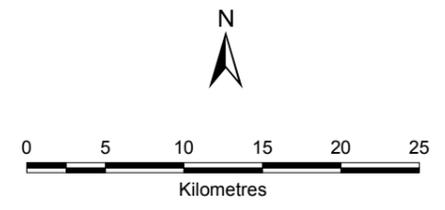
Fortescue Metals Group Ltd
The New Force in Iron Ore

L47/367



LEGEND

- s18_Land
- Mines**
- FMG
- FMG_Rail_Alignments
- Railways
- Dual Carriageway
- Minor Road
- Principal Road
- Secondary Road
- Track



Data Source(s):
Topography, Geoscience Australia

Location Overview
s18 Land & Sites
Kings, Solomon

Requested By: S Bhaskar	Date: 6/11/2013
Drawn By: R Maconachie	Size: A3L
Revised By: rmaconachie	Revision: 0
Approved By: JT	Confidentiality: 1
Scale: 1:450,000	
Coordinate System: GDA 1994 MGA Zone 50	
Document Name: SO_MP_HE_0221.002_r0	

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“MW-103”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 32 pages is the annexure marked “**MW-103**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



TERRA ROSA
CONSULTING

Report on an archaeological site avoidance heritage survey, site identification heritage assessment and archaeological salvage of HWIs YIN_225, YIN_245, and YIN_248 at the Solomon Project conducted by the Yindjibarndi Traditional Owners and Terra Rosa Consulting and prepared for Fortescue Metals Group Limited

November 2016

Authors: Cody Howard and Denis Coutant

Client Ref: 2016_YIN_Trip8

TRCo Ref: WRL21

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Coordinate Capture

The authors advise that all coordinates quoted in this document were initially obtained with a Garmin hand held GPS and a Panasonic FZ-A1 ToughPad, using the GDA datum. All grid references are projected in MGA Zone 50, unless otherwise stated. Dependent on external conditions, these units afford an optimal spatial accuracy of ± 5 m.

Heritage project participants and contacts

The contact details of the heritage project stakeholders are provided below. The authors would like to thank everyone that participated in the heritage survey, assessment and archaeological salvage, and assisted in organising the fieldwork.

2016_YIN_Trip8 was conducted between 15 and 18 November 2016.

Heritage service provider	Terra Rosa Consulting
Address	346 South Terrace, South Fremantle, Western Australia 6162
Field work participants	Cody Howard (archaeologist) Denis Coutant (archaeologist)
Report authors	Cody Howard and Denis Coutant
Editor	Anne Golden
Executive sign-off	Scott Chisholm

Traditional Owners	Wirilu-murra Yindjibarndi Traditional Owners
Address	6 Queen St, Roebourne, Western Australia 6718
Contact	Wirilu-murra Yindjibarndi Aboriginal Corporation c/o Wirilu-murra Enterprises, for and on behalf of the Yindjibarndi Traditional Owners
Field work participants	Rodney Adams Kenny Diamond Cecil Ingle Ricky Sandy

Proponent	Fortescue Metals Group Ltd
Address	Level 2, 87 Adelaide Terrace, East Perth Western Australia 6000
Contact	Tina Ghalati
Field work participants	Aaron Rowley Brad Irons (Heliwest; present 15-16 November)

Executive Summary

Fortescue Metals Group Limited (FMG) plans to utilise land within the Yindjibarndi native title claim (WC2003/003) for the purposes of further developing mining infrastructure, including mining pits, roads, laydowns, and water areas. FMG also plans to develop an Eliwana Rail with associated infrastructure within the Western Hub corridor. To minimise the likelihood of breaching the *Aboriginal Heritage Act 1972 (WA)* (the Act), FMG commissioned a site avoidance heritage survey, a site identification heritage assessment, and an archaeological salvage over the areas scoped for development, within heritage work instructions (HWIs) YIN_225, YIN_245, and YIN_248.

Wirru-murra Aboriginal Corporation (WMYAC) engaged Terra Rosa Consulting (Terra Rosa) to conduct an archaeological heritage survey, assessment, and archaeological salvage of the areas in consultation with the Yindjibarndi Traditional Owners. 2016_YIN_Trip8 was conducted between 15 and 18 November 2016.

Following fieldwork, the salvaged material was stored in a designated sea container at the Solomon Hub, awaiting transportation to Fremantle where it will be subject to detailed analysis by a qualified archaeologist. At the time of reporting, the salvaged materials were not yet available to Terra Rosa in Fremantle and analysis of the salvage material is pending. Once complete, analysis results will be included in an addendum report. Following analysis, the salvaged material will be repatriated to a location agreed upon by the Yindjibarndi Traditional Owners and FMG.

The results of 2016_YIN_Trip8 are summarised as follows:

HWI YIN_225 Complete

- **No heritage restriction zones (HRZs)** were delineated;
- **No registered Aboriginal sites** were identified;
- **Two lodged other heritage places (OHPs; YIN10-101 and YIN10-106)** were considered likely to meet criteria under s5 of the Act, and were recorded to site identification standard as **potential sites**;
- **No heritage places** were considered unlikely to meet criteria under s5 of the Act; and
- **No isolated objects**, comprising background archaeological material (BAM), were recorded.

HWI YIN_245 Complete

- Registered Aboriginal site DAA ID 30313 (YIN08-031; a single rockshelter) was archaeologically salvaged in accordance with Ministerial consent 34-68444;
- The count of artefacts from the archaeological surface salvage of this rockshelter was three;
- Following the archaeological salvage program at DAA ID 30313 (YIN08-031), the supplied archaeological salvage permit was signed off and provided to the attending FMG Field Officer; and
- The salvaged artefacts have been stored in a designated sea container at the Solomon Hub and are awaiting transportation to Fremantle for analysis.

HWI YIN_248 Partially complete

- **No HRZs** were delineated;
- **No registered Aboriginal sites** were identified;
- **Two previously identified heritage places** (YIN10-046 and YIN10-047) was considered likely to meet criteria under s5 of the Act, and were recorded to site identification standard as a single **potential site** (YIN10-046);
- **No heritage places** were considered unlikely to meet criteria under s5 of the Act; and
- **No isolated objects**, comprising BAM, were recorded.

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Acronyms and definitions

The following terms and acronyms are utilised throughout the report. Definitions are provided below for reference.

Term / Abbreviation	Definition
ACMC	Aboriginal Cultural Materials Committee
AHIS	Aboriginal Heritage Inquiry System
BAM	Background archaeological material
DAA	Department of Aboriginal Affairs
FMG	Fortescue Metals Group Limited
GIS	Geographic information system
GPS	Global positioning system
Heritage object	An object to which the Act applies under s6
Heritage place	Any place which contains archaeological and/or ethnographic heritage values
HISF	Heritage Information Submission Form
HWI	Heritage work instruction
Heritage restriction zone (HRZ)	“Any areas which are surveyed, but for which site recording is yet to be complete”, as per FMG’s <i>Heritage Consultant Standards</i> (2015: 50).
MGA	Map grid of Australia
NNTT	National Native Title Tribunal
‘Not Clear’	<p>A scoped HWI survey area within which the proposed works should not proceed, subject to further consultation or advice. A survey area may be considered ‘not clear’ for a number of reasons, including:</p> <ul style="list-style-type: none"> • The presence of a heritage place; • The presence of other heritage values identified by the Traditional Owners; • Access limitations due to terrain or the presence of a heritage place (in such cases, deviations are surveyed in accordance with FMG’s Consultant Standards); and • Because the survey was unable to be completed in the area due to time limitations, priority given to other HWI areas, etcetera (also labelled as ‘not surveyed’).
‘Not Surveyed’	<p>A scoped HWI survey area which was unable to be completed in the area due to time limitations, priority given to other HWI areas, access limitations etcetera (also labelled as ‘pending’).</p> <p>Or a scoped HWI survey area that was not surveyed using pedestrian transects however was cleared by the Traditional Owners.</p>
Other Heritage Place	<p>Other heritage places recorded by Terra Rosa are heritage places which are considered unlikely to meet criteria outlined under section 5 of the <i>Aboriginal Heritage Act 1972 (WA)</i>. Such places, where not already assessed by the ACMC, are still subject to statutory obligations under the Act.</p> <p>This may include other heritage places catalogued by the DAA but not</p>

Term / Abbreviation	Definition
	<p>included on the Register of Aboriginal Sites for one of the following reasons:</p> <ol style="list-style-type: none"> 1. Information about the OHP has been lodged with the DAA but is pending assessment by the ACMC (status L – lodged; also see definition for ‘potential site’, below); or 2. The ACMC assessed the OHP and considered it not to meet the evaluation criteria for inclusion on the Register of Sites (i.e. not a registered Aboriginal site) (status S – stored / not a site).
PAC	Place assessment checklist
Potential site	<p>Potential sites recorded by Terra Rosa are heritage places considered likely to meet criteria under section 5 of the <i>Aboriginal Heritage Act 1972 (WA)</i>. This may include OHPs catalogued by the DAA where information has been lodged, but is pending assessment by the ACMC (status L – lodged).</p>
Registered Aboriginal site	<p>A heritage place which has been determined as meeting criteria under section 5 of the <i>Aboriginal Heritage Act 1972 (WA)</i>, and has been registered by the Registrar of Aboriginal Sites (DAA status R - registered).</p>
‘Surveyed’	<p>A scoped HWI survey area over which the scoped heritage survey / assessment has been completed. The status of the surveyed area will be further described as ‘clear’ or ‘not clear’ depending on the outcome of the survey / assessment.</p>
Terra Rosa	Terra Rosa Consulting
Traditional Owners	Yindjibarndi native title claimants (NNTT no WC 2003/003) and invited participants
The Act	<i>Aboriginal Heritage Act 1972 (WA)</i>
WMYAC	Wirilu-Murra Yindjibarndi Aboriginal Corporation

1 Heritage project overview

Fortescue Metals Group Limited (FMG) plans to utilise land within the Yindjibarndi native title claim (WC2003/003) for the purposes of further developing mining infrastructure, including mining pits, roads, laydowns, and water areas. FMG also plans to develop an Eliwana Rail with associated infrastructure within the Western Hub corridor. The project is contained within exploration licences E47/1334 and E47/1431, and mining tenement M47/1409 (see maps 1-4).

To minimise the likelihood of breaching the *Aboriginal Heritage Act 1972 (WA)* (the Act), FMG commissioned a site avoidance heritage survey, a site identification heritage assessment, and an archaeological salvage over the areas scoped for development. Wirlumurra Aboriginal Corporation (WMYAC) engaged Terra Rosa Consulting (Terra Rosa) to conduct an archaeological heritage survey, assessment, and salvage of the areas in consultation with the Yindjibarndi Traditional Owners. The Traditional Owner participants were nominated by WMYAC.

Plate 1: The heritage team



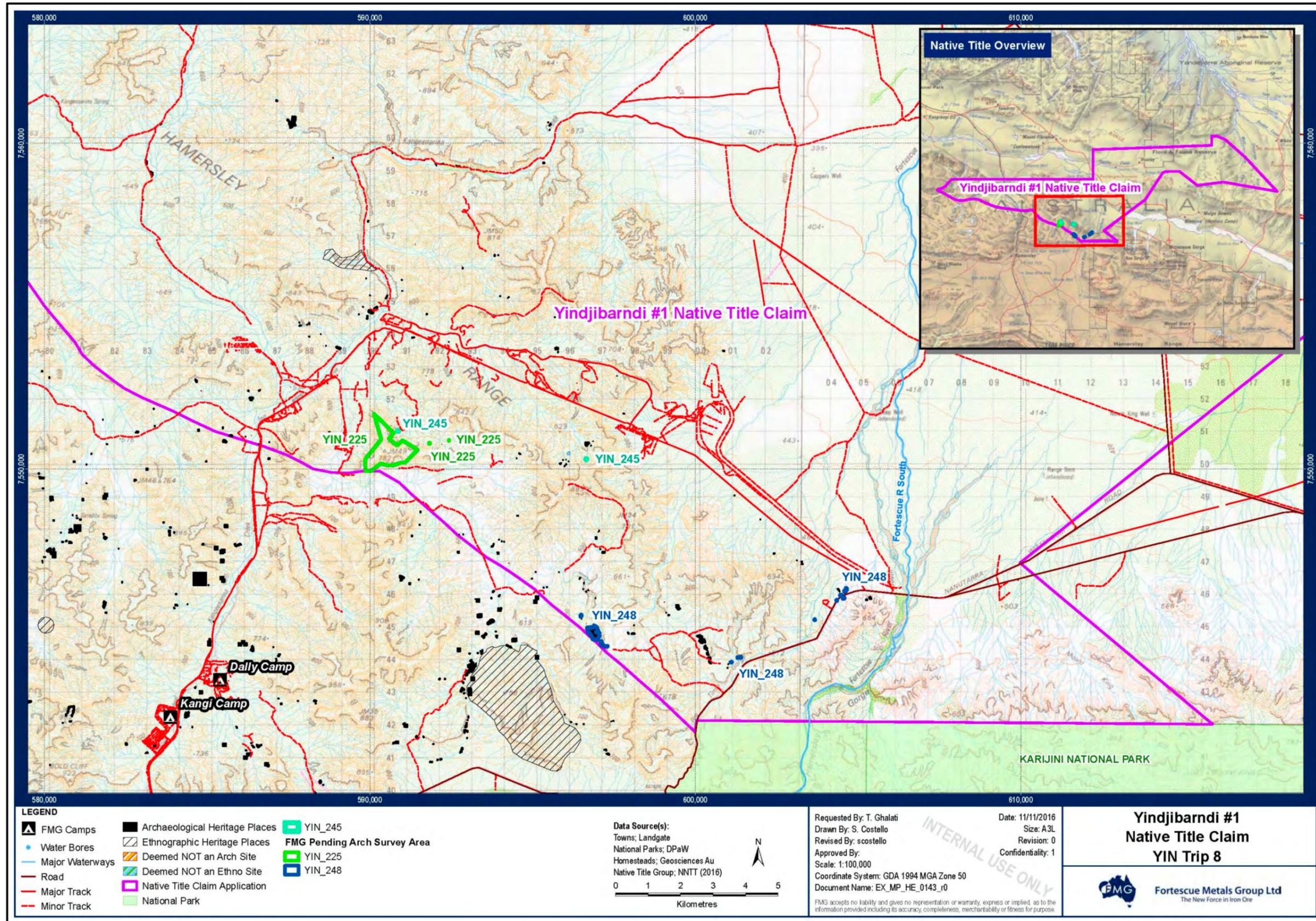
Archaeological site avoidance survey, site identification assessment, and archaeological salvage in accordance with HWIs YIN_225, YIN_245, and YIN_248, conducted with the Yindjibarndi Traditional Owners for FMG

Table 1, below, summarises the assessment requirements for Heritage Work Instructions (HWIs) YIN_225, YIN_245, and YIN_248.

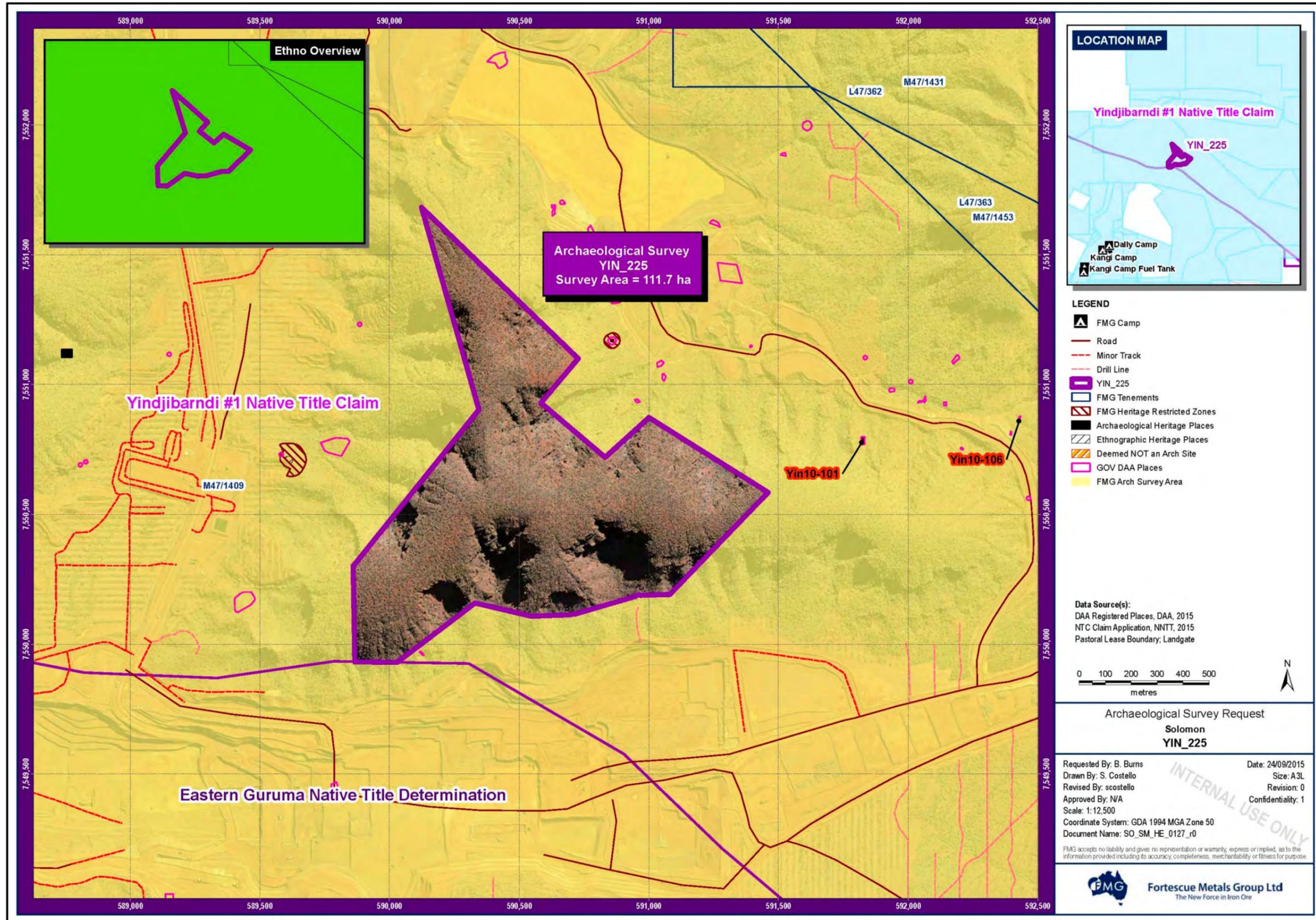
Table 1: Heritage work instruction summary

HWI #	Project area; survey area	Total area (ha)	Assessment type
YIN_225	Kings	111.7 ha	Archaeological site avoidance survey and site identification assessment
YIN_245	Kings	N/A	Archaeological salvage
YIN_248	Western Hub corridor	N/A	Archaeological site identification assessment

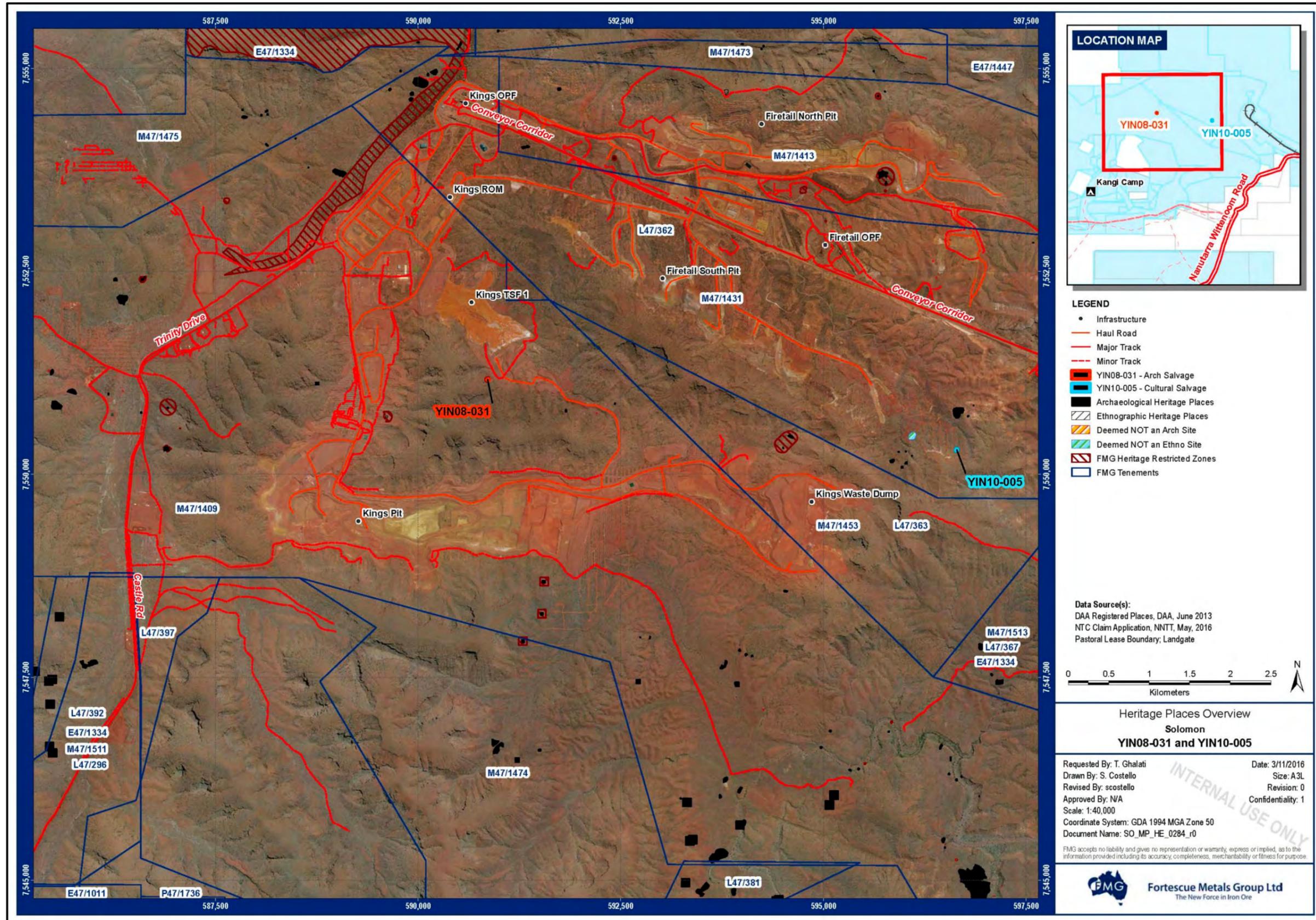
Map 1: Overview map for 2016_YIN_Trip8



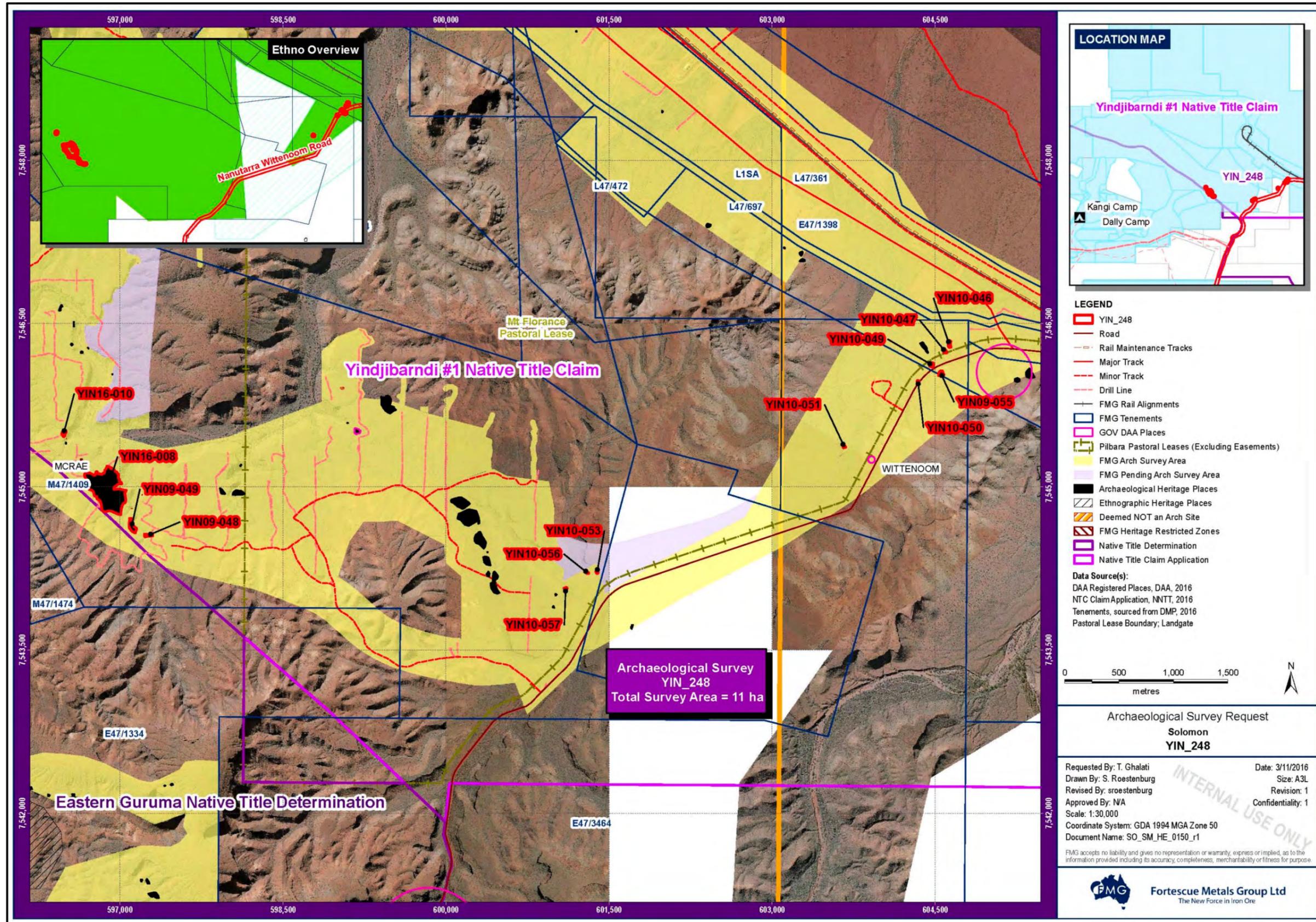
Map 2: Heritage scope of works for HWI YIN_225



Map 3: Heritage scope of works for HWI YIN_245



Map 4: Heritage scope of works for HWI YIN_248



2 Heritage assessment method

The archaeological heritage survey was conducted to a site avoidance standard. The objective of site avoidance heritage surveys is to identify and record brief details of heritage places within the survey areas that may constitute Aboriginal sites as defined under s5 of the Act, to negotiate deviations around such places where possible, and to provide FMG with heritage management considerations for heritage values that would otherwise be impacted by the proposed development. As such, the site avoidance method of heritage assessment is designed to document Aboriginal heritage values to a standard sufficient to provide a preliminary understanding of the characteristics of heritage places and to allow the proponent to proceed with works that will not impact those places.

This includes accurate delineation of the spatial extent of heritage places using handheld global positioning systems (GPSs), justification of the recorded boundaries, and a brief description of the heritage values of the places, sufficient to convey the potential importance and significance of the place. However, site avoidance recording is insufficient to allow a full significance assessment to be made under s39 of the Act for consideration by the Aboriginal Cultural Materials Committee (ACMC).

The archaeological heritage assessment was conducted to a site identification standard in accordance with s18 requirements. The objective of site identification assessments is to provide FMG with sufficient detail to inform the Department of Aboriginal Affairs (DAA) and ACMC's decision on the significance of Aboriginal heritage values within a project footprint and any future management of those values during the development of the area.

This includes accurate delineation of the spatial extent of heritage places using handheld GPSs, justification of the recorded boundaries, analysis of the integrity and condition of the place, and detailed recording of principle attributes and components considered by the ACMC during assessment of the heritage place. Additionally, site identification assessment includes ascertaining the degree to which the proposed development is likely to impact heritage places and objects, and provides the proponent with relevant, informed heritage management recommendations.

Please refer to Terra Rosa's Scope of Heritage Services (2015) for a complete overview of the methods utilised by Terra Rosa.

2.1 Legislative requirements

Under s17 of the Act, it is an offence to disturb an Aboriginal site without prior written permission to do so under s16 or s18 of the Act. This applies regardless of whether an Aboriginal site is registered. Heritage assessments of proposed development areas are conducted to identify the location and extent of sites and heritage places so that they can be appropriately managed in accordance with the legislative requirements of the Act. Outlines of the sections of the Act referenced in this report are provided in appendix 1.

2.2 Desktop assessment procedure

Prior to field work, a preliminary desktop assessment was undertaken to provide an overview of heritage research undertaken to date within the area. Desktop research focused on the

identification of any registered Aboriginal sites within the area, which need to be considered in the heritage approval process for the project.

Desktop research for heritage values relies largely on the Register of Sites maintained by the DAA, which provides an indication as to the presence and nature of any heritage values previously recorded and registered within the area.

Prior to field work, the survey and assessment area boundaries are entered into the DAA Aboriginal Heritage Inquiry System (AHIS) to ascertain whether any registered Aboriginal sites or other heritage places (OHPs) have been recorded within the area. Registered Aboriginal sites are those areas that have been assessed by the ACMC as constituting sites under the Act. OHPs include places for which data has been lodged with the DAA but is pending assessment by the ACMC, and stored data / not a site pertaining to heritage places and objects that have been assessed by the ACMC as not constituting registered Aboriginal sites.

The AHIS search is also utilised to ascertain whether any heritage assessments have previously been conducted within the application area and if any heritage reports containing information relevant to the application area have been registered with the DAA.

Following the AHIS search, relevant registered Aboriginal sites, OHP files and heritage reports held by the DAA are accessed and studied. Some of the information held by the DAA is not publically accessible due to file restriction, or due to temporary access suspension as a result of DAA administrative processes. In such cases, the inability to access information is noted in the heritage assessment results for the relevant sites / heritage places.

Unpublished material (heritage reports not registered with the DAA) available for review is also researched prior to field work and included in the heritage assessment results where relevant.

2.3 Field assessment procedure

As outlined above, the heritage survey was conducted to site avoidance standard and the heritage assessments to site identification standard.

Before the start of the heritage survey, a briefing was conducted by the heritage consultants to provide the Yindjibarndi Traditional Owners with information about its purpose, scope, and method. Any places of interest known to or recognised by the Traditional Owners, including registered Aboriginal sites, were discussed, along with accessibility to and possible vantage points within the assessment areas. The heritage consultants sought confirmation from the Yindjibarndi Traditional Owners that they consented to participate in the heritage assessment and whether additional Traditional Owners, who may hold further knowledge of the area, needed to be consulted. The method utilised during field work was approved and endorsed by the Yindjibarndi Traditional Owners that participated in the field assessment.

Lodged OHPs were subjected to targeted inspection and their registered boundaries assessed for accuracy. Revised boundaries were recorded where existing boundaries did not accurately reflect the location and / or extent of a heritage place. Any information additional to the data known to be held by the DAA was recorded.

Pedestrian transects and helicopter inspection were used to assess the remainder of the survey area for cultural heritage values. Any heritage places identified were recorded to a

site avoidance standard, which makes an assessment of whether they are considered likely to meet the criteria of a site under s5 of the Act.

Any heritage places demonstrating purposive activity, and were assessed as likely to meet criteria under s5 of the Act were recorded as potential sites. Heritage places demonstrating purposive activity but considered unlikely to meet criteria under s5 of the Act were recorded as OHPs. Detailed methods used to record different heritage values are provided in appendix 2. Place assessment checklists (PACs) were completed for all heritage places recorded using an assessment framework outlined in Terra Rosa's Scope of Heritage Services (2015). These have been provided with the preliminary advice preceding this report.

The location, type, and lithology of any identified isolated objects comprising background archaeological material (BAM) during the assessment were also recorded.

A formal debrief meeting upon conclusion of the field trip afforded representatives of the Yindjibarndi Traditional Owner group the opportunity to discuss and comment upon the heritage assessment method and the heritage places identified, including mitigation strategies, and recommendations for heritage management within the area.

2.4 Archaeological salvage methodology

The archaeological salvage program was undertaken by Terra Rosa and the Yindjibarndi Traditional Owners as per the requirements and criteria set out by Ministerial consent 34-68444 under s18 of the Act.

A detailed site plan was completed during the site identification recording of the registered Aboriginal site. All salvaged artefacts were given a number, recorded on the site plan, and individually bagged with a corresponding number. The salvaged material was stored in a designated sea container at the Solomon Hub, awaiting transportation to Fremantle where it will be subject to detailed analysis by a qualified archaeologist.

At the time of reporting, the salvaged materials were not yet available to Terra Rosa in Fremantle and analysis of the salvage material is pending. Once complete, analysis results will be included in an addendum report.

Following analysis, the salvaged material will be repatriated to a location agreed upon by the Yindjibarndi Traditional Owners and FMG.

2.5 Artefact analysis methodology

For all objects collected, attributes such as the type of artefact, lithology, the amount of cortex, and any retouch or usewear were recorded, along with any additional comments. Additional attributes were recorded for certain artefacts such as the number of negative flake scars on cores.

For all grinding material collected additional information was recorded, including the dimensions of the artefact and the ground surface(s), along with comments on pitting / grooves.

Artefact attribute data was then subjected to statistical analysis in order to assess the significance of the heritage place within a localised and regional framework.

2.6 Presentation and review of findings

Results are presented in formats tailored according to the classifications of findings. This ensures that sufficient information is provided in accordance with heritage approval requirements, and prevents the submission of any data superfluous to the requirements of the scope. Definitions of these are provided in the preamble of this report.

Outcomes of the heritage research are reviewed by WMYAC prior to dissemination of results to FMG. The review process ensures that culturally sensitive information is appropriately indicated, and the recommendations discussed amongst the heritage team are made in accordance with the Traditional Owners' suggestions. This process provides Terra Rosa with feedback which is taken into account during the final editing of the report.

3 Desktop research

The objectives of desktop research are to identify if any heritage values have been previously identified within the survey and assessment areas, what the nature of these places is, and to place them in a broader context of relevance to the Traditional Owners.

3.1 AHIS search

As described in section 2.2, an AHIS search was undertaken for the areas described within HWIs YIN_225, YIN_245, and YIN_248. The results of this AHIS search are summarised in table 2 below.

Table 2: AHIS search summary of results

Classification of findings	Number identified in assessment area	HWIs	DAA ID	Site / place type	Comments
Registered Aboriginal sites	1	YIN_245	DAA ID 30310 (YIN08-031)	Artefacts / Scatter, Rock shelter	DAA Status: Registered Aboriginal site / No gender restriction
Lodged OHPs	2	YIN_225	DAA OHP ID 31311 (YIN10-101)	Artefacts / Scatter, Rock shelter, Other: Possible hearth	DAA Status: Lodged / No gender restriction
			DAA OHP ID 31315 (YIN10-106)	Artefacts / Scatter, Rock shelter	DAA Status: Lodged / No gender restriction
Stored OHPs	0	YIN_225 YIN_245YIN_248	N/A	N/A	AHIS search revealed no stored DAA OHPs within the HWI areas.

Descriptions of registered Aboriginal sites and OHPs are provided in section 4. A list of the relevant associated reports is provided in the bibliography (section 7).

3.2 Regional background

3.2.1 Region and native title interests

The Yindjibarndi #1 Native Title Claimants (WC2003/003) are the Yindjibarndi people of the Central Pilbara region whose traditional lands cover an area of approximately 2,778 km² including parts of the Chichester Range, Hamersley Ranges and the Fortescue River. The claim, registered with the Native Title Tribunal in 2003, incorporates portions of the Shires of Ashburton and East Pilbara and the Town of Port Hedland. The Yindjibarndi Traditional Owners continue to hunt in the region, as well as practice their traditional culture, such as performing ceremonies and paying respects to ancestral spirits.

3.2.2 Major landforms

Yindjibarndi country covers three of the Interim Biogeographic Regionalisation for Australia (IBRA) subregions as defined by Thackway and Cresswell (1995) – the Hamersley, Chichester and Fortescue subregions. Each subregion is associated with a defining topographical feature of the Pilbara region, including the Chichester and Hamersley Plateaux and the Fortescue River valley.

The Hamersley subregion covers an area of approximately 56,490 km², extending across the southern part of the Pilbara Craton and encompassing the Hamersley Ranges, the most prominent mountainous area in Western Australia. The Chichester is the largest subregion, covering over 83,700 km² (McKenzie et al. 2009), with the Chichester Range forming the dominating landform in Yindjibarndi country. The permanent wetlands associated with the Oakover and Davis Rivers are therefore important ecological features of the region. The Fortescue subregion is the most restricted of the three subregions within the Yindjibarndi native title claim, with an area of only 19,560 km² (*ibid.*).

3.2.3 Cultural landscape

The Yindjibarndi people consider as their *Ngurra* (country) a large area of the Pilbara featuring the Millstream-Chichester National Park, *Yurlburr* (Python Pool), *Wuyumarri* (Gregory Gorge), *Gambulanha* (the Hamersley Ranges) and parts of *Yandanyirra* (Fortescue River). This has been the Yindjibarndi's *Ngurra* since *Ngurra Nyujunggamu* (when the world was soft) (Juluwarlu Aboriginal Corporation 2008, p. vii). Embedded within these topographical features are Yindjibarndi people's Law, stories, Dreamtime pathways, ancestral spirits and traditional travel routes through country. This intrinsic relationship between culture and *Ngurra* is what is often referred to as the 'cultural landscape' of Yindjibarndi Country.

3.2.4 Water resources

Water sources, such as *Yandanyirra* are highly culturally significant for Yindjibarndi people, providing permanent pools or *Yintha* some of which contain water serpents. Permanent water sources continue to be of high cultural importance, indicating the health of country, which in turn reflects the health of Yindjibarndi culture. Ethnographic and archaeological sites in Yindjibarndi country are therefore concentrated along such water sources. These can often include the archaeological remains of habitation and/or task specific places where a variety of activities took place such as seed grinding, butchering, fishing, stone and

wooden tool manufacturing (*ibid.*). Other significant places associated with water often include named permanent pools and *Thalu* sites.

3.2.5 Natural resources

Within the cultural landscape, exploitable faunal and botanical resources are readily accessible, and contributed to the primary resource base of people living in and travelling through the landscape. Vegetation served a variety of purposes for the Yindjibarndi people including use for tools, food, and its association with spiritual and cultural beliefs (Trigger 2008). The extensive knowledge and use of various plants by the Yindjibarndi people is indicative of the inherent ongoing connection Yindjibarndi have to country. Reflecting their importance to the health and survival of the Yindjibarndi people, plants form part of the order of all forms of Yindjibarndi cultural life, belonging to an extensive vocabulary which is deeply connected with the skin system, sung in the *Burndud* (law song cycle) and controlled through the use of *thalu* sites (Juluwarlu Aboriginal Corporation 2005).

3.2.6 Pastoral history

An important part of the Yindjibarndi people's recent history involves employment on pastoral stations which had been established in their traditional country. Whilst wages were often paid in small rations and Aboriginal people across the Pilbara faced racism and discrimination by the pastoral owners, memories of the pastoral lifestyle continues to be a significant part of recent Yindjibarndi cultural history. This is especially true for many of the current Yindjibarndi elders who grew up on stations and remember their childhood years there. A very significant station for Yindjibarndi people is Millstream Station, which was established in the heartland of Yindjibarndi country.

3.2.7 Aboriginal sites

There are currently 204 Registered Aboriginal Heritage Sites and Other Heritage Places within the boundaries of the Yindjibarndi #1 Native Title Claim included in the Department of Aboriginal Affairs' Register of Aboriginal Sites (DAA 2014). The majority of these sites have been identified and registered as a result of cultural resource management surveys. Consequently, only those areas slated for future developments have been comprehensively surveyed for places of cultural significance to Yindjibarndi people. This is clearly illustrated by the distribution of Aboriginal Heritage sites within the Yindjibarndi #1 Native Title Claim area. The heritage places are located primarily in small clusters in the south, south-west, north-east and east of the claim area.

For ease of analysis, primary site types were established from the DAA sites data. All sites listed as Artefacts / Scatters were broken down according to their other features, including grinding patches / grooves, rockshelters, engravings, man-made structures etc. This simplification of data is consistent with archaeological and ethnographic perspectives that Artefact / Scatters are often secondary to other features of the site or OHP. Therefore, the only time when Artefact / Scatters have been listed in the table below is when they occur without any additional or complementary features. The category of 'Other' covers five OHPs which are classified as two pebble mouse mounds, one group of marked trees and two places with isolated artefacts. The term 'multicomponent sites' was used where sites or OHPs had too many features to fit into any other category. These include two OHPs which have the following features:

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- Man-Made Structure, Painting, Engraving, Artefacts / Scatter; and
- Ceremonial, Repository / cache, Man-Made Structure, Artefacts / Scatter.

Where a site or OHP classified as an Artefact / Scatter had supplementary information defining it as a Rockshelter, it was considered as a Rockshelter rather than Artefact / Scatter. Therefore the only Artefact / Scatters defined as such were those with no supplementary site features.

Table 3: Primary site types of DAA registered sites and OHPs across the Yindjibarndi # 1 Native Title Claim

Primary site type	# OHP	% OHP	# Reg	% Reg	# Total	% Total
Artefacts / Scatter	58	37.2	8	16.7	66	32.4
Burial	2	1.3	0	0.0	2	1.0
Ceremonial, Historical	1	0.6	0	0.0	1	0.5
Engravings	1	0.6	7	14.6	8	3.9
Gender restricted area	1	0.6	0	0.0	1	0.5
Grinding patches / grooves	6	3.8	0	0.0	6	2.9
Man-made structure	1	0.6	0	0.0	1	0.5
Modified Tree	2	1.3	0	0.0	2	1.0
Multicomponent site	2	1.3	0	0.0	2	1
Mythological	4	2.6	0	0.0	4	2.0
Natural feature	3	1.9	0	0.0	3	1.5
Other	5	3.2	0	0.0	5	2.5
Painting	1	0.6	0	0.0	1	0.5
Plant resource	1	0.6	0	0.0	1	0.5
Quarry	3	1.9	0	0.0	3	1.5
Rockshelter	37	23.7	18	37.5	55	27.0
Rockshelter, cache, walled niche	2	1.3	0	0.0	2	1.0
Rockshelter, ceremonial	0	0.0	1	2.1	1	0.5
Rockshelter, grinding patches / grooves	6	3.8	1	2.1	7	3.4
Rockshelter, man-made structure	12	7.7	3	6.3	15	7.4
Rockshelter, modified tree	0	0.0	1	2.1	1	0.5
Rockshelter, mythological, modified tree, engraving	0	0.0	1	2.1	1	0.5
Rockshelter, quarry, man-made structure	0	0.0	2	4.2	2	1.0
Rockshelter, quarry, ochre	2	1.3	0	0.0	2	1.0
Rockshelter, repository / cache	2	1.3	0	0.0	2	1.0
Rockshelter, repository / cache, man-made structure	3	1.9	0	0.0	3	1.5
Rockshelter, walled niche	6	3.8	0	0.0	6	2.9
Water source	1	0.6	0	0.0	1	0.5
TOTAL:	156	100	48	100	204	100

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Figure 1: Numerical distribution of total recorded DAA sites and OHPs for the Yindjibarndi # 1 native title claim area

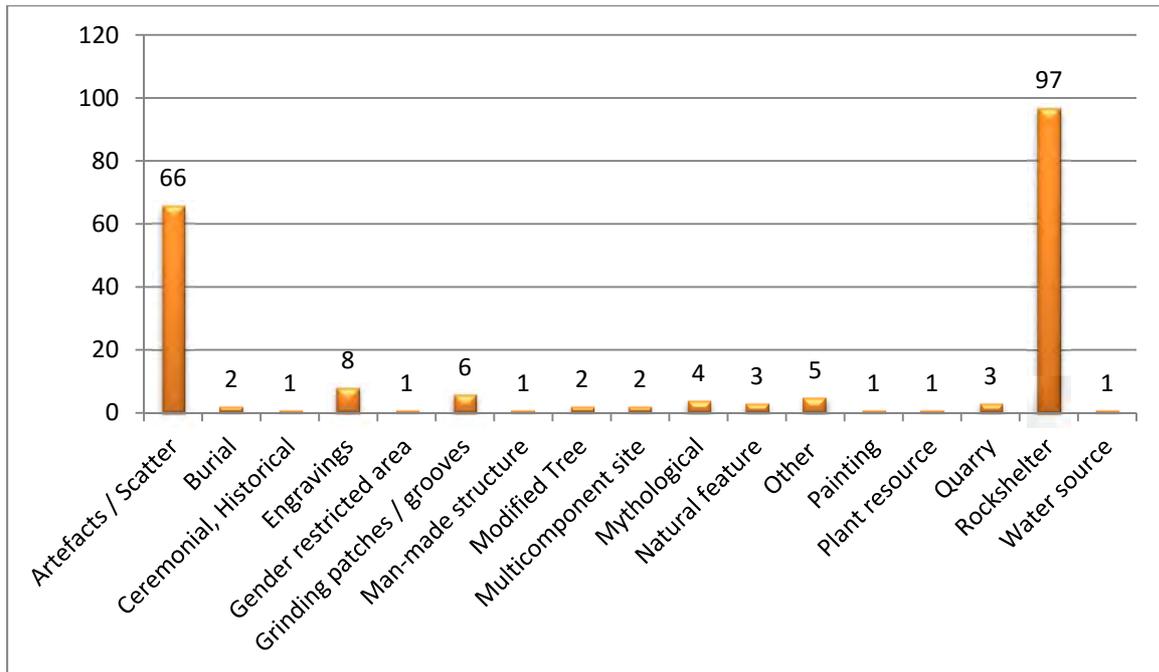
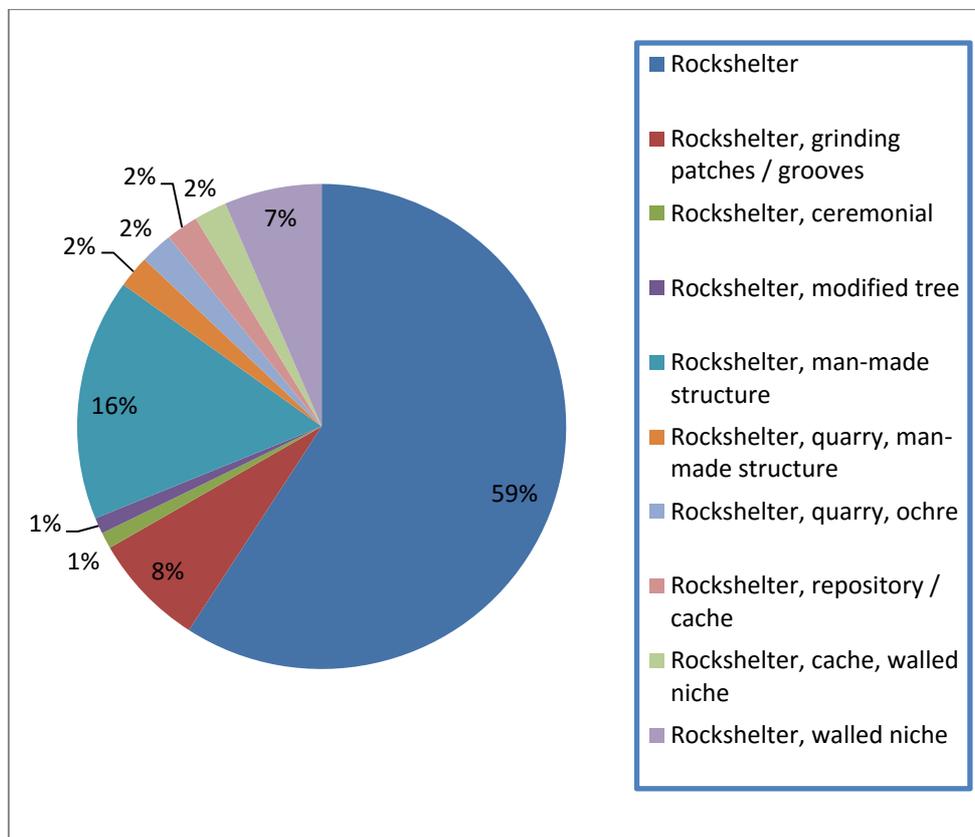


Figure 2: Percentage total of rockshelter types for DAA data in the Yindjibarndi # 1 native title claim area



The most common site types within the Yindjibarndi #1 Native Title Claim area, including both registered sites and OHPs, are rockshelters (47.5%, n = 97; see table above), followed by Artefact / Scatters (32.4%, n = 66) and engravings (3.9%, n = 8). All other type of sites and OHPs represent the remaining 20.1% (n = 41).

Within the rockshelters category, and as represented in the figure above, rockshelters containing artefacts but no other significant features were the most common type of rockshelters (59%, n = 55) within the Yindjibarndi #1 Native Title Claim area. These were followed by rockshelters with associated man-made structures (16%, n = 15). Rockshelters associated to other archaeological features such as grinding patches / grooves and man-made structures, represent the remaining 24% (n = 23) and are less common. The rarest type of rockshelter according to DAA information included rockshelters with modified trees (1%, n = 1) and rockshelters with ceremonial associations (1%, n = 1). Within Yindjibarndi country, rockshelters are most likely to exist in the rockier ranges and hill slopes. Traditional use of these places is likely to reflect seasonal patterns of domestic habitation with many rockshelters in Yindjibarndi country containing grinding materials (DAA 2014). Other rockshelters have been associated with hunting and the caching of objects (evidence of deliberate walling), and spirituality through the presence of rock art within them (ibid.). The Solomon area within Yindjibarndi country is of particular interest, where rockshelter sites occur in higher proportions comparative to the rest of the native title claim area, due to the presence of large ironstone ranges and steep valleys with few areas suitable for the preservation of sites within open contexts within the Hamersley Ranges.

Though these occur in notably smaller numbers, other site types such as burials, engravings and paintings, stone arrangements, grinding patches, quarries, modified trees, mythological sites, ceremonial sites, and culturally important natural features have been identified. Due to the limited dataset that exists for these, it is important that they are documented as they represent relatively rare aspects of the recorded Yindjibarndi cultural heritage and have the potential to offer further insight into the lives of ancestral Yindjibarndi people. However, from a holistic point of view, ceremonial sites, burials and rock art sites are frequently located within rockshelters. Potentially due to the enhanced preservational conditions that rockshelters offer in steep uplands, but also perhaps due to the importance that the Yindjibarndi people gave to the natural fissures and shelters imbued through their daily routine within the gorges and ranges of the Hamersley.

Table 2 presents all dated heritage places (n = 24) within the Yindjibarndi #1 native title claim area. Though these are primarily located at the Solomon development area, these excavated rockshelters contained artefacts and other archaeological deposits. Collectively the dates presented below demonstrate a long and ongoing phase of human habitation within the Yindjibarndi #1 native title claim area.

As far as current evidence shows, Yindjibarndi country was occupied from around 40,000 years ago and has dates of occupation, spread throughout the past 40 millenia, with the exception of the period between 25,000 and 18,000 years BP. This may be due to sample bias. However, there is also the possibility that a very real abandonment of the area occurred during these dates, which interestingly correspond almost exactly with the latest definition of the height of the LGM. Hiscock (2008) states that this period can be defined as occurring between 25,000 years and 17,000 years BP. Only further research can confirm this statement and the abandonment of the area during this period remains as an inference of the data, rather than a solid conclusion. Preliminary results from the Salvage excavations

of YIN10-111, a site with an initial occupation date of 35,000 years BP may indicate ongoing occupation of the site throughout the LGM (Curtis et al. 2014).

It is also important to acknowledge the role which calibration of radiocarbon (^{14}C) dates can play in shifting periods of occupation. It is standard archaeological practice to utilise conventional carbon dates, which are the raw results returned from ^{14}C dating analyses, in order to allow comparison of datasets. However, calibration of radiocarbon dates utilising the latest curves available can make individual dates more accurate, but also older, sometimes significantly so if the date is of great antiquity. For example, the occupation date of 40,935 years BP at site YIN11-028, noted in the table below returns a date range of 49,146 – 42178 cal years BP when calibrated using SH013, a calibration curve calculated by Hogg (et al 2013) that provides an accurate reflection of the degradation of the carbon atom within the southern hemisphere.

What is noted from the dating range from sites excavated within Yindjibarndi country however, is not only the extremely early habitation which occurred in the area, likely to be associated with the initial colonisation of the Australian continent by Aboriginal people, but also significant occupation occurring in the area prior to the advent of the Holocene, circa 10,000 years ago (Hiscock 2008). This period is traditionally associated with an expansion of the population and intensification of occupation of the Australian arid zone (Marwick 2009), but the current evidence from Yindjibarndi country indicates sustained periods of occupation in the area prior to this. A significant amount of dated occupation from the Holocene is noted in the record, however, it is only by continuing to expand the knowledge base of this area that it can be known whether this trend reflects genuine patterns in the Aboriginal occupation of this land or whether, there is a preservation bias within the archaeological record based on the erosion of evidence through time due to environmental and taphonomic factors (Marwick 2009).

Table 4: Overview of dated heritage places in the Yindjibarndi #1 native title claim area

DAA ID	Heritage Place name	Description	Other Consultants Occupation dates (^{14}C age – conventional unless specified)	Terra Rosa Occupation dates (^{14}C age – conventional unless specified)	GPS Location (Zone 50)
30313	YIN 10-107	Rockshelter containing artefacts and an archaeological deposit.	300 - 260 BP (Calibrated) 220 - 140 BP (Calibrated) 20 BP - Post 1950 (Calibrated)	N/A	591937 mE / 7550979 mN
33643	TRYINRS13-05 (OHP)	Rockshelter with artefacts and an archaeological deposit.	N/A	368 ± 25 BP 343 ± 25 BP 380 ± 25 BP	594485 mE / 7550325 mN
31808	YIN11-027	Rockshelter with artefacts and an archaeological deposit.	N/A	158 ± 25 BP 395 ± 25 BP 393 ± 25 BP	589581 mE / 7550731 mN
-	TRYINRS13-04	Rockshelter with engraving	N/A	Engraved rock (OSL) Top 350 ± 30 Bottom 520 ± 45	594506 mE / 7550326 mN

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DAA ID	Heritage Place name	Description	Other Consultants Occupation dates (¹⁴ C age – conventional unless specified)	Terra Rosa Occupation dates (¹⁴ C age – conventional unless specified)	GPS Location (Zone 50)
30578	YIN-WH12 (OHP)	Rockshelter with artefacts and an archaeological deposit.	N/A	404 ± 29 BP 544 ± 29 BP	593946 mE / 7554242 mN
33642	TRYINRS13-02 (OHP)	Rockshelter with artefacts and an archaeological deposit.	N/A	963 ± 25 BP	594405 mE / 7550507 mN
33647	TRYINSC13-02 RS1	Site Complex - Rockshelter with artefacts and an archaeological deposit.	N/A	387 ± 25 1152 ± 25 560 ± 30 Report notes dating is not reliable due to turbation of soil	594718 mE / 7549021 mN
30907	YIN 10-023 (OHP)	Rockshelter containing artefacts, man-made structures and an archaeological deposit. Date from wood-charcoal found in walled niche.	N/A	Wood from Walled Niche 1410 - 1310 (Calibrated)	595793 mE / 7554467 mN
33647	TRYINSC13-02 RS2	Site Complex - Rockshelter with artefacts and an archaeological deposit.	N/A	339 ± 25 BP 1,550 ± 30 BP 1,607 ± 25 BP	594718 mE / 7549021 mN
31803	YIN11-014	Rockshelter with artefacts and an archaeological deposit.	N/A	1051 +/- 20 BP 1384 +/- 38 BP 1998 +/- 20 BP	589878 mE / 7551758 mN
29609	YIN10-21	Rockshelter with artefacts and archaeological deposit.	540-510 BP (Calibrated) 1710-1560 BP (Calibrated) 2000-1890 BP (Calibrated) Alpha dates	N/A	593211 mE / 7554163 mN
-	YIN11-069	Rockshelter with artefacts and an archaeological deposit.		2,132 ± 26 BP	594123 mE / 7547761 mN
33644	TRYINRS13-09 (OHP)	Rockshelter with artefacts and an archaeological deposit.	N/A	2,460 ± 30 BP 2,480 ± 30 BP	595078 mE / 7549006 mN
-	TRYINRS13-03	Rockshelter with artefacts and an archaeological deposit.	N/A	3,118 ± 24 BP 3,098 ± 20 BP	596025 mE / 7550139 mN
30502	YIN10-114	Rockshelter with artefacts and an archaeological deposit.	N/A	1,005 ± 25 BP 1,565 ± 25 BP 3,219 ± 25 BP	5937738 mE / 7553507 mN
-	TRYINPAD13-04	Rockshelter with an archaeological deposit	N/A	4,270 ± 30 BP 4,380 ± 30 BP (Beta Lab Miami) 4,406 ± 20 BP 4,664 ± 20 BP 4,725 ± 20 BP 5,076 ± 26 BP	595056 mE / 7549437 mN

Archaeological site avoidance survey, site identification assessment, and archaeological salvage in accordance with HWIs YIN_225, YIN_245, and YIN_248, conducted with the Yindjibarndi Traditional Owners for FMG

DAA ID	Heritage Place name	Description	Other Consultants Occupation dates (¹⁴ C age – conventional unless specified)	Terra Rosa Occupation dates (¹⁴ C age – conventional unless specified)	GPS Location (Zone 50)
				(Waikato Lab)	
30503	YIN10-120	Rockshelter with artefacts and an archaeological deposit.	N/A	210 ± 25 BP 212 ± 25 BP 258 ± 25 BP 369 ± 25 BP 403 ± 25 BP 418 ± 25 BP 1604 ± 25 BP 1631 ± 25 BP 3,373 ± 25 BP 3,819 ± 25 BP 3,964 ± 25 BP 6,113 ± 25 BP 8,923 ± 25 BP 8,935 ± 25 BP	594166 mE / 7553575 mN
33646	TRYINRS13-11	Rockshelter with artefacts and an archaeological deposit.	N/A	1620 ± 20 BP [U2] 7550 ± 29 BP [U2] 12,450 ± 50 BP [U1] 12,550 ± 50 BP [U1]	594890 mE / 7549484 mN
33647	TRYINRS13-02 RS3	Site Complex - Rockshelter with artefacts and an archaeological deposit.	N/A	2,543 ± 35 BP 3,940 ± 30 BP 4,410 ± 25 BP 4,800 ± 30 BP 7,576 ± 30 BP 13,850 ± 60 BP	594718 mE / 7549021 mN
34437	YIN10-012	Rockshelter with artefacts and an archaeological deposit.	N/A	631 ± 20 BP 2,374 ± 20 BP 14,616 ± 44 BP	591505 mE / 7554915 mN
34022	TRYINPAD13-03	Rockshelter with an archaeological deposit.	N/A	3,914 ± 20 BP [TP1] 26,889 ± 208 BP [TP1] 34686 ± 554 BP [TP2] 53000 ± 6000 BP (OSL) [TP2]	595053 mE / 7549424 mN
30586	YIN10-111	Rockshelter with artefacts and an archaeological deposit.	N/A	200 ± 31 BP [U2] 242 ± 31 BP [U2] 281 ± 30 BP [U1] 652 ± 25 BP [U2] 1,441 ± 29 BP [U2] 1618 ± 23 BP	593394 mE / 7553700 mN

Archaeological site avoidance survey, site identification assessment, and archaeological salvage in accordance with HWIs YIN_225, YIN_245, and YIN_248, conducted with the Yindjibarndi Traditional Owners for FMG

DAA ID	Heritage Place name	Description	Other Consultants Occupation dates (¹⁴ C age – conventional unless specified)	Terra Rosa Occupation dates (¹⁴ C age – conventional unless specified)	GPS Location (Zone 50)
				[U3] 1990 ± 20 BP [U3] 6,400 ± 700 BP (OSL) [U1] 14,700 ± 1,500 BP (OSL) [U1] 17,400 ± 2,100 BP (OSL) [U1] 35,000 ± 4,000 BP (OSL) [U1] 48,000 ± 4,000 BP (OSL) [U1]	
34427	YIN10-014	Rockshelter with artefacts and an archaeological deposit.	N/A	10,423 ± 28 BP 28,816 ± 208 BP 32,932 ± 346 BP 35,155 ± 461 BP	591730 mE / 7554727 mN
31809	YIN11-028	Rockshelter with artefacts and an archaeological deposit.	N/A	307 ± 34 BP [U1] 593 ± 20 BP [U1] 4063 ± 21 BP [U1] 10,880 ± 35 BP [U1] 14,724 ± 66 BP [U1] 39,272 ± 1550 BP [U3] 39,832 ± 1666 BP [U3] 40,935 ± 1945 BP [U3]	588241 mE / 7550148 mN
30310	YIN08-031	Rockshelter with sparse surface artefacts and archaeological deposit.	41,250 - 40,450 BP (Calibrated) – Alpha date	10419 ± 43 BP 30570 ± 432 BP 35641 ± 952 BP	590859 mE / 7551169 mN
30589	YIN09-02	Rockshelter with artefacts and an archaeological deposit.	42,310 - 41,370 BP (Calibrated) – Alpha date	N/A	595675 mE / 7554657 mN
31804	YIN11-015	Rockshelter with artefacts and an archaeological deposit.	N/A	4723 ± 25 BP	589828 mE / 7551554 mN
-	YIN11-021	Rockshelter with artefacts and an archaeological deposit.	N/A	686 ± 20 BP 756 ± 20 BP	588346 mE / 7553157 mN
-	YIN11-055	Rockshelter with artefacts and an archaeological deposit.	N/A	221 ± 23 BP 354 ± 20 BP	587671 mE / 7552953 mN
-	TRYINRS12-01	Rockshelter with artefacts and an archaeological deposit.	N/A	1174 ± 21 [U1] 812 ± 23 [U1] 867 ± 21 [U3]	589634 mE / 7550721 mN

DAA ID	Heritage Place name	Description	Other Consultants Occupation dates (¹⁴ C age – conventional unless specified)	Terra Rosa Occupation dates (¹⁴ C age – conventional unless specified)	GPS Location (Zone 50)
				19591 ± 92 [U3]	
-	YIN14-025	Artefact scatter	N/A	1, 570 ± 160 (OSL) [U1] 9, 030 ± 970 (OSL) [U1]	586262 mE / 7551811 mN
-	YIN11-053	Artefact scatter	N/A	1460 ± 150 (OSL) [TP1]	587534 mE / 7553135 mN

3.2.8 Directing field inquiry

The development of appropriate research questions prior to undertaking a heritage assessment assists consultants in determining the importance and significance of a place and its cultural objects and features, and addressing criteria set out under s5 and s39 of the Act.

In considering whether the knowledge which can be gained from any heritage place is relevant to any specific or general questions, one must first determine what those specific and general questions are. These are arrived at, and informed by, an appreciation of the current level of research and the theoretical background relevant to the region being examined.

The following research questions have been developed by the heritage consultants for the Yindjibarndi #1 native title claim area:

- What is the antiquity of occupation within Yindjibarndi country?
 - What changes in the nature of occupation have occurred over time?
 - Do Holocene and Pleistocene heritage places demonstrate different preferences for location, resources and available raw material?
 - Does the nature of heritage place use change over the 40,000 years of occupation within Yindjibarndi Country? Does this change occur gradually or in stages? What is the nature of this change, and how is it demonstrated in the archaeological record?
 - Is there evidence for a change in land use between the Pleistocene and the Holocene?
 - What is the timing of the Australian small tool tradition in Yindjibarndi country?
- What is the nature of rockshelters located within Yindjibarndi country?
 - Is there a change in occupational nature between upland and lowland rockshelter sites?
 - What physical features render a rockshelter suitable for habitation?

- How was space utilised within rockshelters? Where are artefacts located within them? Where are hearth features located?
- How are sedimentation rates affected by periods of occupation and/or abandonment?
- Does the type of sedimentation demonstrated affect the preservation of archaeological contexts?
- What is the nature of artefact scatters located within Yindjibarndi country?
 - Is there a change in occupational nature between upland and lowland artefact scatters?
 - What interrelationships, if any, exist between artefact scatters and the Yindjibarndi cultural landscape; for example relationships to water sources, ceremonial and mythological sites, or cultural values and practices?
 - Is the complexity of artefact assemblages affected by the physical location of the site?
 - Does the size, composition and / or utility of the assemblage change depending on the proximity of water sources and the reliability of this resource?
 - Is there evidence for the production of formal tools which may be associated with evidence of other subsistence strategies?
 - Is any formalisation evident in the artefact assemblage prior to the Australian small tool tradition? If so, how are these types identified?
- What evidence exists within Yindjibarndi country for trade networks?
- Do the Hamersley Ranges indicate occupation through the LGM in line with Veth's (1993) model of inland oases?
- Does site use within Yindjibarndi Country indicate intensification through the Holocene? Is this intensification the result of population increase?

“MW-104”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “**MW-104**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Our Ref: RWB100096



CORSER & CORSER
LAWYERS

7 December 2010

The Chairperson
C/O The Registrar
Aboriginal Cultural Material Committee
Level 1, 97 St Georges Terrace
Perth, Western Australia 6000

Dear Registrar,

NOTICE UNDER SECTION 18 OF THE *ABORIGINAL HERITAGE ACT 1972* - THE PILBARA INFRASTRUCTURE PTY LTD - APPLICATION FOR CONSENT TO USE LAND FOR FORTESCUE'S SOLOMON MINE PROJECT: FIRETAIL PRIORITY MINING AND INFRASTRUCTURE - YINDJIBARNDI #1 NATIVE TITLE APPLICATION (WAD 6005/03, WC WC03/3)

This firm represents the Wirlumurra Yindjibarndi Aboriginal Corporation (ICN 7483), the membership of which comprises in excess of 100 members of the Yindjibarndi #1 native title application (WAD 6005/03, WC WC03/3). Wirlu-murra Yindjibarndi Aboriginal Corporation has the authority of its board members and ordinary members to determine heritage matters relating to their interests in the Yindjibarndi # 1 native title claim.

We refer to the above application to be lodged by The Pilbara Infrastructure Pty Ltd ("TPI"). The board of directors and members of Wirlu-murra Yindjibarndi Aboriginal Corporation met with representatives of FMG on 8 November 2010 at Roebourne to discuss Fortescue's plans to submit a section 18 application over the land the subject of the Yindjibarndi #1 claim. During the meeting Fortescue and the Wirlu-murra Yindjibarndi Aboriginal Corporation membership discussed the avoidance, minimisation or mitigation of disturbance or damage (including salvage or recording) to any Aboriginal Cultural Heritage.

On 3 December 2010 Fortescue and directors and members of the Wirlumurra Yindjibarndi Aboriginal Corporation met at the Castle Camp for a site visit relating to the Solomon Mining area named the "Firetail Priority Mining and Infrastructure" section 18 application.

The board of directors and members of Wirlu-murra Yindjibarndi Aboriginal Corporation acknowledge that FMG is applying to impact nine Aboriginal sites on the land the subject of this application which include:

Yin 07-03	Artefact scatter	Low
Yin 07-04	Artefact scatter	Low
Yin 08-32	Artefact scatter	Low
Yin 09	Isolated artefacts	Not a site
Yin 09-03	Pebble mouse mound	Not accessed archaeologically
Yin 09-19	Artefact scatter	Low
Yin 09-47	Scarred tree	Medium
Yin 09-55	Pebble mouse mound	Not accessed archaeologically

Yin 09-57	Artefact scatter	Low
Yin 10-64	Reduction area & artefact scatter	Low

Following consultation and the offer of a site visit, the board of directors and members of Wirlumurra Yindjibarndi Aboriginal Corporation determined that they would not object to the application for permission to impact the site on certain terms.

The Yindjibarndi People therefore do not object to the application on the following terms:

1. That Fortescue follow the recommendations included in the final archaeological report relating to the sites to be impacted;
2. That Fortescue follow the recommendations included in the final ethnographic report relating to the sites to be impacted;
3. Fortescue develop and implement a Cultural Heritage Management Plan in consultation with the Wirlumurra Yindjibarndi Aboriginal Corporation;
4. That Fortescue salvage the sites to be impacted prior to the commencement of works according to recommendations included in the final archaeological report using the archaeologists agreed to by Wirlumurra Yindjibarndi Aboriginal Corporation and with the participation of Wirlumurra Yindjibarndi Aboriginal Corporation. The salvaged materials will be stored in a place suitable to the Wirlumurra Yindjibarndi Aboriginal Corporation.

The board of directors and members of Wirlumurra Yindjibarndi Aboriginal Corporation respectfully request that a copy of the recommendations to the Minister of Indigenous Affairs by Aboriginal Cultural Material Committee ("ACMC") is forwarded to them. We would also respectfully request that the ACMC forwards a copy of the Ministerial decision upon receipt.

Yours faithfully,
CORSER & CORSER



.....
R W BOWER
Principal

“MW-105”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 12 pages is the annexure marked “**MW-105**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Office Use Only:	Application	
	Year	Number

Section 18 Notice: FIRETAIL PRIORITY INFRASTRUCTURE AREA

NOTICE UNDER SECTION 18 OF THE *ABORIGINAL HERITAGE ACT 1972*
APPLICATION FOR 'Consent to certain uses'

1. Statement of Notice

To the Aboriginal Cultural Material Committee.

I,

Applicant's Name:	Mark Thomas, as an authorised representative of FMG Pilbara Pty Ltd (a wholly owned subsidiary of Fortescue Metals Group Ltd)
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give notice under section 18 of the *Aboriginal Heritage Act 1972* (the Act) that I require to use the Land, as described in Item 5, for the purpose described in Item 6 below.

2. Contact details of Applicant

Contact details for this application.

Contact Name	Grant Preller				
Position	Heritage Approval Superintendent				
Organisation Name	FMG Pilbara Pty Ltd				
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth WA 6004				
Phone	6218 8888	Mobile	0407385157	Fax	6218 8880
E-mail	gpreller@fmgl.com.au				

Heritage Consultant	Rob Tickle				
Organisation Name	Veritas Archaeology & History Service				
Mailing Address	PO Box 557, Muswellbrook, NSW 2333				
Phone	Mobile	0419220593	Fax	n/a	
E-mail	rtickle@bigpond.net.au				

3. Landowner's Authorisation

- Applicants must provide proof of ownership for each parcel of Land subject to the Notice and authorisation by the landowner(s) to use the Land for the Purpose.
- Applicants who are landowners need only sign the declaration at 12 below.
- If there is more than one landowner provide the additional information on separate pages and their signed authorisations.

Land Parcel 1

Landowner's Full Name	FMG Pilbara Pty Ltd				
Organisation Name					
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth 6004				
Phone	08 62188888	Mobile		Fax	
E-mail	n/a				

Land Parcel 2

Landowner's Full Name	FMG Pilbara Pty Ltd				
Organisation Name					
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth 6004				
Phone	08 62188888	Mobile		Fax	
E-mail	n/a				

4. The Land subject to the s18 Notice

Copies of **ALL** certificate/s proving land ownership for the Land subject to the Notice, such as certificates of title, tenement/s IDs, etc, must be attached. Complete details for each land parcel separately.

Land Parcel 1

Certificate of Title	Vol	n/a	Folio	n/a	Diagram / plan / deposit plan no.	n/a
Lot Number and location of subject lot	Lot No. (whole/part)				Location	WA51087509
Reserve No (if applicable)						
Street Number and Name	n/a					
Town / Suburb	n/a				Postcode	n/a
Tenement ID	E47/1447					
Land Zoning	Vacant Crown land					
Geographical Coordinates (GDA94)	594410mE 7552769mN					
Other						

Land Parcel 2

Certificate of Title	Vol	n/a	Folio	n/a	Diagram / plan / deposit plan no.	n/a
Lot Number and location of	Lot No.				Location	WA51087509

Department of Indigenous Affairs

subject lot	(whole/part)			
Reserve No (if applicable)				
Street Number and Name	n/a			
Town / Suburb	n/a	Postcode	n/a	
Tenement ID	E47/1334			
Land Zoning	Vacant Crown land			
Geographical Coordinates (GDA94)	594924mE 7551724mN			
Other				

5. Map(s) of the Land

- Appendix 1: Map 1 The general location of the Land for the purpose of this Notice.
 Appendix 2: Map 2 Solomon Rail Project, Phase Map 5
 Appendix 3: Map 3 "Firetail Priority Infrastructure Area – Yindjibarndi" (the subject of this application), s18 boundary and heritage surveyed area identified.

6. The Purpose of the use of the Land

Item	Applicant's description
Concise description (10 words or less)	Construction and operation of a mining area and associated infrastructure known as the "Firetail Priority Infrastructure Area".
General description of purpose	<p>Fortescue Metals Group Limited (Fortescue) Solomon Iron Ore Project is an expansion of its current iron ore mining and export operations in the Pilbara region of Western Australia. The Solomon Iron Ore Project (referred to as "The Solomon Hub") is located on the central Hamersley Ranges, and situated approximately 60km north of Tom Price, Western Australia.</p> <p>The Solomon Hub will include the establishment and operation of mining areas on the Firetail and Kings iron ore mine deposits as well as the construction and operation of the Solomon railway line. Together with any associated infrastructure to support the Solomon Hub which includes, but is not limited to: Airstrip; Access roads; Accommodation Camp; Offices, ablution and change house facilities; Power station supplying up to 80 MW maximum demand; Communication infrastructure.</p> <p>As a first stage process in establishing and operating mining areas on the Firetail and Kings iron ore mine deposits, Fortescue will construct and develop a priority area within the Firetail iron ore deposit known as the combined "Firetail Priority Mining and infrastructure Areas". This has been split into two separate section 18 applications known as the "Firetail Priority Infrastructure Area" (subject of this application) and the "Firetail Priority Mining Area" (subject of a separate application).</p>

Department of Indigenous Affairs

	<p>The processed iron ore from the mining area will be transported along the Solomon railway line linking onto the existing Port Hedland to Cloudbreak railway line at chainage 175 to Fortescue's existing Herb Elliot Port facilities in Port Hedland for export.</p> <p>A general location map showing the "Firetail Priority Infrastructure Area" is included in this notice in Appendix 1 as Map 1.</p> <p>An overview of the Solomon Mining area is included as Appendix 2 as Map 2 and is referred to as the 'Solomon Rail Project, Phase Map 5'</p> <p>A map showing the 'Land' and 'Purpose' in relation to the Aboriginal heritage site is included in this notice in Appendix 3 as Map 3.</p>
Processing inputs, discharges	Processing inputs and discharges for the Solomon Project such as water, diesel and oil will be managed as outlined in FMG's Exploration Environmental Management Plan approved by the Department of Environment and Conservation ("DEC").
Bulk material source	Any bulk materials (such as gravel and borrow material) that are required to be sourced at the Solomon Project will be extracted under approvals issued by the Department of Mining and Petroleum (DMP) or Department of Environment and Conservation (DEC).
Associated infrastructure	Associated infrastructure to support the Solomon Mine includes accommodation camps, roads and borrow pits.
New or existing project, approvals & associated dates	<p>The key approval for the construction of a mining area will include:</p> <ul style="list-style-type: none"> • Approval under Part IV of the <i>Environmental Protection Act 1986</i>, • Approvals under <i>Section 18 of the Aboriginal Heritage Act 1972</i>. • Ministerial approval of the Solomon Public Environmental Review under Section 38 of the <i>Environmental Protection Act (1980)</i>. <p>Copies of the Solomon Public Environmental Review have been sent to:</p> <ol style="list-style-type: none"> 1. Wirlumurra Yindjibarndi Group re: FMG Public Environmental Review # 1841. Letter from Environmental Protection Authority are attached at Appendix 7 2. Yindjibarndi Aboriginal Corporation re: FMG Public Environmental Review # 1841 Letter from FMG are attached at Appendix 8 <p>Fortescue will be seeking approvals under the following acts for the development of the project by:</p> <ul style="list-style-type: none"> • <i>Environmental Protection Act 1986 (Parts IV and V)</i> • <i>Rights in Water and Irrigation Act 1914</i> • <i>Mining Act 1978</i> • <i>Environment Protection and Biodiversity Conservation Act 1999</i> • <i>Variation to the Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004</i>

Relation to other proposals	<p>This section 18 Application is for a portion of the Solomon Mining Area which falls within the Yindjibarndi Native Title Claim Area. This application is one of three applications covering the Solomon Mining Area.</p> <p>Fortescue has already submitted applications for the Eastern Guruma portion of the Solomon Mining area known as "Solomon – Airport, Camps and Admin (EAS)".</p> <p>The second section 18 application includes the southern portion of the "Firetail Priority Mining <u>and</u> Infrastructure Area". This second application is known as the "Firetail Priority Mining Area" and has also being submitted for the 7 April 2011 ACMC meeting.</p>
Timeframe for development, staging	The construction of the mining area is expected to commence June 2011.
Extent of activity (m ²)	The Land the subject of this notice is approximately 142Ha.
Previous s18 Notices regarding the Land	No previous Section 18 notices have been lodged regarding the Land the subject of this notice.
Other	n/a

7. Summary of applicant consultation with relevant Aboriginal people and other stakeholders

Consultation	Description
Process of consultation and informant selection	<p>Please see attached document at Appendix 6 for "Summary of Consultation with relevant Aboriginal People and other stakeholders" including Annexure A - P for detail.</p> <p>The consultation and informant selection is summarised as follows:</p> <ul style="list-style-type: none"> • Yindjibarndi Aboriginal Corporation / Juluwarlu Aboriginal Corporation (YAC / JAC) invited to provide informants for initial surveys post signing of a Alternative Heritage Agreement between Fortescue and the Yindjibarndi People • After initial heritage surveys, YAC stopped heritage surveys until a Land Access Agreement (LAA) was reached • Terms and remuneration outlined in the LAA were not tenable for Fortescue and YAC ceased negotiations • Fortescue continued to make every effort to engage YAC and continue negotiations with heritage surveys whilst the negotiations remained stalled

- After a decision was made by YAC at a community meeting to formally suspend heritage surveys, Fortescue made the decision to re-commence without the involvement of Yindjibarndi people
- Fortescue sent invitations to YAC for involvement in heritage surveys and also requests for information relating to known heritage sites within the heritage survey request land
- Fortescue project develops to feasibility stage and decision is made to submit an initial section 18 application for the Firetail Early mining area
- Fortescue becomes aware that members of the Yindjibarndi community are willing to engage and consult and a decision is made to withdraw the section 18 application
- Orientation visit to the site with senior Yindjibarndi people on 10/11 July 2010 with anthropologist David Raftery accompanied by Yindjibarndi men
- Orientation visit to the site with senior Yindjibarndi people on 19/20 August 2010 with anthropologist David Raftery accompanied by Yindjibarndi women and men
- Yindjibarndi people re-commence participation in heritage surveys with Fortescue
- Fortescue make a number of presentations to Yindjibarndi people both onsite at Solomon and also in Roebourne outlining development plans for Fortescue with specific reference to the Solomon Project area and the heritage approvals process
- Fortescue submit notices of intention to submit section 18 applications known as the "Firetail Priority Mining and Infrastructure Areas"
- Ethnographic survey of "Firetail Priority Mining and Infrastructure Areas" for the purposes of a section 18 submission conducted on 3 & 4 November 2010 by anthropologist David Raftery and senior Yindjibarndi men and women
- On 23 November 2010 the Wirilu-Murra Yindjibarndi Aboriginal Corporation is registered
- Follow up visit of sites subject of the section notice per request of the Group on 3 December 2010
- Group meeting with Fortescue in Roebourne on 6 December 2010 to discuss results of the site meeting for Firetail Priority Mining and Infrastructure Areas which resulted on a letter confirming that the Group would not object to Fortescues section 16 & section 18 submissions

Archaeological report

Department of Indigenous Affairs

	<p>Archaeological report is included at Appendix 4, "Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mining and Infrastructure area - December 2010".</p> <p>Ethnographic report Reports from ethnographic and site visits are included at Appendix 5, "Report of a Section 18 Ethnographic Survey and consultations regarding archaeological sites at FMG's Firetail Priority Mining and Infrastructure Area (December 2010)".</p>
List of stakeholders consulted	<p>Yindjibarndi People through their nominated representatives and organisations:</p> <ul style="list-style-type: none"> • Yindjibarndi Aboriginal Corporation (Slater and Gordon) • Juluwarlu Aboriginal Corporation (Michael Woodley) • Wirilu-Murra Yindjibarndi Aboriginal Corporation (Corser and Corser)
Aboriginal people's issues and/or concerns	<p>Whilst letters of notification have been sent through to YAC / JAC, Fortescue have not yet received an objection. Fortescue expect to receive this letter of objection and will forward it through to the DIA if received.</p> <p>Please see attached letter from Wirilumurra Yindjibarndi Group legal representative Ronald Bower from Corser and Corser Lawyers – indicating their non-objection to the Section 18 Application at Appendix 6 for "Summary of Consultation with relevant Aboriginal People and other stakeholders" including Annexure L for details.</p>
Issues / problems encountered during consultation process	<p>Yindjibarndi Aboriginal Corporation (YAC) and Juluwarlu Aboriginal Corporation's refusal to participate in heritage surveys until Fortescue agrees to a financial settlement suitable to them (amounting to about \$90 million per year).</p> <p>The refusal of YAC to participate in heritage surveys has created conflict within the Group. As a result of the conflict a new heritage management body has been formed called the Wirilu-Murra Yindjibarndi Aboriginal Corporation.</p> <p>The process of consultation and the resultant issues are outlined in further detail as a "Summary of Consultation" as Appendix 6.</p>
Outcomes of consultation	<p>The members of the Wirilumurra Yindjibarndi Group do not object to the section 18 application by Fortescue.</p> <p>The Chairperson of the YAC has written to Fortescue indicating that Michael Woodley's affidavits and letters to indicate their intention to oppose any section 18 application lodged by Fortescue.</p>

8. Summary of potential effects on Aboriginal sites and possible management responses

<p>Sites to be impacted by the activities undertaken as described in the Purpose</p>	<p>Sites to be impacted entirely by the Purpose</p> <table border="1" data-bbox="463 362 1516 454"> <thead> <tr> <th data-bbox="463 362 729 421">Site ID</th> <th data-bbox="729 362 996 421">Site type</th> <th data-bbox="996 362 1259 421">Significance</th> <th data-bbox="1259 362 1516 421">Proposed extent of impact by Purpose</th> </tr> </thead> <tbody> <tr> <td data-bbox="463 421 729 454">Yin09-19</td> <td data-bbox="729 421 996 454">Artefact scatter</td> <td data-bbox="996 421 1259 454">Low</td> <td data-bbox="1259 421 1516 454">Full impact</td> </tr> </tbody> </table>	Site ID	Site type	Significance	Proposed extent of impact by Purpose	Yin09-19	Artefact scatter	Low	Full impact
Site ID	Site type	Significance	Proposed extent of impact by Purpose						
Yin09-19	Artefact scatter	Low	Full impact						
<p>Strategies to minimise or avoid identified sites</p>	<p>Fortescue utilises the following strategies to minimise impact to an avoid identified sites:</p> <ul style="list-style-type: none"> • Company Commitment: to avoid all engraving sites and where ever possible all high significance sites • Planning: After initial surveys are completed, the engineers are required to modify their plans to ensure the commitment to avoid engravings is met, and to minimise impact to as many heritage sites as possible. • Management: Fortescue manages heritage through the development of Cultural Heritage Management Plans (CHMP) in consultation with the relevant Aboriginal people. The CHMP includes the Ground Disturbance Permit system for all activity across the project, on-ground protective measures including fencing and monitoring and a comprehensive education process including a compulsory heritage induction and cross cultural awareness training. 								
<p>Management commitments to sustainable heritage protection</p>	<p>A Cultural Heritage Management Plan for the Solomon Hub will be developed and consultation undertaken with the relevant Aboriginal Groups for the Solomon Project including Eastern Guruma, Yindjibarndi, Martu Idja Banyjima, Kariyarra and Palyku People.</p> <p>Fortescue will engage cultural heritage monitors to monitor works during construction.</p>								
<p>Local, regional or cumulative impacts</p>	<p>Public Environmental Review has been submitted to DEC which identifies local, regional or cumulative environmental impacts.</p> <p>This section 18 forms part of a series of applications which will cover the Solomon Project. The survey work undertaken will add to the heritage knowledge of the area. Wherever possible, Fortescue will minimise the adverse impact on cultural heritage.</p>								

9. Applicant Response to Recommendation

Recommendations from Consultation / Heritage Survey Report (s)	Applicant Response to Recommendations
<p>It is recommended to Fortescue by Veritas / Eureka Heritage archaeological consultants that Yin 09-19:</p> <ul style="list-style-type: none"> • The proposed site disturbance is acceptable to the relevant Yindjibarndi Aboriginal people who are authorised to speak for country; • FMGL consults with the Yindjibarndi people regarding any salvage of cultural material, and any ongoing management of cultural material; and, • Management recommendations and/or consent conditions include site salvage, should be carried out using best practice methodology and recording standards methodology. 	<p>Some members of the Yindjibarndi have objected to this application and some have not objected. Fortescue cannot comply with the recommendation that the “proposed site disturbance is acceptable to the Yindjibarndi People” as a whole group.</p> <p>Fortescue agrees to all recommendations relating to the management and salvage procedures for sites subject of the s18 on the Land.</p>

It is recommended to Fortescue by David Raftery, consultant anthropologist that:

- That the Section 18 processes that FMG intends to apply to the PMI (Firetail Priority Mining and Infrastructure Area) proceed.
- It is recommended that the Yindjibarndi #1 WAD6005/03 native title claimants be directly involved in formulating appropriate mitigation strategies for archaeological sites that are to be impacted by the proposed works. This involvement could include, but is not limited to, participation in heritage salvage and monitoring operations.
- It is recommended that all works in the area that may impact on any Aboriginal sites, listed or unlisted, or other heritage values, only be carried out with Ministerial approval under Section 18 of the *Aboriginal Heritage Act 1972*.
- It is recommended that FMG personnel are made aware of their obligations under Section 15 of the *Aboriginal Heritage Act 1972* to report any suspected unrecorded Aboriginal sites or objects.

Whilst Fortescue agrees to the recommendations that Yindjibarndi #1 WAD6005/03 native title claimants be involved in the process, at this stage only members of the Wirlu-Murra Yindjibarndi Aboriginal Corporation are willing to be involved. Fortescue has concluded that at the time of submission of this application, representation from YAC / JAC, the legal representatives of Yindjibarndi #1 WAD6005/03, was not possible due to ongoing problems outlined in Appendix 6 "Summary of Consultation" attached to this application.

10. Attachments

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11. Copyright

Copyright	<i>I licence the Department of Indigenous Affairs, the ACMC and their representatives to use the contents of the Notice and any attachments for any purpose, to reproduce, to modify and adapt the Notice or attachments (including converting them into different formats), and to communicate the Notice or attachments to the public (including via a public web site). I confirm that I have obtained all licences and consents necessary to grant this licence.</i>
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12. Declaration

I declare that I have completed all sections of the Notice and declare that I have read and understood the information submitted and the recommendations I put to the ACMC.

Name (Full name of applicant. Please print)	Mark Thomas Company Secretary FMG Pilbara Pty Ltd		
Signature		Date	18 February 2011

“MW-106”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 12 pages is the annexure marked “**MW-106**” referred to in the witness statement of Michael Woodley dated 5 June 2023.


 Department of Indigenous Affairs

Office Use Only:	Application	
	Year	Number

Section 18 Notice: FIRETAIL PRIORITY MINING AREA

NOTICE UNDER SECTION 18 OF THE *ABORIGINAL HERITAGE ACT 1972*
APPLICATION FOR 'Consent to certain uses'

1. Statement of Notice

To the Aboriginal Cultural Material Committee.

I,

Applicant's Name:	Mark Thomas, as an authorised representative of FMG Pilbara Pty Ltd (a wholly owned subsidiary of Fortescue Metals Group Ltd)
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give notice under section 18 of the *Aboriginal Heritage Act 1972* (the Act) that I require to use the Land, as described in Item 5, for the purpose described in Item 6 below.

2. Contact details of Applicant

Contact details for this application.

Contact Name	Grant Preller				
Position	Heritage Approval Superintendent				
Organisation Name	FMG Pilbara Pty Ltd				
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth WA 6004				
Phone	6218 8888	Mobile	0407385157	Fax	6218 8880
E-mail	gpreller@fmgl.com.au				

Heritage Consultant	Rob Tickle				
Organisation Name	Veritas Archaeology & History Service				
Mailing Address	PO Box 557, Muswellbrook, NSW 2333				
Phone	Mobile	0419220593	Fax	n/a	
E-mail	rtickle@bigpond.net.au				


 Department of Indigenous Affairs

3. Landowner's Authorisation

- Applicants must provide proof of ownership for each parcel of Land subject to the Notice and authorisation by the landowner(s) to use the Land for the Purpose.
- Applicants who are landowners need only sign the declaration at 12 below.
- If there is more than one landowner provide the additional information on separate pages and their signed authorisations.

Land Parcel 1

Landowner's Full Name	FMG Pilbara Pty Ltd				
Organisation Name					
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth 6004				
Phone	08 62188888	Mobile		Fax	
E-mail	n/a				

4. The Land subject to the s18 Notice

Copies of **ALL** certificate/s proving land ownership for the Land subject to the Notice, such as certificates of title, tenement/s IDs, etc, must be attached. Complete details for each land parcel separately.

Land Parcel 1

Certificate of Title	Vol	n/a	Folio	n/a	Diagram / plan / deposit plan no.	n/a
Lot Number and location of subject lot	Lot No. (whole/part)		Location	WA51087509		
Reserve No (if applicable)						
Street Number and Name	n/a					
Town / Suburb	n/a	Postcode	n/a			
Tenement ID	M47/1413					
Land Zoning	Vacant Crown land					
Geographical Coordinates (GDA94)	5994410mE 7554104mN					
Other						
Other	Reserve					

5. Map(s) of the Land

- Appendix 1: Map 1 The general location of the Land for the purpose of this Notice.
 Appendix 2: Map 2 Solomon Rail Project, Phase Map 5
 Appendix 3: Map 3 "Firetail Priority Mining Area – Yindjibarndi" (the subject of this application), s18 boundary and heritage surveyed area identified.

6. The Purpose of the use of the Land

Item	Applicant's description
Concise description (10 words or less)	Construction and operation of a mining area and associated infrastructure known as the "Firetail Priority Mining Area".
General description of purpose	<p>Fortescue Metals Group Limited (Fortescue) Solomon Iron Ore Project is an expansion of its current iron ore mining and export operations in the Pilbara region of Western Australia. The Solomon Iron Ore Project (referred to as "The Solomon Hub") is located on the central Hamersley Ranges, and situated approximately 60km north of Tom Price, Western Australia.</p> <p>The Solomon Hub will include the establishment and operation of mining areas on the Firetail and Kings iron ore mine deposits as well as the construction and operation of the Solomon railway line. Together with any associated infrastructure to support the Solomon Hub which includes, but is not limited to: Airstrip; Access roads; Accommodation Camp; Offices, ablution and change house facilities; Power station supplying up to 80 MW maximum demand; Communication infrastructure.</p> <p>As a first stage process in establishing and operating mining areas on the Firetail and Kings iron ore mine deposits, Fortescue will construct and develop a priority area within the Firetail iron ore deposit known as the "Firetail Priority Mining and infrastructure Areas". This has been split into two separate section 18 applications known as the "Firetail Priority Mining Area" (subject of this application) and the "Firetail Priority Infrastructure Area" (subject of a separate application).</p> <p>The processed iron ore from the mining area will be transported along the 'Solomon railway line' linking onto the existing Port Hedland to Cloudbreak railway line at chainage 175 to Fortescue's existing Herb Elliot Port facilities in Port Hedland for export.</p> <p>A general location map showing the 'the Firetail Priority Mining area' is included in this notice in Appendix 1 as Map 1.</p> <p>An overview of the Solomon Mining area is included as Appendix 2 as Map 2 and is referred to as the 'Solomon Rail Project, Phase Map 5'</p>

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	A map showing the 'Land' and 'Purpose' in relation to the Aboriginal heritage site is included in this notice in Appendix 3 as Map 3 .
Processing inputs, discharges	Processing inputs and discharges for the Solomon Project such as water, diesel and oil will be managed as outlined in FMG's Exploration Environmental Management Plan approved by the Department of Environment and Conservation ("DEC").
Bulk material source	Any bulk materials (such as gravel and borrow material) that are required to be sourced at the Solomon Project will be extracted under approvals issued by the Department of Mining and Petroleum (DMP) or Department of Environment and Conservation (DEC).
Associated infrastructure	Associated infrastructure to support the Solomon Mine includes accommodation camps, roads and borrow pits.
New or existing project, approvals & associated dates	<p>The key approval for the construction of a mining area will include:</p> <ul style="list-style-type: none"> • Approval under Part IV of the <i>Environmental Protection Act 1986</i>, • Approvals under <i>Section 18 of the Aboriginal Heritage Act 1972</i>. • Ministerial approval of the Solomon Public Environmental Review under Section 38 of the Environmental Protection Act (1980). <p>Copies of the Solomon Public Environmental Review have been sent to:</p> <ol style="list-style-type: none"> 1. Wirlumurra Yindjibarndi Group re: FMG Public Environmental Review # 1841. Letter from Environmental Protection Authority are attached at Appendix 7 2. Yindjibarndi Aboriginal Corporation re: FMG Public Environmental Review # 1841 Letter from FMG are attached at Appendix 8 <p>Fortescue will be seeking approvals under the following acts for the development of the project by:</p> <ul style="list-style-type: none"> • <i>Environmental Protection Act 1986 (Parts IV and V)</i> • <i>Rights in Water and Irrigation Act 1914</i> • <i>Mining Act 1978</i> • <i>Environment Protection and Biodiversity Conservation Act 1999</i> • <i>Variation to the Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004</i>
Relation to other proposals	<p>This section 18 Application is for a portion of the Solomon Mining Area which falls within the Yindjibarndi Native Title Claim Area. This application is one of three applications covering the Solomon Mining Area.</p> <p>Fortescue has already submitted applications for the Eastern Guruma portion of the Solomon Mining area known as "Solomon – Airport, Camps and Admin (EAS)".</p> <p>The second section 18 application includes the southern portion of the "Firetail Priority Mining and Infrastructure Area". This second application is</p>


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	known as the "Firetail Priority Infrastructure Area" and has also being submitted for the 7 April 2011 ACMC meeting.
Timeframe for development, staging	The construction of the mining area is expected to commence June 2011.
Extent of activity (m ²)	The Land the subject of this notice is approximately 350Ha.
Previous s18 Notices regarding the Land	No previous Section 18 notices have been lodged regarding the Land the subject of this notice.
Other	n/a

7. Summary of applicant consultation with relevant Aboriginal people and other stakeholders

Consultation	Description
Process of consultation and informant selection	<p>Please see attached document at Appendix 6 for "Summary of Consultation with relevant Aboriginal People and other stakeholders" including Annexures for detail.</p> <p>The consultation and informant selection is summarised as follows:</p> <ul style="list-style-type: none"> • Yindjibarndi Aboriginal Corporation / Juluwarlu Aboriginal Corporation (YAC / JAC) invited to provide informants for initial surveys post signing of a Alternative Heritage Agreement between Fortescue and the Yindjibarndi People • After initial heritage surveys, YAC stopped heritage surveys until a Land Access Agreement (LAA) was reached • Terms and remuneration outlined in the LAA were not tenable for Fortescue and YAC ceased negotiations • Fortescue continued to make every effort to engage YAC and continue negotiations with heritage surveys whilst the negotiations remained stalled • After a decision was made by YAC at a community meeting to formally suspend heritage surveys, Fortescue made the decision to re-commence without the involvement of Yindjibarndi people • Fortescue sent invitations to YAC for involvement in heritage surveys and also requests for information relating to known heritage sites within the heritage survey request land • Fortescue project develops to feasibility stage and decision is made to submit an initial section 18 application for the Firetail Early mining area • Fortescue becomes aware that members of the Yindjibarndi community are



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	<p>willing to engage and consult and a decision is made to withdraw the section 18 application</p> <ul style="list-style-type: none"> • Orientation visit to the site with senior Yindjibarndi people on 10/11 July 2010 with anthropologist David Raftery accompanied by Yindjibarndi men • Orientation visit to the site with senior Yindjibarndi people on 19/20 August 2010 with anthropologist David Raftery accompanied by Yindjibarndi women and men • Yindjibarndi people re-commence participation in heritage surveys with Fortescue • Fortescue make a number of presentations to Yindjibarndi people both onsite at Solomon and also in Roebourne outlining development plans for Fortescue with specific reference to the Solomon Project area and the heritage approvals process • Fortescue submit notices of intention to submit section 18 applications known as the "Firetail Priority Mining and Infrastructure Areas" • Ethnographic survey of "Firetail Priority Mining and Infrastructure Areas" for the purposes of a section 18 submission conducted on 3 & 4 November 2010 by anthropologist David Raftery and senior Yindjibarndi men and women • On 23 November 2010 the Wirilu-Murra Yindjibarndi Aboriginal Corporation is registered • Follow up visit of sites subject of the section notice per request of the Group on 3 December 2010 • Group meeting with Fortescue in Roebourne on 6 December 2010 to discuss results of the site meeting for Firetail Priority Mining and Infrastructure Areas which resulted on a letter confirming that the Group would not object to Fortescues section 16 & section 18 submissions <p>Archaeological report Archaeological report is included at Appendix 4, "Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mining and Infrastructure area - December 2010".</p> <p>Ethnographic report Reports from ethnographic and site visits are included at Appendix 5, "Report of a Section 18 Ethnographic Survey and consultations regarding archaeological sites at FMG's Firetail Priority Mining and Infrastructure Area (December 2010)".</p>
List of stakeholders consulted	<p>Yindjibarndi People through their nominated representatives and organisations:</p> <ul style="list-style-type: none"> • Yindjibarndi Aboriginal Corporation (Slater and Gordon) • Juluwarlu Aboriginal Corporation (Michael Woodley)


 Department of Indigenous Affairs

	<ul style="list-style-type: none"> Wirlu-Murra Yindjibarndi Aboriginal Corporation (Corser and Corser)
Aboriginal people's issues and/or concerns	<p>Whilst letters of notification have been sent through to YAC / JAC, Fortescue have not yet received an objection. Fortescue expect to receive this letter of objection and will forward it through to the DIA if received.</p> <p>Please see attached letter from Wirlumurra Yindjibarndi Group legal representative Ronald Bower from Corser and Corser Lawyers – indicating their non-objection to the Section 18 Application at Appendix G for "Summary of Consultation with relevant Aboriginal People and other stakeholders" including Annexure L for details.</p>
Issues / problems encountered during consultation process	<p>Yindjibarndi Aboriginal Corporation (YAC) and Juluwarlu Aboriginal Corporation's refusal to participate in heritage surveys until Fortescue agrees to a financial settlement suitable to them (amounting to about \$90 million per year).</p> <p>The refusal of YAC to participate in heritage surveys has created conflict within the Group. As a result of the conflict a new heritage management body has been formed called the Wirlu-Murra Yindjibarndi Aboriginal Corporation.</p> <p>The process of consultation and the resultant issues are outlined in further detail as a "Summary of Consultation" as Appendix G.</p>
Outcomes of consultation	<p>The members of the Wirlumurra Yindjibarndi Group do not object to the section 18 application by Fortescue.</p> <p>The Chairperson of the YAC has written to Fortescue indicating that Michael Woodley's affidavits and letters to indicate their intention to oppose any section 18 application lodged by Fortescue.</p>

8. Summary of potential effects on Aboriginal sites and possible management responses

Sites to be impacted by the activities undertaken as described in the Purpose	<p>Sites to be impacted entirely by the Purpose</p> <table border="1"> <thead> <tr> <th><u>Site ID</u></th> <th><u>Site type</u></th> <th><u>Significance</u></th> <th><u>Proposed extent of impact by Purpose</u></th> </tr> </thead> <tbody> <tr> <td>Yin07-03</td> <td>Artefact scatter</td> <td>Low</td> <td>Full impact</td> </tr> <tr> <td>Yin07-04</td> <td>Artefact scatter</td> <td>Low</td> <td>Full impact</td> </tr> <tr> <td>Yin08-32</td> <td>Artefact scatter</td> <td>Low</td> <td>Full impact</td> </tr> <tr> <td>Yin09</td> <td>Isolated artefacts</td> <td>Not a site</td> <td>Full impact</td> </tr> <tr> <td>Yin09-03</td> <td>Pebble mouse mound</td> <td>Not a site, not assessed archaeologically</td> <td>Full impact</td> </tr> <tr> <td>Yin09-47</td> <td>Scarred tree</td> <td>Medium</td> <td>Full impact</td> </tr> <tr> <td>Yin09-55</td> <td>Pebble mouse mound</td> <td>Not a site, not assessed archaeologically</td> <td>Full impact</td> </tr> <tr> <td>Yin09-57</td> <td>Artefact scatter</td> <td>Low</td> <td>Full impact</td> </tr> <tr> <td>Yin10-64</td> <td>Reduction area, Artefact scatter</td> <td>Low</td> <td>Full impact</td> </tr> </tbody> </table>	<u>Site ID</u>	<u>Site type</u>	<u>Significance</u>	<u>Proposed extent of impact by Purpose</u>	Yin07-03	Artefact scatter	Low	Full impact	Yin07-04	Artefact scatter	Low	Full impact	Yin08-32	Artefact scatter	Low	Full impact	Yin09	Isolated artefacts	Not a site	Full impact	Yin09-03	Pebble mouse mound	Not a site, not assessed archaeologically	Full impact	Yin09-47	Scarred tree	Medium	Full impact	Yin09-55	Pebble mouse mound	Not a site, not assessed archaeologically	Full impact	Yin09-57	Artefact scatter	Low	Full impact	Yin10-64	Reduction area, Artefact scatter	Low	Full impact
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Strategies to minimise or avoid identified sites	<p>Fortescue utilises the following strategies to minimise impact to an avoid identified sites:</p> <ul style="list-style-type: none"> • Company Commitment: to avoid all engraving sites and where ever possible all high significance sites • Planning: After initial surveys are completed, the engineers are required to modify their plans to ensure the commitment to avoid engravings is met, and to minimise impact to as many heritage sites as possible. • Management: Fortescue manages heritage through the development of Cultural Heritage Management Plans (CHMP) in consultation with the relevant Aboriginal people. The CHMP includes the Ground Disturbance Permit system for all activity across the project, on-ground protective measures including fencing and monitoring and a comprehensive education process including a compulsory heritage induction and cross cultural awareness training. 																																								
Management commitments to sustainable heritage protection	<p>A Cultural Heritage Management Plan for the Solomon Hub will be developed and consultation undertaken with the relevant Aboriginal Groups for the Solomon Project including Eastern Guruma, Yindjibarndi, Martu Idja Banyjima, Kariyarra and Palyku People.</p> <p>Fortescue will engage cultural heritage monitors to monitor works during construction.</p>																																								
Local, regional or cumulative impacts	<p>Public Environmental Review has been submitted to DEC which identifies local, regional or cumulative environmental impacts.</p> <p>This section 18 forms part of a series of applications which will cover the Solomon Project. The survey work undertaken will add to the heritage knowledge of the area. Wherever possible, Fortescue will minimise the adverse impact on cultural heritage.</p>																																								

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<p>It is recommended to Fortescue by Veritas / Eureka Heritage archaeological consultants that the following sites Yin 07-03, Yin 07-04, Yin 08-32, Yin 09, Yin 09-47, Yin 09-57, Yin 10-64:</p> <ul style="list-style-type: none"> • The proposed site disturbance is acceptable to the relevant Yindjibarndi Aboriginal people who are authorised to speak for country; • FMGL consults with the Yindjibarndi people regarding any salvage of cultural material, and any ongoing management of cultural material; and, • Management recommendations and/or consent conditions include site salvage, should be carried out using best practice methodology and recording standards methodology. <p>It is recommended to Fortescue by Veritas / Eureka Heritage archaeological consultants that the following sites Yin 09-03, Yin 09-55:</p> <ul style="list-style-type: none"> • That further ethnographic work is conducted in the Firetail and wider Solomon area to fully evaluate the site 	<p>Some members of the Yindjibarndi have objected to this application and some have not objected. Fortescue cannot comply with the recommendation that the "proposed site disturbance is acceptable to the Yindjibarndi People" as a whole group.</p> <p>Fortescue agrees to all recommendations relating to the management and salvage procedures for sites subject of the s18 on the Land.</p>

It is recommended to Fortescue by David Raftery, consultant anthropologist that:

- That the Section 18 processes that FMG intends to apply to the PMI (Firetail Priority Mining and Infrastructure Area) proceed.
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	5	Ethnographic report "Report of a Section 18 Ethnographic Survey and consultations regarding archaeological sites at FMG's Firetail Priority Mining and Infrastructure Area (December 2010)"
	6	Summary of Consultation with relevant Aboriginal People and other stakeholders including Annexure A – P
	7	Letter from EPA to Wirlumurra Yindjibarndi RE: Public Environmental Review #1841
	8	Letter from FMG to Yindjibarndi Aboriginal Corporation RE: Public Environmental Review #1841
	9	ASIC company details
	10	Mining tenement register search - Documents relating to Tenements held by Fortescue subject of this Application
	11	Office of the Registrar of Indigenous Corporations certificate registration of "Wirlumurra Yindjibarndi Aboriginal Corporation"
	12	WYAC letter of non-objection to Fortescue's section 18 applications for the Firetail Priority Mining and Infrastructure Areas and letter from WYAC legal representative, Corser and Corser lawyers confirming the authority to speak for Yindjibarndi country
13	Letter of intent to submit a section 18 notice to YAC	

11. Copyright

Copyright	<i>I licence the Department of Indigenous Affairs, the ACMC and their representatives to use the contents of the Notice and any attachments for any purpose, to reproduce, to modify and adapt the Notice or attachments (including converting them into different formats), and to communicate the Notice or attachments to the public (including via a public web site). I confirm that I have obtained all licences and consents necessary to grant this licence.</i>
-----------	--

12. Declaration

I declare that I have completed all sections of the Notice and declare that I have read and understood the information submitted and the recommendations I put to the ACMC.

Name (Full name of applicant. Please print)	Mark Thomas Company Secretary FMG Pilbara Pty Ltd		
Signature		Date	18 February 2011

“MW-107”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 13 pages is the annexure marked “**MW-107**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Department of Indigenous Affairs

Office Use Only:	Application	
	Year	Number

Section 18 Notice: FIRETAIL PRIORITY MINING AREA

NOTICE UNDER SECTION 18 OF THE ABORIGINAL HERITAGE ACT 1972
APPLICATION FOR 'Consent to certain uses'

1. Statement of Notice

To the Aboriginal Cultural Material Committee.

1. *Rod Campbell*

Applicant's Name:	
	as an authorised representative of FMG Pilbara Pty Ltd (a wholly owned subsidiary of Fortescue Metals Group Ltd)

give notice under section 18 of the *Aboriginal Heritage Act 1972* (the Act) that I require to use the Land, as described in Item 5, for the purpose described in Item 6 below.

2. Contact details of Applicant

Contact details for this application.

Contact Name	Grant Preller				
Position	Heritage Approval Superintendent				
Organisation Name	FMG Pilbara Pty Ltd				
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth WA 6004				
Phone	6218 8888	Mobile	0407385157	Fax	6218 8880
E-mail	gpreller@fmgl.com.au				

Heritage Consultant	Rob Tickle				
Organisation Name	Veritas Archaeology & History Service				
Mailing Address	PO Box 557, Muswellbrook, NSW 2333				
Phone	Mobile	0419220593	Fax	n/a	
E-mail	rtickle@bigpond.net.au				

Department of Indigenous Affairs

3. Landowner's Authorisation

- Applicants must provide proof of ownership for each parcel of Land subject to the Notice and authorisation by the landowner(s) to use the Land for the Purpose.
- Applicants who are landowners need only sign the declaration at 12 below.
- If there is more than one landowner provide the additional information on separate pages and their signed authorisations.

Land Parcel 1

Landowner's Full Name	FMG Pilbara Pty Ltd				
Organisation Name					
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth 6004				
Phone	08 62188888	Mobile		Fax	
E-mail	n/a				

4. The Land subject to the s18 Notice

Copies of **ALL** certificate/s proving land ownership for the Land subject to the Notice, such as certificates of title, tenement/s IDs, etc, must be attached. Complete details for each land parcel separately.

Land Parcel 1

Certificate of Title	Vol	n/a	Folio	n/a	Diagram / plan / deposit plan no.	n/a
Lot Number and location of subject lot	Lot No. (whole/part)		Location		WA51087509	
Reserve No (if applicable)						
Street Number and Name	n/a					
Town / Suburb	n/a			Postcode	n/a	
Tenement ID	M47/1413					
Land Zoning	Vacant Crown land					
Geographical Coordinates (GDA94)	5994410mE 7554104mN					
Other						
Other	Reserve					

Department of Indigenous Affairs

5. Map(s) of the Land

- Appendix 1: Map 1 The general location of the Land for the purpose of this Notice.
 Appendix 2: Map 2 Solomon Rail Project, Phase Map 5
 Appendix 3: Map 3 "Firetail Priority Mining Area -- Yindjibarndi" (the subject of this application), s18 boundary and heritage surveyed area identified.

6. The Purpose of the use of the Land

Item	Applicant's description
Concise description (10 words or less)	Construction and operation of a mining area and associated infrastructure known as the "Firetail Priority Mining Area".
General description of purpose	<p>Fortescue Metals Group Limited (Fortescue) Solomon Iron Ore Project is an expansion of its current iron ore mining and export operations in the Pilbara region of Western Australia. The Solomon Iron Ore Project (referred to as "The Solomon Hub") is located on the central Hamersley Ranges, and situated approximately 60km north of Tom Price, Western Australia.</p> <p>The Solomon Hub will include the establishment and operation of mining areas on the Firetail and Kings iron ore mine deposits as well as the construction and operation of the Solomon railway line. Together with any associated infrastructure to support the Solomon Hub which includes, but is not limited to: Airstrip; Access roads; Accommodation Camp; Offices, ablution and change house facilities; Power station supplying up to 80 MW maximum demand; Communication infrastructure.</p> <p>As a first stage process in establishing and operating mining areas on the Firetail and Kings iron ore mine deposits, Fortescue will construct and develop a priority area within the Firetail iron ore deposit known as the "Firetail Priority Mining and infrastructure Areas". This has been split into two separate section 18 applications known as the "Firetail Priority Mining Area" (subject of this application) and the "Firetail Priority Infrastructure Area" (subject of a separate application).</p> <p>The processed iron ore from the mining area will be transported along the 'Solomon railway line' linking onto the existing Port Hedland to Cloudbreak railway line at chainage 175 to Fortescue's existing Herb Elliot Port facilities in Port Hedland for export.</p> <p>A general location map showing the 'the Firetail Priority Mining area' is included in this notice in Appendix 1 as Map 1.</p> <p>An overview of the Solomon Mining area is included as Appendix 2 as Map 2 and is referred to as the 'Solomon Rail Project, Phase Map 5'</p>

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	A map showing the 'Land' and 'Purpose' in relation to the Aboriginal heritage site is included in this notice in Appendix 3 as Map 3.
Processing inputs, discharges	Processing inputs and discharges for the Solomon Project such as water, diesel and oil will be managed as outlined in FMG's Exploration Environmental Management Plan approved by the Department of Environment and Conservation ("DEC").
Bulk material source	Any bulk materials (such as gravel and borrow material) that are required to be sourced at the Solomon Project will be extracted under approvals issued by the Department of Mining and Petroleum (DMP) or Department of Environment and Conservation (DEC).
Associated infrastructure	Associated infrastructure to support the Solomon Mine includes accommodation camps, roads and borrow pits.
New or existing project, approvals & associated dates	<p>The key approval for the construction of a mining area will include:</p> <ul style="list-style-type: none"> • Approval under Part IV of the <i>Environmental Protection Act 1986</i>, • Approvals under <i>Section 18 of the Aboriginal Heritage Act 1972</i>. • Ministerial approval of the Solomon Public Environmental Review under Section 38 of the <i>Environmental Protection Act (1980)</i>. <p>Copies of the Solomon Public Environmental Review have been sent to:</p> <ol style="list-style-type: none"> 1. Wirlumurra Yindjibarndi Group re: FMG Public Environmental Review # 1841. Letter from Environmental Protection Authority are attached at Appendix 7 2. Yindjibarndi Aboriginal Corporation re: FMG Public Environmental Review # 1841 Letter from FMG are attached at Appendix 8 <p>Fortescue will be seeking approvals under the following acts for the development of the project by:</p> <ul style="list-style-type: none"> • <i>Environmental Protection Act 1986 (Parts IV and V)</i> • <i>Rights in Water and Irrigation Act 1914</i> • <i>Mining Act 1978</i> • <i>Environment Protection and Biodiversity Conservation Act 1999</i> • <i>Variation to the Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004</i>
Relation to other proposals	<p>This section 18 Application is for a portion of the Solomon Mining Area which falls within the Yindjibarndi Native Title Claim Area. This application is one of three applications covering the Solomon Mining Area.</p> <p>Fortescue has already submitted applications for the Eastern Guruma portion of the Solomon Mining area known as "Solomon – Airport, Camps and Admin (EAS)".</p> <p>The second section 18 application includes the southern portion of the "Firetail Priority Mining and Infrastructure Area". This second application is</p>

Department of Indigenous Affairs

	known as the "Firetail Priority Infrastructure Area" and has also being submitted for the 7 April 2011 ACMC meeting.
Timeframe for development, staging	The construction of the mining area is expected to commence June 2011.
Extent of activity (m ²)	The Land the subject of this notice is approximately 350Ha.
Previous s18 Notices regarding the Land	No previous Section 18 notices have been lodged regarding the Land the subject of this notice.
Other	n/a

7. Summary of applicant consultation with relevant Aboriginal people and other stakeholders

Consultation	Description
Process of consultation and informant selection	<p>Please see attached document at Appendix 6 for "Summary of Consultation with relevant Aboriginal People and other stakeholders" including Annexures for detail.</p> <p>The consultation and informant selection is summarised as follows:</p> <ul style="list-style-type: none"> • Yindjibarndi Aboriginal Corporation / Juluwarlu Aboriginal Corporation (YAC / JAC) invited to provide informants for initial surveys post signing of a Alternative Heritage Agreement between Fortescue and the Yindjibarndi People • After initial heritage surveys, YAC stopped heritage surveys until a Land Access Agreement (LAA) was reached • Terms and remuneration outlined in the LAA were not tenable for Fortescue and YAC ceased negotiations • Fortescue continued to make every effort to engage YAC and continue negotiations with heritage surveys whilst the negotiations remained stalled • After a decision was made by YAC at a community meeting to formally suspend heritage surveys, Fortescue made the decision to re-commence without the involvement of Yindjibarndi people • Fortescue sent invitations to YAC for involvement in heritage surveys and also requests for information relating to known heritage sites within the heritage survey request land • Fortescue project develops to feasibility stage and decision is made to submit an initial section 18 application for the Firetail Early mining area • Fortescue becomes aware that members of the Yindjibarndi community are

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	<p>willing to engage and consult and a decision is made to withdraw the section 18 application</p> <ul style="list-style-type: none"> • Orientation visit to the site with senior Yindjibarndi people on 10/11 July 2010 with anthropologist David Raftery accompanied by Yindjibarndi men • Orientation visit to the site with senior Yindjibarndi people on 19/20 August 2010 with anthropologist David Raftery accompanied by Yindjibarndi women and men • Yindjibarndi people re-commence participation in heritage surveys with Fortescue • Fortescue make a number of presentations to Yindjibarndi people both onsite at Solomon and also in Roebourne outlining development plans for Fortescue with specific reference to the Solomon Project area and the heritage approvals process • Fortescue submit notices of intention to submit section 18 applications known as the "Firetail Priority Mining and Infrastructure Areas" • Ethnographic survey of "Firetail Priority Mining and Infrastructure Areas" for the purposes of a section 18 submission conducted on 3 & 4 November 2010 by anthropologist David Raftery and senior Yindjibarndi men and women • On 23 November 2010 the Wirilu-Murra Yindjibarndi Aboriginal Corporation is registered • Follow up visit of sites subject of the section notice per request of the Group on 3 December 2010 • Group meeting with Fortescue in Roebourne on 6 December 2010 to discuss results of the site meeting for Firetail Priority Mining and Infrastructure Areas which resulted on a letter confirming that the Group would not object to Fortescues section 16 & section 18 submissions <p>Archaeological report Archaeological report is included at Appendix 4, "Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mining and Infrastructure area - December 2010".</p> <p>Ethnographic report Reports from ethnographic and site visits are included at Appendix 5, "Report of a Section 18 Ethnographic Survey and consultations regarding archaeological sites at FMG's Firetail Priority Mining and Infrastructure Area (December 2010)".</p>
List of stakeholders consulted	<p>Yindjibarndi People through their nominated representatives and organisations:</p> <ul style="list-style-type: none"> • Yindjibarndi Aboriginal Corporation (Slater and Gordon) • Juluwarlu Aboriginal Corporation (Michael Woodley)

Department of Indigenous Affairs

	<ul style="list-style-type: none"> Wirlu-Murra Yindjibarndi Aboriginal Corporation (Corser and Corser)
Aboriginal people's issues and/or concerns	<p>Whilst letters of notification have been sent through to YAC / JAC, Fortescue have not yet received an objection. Fortescue expect to receive this letter of objection and will forward it through to the DIA if received.</p> <p>Please see attached letter from Wirlumurra Yindjibarndi Group legal representative Ronald Bower from Corser and Corser Lawyers – indicating their non-objection to the Section 18 Application at Appendix 6 for "Summary of Consultation with relevant Aboriginal People and other stakeholders" including Annexure L for details.</p>
Issues / problems encountered during consultation process	<p>Yindjibarndi Aboriginal Corporation (YAC) and Juluwarlu Aboriginal Corporation's refusal to participate in heritage surveys until Fortescue agrees to a financial settlement suitable to them (amounting to about \$90 million per year).</p> <p>The refusal of YAC to participate in heritage surveys has created conflict within the Group. As a result of the conflict a new heritage management body has been formed called the Wirlu-Murra Yindjibarndi Aboriginal Corporation.</p> <p>The process of consultation and the resultant issues are outlined in further detail as a "Summary of Consultation" as Appendix 6.</p>
Outcomes of consultation	<p>The members of the Wirlumurra Yindjibarndi Group do not object to the section 18 application by Fortescue.</p> <p>The Chairperson of the YAC has written to Fortescue indicating that Michael Woodley's affidavits and letters to indicate their intention to oppose any section 18 application lodged by Fortescue.</p>

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8. Summary of potential effects on Aboriginal sites and possible management responses

Sites to be impacted by the activities undertaken as described in the Purpose	<table border="1"> <thead> <tr> <th colspan="4">Sites to be impacted entirely by the Purpose</th> </tr> <tr> <th>Site ID</th> <th>Site type</th> <th>Significance</th> <th>Proposed extent of impact by Purpose</th> </tr> </thead> <tbody> <tr> <td>Yin07-03</td> <td>Artefact scatter</td> <td>Low</td> <td>Full impact</td> </tr> <tr> <td>Yin07-04</td> <td>Artefact scatter</td> <td>Low</td> <td>Full impact</td> </tr> <tr> <td>Yin08-32</td> <td>Artefact scatter</td> <td>Low</td> <td>Full impact</td> </tr> <tr> <td>Yin09</td> <td>Isolated artefacts</td> <td>Not a site</td> <td>Full impact</td> </tr> <tr> <td>Yin09-03</td> <td>Pebble mouse mound</td> <td>Not a site, not assessed archaeologically</td> <td>Full impact</td> </tr> <tr> <td>Yin09-47</td> <td>Scarred tree</td> <td>Medium</td> <td>Full impact</td> </tr> <tr> <td>Yin09-55</td> <td>Pebble mouse mound</td> <td>Not a site, not assessed archaeologically</td> <td>Full impact</td> </tr> <tr> <td>Yin09-57</td> <td>Artefact scatter</td> <td>Low</td> <td>Full impact</td> </tr> <tr> <td>Yin10-64</td> <td>Reduction area, Artefact scatter</td> <td>Low</td> <td>Full impact</td> </tr> </tbody> </table>	Sites to be impacted entirely by the Purpose				Site ID	Site type	Significance	Proposed extent of impact by Purpose	Yin07-03	Artefact scatter	Low	Full impact	Yin07-04	Artefact scatter	Low	Full impact	Yin08-32	Artefact scatter	Low	Full impact	Yin09	Isolated artefacts	Not a site	Full impact	Yin09-03	Pebble mouse mound	Not a site, not assessed archaeologically	Full impact	Yin09-47	Scarred tree	Medium	Full impact	Yin09-55	Pebble mouse mound	Not a site, not assessed archaeologically	Full impact	Yin09-57	Artefact scatter	Low	Full impact	Yin10-64	Reduction area, Artefact scatter	Low	Full impact
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Strategies to minimise or avoid identified sites	<p>Fortescue utilises the following strategies to minimise impact to an avoid identified sites:</p> <ul style="list-style-type: none"> • Company Commitment: to avoid all engraving sites and where ever possible all high significance sites • Planning: After initial surveys are completed, the engineers are required to modify their plans to ensure the commitment to avoid engravings is met, and to minimise impact to as many heritage sites as possible. • Management: Fortescue manages heritage through the development of Cultural Heritage Management Plans (CHMP) in consultation with the relevant Aboriginal people. The CHMP includes the Ground Disturbance Permit system for all activity across the project, on-ground protective measures including fencing and monitoring and a comprehensive education process including a compulsory heritage induction and cross cultural awareness training. 																																												
Management commitments to sustainable heritage protection	<p>A Cultural Heritage Management Plan for the Solomon Hub will be developed and consultation undertaken with the relevant Aboriginal Groups for the Solomon Project including Eastern Guruma, Yindjibarndi, Martu Idja Banyjima, Kariyarra and Palyku People.</p> <p>The CHMP will include the following key heritage management principles which will be implemented to ensure that every reasonable effort is made to minimise the likelihood of unauthorised impact to Aboriginal heritage sites. This includes:</p> <ol style="list-style-type: none"> 1. Where possible, avoid of areas with significant cultural heritage value; 2. Where possible, create exclusion zones around areas with significant cultural value if they cannot be avoided; 3. Manage the location of Aboriginal heritage sites and the respective exclusion zones through Fortescues GIS data management system; 4. Ensure that all ground disturbance activities are managed through Fortescues "Ground Disturbance System"; 5. Ensure that all personnel involved in any activity relating to ground disturbance have adequate training; 6. Ensure that all Aboriginal heritage sites adjacent to ground disturbance activities have been adequately identified; 																																												

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	Fortescue will engage cultural heritage monitors to monitor works during construction.
Local, regional or cumulative impacts	<p>Public Environmental Review has been submitted to DEC which identifies local, regional or cumulative environmental impacts.</p> <p>This section 18 forms part of a series of applications which will cover the Solomon Project. The survey work undertaken will add to the heritage knowledge of the area. Wherever possible, Fortescue will minimise the adverse impact on cultural heritage.</p>

9. Applicant Response to Recommendation

Recommendations from Consultation / Heritage Survey Report (s)	Applicant Response to Recommendations
<p>It is recommended to Fortescue by Veritas / Eureka Heritage archaeological consultants that the following sites Yin 07-03, Yin 07-04, Yin 08-32, Yin 09, Yin 09-47, Yin 09-57, Yin 10-64:</p> <ul style="list-style-type: none"> • The proposed site disturbance is acceptable to the relevant Yindjibarndi Aboriginal people who are authorised to speak for country; • FMGL consults with the Yindjibarndi people regarding any salvage of cultural material, and any ongoing management of cultural material; and, • Management recommendations and/or consent conditions include site salvage, should be carried out using best practice methodology and recording standards methodology. <p>It is recommended to Fortescue by Veritas / Eureka Heritage archaeological consultants that the following sites Yin 09-03, Yin 09-55:</p> <ul style="list-style-type: none"> • That further ethnographic work is conducted in the Firetail and wider Solomon area to fully evaluate the site 	<p>Some members of the Yindjibarndi have objected to this application and some have not objected. Fortescue cannot comply with the recommendation that the "proposed site disturbance is acceptable to the Yindjibarndi People" as a whole group.</p> <p>Fortescue agrees to all recommendations relating to the management and salvage procedures for sites subject of the s18 on the Land.</p>

Department of Indigenous Affairs

It is recommended to Fortescue by David Raftery, consultant anthropologist that:

- That the Section 18 processes that FMG intends to apply to the PMI (Firetail Priority Mining and Infrastructure Area) proceed.
- It is recommended that the Yindjibarndi #1 WAD6005/03 native title claimants be directly involved in formulating appropriate mitigation strategies for archaeological sites that are to be impacted by the proposed works. This involvement could include, but is not limited to, participation in heritage salvage and monitoring operations.
- It is recommended that all works in the area that may impact on any Aboriginal sites, listed or unlisted, or other heritage values, only be carried out with Ministerial approval under Section 18 of the *Aboriginal Heritage Act 1972*.
- It is recommended that FMG personnel are made aware of their obligations under Section 15 of the *Aboriginal Heritage Act 1972* to report any suspected unrecorded Aboriginal sites or objects.

Whilst Fortescue agrees to the recommendations that Yindjibarndi #1 WAD6005/03 native title claimants be involved in the process, at this stage only members of the Wirilu-Murra Yindjibarndi Aboriginal Corporation are willing to be involved. Fortescue has concluded that at the time of submission of this application, representation from YAC / JAC, the legal representatives of Yindjibarndi #1 WAD6005/03, was not possible due to ongoing problems outlined in Appendix 6 "Summary of Consultation" attached to this application.

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10. Attachments

Attachments	Description	
<ul style="list-style-type: none"> - Landowner's authorisation documents - Certificates of Title - Tenement ID - Additional Maps - Photographs - Additional pages for the Notice - Heritage Survey Reports - Site Recording forms (must be submitted for s18 progress) - Other - Electronic copy of application and all supporting material (must be submitted for s18 to progress) 	APPENDIX	APPENDIX DESCRIPTION
	1	Map 1 - General location map
	2	Map 2 – Overview map of the Solomon Mining area
	3	Map 3 – Archaeological map of the Land archaeological with s18 boundary and archaeological heritage surveyed area identified.
	4	Archaeological report "Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mining and Infrastructure area - December 2010" including site cards
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	13	Letter of intent to submit a section 18 notice to YAC
14	Response to "Request for further information" including Annexures	

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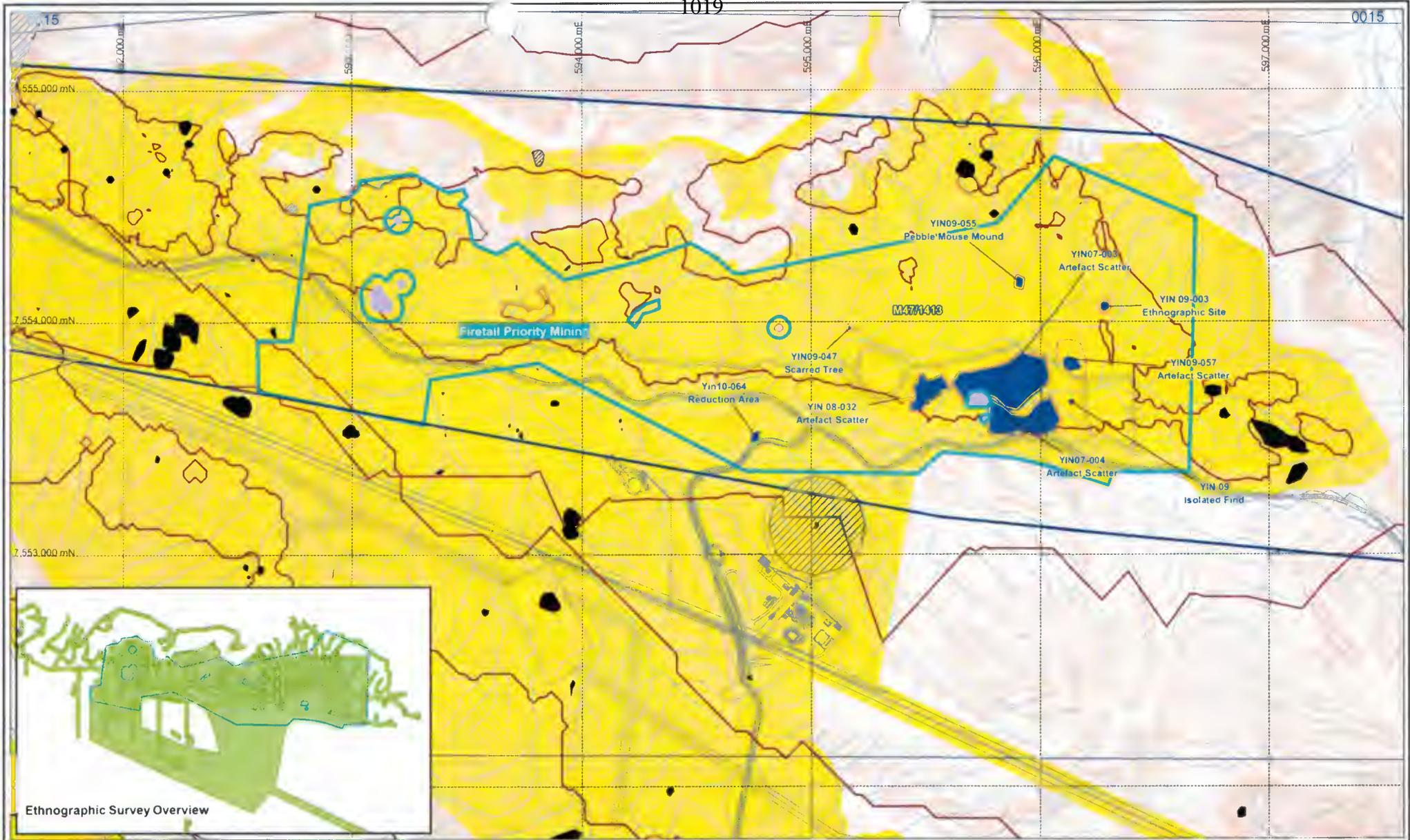
11. Copyright

Copyright	<i>I licence the Department of Indigenous Affairs, the ACMC and their representatives to use the contents of the Notice and any attachments for any purpose, to reproduce, to modify and adapt the Notice or attachments (including converting them into different formats), and to communicate the Notice or attachments to the public (including via a public web site). I confirm that I have obtained all licences and consents necessary to grant this licence.</i>
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12. Declaration

I declare that I have completed all sections of the Notice and declare that I have read and understood the information submitted and the recommendations I put to the ACMC.

Name (Full name of applicant. Please print)	<i>Rod Campbell</i> Company Secretary FMG Pilbara Pty Ltd		
Signature	<i>Rod Campbell</i>	Date	March 2011
		<i>17</i>	



- Firetail Pit Outlines
- Proposed Infrastructure
- Watercourses
- Contour
- Land subject to s18 Application
- Aboriginal Sites to be impacted by the s18
- Aboriginal Sites under s16 investigation
- FMG Tenement
- Heritage Surveyed Area
- FMG Identified Aboriginal Heritage Site
- DIA Registered Site
- Ethno Surveyed Area



Fortescue Metals Group Ltd

**S18 Application
Firetail Priority Mining Area**

Author: J. P. ...	Date: ...
Drawn by: J. P. ...	Reviewed: ...
Checked: J. P. ...	Confidence: ...
Drawn by: J. P. ...	Date: 19/0015

“MW-108”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

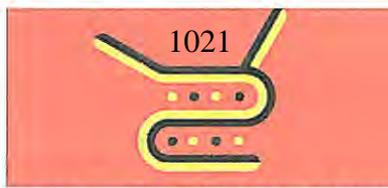
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-108”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

19/04/11
Ryan Crawford
Senior Heritage Officer
Department of Indigenous Affairs
Perth, WA

Dear Ryan,

The Yindjibarndi Aboriginal Corporation (YAC) wishes to object to the section 18 applications made by FMG described by you in the email to Michael Woodley dated 13/04/11 sent at 12.18pm as *'two section 18 Notices for the 'Firetail Priority Mining Area' and 'Firetail Priority Infrastructure Area' that are scheduled to be considered at the May meeting of the Aboriginal Cultural Material Committee (ACMC)'*.

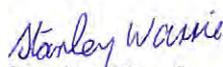
The YAC would like the opportunity to gather the evidence for the sites and location in question for our submission to the ACMC and request that we are allowed to submit that evidence to the ACMC via the DIA by 20 May 2011.

The Yindjibarndi people represented by the YAC are concerned and upset by FMG's actions at the area they term 'Firetail' and they wish to be able to lodge their strongest objection to the ACMC.

As you may be aware the YAC and FMG are currently in an extremely emotional and distressing dispute which is affecting all members of the previously close knit Yindjibarndi community. The YAC would like to be given the time to effect a response to FMG's section 18 applications that will encapsulate their cultural knowledge and objections to FMG's desire to permanently disturb and destroy Yindjibarndi sites within the area we call *Ganyjingarringunha*. The many Yindjibarndi supporters of the YAC's position cannot believe that FMG is continuing to push on with an agenda that does not include them, their views, or their cultural knowledge; these people request the opportunity to let the ACMC and the Minister of Indigenous Affairs know of their opinions on how they would like to deal with the section 18 applications that are the subject of this correspondence, so that an appropriate, informed recommendation can be made to the Minister by the Committee.

To do this properly and respectfully the YAC asks to be given to the 20 May 2011 to provide their response.

We look forward to hearing from you


Stanley Warrie
Chairperson
Yindjibarndi Aboriginal Corporation

“MW-109”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked **“MW-109”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

Our reference: ^{LS-600-1-0002} LS-50-10001 ^W
 Your reference:

6 May 2011

Members of the Juluwarlu Aboriginal Corporation
 PO Box 111
 Roebourne, WA 6718
 (By Post and email admin@juluwarlu.pilbara.net)

Members of the Yindjibarndi Aboriginal Corporation
 PO Box 111
 Roebourne, WA 6718
 (By Post and email admin@juluwarlu.pilbara.net)

Attention: Simon Millman
 Slater & Gordon Lawyers
 Level 2, Council House
 27-29 St Georges Tce
 Perth
 WA 6000



Dear Members of the Juluwarlu Aboriginal Corporation,

Consultation and heritage for Solomon Project Area

I am writing to confirm Fortescue's commitment to provide Yindjibarndi Aboriginal Corporation ("YAC") members with the opportunity to consult and provide heritage information about the Solomon Project Area; and invite their participation in heritage surveys.

Fortescue has previously provided YAC with extensive information about the Solomon Project, its proposed activities, timeframes, and licenses. I have included a map of this area for your reference.

During the 4 May 2011 meeting with the Aboriginal Cultural Materials Committee ("ACMC"), Fortescue noted YAC advice to the ACMC that they have undertaken surveys and has recorded information about heritage sites within the Solomon Project area. Fortescue requests that YAC provides Fortescue with the heritage information and relevant reports.

Fortescue also notes YAC's ongoing refusal to participate in heritage surveys. Fortescue will like to advise that our offer remains for members of YAC to be involved in heritage surveys and matters; and we will continue to notify you about upcoming heritage surveys.

Fortescue would like to advise YAC that future heritage matters for the Fortescue Solomon project in the Yindjibarndi native title claim area will be managed and facilitated by the Wirlu-murra Yindjibarndi Aboriginal Corporation ("WYAC").

If members of YAC wish to be involved in future heritage surveys, please contact and liaise with WYAC, or contact and discuss with Fortescue directly.

Further to this advice, I would like to take this opportunity to notify YAC that Fortescue sent WYAC a survey request on 5 May for a heritage surveys pertaining to heritage survey requests YIN_48, YIN_050, YIN_053 to commence on Monday 9 May. Please find enclosed the survey request and maps for your information. Please provide details of any heritage information relevant to the survey requests.

Fortescue looks forward to receiving the heritage information for the Solomon projects and working with the Yindjibarndi people on these surveys.

Should you wish to discuss the above, or require any additional information, please do not hesitate to contact me on (08) 62188054.

Yours sincerely



Lisa Maher
Heritage Manager

Encl. A3 Solomon overview map
Encl. YIN_48, YIN_050, YIN_053 Heritage Survey Requests

Copy: Registrar of Indigenous Affairs
Department of Indigenous Affairs
Level 1, Governor Stirling Tower
196 St Georges Terrace
Perth WA 6000

Copy: Wirlu-murra Yindjibarndi Aboriginal Corporation
c/- Ronald Bowers
Corser and Corser Lawyers
Level 4, Irwin Chambers
16 Irwin Street
Perth, WA 6000

“MW-110”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 4 pages is the annexure marked “**MW-110**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

RECEIVED 27 MAY 2011



Fortescue
The New Force in Iron Ore

Our Ref: LS-100-I-0590

Your Ref: 334858

25 May 2011

Members of the Yindjibarndi Aboriginal Corporation
PO Box 111
Roebourne, WA 6718
(By post and email admin@juluwarlu.pilbara.net)

ATT: Simon Millman
Slater & Gordon Lawyers
Level 2, Council House
27-29 St Georges Terrace
Perth WA 6000

Dear Members of the Yindjibarndi Aboriginal Corporation,

RE YINDJIBARNDI / FORTESCUE METALS GROUP – HERITAGE AGREEMENT

I refer to your letter received on 16 May 2011 regarding Yindjibarndi and Fortescue heritage matters. Fortescue always welcomes Yindjibarndi Aboriginal Corporation's (YAC) comments about heritage matters and takes this opportunity to respond to your correspondence.

Consultation with Yindjibarndi People:

As you are aware, Fortescue has been working cooperatively and positively with Yindjibarndi people and their representatives to consult about Fortescue heritage matters.

Fortescue follows the Department of Indigenous Affairs (DIA) guidelines to consult and involve Aboriginal people with known and claimed interests in Fortescue's heritage matters.

Fortescue will continue to consult with Yindjibarndi members of both Wirlu Murra Yindjibarndi Aboriginal Corporation (WYAC) and YAC with heritage knowledge about matters in the Yindjibarndi determined and application areas, and ensure that we comply with DIA's guidelines and the requirements under the *Aboriginal Heritage Act* 1972.

Please also note that if your members of your organisation believe that they should be involved in Fortescue heritage surveys for project areas within Yindjibarndi determination and application areas, please do not hesitate to contact Grant Preller on 62188406 to facilitate their involvement in heritage matters.

Consultation about Solomon project area:

Fortescue currently consults extensively with Yindjibarndi People and their representatives about heritage matters in the Solomon project area (Solomon). Fortescue

has always invited Yindjibarndi People, including YAC members, to participate in heritage surveys and consult about heritage matters for Solomon.

Fortescue is satisfied that we have provided Yindjibarndi People with the information and opportunity to provide input, or to be involved in, heritage matters for Solomon. In addition, we are satisfied that we have always involved Yindjibarndi People with the knowledge and authority to speak for the Solomon area in heritage surveys.

Heritage Agreement:

We thank you for your offer to consider a heritage agreement, but YAC's offer seems misconceived. As you are aware Yindjibarndi People, including many YAC members, agreed to enter into the FMG – Yindjibarndi People Land Access Agreement at the Yindjibarndi community meeting on 16 March 2011. Yindjibarndi People are currently in the process of ratifying this agreement for both the Yindjibarndi determined and application areas.

Heritage information:

YAC's comment about heritage information only becoming available with an agreement executed between YAC and FMG is contrary to the advice to YAC's members provided by the Aboriginal Cultural Materials Committee; and the approach currently being taken by Yindjibarndi people. We will advise DIA and the ACMC about YAC's approach outlined in your correspondence of 16 May 2011 for their information and action.

In addition, YAC's approach outlined in your correspondence is disappointing. Fortescue demonstrates a strong record for working collaboratively with traditional owners and its project managers to avoid as far as possible Aboriginal heritage sites of significance within its project areas. Fortescue's heritage department currently works closely with the planners, engineers and Yindjibarndi people to ensure wherever possible Aboriginal heritage sites are avoided in the Solomon area. We will continue to do this in other areas of development.

Anketell project:

With regard to your request for information about the Anketell rail, I believe that Fortescue's Land Access Lawyer Sukhpal Singh has provided Yindjibarndi Aboriginal Corporation c/- Slater and Gordon with correspondence and maps about this project dated 17 February 2011. I have enclosed two A3 maps with the proposed routes for the rail through the Yindjibarndi #1 application area and the Yindjibarndi Determination area.

Please contact me if you wish to further discuss the above matters.

Yours sincerely,

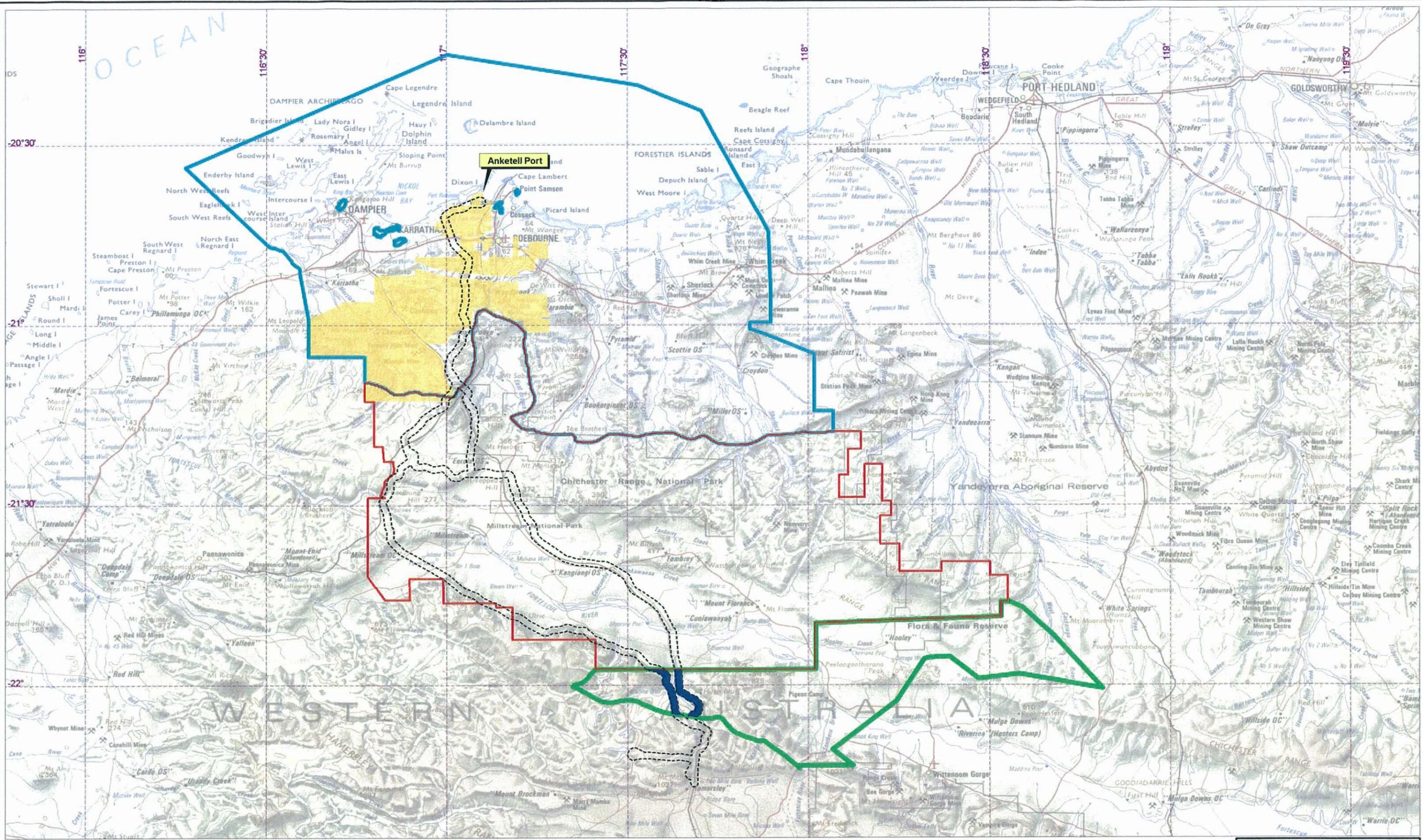


Lisa Maher

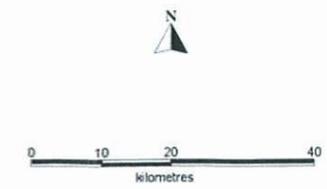
Heritage Manager

Fortescue Metals Group Limited

Enc: A3 Maps: Proposed Anketell Rail Routes Yindjibarndi



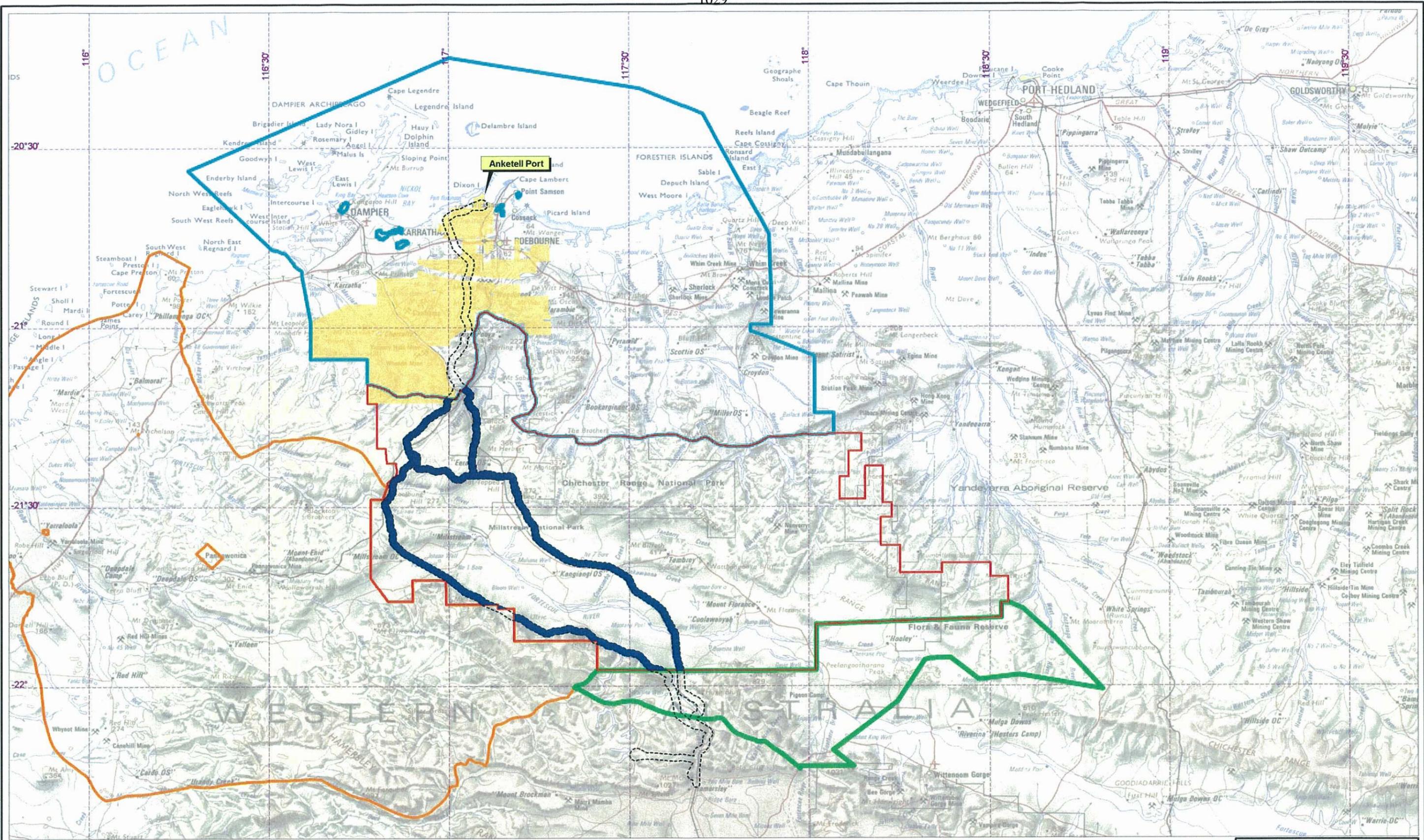
- Mount Welcome Pastoral Lease
- Ngarluma Determined Area
- Yindjibarndi Determined Claim Area
- Yindjibarndi 1 Area
- Kuruma Marthudunera Combined Claim Area
- Section 91 Land Administration Act Investigation Licence



FMG Fortescue Metals Group Ltd

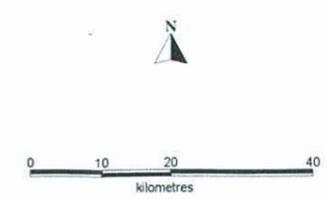
**Central Pilbara Project
Section 91
Rail Investigation Licence in
Yindjibarndi 1 Native Title Claim**

Author: Sukphal Singh	Date: 16/2/2011
Drawn By: J.B.	Revision: 0
Doc No: 100_MP_OP_0019	Confidentiality: 1
Projection: MGA Zone 50 (GDA 94) Scale: 1:1000000	



- Mount Welcome Pastoral Lease
- Ngarluma Determined Area
- Yindjibarndi Determined Claim Area
- Yindjibarndi 1 Area
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- Section 91 Land Administration Act Investigation Licence

Fortescue Metals Group Ltd	
Central Pilbara Project Section 91 Rail Investigation Licence in Yindjibarndi Determined Claim Area	
Author: Sukphal Singh	Date: 16/2/2011
Drawn By: J.B.	Revision: 0
Doc No: 100_MP_OP_0019	Confidentiality: 1
Projection: MGA Zone 50 (GDA 95) Scale: 1:1000000	



“MW-111”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

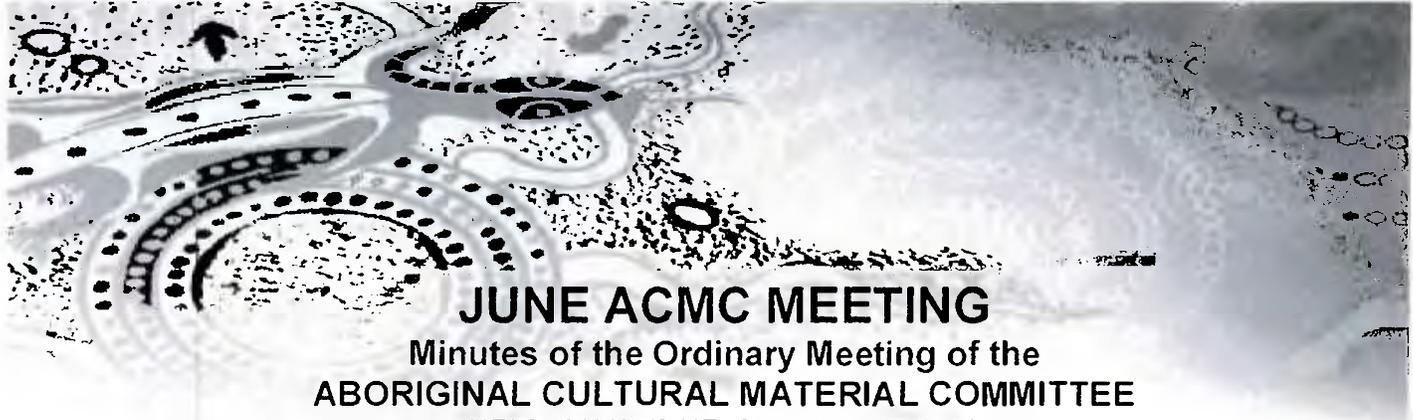
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 18 pages is the annexure marked “**MW-111**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



JUNE ACMC MEETING
Minutes of the Ordinary Meeting of the
ABORIGINAL CULTURAL MATERIAL COMMITTEE
HELD ON WEDNESDAY 1 June 2011
Conference Room
Department of Indigenous Affairs
1st Floor, 197 St George's Terrace, Perth

Members Present:

Mr Haydn Lowe, Chairperson
Ms Louise Austen, Member
Mr Quinton Tucker, Member
Ms Mary Cowley, (Deputy Ex-Officio, Department of Indigenous Affairs)
Mr Ken McCrackan (Ex-Officio, Department of Regional Development and Lands)
Mr Alec Coles, (Ex-Officio, WA Museum)

Apologies:

Mr Bill Bennell, Member

Observers:

Dr Ian Macleod, (Deputy Ex-Officio, WA Museum)

Staff Present:

Dr Kathryn Przywolnik, Registrar of Aboriginal Sites
Ms Jo Franz, Director Heritage and Culture
Ms Christine Lewis, Manager, Heritage South
Mr Jeremy Elliott, Manager, Heritage North
Ms Camille Kirby, ACMC Executive Officer
Ms Christine Bolton, A/ Heritage Project Officer

Presenters:

Ms Anneka Bunt, Senior Heritage Officer
Mr Ryan Crawford, Senior Heritage Officer
Ms Sally McGann, Senior Heritage Officer
Mr Robert Brock, Senior Heritage Officer
Mr Denis Callaghan, Senior Heritage Officer
Mr Simon Keenan, Senior Heritage Officer

<p><i>emphasises that this is consistent with other descriptions of Traditional Aboriginal funerary practices and places.</i></p>	
<p><i>YAC do not consider the heritage surveys without the participation of Yindjibarndi Heritage consultants can be considered thorough and to meet the section 18 standards required by ACMC as they consider the methodology inadequate. Given that the methodology of the reports is insufficient YAC suggest the recommendations drawn from the reports and used in the section 18 Notice are insufficient and cannot be relied upon.</i></p>	<p><i>Attach 16: 11.</i> <i>Attach 16: 5.</i></p>
<p><i>YAC request a condition that FMG must engage with, and reach agreement on, a mutually beneficial Cultural Heritage Management Plan (CHMP) with the YAC prior to any further ground disturbing work on the Land. FMG does not agree and would rather develop a CHMP to the satisfaction of the Registrar.</i></p>	<p><i>Attach 16: 29-30.</i> <i>Attach 17: 16.5.</i></p>
<p><i>As mentioned above there is a concern that heritage surveys have been conducted without the participation of some Traditional Owner representatives. Copies of all heritage survey reports for surveys conducted on the Land since 2007 were requested by the Registrar. FMG further edited Report 1 and relies on its content to summarise the methods and results of earlier surveys of the Land. FMG has not provided the earlier reports as requested.</i></p>	<p><i>Attach 1.</i></p>
<p><i>FMG asserts YAC have not provided any additional heritage information about the Land and question the veracity of the cultural information included in the report. FMG maintains that all sites on the Land have been identified and recorded in sufficient detail. FMG considers the argument that a portion of the Land is a Religious precinct is not relevant.</i></p>	<p><i>Attach. 17</i> <i>Attach 17: 13.1.</i></p>
<p><i>FMG has not disputed the YAC claim of at least 250 rock shelters and caves on the Land subject to the two current Firetail FMG section 18 Notices. FMG argues the caves and rockshelters were assessed by heritage professionals. FMG's heritage professionals have decided some rockshelters are not sites and others are not located on the Land. Neither FMG nor their heritage professionals have provided section 15 reports relating to these rockshelters to the Registrar. Heritage professionals are not decision makers on places as sites under the AHA.</i></p>	<p><i>Attach 17: 14.2.</i></p>

Sites on the Land eg DIA 23567 (Telfer Archaic)

<p><i>Heritage surveys facilitated by FMG have identified a total of 8 Aboriginal places on the Land that may be a site under section 5 of the Aboriginal Heritage Act 1972 (AHA). Four of these places are recorded as artefact scatters, 1 place is a modified tree and two places are recorded as a Pebble Mouse Mound Thalu site. Please refer to Table 1 for further information on these seven places.</i></p>	<p><i>Register Report 1</i> <i>Table 1</i></p>
<p><i>The YAC has provided further information on the significance of the two Pebble Mouse Mound sites. This information is being processed and has not yet been assessed by the DIA Site Assessment Group (SAG). The information contained within the Site Assessment Table above may change, depending on SAG outcomes.</i></p>	
<p><i>A number of Aboriginal sites had been identified as being located very close to the Land. In assessing the Notice, FMG were asked to provide contextual information on these places and the only place for which DIA received</i></p>	<p><i>Attach. 1.</i></p>

<p><i>substantial information is in relation to a rockshelter with walled niche, located within the eastern-most small, circular area excised from the Land. The niche has been inspected by Wirru-Murra representatives, a consultant archaeologist and Police as there was material behind the walled niche that resembled skeletal remains. The State Pathologist been unable to determine from the photographs provided to her by the Police whether the remains are bone, human or otherwise. The Registrar will travel to the site to investigate the material to assist the State Pathologist in making a determination.</i></p>	
<p><i>Section 12 of the May 2011 YAC Heritage Report has provided heritage information associated with places on the Land. This information suggests the cultural landscape associated with the Land has been significantly underplayed by FMG and their heritage professionals. The YAC report states that there is a substantial number of rockshelters and caves and provides photos to illustrate the density of places on some parts of the Land. The YAC estimate that the two current Firetail section 18 Lands contain at least 250 rockshelters and caves.</i></p>	<p>Attach 16: 19-29.</p> <p>Attach 16: 23.</p>
<p><i>The information provided within the YAC report and the subsequent response from FMG casts doubt that all sites located on the Land have been identified and recorded sufficiently. The status of places on the Land is therefore unclear and it appears that further heritage survey is necessary to properly assess, document and report on all places on the Land that may constitute a site under the AHA.</i></p>	<p>Attach 16: 24.</p> <p>Attach 16.</p> <p>Attach 17.</p> <p>Notice.</p>

Significance Period, rarity, representativeness, group value, survival condition, fragility, and vulnerability, documentation, potential, diversity

<p><i>Heritage surveys identified 7 sites on the Land. Please refer to Table 1 for detailed information on site significance. Three of the artefact scatters were considered to have low archaeological significance. The scarred tree DIA 28951 (YIN 09-47) was assessed as being of medium archaeological significance. This was changed from an earlier assessment of high archaeological significance. Two other artefact scatters were accorded a low-medium and medium level of archaeological significance.</i></p>	<p>Table 1.</p>
<p><i>Information has not been provided about the places recorded since 2007 to assess the importance and significance of places on the Land in relation to the surrounding cultural landscape. The lack of this information has also made it hard to consider the Archaeological significance assessments for the sites on the Land in Report 1. FMG has not made this information available to date.</i></p>	<p>Attach 1.</p>
<p><i>The lack of this information has also made it hard to consider the Archaeological significance assessments for the seven sites in Report 1. Part of the Veritas consideration of site significance was an assessment of the potential for "information contained within" the site to contribute additional information to that already known or to general research questions applicable to the study area. The information 'already known' is held by the Applicant and has not been made available to DIA to date.</i></p>	
<p><i>The YAC report also indicates that Pebble Mouse Mound locations are significant Yindjibarndi heritage places and in need of protection. This includes the two Pebble Mouse Mounds located on the Land, DIA 28950 and DIA 28952 (YIN 09-55), which was identified by Wirru-Murra participants of</i></p>	<p>Attach 16: 21.</p>

<p><i>the Raftery July 2010 survey as an increase site designed to increase the incidence of local foodstuffs.</i></p> <p><i>The YAC consider the Land to be part of a religious and burial precinct. The YAC report provides a number of photographs of walled niches from local rockshelters as evidence of this. The results of the inspection of the walled niche, possibly containing skeletal remains discussed above (located immediately to the north of the Land) may also support this. It is likely that the heritage values associated with the walled niche and possible skeletal remains (that are located very close to the Land) extend onto the Land surrounding the remains. This was not made clear within the YAC report.</i></p> <p><i>The YAC state, given all sites on the Land are to be destroyed, they are concerned for the spiritual and mental health of the country and the Yindjibarndi people who are "intricately linked and interdependent".</i></p>	<p>Attach 16.</p> <p>Attach 16: 10.</p>
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Impacts on Heritage from the purpose

Magnitude, cumulative effect, rate of change. Severity, frequency, diverse impacts, mapped impact zones/sites
Duration, range, access, aesthetics, cultural loss

<p><i>It is not clear whether all places on the Land which might constitute a site under the AHA have been identified, sufficiently assessed and reported on within the Notice and accompanying documentation. The potential impacts on heritage from the Purpose are therefore not clear. The Applicant has stated that the Purpose will impact all sites located on the Land and result in the complete removal of cultural materials. The YAC assert that this loss could also include the removal of a portion of a religious and burial precinct with ramifications to the spiritual and mental well being of the Yindjibarndi people, their country, heritage and culture.</i></p> <p><i>The Purpose will have an impact on the cultural landscape of the area and also on the potential of information that might be elicited on past localised Aboriginal occupation, subsistence practices and socio-economic strategies. During consultation the Wirru Murra Yindjibarndi representatives considered the archaeological sites visited to have no cultural significance.</i></p> <p><i>The YAC Heritage Report indicates that the areas of Land subject of the two current FMG Firetail section 18 Notices could contain at least 250 rockshelters and caves. Numerous other areas containing particular stones and ochre sources are also identified, however the YAC report contains little information on the impacts to heritage should these particular places be removed.</i></p> <p><i>Although artefact scatters are reported as being common in the area, little information has currently been provided regarding the nature and significance of the large number of other identified Aboriginal sites recorded between 2007 and 2010 which surround the Land. This lack of information means it is difficult to contextualise the nature and significance of the place and place features within the surrounding cultural landscape.</i></p> <p><i>It is difficult to assess how the impacts to heritage might be mitigated until the status of places on the Land is made clear.</i></p>	<p>Notice: 8.</p> <p>Attach 16.</p> <p>Report 2: 14.</p> <p>Attach 16.</p> <p>Report 1.</p>
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Will the Purpose breach the Act if the Minister does not grant consent

Consequences for State, Heritage and Proponent

Yes, Aboriginal heritage sites will be disturbed in such a way that would constitute a breach of the AHA if the Minister does not grant consent.

Reasons for Ministerial consent or decline

Benefits to the State, heritage or Proponent

It is recommended that the ACMC defer making a recommendation to the Minister in relation to the Notice as:

- The status of places on the Land is unclear. FMG has identified 7 sites on the Land however the YAC assert that at least 250 rockshelters and caves are located in the Firetail mining and infrastructure areas of current two section 18 Land.
- FMG has not provided information on the identification and heritage assessment of the rockshelters and caves located on the Land.
- The above indicates a need for further consultation to occur with the YAC and the Wirru-Murra group regarding the identification of heritage values associated with places on the Land.
- The above would enable the ACMC to be confident that all Indigenous heritage values on the Land have been identified and sufficiently documented.

Notice

If consent, what conditions should be applied, removed or amended

Is monitoring, salvage or a management plan required? Conditions should be doable, heritage related and enforceable

That the Applicant (on behalf of the Landowner):

1. Prior to conducting the Purpose engage appropriately qualified archaeologists to work cooperatively with the Aboriginal people identified in the Notice ("the Consultants") to undertake, using best practice methods, that include the salvage method recommendations for each site within the Tickle 2010 report, and are to the satisfaction of the Registrar, the following:
 - a) Archaeological salvage of artefact assemblages located within sites on the Land and the thorough recording and archiving of each collected artefact assemblage, including a record of the intra-site spatial distributions of collected cultural materials.
 - b) Detailed analysis (including usewear and residue analysis where appropriate) of all salvaged Aboriginal cultural material by qualified archaeologists with suitable experience in lithic analysis.
2. Relocate all collected materials to a safe keeping place satisfactory to the Consultants and report to the Registrar on the location and

Report 1.

Notice: 9.

condition of the collected materials.

Applicant has agreed to all recommendations from the heritage consultants relating to site management and salvage procedures, including recommendation that management (including site salvage), should be undertaken using best practice methodology and recording standards methodology.

3. *Provide all reports resulting from Conditions 1 and 2 to the Registrar on completion of the salvage and analysis.*
4. *Prior to conducting the Purpose provide the Registrar of Aboriginal Sites with information on the location and archaeological and ethnographic assessments of all rockshelters and caves located on the Land.*
5. *Prior to conducting the Purpose consult with representatives of the Yindjibarndi Aboriginal Corporation (YAC) and the Wiru-Murra group, to the satisfaction of the Registrar, to clarify the status of places on the Land and identify all places and heritage values associated with places on the Land.*

As well as the above conditions it is recommended that conditions 1 to 5 from the Schedule of Standard Conditions in Attachment 1 are to apply for this resolution.

Requests and Advice

Standard Requests and Advice in Attachment 2 are to apply to this resolution.

End of Assessment

Type: Mining

Status: Defer

Proposed
Recommendation

Based on the information provided, it is recommended that the Committee defer the Notice lodged by FMG Pilbara Pty Ltd ("the Landowner") to use the land described in Item 4 of the Notice as a portion of Tenement M47/1413 ("the Land"), for the purpose described in Item 6 of the Notice as Construction and operation of a mining area and associated infrastructure known as the "Firetail Priority Mining Area" ("the Purpose") and refer back to the Applicant with a request to:

- *Provide the latest version of heritage reports for all heritage surveys conducted across the Land since 2007 to the Registrar of Aboriginal Sites;*
- *Clarify the status of places on the Land by providing the Registrar of Aboriginal Sites with information regarding the location and assessments of all rockshelters and caves located on the Land;*
- *Conduct heritage surveys of the Land with YAC representatives to ensure that all heritage values associated with places on the Land are identified, assessed and recorded sufficiently and that culturally appropriate mitigation strategies are identified.*

Presentation**Attendees –****Yindjibarndi Aboriginal Corporation**

Phil Davies

Simon Millman

Michael Woodley (via phone link up with Angus Mack, Thomas Jacobs, Kar Warrie and other members from the Yindjibarndi Aboriginal Corporation).

Chris Prast

Wirru-Murra Yindjibarndi Aboriginal Corporation (WMYAC)

Bruce Woodley

John Sandy

Chau Savas

Ken Sandy

Fortescue Metals Group (FMG)

Alexa Morcombe

Lisa Maher

Grant Preller

Blaire McGlew

Phil Davies presented a DVD to the Committee and the attendees which talked about caves and rock shelters in the section 18 area, and how important the area is to the Yindjibarndi people. The DVD also presented views of women regarding the area and how the group must be respectful of the wishes of Mr Ned Cheedy. The DVD lasted approximately 20 mins (due to some technical errors which caused the disc to stop in some places).

Yindjibarndi representatives stated that they would not discuss sites on land with FMG until a Heritage agreement is in place.

YAC also raised the issue that members from WMYAC did not respect the Yindjibarndi elder Mr Ned Cheedy.

The Committee asked of representatives from WMYAC: Does Ned Cheedy know about Country?

John Sandy responded that yes, WMYAC respect him as he is their Elder. Mr Sandy continued to state that the burial site is already protected a statement which was supported by FMG.

Michael Woodley stated that he was grateful for that.

Mr Sandy stated that he was there when the remains were identified and that straight away he advise that FMG were not to impact it and a 100 metre buffer was placed around the site.

The Committee noted that there was discussion from Michael saying bones had been removed. The Committee asked those present in the room if bones had been removed from the sites?

The Committee noted the response that no bones had been removed from the sight and that this misunderstanding had arisen from correspondence from the Department of

Indigenous Affairs to the Yindjibarndi Aboriginal Corporation. The Committee noted that information from the Registrar that no bones had been removed and Mr Woodley was pleased that it was a misunderstanding.

Mr Woodley stated to the Committee that the burial site gives indication that there are possibly other sites in the area due to the large number of caves.

The Committee noted to Mr Woodley that the DVD stated that Ned Cheedy had been disrespected.

Mr Woodley informed the Committee that correspondence and affidavits from members of WMYAC informed YAC that Ned Cheedy has no right to speak for country and had no knowledge of heritage of the Land. Simon Millman from YAC informed the committee that he would provide this information later that day so the Committee could see evidence of this.

The Committee asked the WMYAC members present what their thoughts were of Ned Cheedy

The representatives of WMYAC responded that they respected Ned Cheedy and he was their elder.

Alexa Morcombe informed the Committee that FMG had provided an application regarding consultation and a copy of the Notice had been provided to WMYAC. Ms Morcombe also informed the Committee that FMG have made a commitment to avoid the burial site and that the additional information provided by YAC does not provide further information on sites and that FMG have requested on numerous occasions that YAC consult with them.

Mr Davies asked the Committee for a right of reply to clarify some information. Mr Davies informed the Committee that ethnographic and archaeological clearance surveys were completed by Wayne Glendenning, both without YAC involvement. Within 250 metres of YIN WH004, the walled niche, YAC identified two other walled niches. The formal surveys only visited 19 of the identified sites and not all caves have been investigated for remains or Aboriginal cultural material. YAC stated that there is a vast silence in the archaeological and ethnographic reports due to lack of consultation and visitation of sites.

Mr Millman asked for the information regarding advice from the State Solicitors Office.

The Committee informed Mr Millman that if the State Solicitors Office informs the ACMC that the information could be passed onto him, then he was welcomed to access it. And noted the previous email sent to Mr Millman indication that this information would not be forwarded.

Ms Morcombe stated to the Committee that from the perspective of FMG, they had done everything within their power to consult with groups; however is it also difficult to do consultation if some groups refuse to consult

3.5

Notice under Section 18 of the AHA – FMG Pilbara Pty Ltd on behalf of Rod Campbell, as an authorised representative of FMG Pilbara Pty Ltd (a wholly owned subsidiary of Fortescue Metals Group Ltd) - Construction and operation of a mining area and associated infrastructure known as the “Firetail Priority Mining Area” - Portion of Tenement M47/1413, as described on map 3 Dwg No: SO_PE_HE_0048, by S. Hendricksen, dated 17 February 2011 in Appendix 3 of the Notice.

DIA File No: 11/0211

Presenter: Ryan Crawford

Information tabled at the meeting:

No other information was presented as part of this Notice.

Declaration of interest:

Haydn Lowe, Chair, made a declaration of a potential conflict of interest. The Committee resolved to hear the Notice without Mr Lowe present. The Committee resolved to recommend that Quinton Tucker be Chair for the purpose of hearing the Notices from FMG.

3.5.1 SITE ASSESSMENTS

ACMC Discussion on Site Assessments:

No sites needed to be assessed for this item.

Resolution (2011/102)

Based on the information provided, the Committee resolved to determine the following site table be confirmed and endorsed:

Item No.	DIA #	Site Name	Site Type	For Decision		
				s5	s39(2)	Access
Sites to be reassessed by ACMC:						
1	28950	YIN 09-03	Pebble Mouse Mound	b	a,b,c	
2	28952	YIN 09-55	Pebble Mouse Mound	b	a,b,c	
Sites newly reported to be assessed by ACMC:						
2	29696	Firetail Walled Niche 1	Man Made Structure		Insufficient information	
3	30141	Firetail Cave			Insufficient information	
4	30142	Firetail Walled Niche 2	Man Made Structure		Insufficient information	
5	30143	Firetail Cave 4			Insufficient information	
6	30144	Firetail Rockshelter 7			Insufficient information	
7	30145	Firetail Rockshelter 18			Insufficient information	

CARRIED:

3.5.2 SECTION 18 NOTICE

ACMC Discussion on Section 18 Notice and Recommendations:

- The Committee noted that Ned Cheedy's heritage information needed to be listened to by all groups. The Committee noted that the submissions regarding heritage from Yindjibarndi Aboriginal Corporation are consistent with the affidavit from Ned Cheedy. The Committee noted that if consent was granted to FMG, then a condition should include monitors from both Yindjibarndi Aboriginal Corporation and Wirlu-Murra Aboriginal Corporation.
- The Committee noted that conditions of consent would need to ensure that Yindjibarndi Aboriginal Corporation were present when the purpose is being carried out and asked for two additional conditions to be added to the consent;
 1. FMG were to invite representative who were identified by the Yindjibarndi people to monitor the ground disturbance works; and
 2. Avoid all sites that contain skeletal remains.
- The Committee noted that the status of sites on the Land remains unclear. The Applicant has identified seven sites on the Land however the Yindjibarndi Aboriginal Corporation assert that at least 250 rockshelters and caves are located in the Firetail mining and infrastructure areas of Land. The Committee felt that the unclear nature of sites could be addressed using conditions if consent was granted to the Applicant.

The Committee recommended that consent be granted with conditions and gave the following reasons for decision:

- That there remains a need for further consultation to occur with the Yindjibarndi Aboriginal Corporation and the Wirlu-Murra group regarding the identification of heritage values associated with places on the Land.
- There is a need for representatives of Yindjibarndi Aboriginal Corporation to participate in heritage surveys over the full extent of the Land
- The above points would enable the ACMC to be confident that all Indigenous heritage values on the Land have been identified and sufficiently documented.
- The Committee felt that given the statements made by Yindjibarndi Aboriginal Corporation that they were unwilling to participate in Heritage Surveys until there was a heritage agreement in place that there would be no value in deferring the Notice again as no new Information would be forthcoming in a reasonable amount of time given the current relationships between FMG and Yindjibarndi Aboriginal Corporation.

Resolution: (Consent with Conditions, Mining)

Resolution (2011/103)

Resolved to recommend to the Minister that consent with conditions be granted to FMG Pilbara Pty Ltd ("the Landowner") to use the land described in Item 4 of the Notice as a portion of Tenement M47/1413 ("the Land"), for the purpose described in Item 6 of the Notice as Construction and operation of a mining area and associated infrastructure known as the "Firetail Priority Mining Area" ("the Purpose").

On current knowledge the Purpose will impact upon eight Aboriginal sites within the meaning of section 5 of the AHA ("Sites") on the Land. The Sites are DIA 28947(YIN 07-03), DIA 28948 (YIN 07-04), DIA 28949 (YIN 08-32), DIA 28951 (YIN 09-47), DIA 28954 (YIN 09-57), DIA 29766 (YIN 10-64), DIA 28952 (YIN 09-55), DIA 28950 (YIN 09-03).

Conditions

That the Landowner:

1. Avoid all Sites that contain Aboriginal human remains.
2. Invite two people (one from each group) nominated by the Yindjibarndi Aboriginal Corporation and the Wirlu-Murra Yindjibarndi Aboriginal Corporation at any one time (on a rotational basis) to monitor all and any activities related to the Purpose that involve disturbance to the surface of the Land or any part of the Land in the following situations:
 - where the Purpose disturbs the surface of the Land for the first time or what appears to be the first time; and
 - where any heritage consultant engaged in respect of the Purpose has indicated that there is a likelihood of finding any objects within the meaning of section 6 of the AHA ("Objects") during the carrying out of the Purpose.
3. Prior to conducting the Purpose engage appropriately qualified archaeologists to work cooperatively with the Aboriginal people identified in the Notice ("the Consultants") to undertake, using best practice methods, that include the salvage method recommendations for each site within the Tickle 2010 report, and are to the satisfaction of the Registrar, the following:
 - a) Archaeological salvage of artefact assemblages located within sites on the Land and the thorough recording and archiving of each collected artefact assemblage, including a record of the intra-site spatial distributions of collected cultural materials.
 - b) Detailed analysis (including usewear and residue analysis where appropriate) of all salvaged Aboriginal cultural material by qualified archaeologists with suitable experience in lithic analysis.
4. Prior to conducting the Purpose consult with representatives of the Yindjibarndi Aboriginal Corporation and the Wirlu-Murra Yindjibarndi Aboriginal Corporation, to the satisfaction of the Registrar, to clarify the status of heritage places on the Land and identify all heritage values associated with places on the Land.
5. Prior to conducting the Purpose provide the Registrar of Aboriginal Sites ("the Registrar") with information on the location and archaeological and ethnographic assessments of all rockshelters and caves located on the Land which will include copies of all archaeological and anthropological reports over the Land.
6. Relocate all collected materials to a safe keeping place satisfactory to the Consultants and report to the Registrar on the location and condition of the collected materials.
7. Provide all reports resulting from Conditions 1 and 2 to the Registrar on completion of the salvage and analysis.
8. Immediately cease carrying out the Purpose if human skeletal remains ("Remains") are found and report the matter to the Western Australia Police and the Registrar. Where it is determined that the Remains are Aboriginal in origin and not a police matter, they must remain *in situ* and undisturbed until the Registrar makes a

decision about how to proceed in respect of the Remains. The Landowner must at its expense manage the Remains in accordance with the Registrar's decision and notify the whereabouts of the Remains to the Registrar.

9. Provide to the Registrar annually, or at the completion of the Purpose if the Purpose is completed within one year, a written report advising the Registrar whether and to what extent the Purpose has impacted on all or any Sites or Objects that may be located on the Land and to assist the Aboriginal Cultural Material Committee (ACMC) to reassess the status of the Sites. This report is to include a detailed description of:
 - a. whether such Sites or Objects have been partially or entirely impacted by the Purpose;
 - b. the level, type and effect of any such impact (including, where possible, the provision of photographs taken during and after the impact);
 - c. where Sites or Objects have been salvaged, when and how such salvage took place, who was present at the salvage and, subject to issues of cultural confidentiality, to where the material was re-located.

This condition should not be construed as preventing the proponent from advising the Registrar in writing of all or any of the matters outlined above at any time prior to the completion of the Purpose. The Registrar and the ACMC welcome the provision of comprehensive and ongoing information about Sites and Objects in Western Australia.

Failure to comply with these conditions may constitute an offence under section 55 of the AHA. The Department of Indigenous Affairs carries out routine checks on compliance with conditions of Ministerial consents.

Requests and Advice

Standard Requests and Advice in Attachment 2 are to apply to this resolution.

Carried:

Action

- ACMC Heritage Project Officer to prepare briefing note to the Minister in accordance with Resolution 2011/103
- ACMC Heritage Project Officer to prepare a decision sheet relating to Item 3.5.2 for the Chairman's signature.
- ACMC Executive Officer to ensure the Aboriginal Heritage Management System is updated with the relevant details for the resolutions for this s18 application.

3.6

Notice under Section 18 of the AHA – FMG Pilbara Pty Ltd on behalf of Rod Campbell, as an authorised representative of FMG Pilbara Pty Ltd (a wholly owned subsidiary of Fortescue Metals Group Ltd) - Construction and operation of a mining area and associated infrastructure known as the “Firetail Priority Infrastructure Area” - Portions of Tenements E47/1447 and E47/1334, as described on map 3 Dwg No: SO_PE_HE_0056, by S. Hendricksen, dated 17 February 2011 in Appendix 3 of the Notice.

DIA File No: 11/0210

Presenter: Ryan Crawford

Information tabled at the meeting:

No other information was presented as part of this Notice

Declaration of interest:

Haydn Lowe, Chair, made a declaration of a potential conflict of interest. The Committee resolved to hear the Notice without Mr Lowe present. The Committee resolved to recommend that Quinton Tucker be Chair for the purpose of hearing the Notices from FMG.

3.6.1 SITE ASSESSMENTS

ACMC Discussion on Site Assessments:

No sites needed to be assessed for this item.

3.6.2 SECTION 18 NOTICE

ACMC Discussion on Section 18 Notice and Recommendations:

- The Committee noted that this Notice had similarities with the previous item, 3.5.
- The Committee noted that the status of sites on the Land remains unclear. The Applicant has identified seven sites on the Land however the Yindjibarndi Aboriginal Corporation assert that at least 250 rockshelters and caves are located in the Firetail mining and infrastructure areas of Land. The Committee felt that the unclear nature of sites could be addressed using conditions if consent was granted to the Applicant.

The Committee recommended that consent be granted with conditions and gave the following reasons for decision:

- That there remains a need for further consultation to occur with the Yindjibarndi Aboriginal Corporation and the Wirlu-Murra group regarding the identification of heritage values associated with places on the Land.
- There is a need for representatives of Yindjibarndi Aboriginal Corporation to participate in heritage surveys over the full extent of the Land
- The above points would enable the ACMC to be confident that all Indigenous heritage values on the Land have been identified and sufficiently documented.
- The Committee felt that given the statements made by Yindjibarndi Aboriginal Corporation that they were unwilling to participate in Heritage Surveys until there was a heritage agreement in place that there would be no value in deferring the Notice again as no new information would be forthcoming in a reasonable amount of time given the current relationships between FMG and the Yindjibarndi Aboriginal Corporation.

Resolution: (Consent with conditions, Mining)**Resolution (2011/104)**

Resolved to recommend to the Minister that consent with conditions be granted to FMG Pilbara Pty Ltd ("the Landowner") to use the land described in Item 4 of the Notice as portions of Tenements E47/1447 and E47/1334 ("the Land"), for the purpose described in Item 6 of the Notice as Construction and operation of a mining area and associated infrastructure known as the "Firetail Priority Infrastructure Area" ("the Purpose").

On current knowledge the Purpose will impact upon 1 Aboriginal site within the meaning of section 5 of the AHA ("Sites") on the Land. The site is DIA 29765 (YIN 09-19).

Conditions**That the Landowner:**

1. Ensure that DIA 29765 is not disturbed any further until the DIA Compliance Unit has finished conducting an investigation into possible site impacts and informs the Applicant that the investigation has concluded and no further action will be taken.
2. Invite two people (one from each group) nominated by the Yindjibarndi Aboriginal Corporation (YAC) and the Wirlu-Murra Yindjibarndi Aboriginal Corporation at any one time (on a rotational basis) to monitor all and any activities related to the Purpose that involve disturbance to the surface of the Land or any part of the Land in the following situations:
 - where the Purpose disturbs the surface of the Land for the first time or what appears to be the first time; and
 - where any heritage consultant engaged in respect of the Purpose has indicated that there is a likelihood of finding any objects within the meaning of section 6 of the AHA ("Objects") during the carrying out of the Purpose.
3. Prior to conducting the Purpose engage appropriately qualified archaeologists to work cooperatively with the Aboriginal people identified in the Notice ("the Consultants") to undertake, using best practice methods, that include the salvage method recommendations for each site within the Tickle 2010 report, and are to the satisfaction of the Registrar, the following:
 - c) Archaeological salvage of artefact assemblages located within sites on the Land and the thorough recording and archiving of each collected artefact assemblage, including a record of the intra-site spatial distributions of collected cultural materials.
 - d) Detailed analysis (including usewear and residue analysis where appropriate) of all salvaged Aboriginal cultural material by qualified archaeologists with suitable experience in lithic analysis.
4. Prior to conducting the Purpose consult with representatives of the Yindjibarndi Aboriginal Corporation and the Wirlu-Murra Yindjibarndi Aboriginal Corporation, to the satisfaction of the Registrar, to clarify the status of heritage places on the Land and identify all heritage values associated with places on the Land.

5. Prior to conducting the Purpose provide the Registrar of Aboriginal Sites with information on the location and archaeological and ethnographic assessments of all rockshelters and caves located on the Land which will include copies of all archaeological and anthropological reports over the Land.
6. Relocate all collected materials to a safe keeping place satisfactory to the Consultants and report to the Registrar on the location and condition of the collected materials.
7. Provide all reports resulting from Conditions 1 and 2 to the Registrar on completion of the salvage and analysis.
8. Immediately cease carrying out the Purpose if human skeletal remains ("Remains") are found and report the matter to the Western Australia Police and the Registrar. Where it is determined that the Remains are Aboriginal in origin and not a police matter, they must remain *in situ* and undisturbed until the Registrar makes a decision about how to proceed in respect of the Remains. The Landowner must at its expense manage the Remains in accordance with the Registrar's decision and notify the whereabouts of the Remains to the Registrar.
9. Provide to the Registrar annually, or at the completion of the Purpose if the Purpose is completed within one year, a written report advising the Registrar whether and to what extent the Purpose has impacted on all or any Sites or Objects that may be located on the Land and to assist the Aboriginal Cultural Material Committee (ACMC) to reassess the status of the Sites. This report is to include a detailed description of:
 - a. whether such Sites or Objects have been partially or entirely impacted by the Purpose;
 - b. the level, type and effect of any such impact (including, where possible, the provision of photographs taken during and after the impact);
 - c. where Sites or Objects have been salvaged, when and how such salvage took place, who was present at the salvage and, subject to issues of cultural confidentiality, to where the material was re-located.

This condition should not be construed as preventing the proponent from advising the Registrar in writing of all or any of the matters outlined above at any time prior to the completion of the Purpose. The Registrar and the ACMC welcome the provision of comprehensive and ongoing information about Sites and Objects in Western Australia.

Failure to comply with these conditions may constitute an offence under section 55 of the AHA. The Department of Indigenous Affairs carries out routine checks on compliance with conditions of Ministerial consents.

Requests and Advice

Standard Requests and Advice in Attachment 2 are to apply to this resolution.

CARRIED:

Action

- ACMC Heritage Project Officer to prepare briefing note to the Minister in accordance with Resolution 2011/104.

- ACMC Heritage Project Officer to prepare a decision sheet relating to Item 3.6.2 for the Chairman's signature.
- ACMC Executive Officer to ensure the Aboriginal Heritage Management System is updated with the relevant details for the resolutions for this s18 application.

Haydn Lowe left the meeting due to other business he needed to attend to. The Committee noted that he will be absent from 1:50pm.

“MW-112”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked **“MW-112”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



Our Ref: LS-100-I-0621

Your Ref:

4 August 2011

Yindjibarndi Aboriginal Corporation

C / - Simon Millman

Slater & Gordon Lawyers

Level 2, Council House

27-29 St Georges Terrace

Perth WA 6000

BY POST & EMAIL

Wirru Murra Yindjibarndi Aboriginal Corporation

C / - Ronald Bowers

Corser and Corser Lawyers

Level 4, Irwin Chambers

16 Irwin Street

Perth WA 6000

BY POST & EMAIL

Copy to: Registrar of Indigenous Affairs

Department of Indigenous Affairs

Level 1, Governor Stirling Tower

196 St Georges Terrace

Perth WA 6000

BY POST & EMAIL

Dear Sirs,

INVITATION TO PROVIDE REPRESENTATIVES FOR MONITORING WORK ON SOLOMON FIRETAIL MINING PRIORITY AREA

By Notice dated 18 February 2011 ("**S18 Notice**") to the Aboriginal Cultural Materials Committee ("**ACMC**"), FMG Pilbara Pty Ltd ("**Applicant**") sought consent pursuant to s18(3) of the *Aboriginal Heritage Act 1978* (WA) ("**AHA**") to use certain land ("**Firetail Priority Mining Area**").

You may recall that on or about 2 March 2011, the Applicant provided you with a copy of the S18 Notice.

By letter dated 30 June 2011, the Minister responsible for the AHA granted the consent sought by the Notice, subject to a number of conditions ("**S18 Consent**").

You may recall that on or about 4 July 2011, the Applicant provided you with a copy of the S18 Consent.

Condition 2 of the S18 Consent provides as follows:

Invite two people (one from each group) nominated by the Yindjibarndi Aboriginal Corporation and the Wirlu-Murra Yindjibarndi Aboriginal Corporation at any one time (on a rotational basis) to monitor all and any activities related to the Purpose that involve disturbance to the surface of the Land or any part of the Land in the following situations:

- a) *where the Purpose disturbs the surface of the Land for the first time or what appears to be the first time; and*
- b) *where any heritage consultant engaged in respect of the Purpose has indicated that there is a likelihood of finding any objects within the meaning of section 6 of the AHA ("Objects") during the carrying out of the Purpose.*

In anticipation of the need to invite a person in accordance with the above Condition 2, the Applicant invites each of Yindjibarndi Aboriginal Corporation and the Wirlu-Murra Yindjibarndi Aboriginal Corporation to:

1. nominate a person who the Applicant can (when appropriate) invite to undertake the monitoring referred to in the above condition; and
2. advise the contract details of that person.

The person must be aged 18 years or over to allow access to site under the Applicant's site safety requirements.

The nomination can be made to myself via email lmaher@fmgl.com.au or by fax or post to an address shown at the foot of page 1 of this letter.

Yours sincerely,



Lisa Maher

Heritage Manager

Fortescue Metals Group Limited

“MW-113”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked **“MW-113”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

Our Ref: RWB: 100096
 Principal: Ronald Bower
 E-mail: ronald.bower@corsers.com.au



CORSER & CORSER
LAWYERS

The Chairperson
 C/O The Registrar
 Aboriginal Cultural Materials Committee
 Level 1, 97 St Georges Terrace
 PERTH WA 6000

17 August 2011

Dear Registrar

NOTICE UNDER SECTION 18 OF THE ABORIGINAL HERITAGE ACT 1972 – AUGUST 2011 – FMG PILBARA PTY LTD – APPLICATION FOR CONSENT TO USE LAND FOR FORTESCUE’S SOLOMON MINE PROJECT: FIRETAIL, CONVEYORS AND TRINITY TSF

This firm represents the Wirlu-murra Yindjibarndi Aboriginal Corporation (ICN 7483), the membership of which comprise in excess of 200 members of the Yindjibarndi #1 native title application (WAD 6005/03, WC WC03/3). Wirlu-murra Yindjibarndi Aboriginal Corporation has the authority of its board members and ordinary members to determine heritage matters relating to their interest in the Yindjibarndi #1 native title claim.

We refer to the above application to be lodged by FMG Pilbara Pty Ltd.

The board of directors and members of the Wirlu-murra Yindjibarndi Aboriginal Corporation met with representatives of FMG on 13 July 2011 at Roebourne to discuss Fortescue’s plans to submit a Section 18 application over the Land the subject of the Yindjibarndi #1 claim. During the meeting, Fortescue and the Wirlu-murra Yindjibarndi Aboriginal Corporation membership discussed the avoidance, minimisation or mitigation of disturbance or damage (including salvage or recording) to any Aboriginal Cultural Heritage.

In addition, Fortescue formally notified the board of directors and members of the Wirlu-murra Yindjibarndi Aboriginal Corporation of its intention to make this application on 1 August 2011.

The board of director and members of Wirlu-murra Yindjibarndi Aboriginal Corporation acknowledge that FMG is applying to impact the following 21 Aboriginal sites on the Land the subject of this Notice:

Site ID	Site Type	Level of
YIN10-	Artefact Scatter	Full
YIN10-	Artefact Scatter	Full
YIN09-	Artefact Scatter	Full
YIN10-	Artefact Scatter	Full
YIN10-	Artefact Scatter	Full

YIN10-	Artefact Scatter	Full
YIN08-	Artefact Scatter	Full
YIN10-	Rock Shelter	Full
YIN08-	Artefact Scatter, Rock Shelter	Full
YIN10-	Cache, Rock Shelter, Walled Niche	Full
YIN10-	Rock Shelter, Stone Arrangement	Full
YIN10-	Rock Shelter, Walled Niche	Full
YIN10-	Rock Shelter, Walled Niche	Full
YIN09-	Artefact Scatter, Rock Shelter	Full
YIN09-	Walled Niche	Full
YIN10-	Artefact Scatter, Millstone, Rock Shelter, Walled	Full
YIN10-	Millstone, Rock Shelter	Full
YIN10-	Rock Shelter, Walled Niche	Full
YIN10-	Rock Shelter, Walled Niche	Full
YIN-	Rock Shelter, Walled Niche	Full
YIN10-	Artefact Scatter	Full

Following consultation, the board of director and members of Wirilu-murra Yindjibarndi Aboriginal Corporation determined that they would not object to the Section 18 application for consent to impacts the above mentioned sites on the following terms:

1. That Fortescue follow the recommendations included in the final archaeological report relating to sites to be impacted;
2. That Fortescue follow the recommendations included in the final ethnographic report relating to the sites to be impacted;
3. That Fortescue salvage the sites to be impacted prior to the commencement of works in accordance with recommendation included in the final archaeological report using archaeologists agreed to by Wirilu-murra Yindjibarndi Aboriginal Corporation and with the participation of Wirilu-murra Yindjibarndi Aboriginal Corporation. The salvaged materials will be stored in a place suitable to the Wirilu-murra Yindjibarndi Aboriginal Corporation.

The board of directors and members of Wirilu-murra Yindjibarndi Aboriginal Corporation respectfully request that a copy of the recommendations to the Minister of Indigenous Affairs by the Aboriginal Cultural Materials Committee (ACMC) is forward to them. We also respectively request that ACMC forwards a copy of the Ministerial decision upon receipt.

Yours faithfully
Corser & Corser

 Ronald Bower
 PRINCIPAL

“MW-114”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 17 pages is the annexure marked “**MW-114**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Office Use Only:	Application	
	Year	Number

Section 18 Notice: Firetail, Conveyors & Trinity TSF

NOTICE UNDER SECTION 18 OF THE ABORIGINAL HERITAGE ACT 1972 APPLICATION FOR 'Consent to certain uses'

1. Statement of Notice

To the Aboriginal Cultural Material Committee.

I, Mark Thomas, as an authorised representative of FMG Pilbara Pty Ltd (a wholly owned subsidiary of Fortescue Metals Group Ltd), give notice under section 18 of the *Aboriginal Heritage Act 1972* (the Act) that I require to use the Land, as described in Item 5, for the purpose described in Item 6 below.

2. Contact details of Applicant

Contact Name	Roberta Molson				
Position	Heritage Approvals Superintendent				
Organisation Name	FMG Pilbara Pty Ltd				
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth, WA 6004				
Phone	08 9230 1275	Mobile	0420 552 542	Fax	6218 8880
E-mail	rmolson@fmgl.com.au				

Heritage Consultant	Jodie Mitchell				
Organisation Name	Alpha Archaeology Pty Ltd				
Mailing Address	Suite 107, 10 Elizabeth St, Kensington, Vic 3031				
Phone	03 9372 3350	Mobile		Fax	03 9372 3353
E-mail	jodie.mitchell@alphaarc.com				

3. Landowner's Authorisation

Land Parcels 1 – 3

Landowner's Full Name	FMG Pilbara Pty Ltd				
Organisation Name					
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth 6004				
Phone	08 6218 8888	Mobile		Fax	08 6218 8880
E-mail	n/a				

See **Appendix 1** for FMG Pilbara Pty Ltd company details.

4. The Land subject to the s18 Notice**Land Parcel 1**

Certificate of Title	Vol		Folio		Diagram / plan / deposit plan no.	
Lot Number and location of subject lot		Lot No. Part			Location	
Reserve No (if applicable)						
Street Number and Name						
Town / Suburb					Postcode	
Tenement ID		M47/1409				
Land Zoning		Vacant Crown Land				
Geographical Coordinates (GDA94)		590,800mE 7,552,000mN				
Other						

Land Parcel 2

Certificate of Title	Vol		Folio		Diagram / plan / deposit plan no.	
Lot Number and location of subject lot		Lot No. Part			Location	
Reserve No (if applicable)						
Street Number and Name						
Town / Suburb					Postcode	
Tenement ID		M47/1413				
Land Zoning		Vacant Crown Land				
Geographical Coordinates (GDA94)		594,900mE 7,554,000mN				
Other						

Land Parcel 3

Certificate of Title	Vol		Folio		Diagram / plan / deposit plan no.	
Lot Number and location of subject lot		Lot No. Part			Location	
Reserve No (if applicable)						
Street Number and Name						
Town / Suburb					Postcode	
Tenement ID		M47/1431				
Land Zoning		Vacant Crown Land				
Geographical Coordinates (GDA94)		590,500mE 7,554,000mN				
Other						

See **Appendix 2** for tenement reports.

5. Map(s) of the Land

Appendix 3: General location of the Land subject to this Notice.

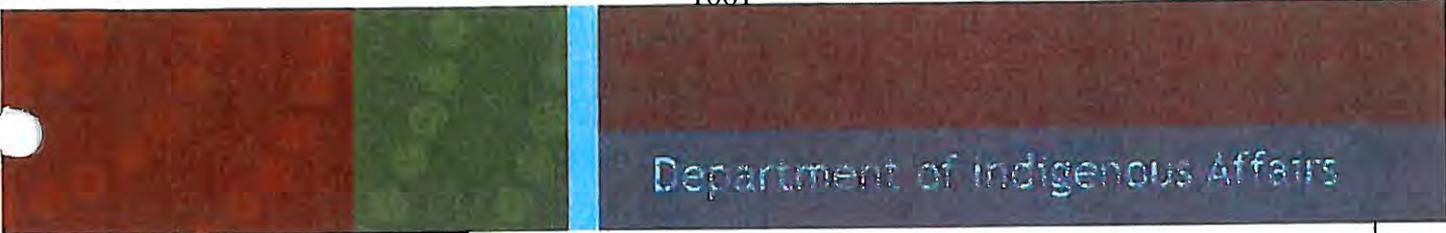
Appendix 4: Solomon Firetail and Trinity TSF map displaying s18 boundary and sites (the subject of this application), previously submitted s18 boundaries, tenements and heritage-surveyed areas.

Appendix 5: Solomon Firetail and Trinity TSF map displaying s18 boundary and sites (the subject of this application), tenements and ethnographic-surveyed areas.

6. The Purpose of the use of the Land

Item	Applicant's description
Concise description (10 words or less)	Construction of a mining area and associated infrastructure, including a tailings storage facility (TSF) at Fortescue Metals Group's Firetail and Kings Mining Areas (Solomon Hub).
General description of purpose	<p>Fortescue Metals Group Limited's (Fortescue) Solomon Project is an expansion of its current iron ore mining and export operations in the Pilbara region of Western Australia. The Solomon Project is located on the central Hamersley Ranges, and situated approximately 60km north of Tom Price, Western Australia.</p> <p>The 'Purpose' for which the 'Land' subject to this Notice is to be used, is to construct a mining area and associated infrastructure at Fortescue's Firetail and Kings Mining Areas. Proposed infrastructure includes:</p> <ul style="list-style-type: none"> • Ore Processing Facility (OPF) • Conveyors • Crushing Hub • Tailings Storage Facility (TSF) <p>Refer to the Map in Appendix 4 for an overview of proposed infrastructure placement.</p>
Processing inputs, discharges	<p>The Kings OPF, conveyor, Crushing Hub 1 and related infrastructure are expected to produce 40 million tonnes of product ore each year following completion.</p> <p>Processing inputs and discharges for the Solomon Project such as water, diesel and oil will be managed as outlined in Fortescue's Construction Environmental Management Plan approved by the Department of Environment and Conservation (DEC). Refer to Appendix 6 for relevant documentation.</p>

Bulk material source	Any bulk materials (such as gravel and borrow material) that are required to be sourced at the Solomon Project will be extracted under approvals issued by the Department of Mining and Petroleum (DMP) or DEC from within the project area.
Associated infrastructure	<p>The Solomon Project will include the establishment and operation of mining operations at the Firetail and Kings iron ore deposits as well as the construction and operation of the Solomon railway line. Together with any associated infrastructure to support the Solomon Project which includes: an airstrip; access roads; accommodation camps; offices, ablution and change house facilities; a power station; and communications infrastructure.</p> <p>The processed iron ore from the mining area will be transported along the Solomon railway line linking onto the existing Port Hedland to Cloudbreak railway line at chainage 175 to Fortescue's existing Herb Elliot Port facilities in Port Hedland for export.</p>
New or existing project, approvals & associated dates	<p>The key approvals received for the construction of the mining area include:</p> <ul style="list-style-type: none"> • Approval under Part IV of the <i>Environmental Protection Act 1986</i>, obtained in April 2011; • Approval under the <i>Environment Protection and Biodiversity Conservation Act 1999</i>, obtained in April 2011; • Approvals under Section 18 of the <i>Aboriginal Heritage Act 1972</i>. • Approval under the <i>Mining Act 1978</i>, obtained in June 2011; <p>Fortescue will also be seeking approvals under the following acts for the development of the mining area:</p> <ul style="list-style-type: none"> • <i>Environmental Protection Act 1986</i> (Part V) • <i>Rights in Water and Irrigation Act 1914</i> • <i>Mining Act 1978</i>
Relation to other proposals	n/a
Timeframe for development, staging	<p>Construction of the Firetail Mining Area is expected to commence in September 2011.</p> <p>Construction timing for associated infrastructure within the proposed mining area is as follows:</p> <ul style="list-style-type: none"> • OPF – October 2011 • Conveyors – September 2011 • Crushing Hub – October 2011 • Tailings Storage Facility (TSF) – November 2011


 Department of Indigenous Affairs

Extent of activity (m2)	The Land subject to this notice comprises a total area of 5,759,809m2, or 576 hectares.
Previous s18 Notices regarding the Land	<p>To date Fortescue has submitted three Section 18 applications for land adjacent to the Land subject to this Notice (within Solomon Hub):</p> <ul style="list-style-type: none"> • Solomon Airport, Camps and Admin – ministerial consent received 13 May 2011 (DIA ref: 34-11556); sites yet to be salvaged within Eastern Guruma Country. • Firetail Priority Mining Area – ministerial consent received 30 June 2011 (DIA ref: 34-13307); sites yet to be salvaged within Yindjibarndi Country. • Firetail Priority Infrastructure Area – pending Ministerial decision; site yet to be salvaged within Yindjibarndi Country.
Other	n/a

7. Summary of applicant consultation with relevant Aboriginal people and other stakeholders

Consultation	Description
<p>Process of consultation and informant selection</p> <p>STATEMENT (A)</p> <p>AGREEMENT II</p> <p>CONSULTATION I</p> <p>CONSULTATION III</p> <p>IV</p>	<p>History of consultation between Fortescue and Yindjibarndi</p> <p>In 2007, when Fortescue sought the grant of its initial licences to carry out exploration work in the Solomon area, it initiated a consultation process with the Native Title Claimants for the area, The Yindjibarndi People.</p> <p>Since 2007 the process of consultation undertaken by Fortescue has been driven by the relationship between the parties. This relationship has on some levels been problematic – primarily due to a failure of the parties to reach an agreement over financial compensation for mining.</p> <p>In July 2007, Fortescue negotiated a heritage agreement with the Yindjibarndi People to cover exploration activities. Five months after the signing of this agreement, the Yindjibarndi People advised Fortescue that, until the conclusion of a Land Access Agreement Yindjibarndi People would no longer participate in Heritage Surveys with Fortescue. Yindjibarndi's proposed Land Access Agreement included a prohibitive remuneration package in excess of any amount previously agreed to within the mining industry.</p> <p>Fortescue continued to seek the participation of Yindjibarndi People in heritage surveys and in consultation over heritage matters. Fortescue's attempts at consultation included meetings and discussions with the Yindjibarndi Aboriginal Corporation (YAC) through Juluwarlu Aboriginal Corporation (JAC), Yindjibarndi's chosen heritage representatives.</p> <p>On all occasions Fortescue requested Yindjibarndi to continue surveys while the Land Access Agreement negotiations continued. Yindjibarndi maintained their position against participating in heritage surveys. - YAC did this</p> <p>Fortescue continued to keep DIA informed of these matters and outlined its concerns about Yindjibarndi's refusal to participate in heritage surveys. Fortescue has also sought advice from DIA on how best to meet its obligations under the <i>Aboriginal Heritage Act 1972 (AHA)</i> in these circumstances. In addition Fortescue requested that the DIA assist in the facilitation of consultation between the parties.</p> <p>In July 2010 Fortescue was approached by senior Yindjibarndi claimants wanting to engage in heritage matters to protect their country. Fortescue therefore arranged a site visit to the Solomon</p>

correct the record

Yindjibarndi participated in heritage surveys until May 2009.

the onus is not with the Yindjibarndi to do surveys

equally the YAC could say that the package on offer is not only laughable - it is illegal

Project Area, offering the Yindjibarndi participants an opportunity to see the project area and consult over proposed mining plans.

On 23 November 2010, members of the Yindjibarndi People, dissatisfied with the approach of the JAC and YAC registered the Wirlu-Murra Yindjibarndi Aboriginal Corporation (WYAC). The WYAC certificate of registration from the Office of the Registrar of Indigenous Corporations is included as **Appendix 7**.

V

Furthermore, at a community meeting held on 16 March 2011, a majority of the Yindjibarndi People voted in favour of executing a Land Access Agreement with Fortescue. Subsequent to this positive response, Fortescue have continued to engage with the Yindjibarndi People via the WYAC representative body in the development and execution of a Land Access Agreement.

VI

On 17 June 2011 the National Native Title Tribunal (NNTT) passed a decision granting a number of Fortescue's mining and exploration tenements in the Solomon Project area. This decision supported Fortescue's position that they had negotiated in good faith with the Yindjibarndi People. In addition, the decision supported Fortescue's approach to dealing with both representative bodies (YAC & WYAC) with regard to Yindjibarndi land. A summary of the NNTT decision, as compiled by Fortescue's Land Access Lawyer, is included as **Appendix 8**.

VII

Fortescue's position with regard to consultation with the Yindjibarndi People has been further supported by receipt of ministerial consent for to three previously submitted Section 18 submissions over land in Yindjibarndi country. In conjunction with these Section 18 submissions, on 4 May 2011, Fortescue made a presentation to the ACMC providing additional insight into the history of consultation with the Yindjibarndi People. This presentation is included as **Appendix 9**. Refer to Section 6 of this Notice for an overview of previous Section 18 submissions.

Since July 2010, regular consultation between WYAC and Fortescue has seen Yindjibarndi Traditional Owners participating in heritage surveys on an ongoing basis.¹ Discussions are also progressing with the engagement of Yindjibarndi Heritage Monitors who will play a key role in the management and monitoring of heritage sites on Yindjibarndi country.

VIII

Positive consultation with WYAC has also resulted in the development of a *Cultural Heritage Management Plan (CHMP)* for Solomon Project, which provides an important procedural framework for ongoing collaboration over a range of heritage matters. A presentation on the CHMP development, discussed with WYAC on 8

¹ This is expected to continue ongoing with two groups of 6-8 Yindjibarndi Traditional Owners working regular survey swings.

Department of Indigenous Affairs

June 2011, is included as **Appendix 10**. The resulting CHMP is included as **Appendix 11**.²

A copy of the Solomon Project CHMP was forwarded to the YAC on 26 May 2011 inviting input and comment; however Fortescue has not yet received a response. This correspondence is included at **Appendix 12**.

Throughout this period, and continuing through 2011, Fortescue has consistently extended invitations to the YAC to participate in heritage surveys and provide comment on known heritage sites on the Land. Examples of such correspondence are included in **Appendix 13**.³

These invitations were recently extended, at Fortescue's request, by anthropologist Brad Goode, engaged to conduct ethnographic 'site identification' surveys over the Land the subject of this Notice.⁴ This invitation was declined. Furthermore, the YAC have continued to ignore or decline Fortescue's invitations to engage in heritage matters. A recent example of YAC's response to Fortescue requests for comment is included in **Appendix 14**.

Additional consultation relating directly to the Land

Fortescue met with WYAC Working Group, which included all members of the WYAC Heritage Sub-Committee, on 13 July in Wickham. Amongst other matters, this Section 18 application was discussed in detail. This included discussion on sites to be impacted by the Purpose and confirmation that the group was satisfied with the level of consultation over the Land. A copy of the presentation is included at **Appendix 15**.

In addition, Fortescue formally notified the Yindjibarndi People (through WYAC and YAC legal representatives) of its intention to submit this Section 18 Notice on 1 August 2011. This correspondence is included at **Appendix 16**.

Upon receiving no response from the YAC, a further email was sent requesting confirmation of receipt and reaffirming the requesting that any comment in response to this Section 18 submission be forwarded to Fortescue and/or the DIA prior to the submission date of 19 August 2011. This email is included as **Appendix 17**.

Although the problematic relationship with the YAC has impacted on the process for consultation, significant progress has been made in 2011 through regular and detailed consultation with Yindjibarndi

² Fortescue Metal's Group Limited, *Cultural Heritage Management Plan for Solomon project area in the Pilbara region of WA*, FMG, Perth, July 2011.

³ Refer to Appendix 13 for examples of correspondence from Fortescue to YAC requesting involvement in heritage surveys and heritage matters relating to the Solomon Project Areas.

⁴ Goode, B., *A Report of an Ethnographic Aboriginal Heritage Survey of the Solomon Project in the Eastern Pilbara Region of Western Australia*, Brad Good & Associates, Dunsborough, August 2011, page 9.

Traditional Owners from the WYAC membership. Despite the YAC's persistent refusal to engage, Fortescue has continued to provide YAC with the information and opportunity to consult about heritage places and related values on the Land.

The above summary and related documents demonstrate that Fortescue has undertaken extensive consultation with Yindjibarndi People over the Solomon Project area and the Land the subject of this Notice. Fortescue submits that the information provided to the ACMC is sufficient to establish the existence of sites on the Land and the significance of those sites.

Archaeological Surveys

The archaeological sites on the Land were identified over numerous field trips, with comprehensive site identification archaeological surveys conducted. The archaeologists and Traditional Owners who participated in the above mentioned Alpha Archaeology surveys are listed in Table 1 below.

In early 2011, Fortescue engaged Alpha Archaeology to conduct an additional assessment and re-recording of sites within the Section 18 Land. Several archaeological assessments had previously been conducted over these sites between 2007 and 2011, to varied recording levels and it was deemed beneficial to compile this information into a single report and ensure accurate site identification recording was conducted for all sites on the Land.

Details and results of these surveys are presented in the Alpha Archaeology Report (August 2011)⁵ included in **Appendix 18**.

Table 1: Archaeologists & Yindjibarndi Traditional Owners involved in archaeological surveys over the Land

Survey date	Archaeologists	Traditional Owners
24 May 2011 – 2 June 2011	Rebecca Yit, Elizabeth McFarlane, Alexander Timms, Kate Duca, Phoebe Heddell-Stevens and Matthew Ebbs.	Curtis Allen, Ethan Sandy, Duncan Aubrey, Noel Aubrey, Glen Aubrey, Steven Adams, Aquinus Ranger and Rowan Davies
7 June 2011 – 13 June 2011	Alexander Timms, Allison Isepy, Nicholas Ellis and Bruce Numode	Clarence Woodley, Johnny King, Lester Mather, Garth Ranger, Malcolm Hubert, Birchell Mundy, Kenny Diamond and Terrance Sandy
22 June 2011 – 30 June 2011	Rebecca Yit, Elizabeth McFarlane, Allison Esepy, Kate Duca, Phoebe Heddell-Stevens and Alana Colbert	Brian Phillips, Paydon Sandy, Edmund Sandy, Kendall Nannup, Robert Mather, Christian Sandy, Henry (David) Gerald and Kieran Long

Re-recording

⁵ Yit, R., *Report on Re-recording of Aboriginal Heritage Sites within the Firetail and Tailings Projects, Solomon Mining and Infrastructure Area*, Alpha Archaeology Pty Ltd, Kensington, August 2011.

	<p><u><i>Ethnographic surveys</i></u></p> <p>An Section 18 level (site identification) ethnographic survey was undertaken covering the Land subject to this notice. Details and results of this survey are presented in the Brad Goode and Associates Report (August 2011)⁶ included in Appendix 19.</p> <p>As part of this survey the archaeological sites were also assessed with regard to ethnographic significance.</p> <p>Table 2: Anthropologists & Yindjibarndi Traditional Owners involved in ethnographic surveys over the Land</p> <table border="1" data-bbox="475 723 1337 1055"> <thead> <tr> <th>Survey</th> <th>Survey dates</th> <th>Anthropologists</th> <th>Traditional Owners</th> </tr> </thead> <tbody> <tr> <td>Yin_076</td> <td>27 June 2011 – 1 July 2011</td> <td>Brad Goode</td> <td>Ken Sandy, Clifton Mack, Ricky Sandy, Don Walker and Kenny Diamond</td> </tr> <tr> <td>YIN_077</td> <td>27 June 2011 – 1 July 2011</td> <td>Brad Goode</td> <td>Ken Sandy, Clifton Mack, Ricky Sandy, Don Walker and Kenny Diamond</td> </tr> </tbody> </table>	Survey	Survey dates	Anthropologists	Traditional Owners	Yin_076	27 June 2011 – 1 July 2011	Brad Goode	Ken Sandy, Clifton Mack, Ricky Sandy, Don Walker and Kenny Diamond	YIN_077	27 June 2011 – 1 July 2011	Brad Goode	Ken Sandy, Clifton Mack, Ricky Sandy, Don Walker and Kenny Diamond
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List of stakeholders consulted	As listed in Tables 1 & 2 and as detailed in the archaeological report (see Appendix 18) and ethnographic report (see Appendix 19).												
Aboriginal people's issues and/or concerns	Please refer to full details of the consultation process and outcomes with the Yindjibarndi People in the above sections.												
Issues / problems encountered during consultation process	Please refer to full details of the consultation process and outcomes with the Yindjibarndi People in the above sections.												
Outcomes of consultation	Following on from Fortescue's consultation (as detailed in above sections), a letter was received on 17 August 2011 from WYAC's legal representatives confirming the Yindjibarndi People's 'non-objection' to this application. This letter is included at Appendix 20 .												

⁶ Goode, B., *A Report of an Ethnographic Aboriginal Heritage Survey of the Solomon Project in the Eastern Pilbara Region of Western Australia*, Brad Good & Associates, Dunsborough, August 2011, page 9.

8. Summary of potential effects on Aboriginal sites and possible management responses

Heritage Impact	Description																																																																																								
<p>Sites to be impacted by the activities undertaken as described in the Purpose</p> <p><i>Tickler's comments</i></p> <p><i>who by</i></p> <p><i>when sites were identified</i></p>	<p>FMG will be required to impact 21 Aboriginal sites located within the Land. A map showing the sites subject to this Section 18 is included in this notice as Appendix 4. These sites are:</p> <table border="1" data-bbox="547 600 1311 1594"> <thead> <tr> <th>Site ID</th> <th>Site Type</th> <th>Significance</th> <th>Level of impact</th> </tr> </thead> <tbody> <tr><td>YIN10-079</td><td>Artefact Scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-078</td><td>Artefact Scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN09-028</td><td>Artefact Scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-080</td><td>Artefact Scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-063</td><td>Artefact Scatter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-092</td><td>Artefact Scatter</td><td>Medium</td><td>Full</td></tr> <tr><td>YIN08-027</td><td>Artefact Scatter</td><td>Medium</td><td>Full</td></tr> <tr><td>YIN10-082</td><td>Rockshelter</td><td></td><td>Full</td></tr> <tr><td>YIN08-029</td><td>Artefact Scatter, Rock Shelter</td><td>Medium</td><td>Full</td></tr> <tr><td>YIN10-118</td><td>Cache, Rockshelter, Walled Niche</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-100</td><td>Rockshelter, Stone Arrangement</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-097</td><td>Rockshelter, Walled Niche</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-102</td><td>Rockshelter, Walled Niche</td><td>Low</td><td>Full</td></tr> <tr><td>YIN09-008</td><td>Artefact Scatter, Rockshelter</td><td>Low</td><td>Full</td></tr> <tr><td>YIN09-056</td><td>Walled Niche</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-019</td><td>Artefact Scatter, Millstone, Rockshelter, Walled Niche</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-061</td><td>Millstone, Rockshelter</td><td>Medium</td><td>Full</td></tr> <tr><td>YIN10-121</td><td>Rockshelter, Walled Niche</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-090</td><td>Rockshelter, Walled Niche</td><td>Low</td><td>Full</td></tr> <tr><td>YIN-WH10</td><td>Rockshelter, Walled Niche</td><td>Low</td><td>Full</td></tr> <tr><td>YIN10-074</td><td>Artefact Scatter</td><td>Low</td><td>Full</td></tr> </tbody> </table> <p>Full details of the sites on the Land are provided in the Alpha Archaeology Report in Appendix 18 (August 2011).⁷</p>	Site ID	Site Type	Significance	Level of impact	YIN10-079	Artefact Scatter	Low	Full	YIN10-078	Artefact Scatter	Low	Full	YIN09-028	Artefact Scatter	Low	Full	YIN10-080	Artefact Scatter	Low	Full	YIN10-063	Artefact Scatter	Low	Full	YIN10-092	Artefact Scatter	Medium	Full	YIN08-027	Artefact Scatter	Medium	Full	YIN10-082	Rockshelter		Full	YIN08-029	Artefact Scatter, Rock Shelter	Medium	Full	YIN10-118	Cache, Rockshelter, Walled Niche	Low	Full	YIN10-100	Rockshelter, Stone Arrangement	Low	Full	YIN10-097	Rockshelter, Walled Niche	Low	Full	YIN10-102	Rockshelter, Walled Niche	Low	Full	YIN09-008	Artefact Scatter, Rockshelter	Low	Full	YIN09-056	Walled Niche	Low	Full	YIN10-019	Artefact Scatter, Millstone, Rockshelter, Walled Niche	Low	Full	YIN10-061	Millstone, Rockshelter	Medium	Full	YIN10-121	Rockshelter, Walled Niche	Low	Full	YIN10-090	Rockshelter, Walled Niche	Low	Full	YIN-WH10	Rockshelter, Walled Niche	Low	Full	YIN10-074	Artefact Scatter	Low	Full
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<p>Strategies to minimise or avoid identified sites</p>	<p>When planning project operations, Fortescue's policy is to minimise the impact to cultural heritage and the environment. Refer to section 1.4 of the Solomon Hub Cultural Heritage Management Plan (CHMP) in Appendix 11.⁸</p>																																																																																								

⁷ Yit, R., *Report on Re-recording of Aboriginal Heritage Sites within the Firetail and Tailings Projects, Solomon Mining and Infrastructure Area*, Alpha Archaeology Pty Ltd, Kensington, August 2011.

⁸ Fortescue Metal's Group Limited, *Cultural Heritage Management Plan for Solomon project area in the Pilbara region of WA*, FMG, Perth, July 2011.

Management commitments to sustainable heritage protection	Fortescue engages a number of heritage management principles to ensure that every reasonable effort is made to protect and manage Aboriginal heritage sites. Refer to section 4 of the Solomon Hub CHMP (see Appendix 11).
Local, regional or cumulative impacts	n/a

9. Applicant Response to Recommendation

Recommendations from Consultation / Heritage Survey Report (s)	Applicant Response to Recommendations
<p><u><i>Archaeological Report</i></u></p> <ol style="list-style-type: none"> 1. FMGL ensure that its employees and contractors (as appropriate) are advised of the revised boundaries and site types of Aboriginal sites YIN08_027, YIN08_029, YIN09_028, DIA 29607/YIN09_008, DIA 28953/YIN09_056, DIA 29612/YIN WH10, DIA 2608/YIN10_019, DIA 29610/YIN10_061, YIN10_063, YIN10_074, YIN10_078, YIN10_079, YIN10_080, YIN10_082, YIN10_090, YIN10_092, YIN10_097, YIN10_100, YIN10_102, YIN10_118 and YIN10_121 2. FMGL ensure that its employees and contractors (as appropriate) are informed that sites DIA 29607/YIN09_008, DIA 28953/YIN09_056, DIA 29612/YIN WH10, DIA 2608/YIN10_019 and 	Fortescue agrees with all recommendations.

<p>DIA 29610/YIN10_061 constitute Aboriginal archaeological sites to which the Act applies and should, therefore be avoided</p> <p>3. It is recommended that the Aboriginal Cultural Material Committee be advised of the revised boundary locations of DIA 29607/YIN09_008, DIA 28953/YIN09_056, DIA 29612/YIN WH10, DIA 2608/YIN10_019 and DIA 29610/YIN10_061</p> <p>4. Informed that YIN08-027, YIN08_029, YIN09_028, YIN10_063, YIN10_074, YIN10_078, YIN10_079, YIN10_080, YIN10_082, YIN10_090, YIN10_092, YIN10_097, YIN10_100, YIN10_102, YIN10_118, YIN10_121 may constitute Aboriginal archaeological sites to which the Act may apply and should, therefore be avoided; DIA should be advised of the existence of these site places through the formalised Aboriginal Cultural Materials Committee site registration process. Accordingly the relevant DIA site registration form has been completed for this site and lodged with the DIA.</p> <p>5. Residue analysis and mitigative salvage of cultural material at sites YIN08_027 and DIA 29610/YIN10_061 be undertaken.</p>	
<p><u><i>Ethnographic Report⁹</i></u></p> <p>1. As a result of the above survey it is recommended that as no new ethnographic sites of significance, as defined by section 5 of the AHA, were identified within survey request areas: Yin_076 Fire Tail West and Yin_077 Trinity TSF & Conveyors, that the proposed mining and infrastructure development should</p>	<p>Fortescue agrees with all recommendations.</p>

⁹ Recommendations related only to The Land outlined in this Section 18.

proceed as planned.

2. In terms of FMG's wish to seek ministerial consent pursuant to an application under section 18 of the AHA to use the land that contains several archaeological sites within survey request areas: Yin_076 and Yin_077 it is further recommended that consent should be granted as at present there are no objections from the WYAC.
3. If consent is granted, FMG should consider the following mitigation strategies:
 - a. All artefact sites of low cultural significance should, with the assistance of the Yindjibarndi, be salvaged and the artefacts either stored or relocated. If stored, the cultural material should be repatriated to the country as soon as possible and in keeping with the wishes of the Yindjibarndi.
 - b. All artefacts sites of merit should be further examined by archaeologists acting under section 16 permits and assisted by Yindjibarndi who consider this type of scientific enquiry of assistance to the understanding of their prehistoric society and its occupation, and use of the landscape.
 - c. All identified walled niches (see tables) should be further examined by male archaeologists and male Yindjibarndi, to determine if ritual objects or skeletal remains exist in these places. If these features are present then the site should be preserved in situ and monitored through the mining process if it occurs in the area near where the niche is located.

<p>4. It is recommended that FMG provide the WYAC heritage subcommittee with regular information regarding water management procedures as the project proceeds.</p> <p>5. It is recommended that FMG temporarily store all salvaged archaeological material until an adequate place can be found in country to repatriate the material. The final 'in country' repository should be decided by the WYAC once the mine plan is finalised and the archaeologists have consulted with the Yindjibarndi group about the options and potential locations for artefact storage.</p>	
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10. Attachments

Attachments	Description
Appendix 1:	- FMG Pilbara Pty Ltd company details.
Appendix 2:	- Tenement reports.
Appendix 3:	- General location of the Land subject to this Notice.
Appendix 4:	- Solomon Firetail and Trinity TSF map displaying s18 boundary and sites (the subject of this application), previously submitted s18 boundaries, tenements and <u>heritage-surveyed</u> areas.
Appendix 5:	- Solomon Firetail and Trinity TSF map displaying s18 boundary and sites (the subject of this application), tenements and <u>ethnographic-surveyed</u> areas.
Appendix 6:	- Fortescue's Construction Environmental Management Plan approved by the Department of Environment and Conservation (DEC).
Appendix 7:	- WYAC certificate of registration from the Office of the Registrar of Indigenous Corporations.
Appendix 8:	- Summary of the NNTT decision, as compiled by Fortescue's Native Title lawyer.
Appendix 9:	- Presentation to ACMC on previous Section 18s
Appendix 10:	- Presentation on the CHMP development, discussed with WYAC on 8 June 2011.
Appendix 11:	- Cultural Heritage Management Plan (CHMP) for Solomon Project.
Appendix 12:	- Letter to YAC regarding comment / input on CHMP.
Appendix 13:	- Example correspondence to YAC requesting survey participation & consultation on heritage matters.
Appendix 14:	- Recent response letter from YAC refusing to engage with FMG.
Appendix 15:	- 13 July 2011 presentation to WYAC on Section 18 application.
Appendix 16:	- Letters to YAC and WYAC regarding notification to submit Section 18.
Appendix 17:	- Email to YAC following up on Section 18 notification letter.
Appendix 18:	- Archaeology report.
Appendix 19:	- Ethnographic report.
Appendix 20:	- WYAC letter on non-objection.
Other	DIA site recording forms have been submitted with the master copy of this Notice and submitted electronically along with GIS shape files.

11. Copyright

Copyright	<i>I licence the Department of Indigenous Affairs, the ACMC and their representatives to use the contents of the Notice and any attachments for any purpose, to reproduce, to modify and adapt the Notice or attachments (including converting them into different formats), and to communicate the Notice or attachments to the public (including via a public web site). I confirm that I have obtained all licences and consents necessary to grant this licence.</i>
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12. Declaration

I declare that I have completed all sections of the Notice and declare that I have read and understood the information submitted and the recommendations I put to the ACMC.

Name (Full name of applicant. Please print)	<i>FMA PILBARRA PTY LTD</i>		
Signature	<i>[Signature]</i> <i>COMPANY SECRETARY</i>	Date	<i>19/8/2011</i>

“MW-115”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 5 pages is the annexure marked “**MW-115**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Our Ref: LS-FT-I-0625

26 August 2011



Yindjibarndi Aboriginal Corporation

c/- Simon Millman
Slater and Gordon Lawyers
Level 2, Council House
27 – 29 St Georges terrace
Perth WA 6000
(by Post and email)

Copy to: The Registrar of Aboriginal Sites

Department of Indigenous Affairs
Level 1, Governor Stirling Tower
196 St Georges Terrace
Perth WA 6000
(by Post and email)

Dear Mr Millman,

NOTIFICATION OF PROPOSED SECTION 18 NOTICE UNDER THE ABORIGINAL HERITAGE ACT (1972) AT FORTESCUE'S SOLOMON MINE PROJECT: FIRETAIL, CENTRAL, WEST AND RAIL LOOP

Fortescue hereby gives notice of its intention to make an application under Section 18 of the *Aboriginal Heritage Act 1972* to the Aboriginal Cultural Material Committee (ACMC) to disturb sites located within the proposed 'Firetail, Central, West and Rail Loop' area at Solomon Mining area. Please refer to the attached maps for the overall location of the Land subject to the Notice and the location of heritage sites noted in the heritage survey reports.

The list of Aboriginal heritage sites to be included in the "Firetail Central, West and Rail Loop" section18 notice include:

Site_ID	Site_Type
YIN WH13	Rock Shelter
YIN 09-005	Ochre Quarry, Rock Shelter
YIN 09-006	Ochre Quarry, Rock Shelter
YIN10-108	Rockshelter
YIN10-109	Artefact Scatter, Rockshelter
YIN10-110	Rockshelter
YIN10-113	Rockshelter, Walled Niche
YIN10-115	Artefact Scatter

YIN10-114	Artefact Scatter, Rockshelter
YIN11-032	Rockshelter, Stone Arrangement
YIN10-119	Grinding Patch, Rockshelter
YIN10-120	Artefact Scatter, Rockshelter
YIN10-075	Artefact Scatter, Millstones
YIN10-076	Artefact Scatter
YIN WH18	Cache
YIN09-023	Artefact Scatter
YIN10-073	Artefact Scatter, Millstones
YIN10-067	Artefact Scatter
YIN10-066	Reduction Area
YIN09-029	Artefact Scatter
YIN10-081	Artefact Scatter
YIN11-002	Artefact Scatter
YIN11-001	Artefact Scatter
YIN11-004	Artefact Scatter
YIN11-003	Artefact Scatter
YIN11-005	Artefact Scatter
YIN09-027	Artefact Scatter
YIN WH02	Artefact Scatter, Camp Site
YIN09-026	Artefact Scatter
YIN10-039	Artefact Scatter

A copy of the Section 18 Notice will be forwarded to you once all reports and related information has been collated.

Also please note that Alpha Archaeology, on behalf of Fortescue, is submitting a Section 16 application or the following three sites within Firetail Central on 16 September 2011:

Site_ID	Site_Type
YIN10-116	Rockshelter, Artefact Scatter, Walled Niche
YIN10-062	Rockshelter, Artefact Scatter
YIN10-111	Rockshelter, Artefact Scatter

It is a Fortescue policy to minimise impact to identified Aboriginal heritage sites where ever possible. Fortescue request the Yindjibarndi Aboriginal Corporation to forward any information relating to Aboriginal heritage sites that may be known to exist on the Land in addition to those identified in the Notice.

This section 18 notice will be submitted to the Aboriginal Cultural Materials Committee on 16 September 2011. Please advise of any additional information on any known Aboriginal sites so that this information can be incorporated into the development plans for this Project area.

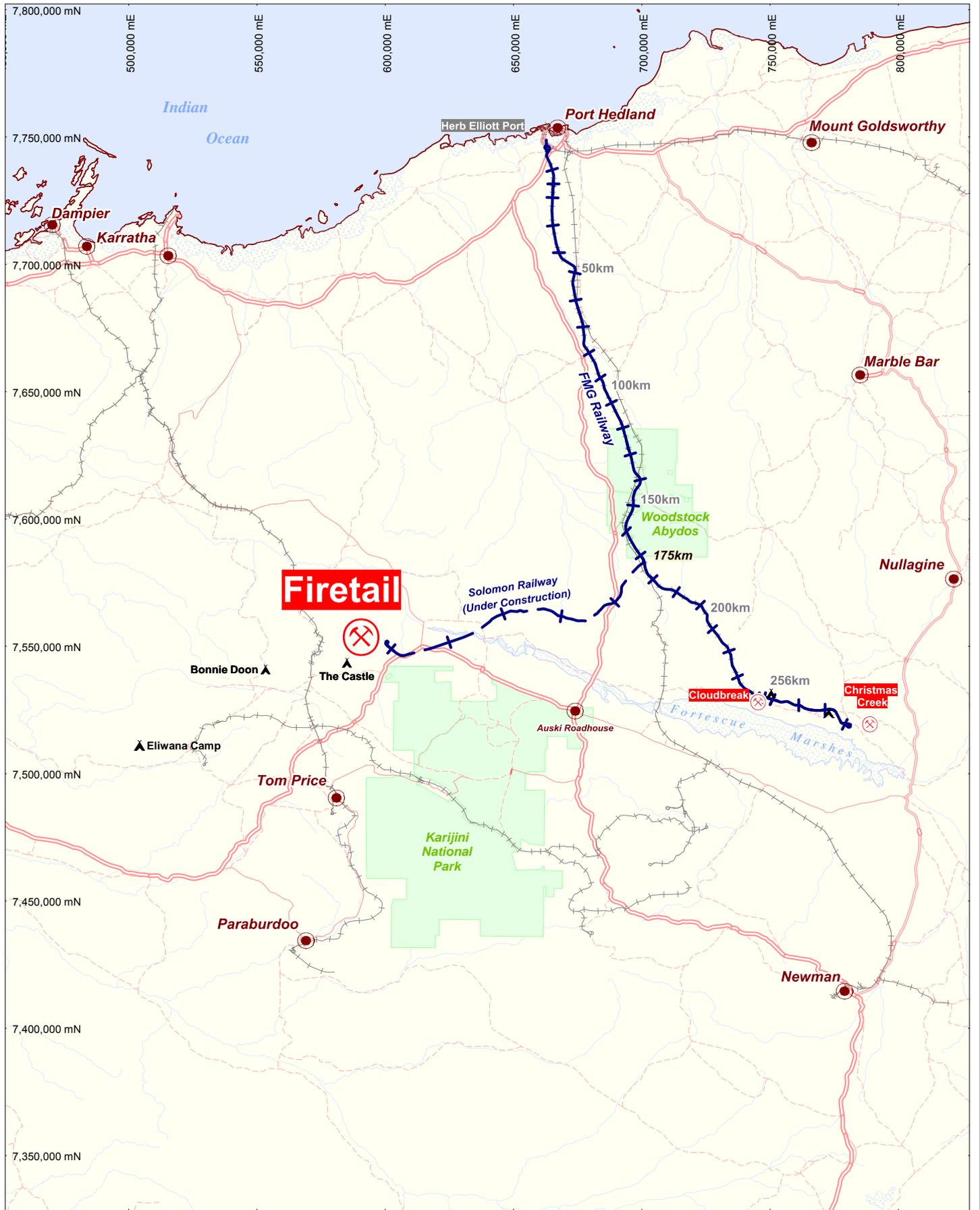
In addition, Fortescue wish to extend previous invitations to Yindjibarndi Aboriginal Corporation to participate the ongoing heritage survey program that is currently underway on project areas on Yindjibarndi country. These surveys include extensive archaeological and ethnographic assessments of the land which are undertaken to ensure that Fortescue's Mine and Infrastructure Planning Departments have all available information to minimise impact to Aboriginal sites wherever possible.

Please feel free to contact me if you have any further queries.

Yours Sincerely,



Roberta Molson
Heritage Approvals Superintendent



Location Map

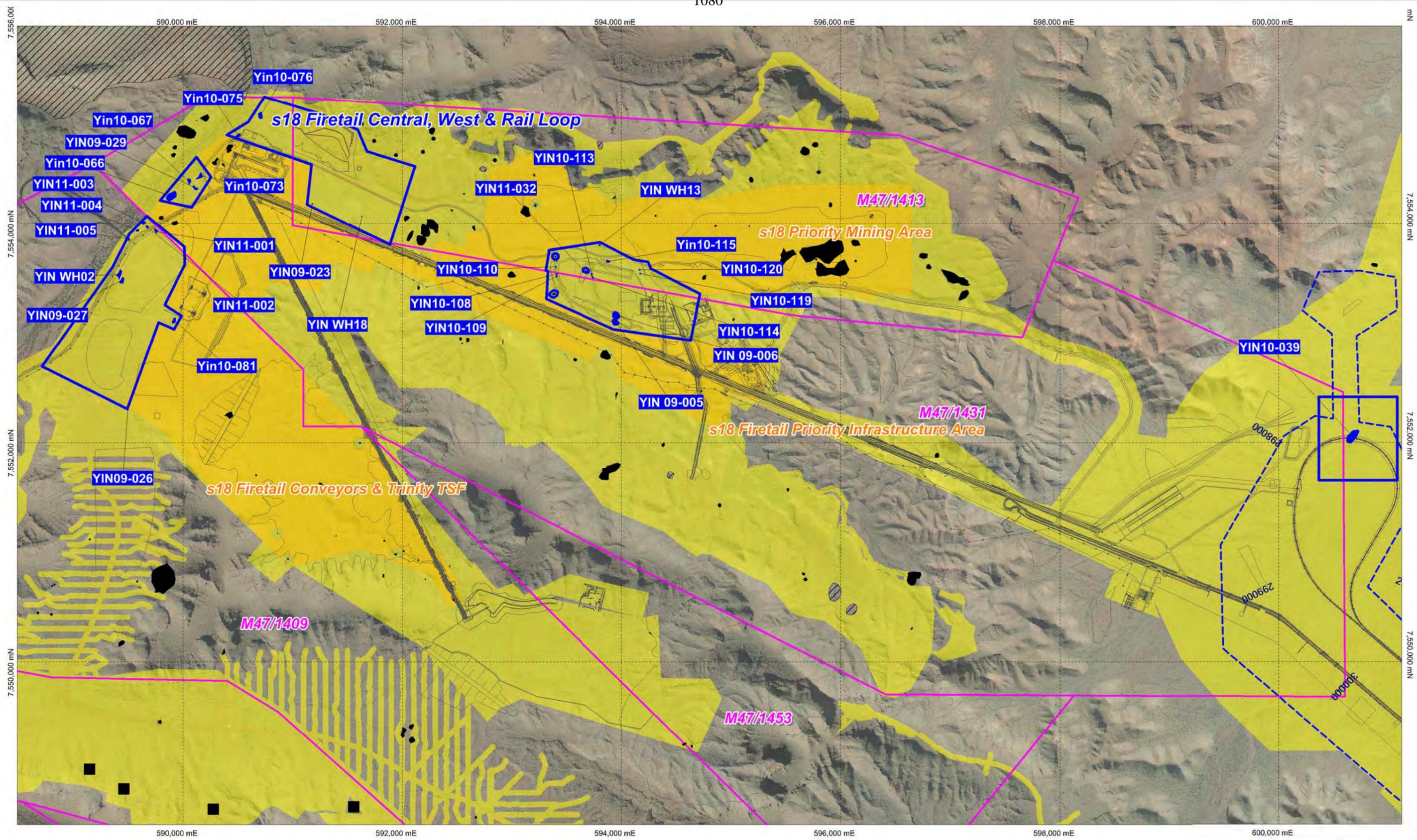
Legend

- Towns
- Major Roads/Tracks
- Creeks
- FMG Railway
- FMG Proposed Railways
- Other Railways
- ⊗ FMG Mines

Fortescue Metals Group Ltd

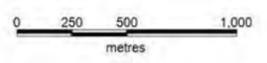
Solomon Project Location

Author: T.Edwards	Date: 17/02/2011
Drawn By: PM	Revision: 5
Doc No: 100_MP_EN_0003	Confidentiality: 1
Projection: MGA Zone 50 (GDA 94)	Scale: 1:2million



- Aboriginal Sites (s18 -Heritage Approval TBA)
- s18 Firetail Central, West & Rail Loop
- Previously Submitted s18 Land (Heritage Surveyed)
- FMG Identified Aboriginal Heritage Site
- FMG Tenements
- Heritage Surveyed Area

Proposed Solomon Infrastructure



Fortescue Metals Group Ltd	
S18 Application Firetail Central, West & Rail-Loop	
Author: A. Munro	Date: 26/8/2011
Drawn By: S. Hendricksen	Revision: 1
Dwg No: SO_MP_HE_0107	Report No: 1
Projection: MGA Zone 50 (GDA 94)	Scale: 1:32000

“MW-116”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-116”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

13/09/11
Lisa Maher Heritage
Manager Fortescue Metals Group Limited

CC: Ms Kathryn Przywolnik - Registrar Aboriginal Sites:
Department of Indigenous Affairs

Dear Lisa,

RE: Meeting to discuss the Yindjibarndi Aboriginal Corporation (YAC) proposal to manage Yindjibarndi sites of significance regarding the proposed Solomon Hub Project (Ganyjingarringunha) in accordance with the Ministerial Consent.

As from the letter I sent to you on the 5/8/11 regarding the management of the sites according to the Ministerial Consent. See attach FYI.

Yindjibarndi Aboriginal Corporation (YAC) have not been contacted by Fortescue Metals Group (FMG) regarding our request to progress with the condition 4 and therefore we are now growing extensively concerned about FMG's commitment to comply with the Minister's Consent to involve the (YAC) to participate in the protection of our cultural sites.

As we prefer the condition to be in accordance with the Ministerial Consent.

The Yindjibarndi Aboriginal Corporation (YAC) refers to condition 4 of the Ministerial consent quoted in your letter. In order to fulfil the Minister's conditions set out in a letter to FMG from the Minister dated 30 June 2011, the YAC insists that it conduct archaeological and ethnographic heritage surveys within the section 18 application area which is the subject of the Minister's consent to 'clarify the status of heritage places on the Land and [comprehensively and exhaustively] identify all heritage values associated with places on the Land'.

Once these ethnographic and archaeological heritage surveys are conducted the YAC will construct an acceptable Cultural Heritage Management Plan (CHMP) that will adequately and effectively protect Yindjibarndi sites with the section 18-application area that is the subject of this Ministerial Consent.

Therefore the YAC prefers that no work is undertaken to 'conduct the Purpose' or to 'disturb the ground' prior to the YAC undertaking archaeological and ethnographic heritage surveys and completing a CHMP.

I would very much appreciate your response and reasons why you are not complying with the Ministerial Consent by not involving the YAC in the heritage protection.

Regards,

Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Aboriginal Corporation (YAC)
Mobile: 0419 097 130.



“MW-117”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-117”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

13/09/11
Lisa Maher Heritage
Manager Fortescue Metals Group Limited

CC: Ms Kathryn Przywolnik - Registrar Aboriginal Sites:
Department of Indigenous Affairs

Dear Lisa,

RE: Meeting to discuss the Yindjibarndi Aboriginal Corporation (YAC) proposal to manage Yindjibarndi sites of significance regarding the proposed Solomon Hub Project (Ganyjingarringunha) in accordance with the Ministerial Consent.

As from the letter I sent to you on the 5/8/11 regarding the management of the sites according to the Ministerial Consent. See attach FYI.

Yindjibarndi Aboriginal Corporation (YAC) have not been contacted by Fortescue Metals Group (FMG) regarding our request to progress with the condition 4 and therefore we are now growing extensively concerned about FMG's commitment to comply with the Minister's Consent to involve the (YAC) to participate in the protection of our cultural sites.

As we prefer the condition to be in accordance with the Ministerial Consent.

The Yindjibarndi Aboriginal Corporation (YAC) refers to condition 4 of the Ministerial consent quoted in your letter. In order to fulfil the Minister's conditions set out in a letter to FMG from the Minister dated 30 June 2011, the YAC insists that it conduct archaeological and ethnographic heritage surveys within the section 18 application area which is the subject of the Minister's consent to 'clarify the status of heritage places on the Land and [comprehensively and exhaustively] identify all heritage values associated with places on the Land'.

Once these ethnographic and archaeological heritage surveys are conducted the YAC will construct an acceptable Cultural Heritage Management Plan (CHMP) that will adequately and effectively protect Yindjibarndi sites with the section 18-application area that is the subject of this Ministerial Consent.

Therefore the YAC prefers that no work is undertaken to 'conduct the Purpose' or to 'disturb the ground' prior to the YAC undertaking archaeological and ethnographic heritage surveys and completing a CHMP.

I would very much appreciate your response and reasons why you are not complying with the Ministerial Consent by not involving the YAC in the heritage protection.

Regards,

Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Aboriginal Corporation (YAC)
Mobile: 0419 097 130.



“MW-118”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 4 pages is the annexure marked **“MW-118”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



CORSER & CORSER
LAWYERS

Our Ref: RWB: 100096
Principal: Ronald Bower
E-mail: ronald.bower@corsers.com.au

The Chairperson
The Registrar of Aboriginal Sites
Department of Indigenous Affairs
Level 1, Governor Stirling Tower
196 St Georges Terrace
PERTH WA 6000

16 September 2011

Dear Registrar

**NOTICE UNDER SECTION 18 OF THE ABORIGINAL HERITAGE ACT 1972 –FMG
PILBARA PTY LTD – APPLICATION FOR CONSENT TO USE LAND FOR
FORTESCUE’S SOLOMON MINE PROJECT: FIRETAIL CENTRAL, WEST AND RAIL
LOOP**

This firm represents the Wirlu-murra Yindjibarndi Aboriginal Corporation (ICN 7483), the membership of which comprises in excess of 200 members of the Yindjibarndi #1 native title application (WAD 6005/03, WC WC03/3). Wirlu-murra Yindjibarndi Aboriginal Corporation has the authority of its board members and ordinary members to determine heritage matters relating to their interest in the Yindjibarndi #1 native title claim.

We refer to the above application expected to be lodged by FMG Pilbara Pty Ltd on Friday 16 September 2011. The sites to which this section 18 application is relevant are as follows:

Site ID	Site Type
YIN WH13	Rock Shelter, Stone Arrangement
YIN 09- 005	Ochre Quarry Complex
YIN 09- 006	Ochre Quarry Complex
YIN10- 108	Rockshelter, partial Walled Niche
YIN10- 110	Rockshelter, partial Walled Niche
YIN10- 113	Rockshelter, partial Walled Niche
YIN10- 114	Artefact Scatter, Rockshelter
(blank)	(blank)

YIN10-119	Grinding Patch, Rockshelter, Artefact Scatter
YIN10-120	Artefact Scatter, Rockshelter
YIN11-032	Rock Shelter, Stone Arrangement
YIN11-002	Artefact Scatter
YIN11-001	Artefact Scatter
YIN11-005	Artefact Scatter
YIN09-027	Artefact Scatter
YIN WH02	Artefact Scatter
YIN10-039	Artefact Scatter

The board of directors and members of the Wirlu-murra Yindjibarndi Aboriginal Corporation met with representatives of FMG on 13 September 2011 at Roebourne to discuss Fortescue's plans to submit a Section 18 application over the Land the subject of the Yindjibarndi #1 claim. During the meeting, Fortescue and the Wirlu-murra Yindjibarndi Aboriginal Corporation membership discussed the avoidance, minimisation or mitigation of disturbance or damage (including salvage or recording) to any Aboriginal Cultural Heritage.

In addition, Fortescue formally notified the board of directors and members of the Wirlu-murra Yindjibarndi Aboriginal Corporation of its intention to make this application on Friday 16 September 2011.

Following consultation, the board of directors and members of Wirlu-murra Yindjibarndi Aboriginal Corporation determined that they would not object to the Section 18 application for consent to impact sites on the following terms:

1. That Fortescue follow the recommendations included in the final archaeological report relating to sites to be impacted;
2. That Fortescue follow the recommendations included in the final ethnographic report relating to the sites to be impacted;
3. That Fortescue salvage the sites to be impacted prior to the commencement of works in accordance with recommendations included in the final archaeological report using archaeologists agreed to by Wirlu-murra Yindjibarndi Aboriginal Corporation and with the participation of Wirlu-murra Yindjibarndi Aboriginal Corporation. The salvaged materials will be stored in a place suitable to the Wirlu-murra Yindjibarndi Aboriginal Corporation.

The board of directors and members of Wirlu-murra Yindjibarndi Aboriginal Corporation respectfully requests that a copy of the recommendations to the Minister of Indigenous Affairs by

the Aboriginal Cultural Materials Committee (ACMC) is forward to it. We also respectfully request that ACMC forwards to them a copy of the Ministerial decision upon receipt.

Yours faithfully

Corser & Corser



Ronald Bower
PRINCIPAL

“MW-119”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

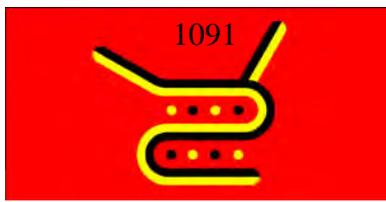
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked **“MW-119”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

18/09/11

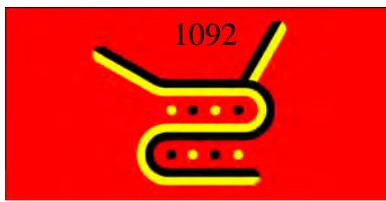
To the Registrar - Ms Kathryn Przywolnik
Department of Indigenous Affairs
St Georges Terrace
Perth, WA 6000

FMG Section 16 and 18 applications

Dear Kathryn,

The Yindjibarndi Aboriginal Corporation (YAC) are extremely concerned about the industrial activities that are being undertaken by FMG Pty Ltd at the place they call their 'Solomon Project'. The YAC emphasise that the Yindjibarndi Aboriginal sites within the FMG 'Solomon' industrial disturbance footprint are internationally significant. As stated within the 'Yindjibarndi Heritage Report' presented to the 'Aboriginal Cultural Material Committee' (ACMC) for the June 1 2011 ACMC meeting, which was formulated in response to the FMG Section 18 application made to the ACMC on May 4 2011, the YAC asserts that FMG has not conducted exhaustive, comprehensive or legitimate archaeological and ethnographic heritage surveys, and therefore misrepresents and underestimates the Aboriginal sites and heritage values of the section 18 application areas. With regard to the section 18 applications FMG put to the ACMC on May 4 2011 the YAC regards them to be flawed and inadequate because:

1. They erroneously relied upon both archaeological and ethnographic data compiled during heritage surveys during which there were no Yindjibarndi Heritage Consultants present.
2. They relied upon data collected that was not to 'site identification' standard which is compulsory for all section 18 applications.
3. They did not consult with Yindjibarndi people who hold knowledge of, and specific cultural interests within, the section 18 application area. Some of the Yindjibarndi people who should have been consulted were mentioned by the Registrar in letters to the Proponent. Instead, from June 2010, FMG preferred to rely upon a limited number of Wirlu-Murra representatives, who have been misleadingly installed by FMG as being Yindjibarndi knowledge holders; however, as is highlighted by FMG's own archaeological and ethnographic reports contained within the section 18 materials presented to the ACMC, the Wirlu-Murra people hold no specific knowledge of the location, were inexperienced in the conduct of heritage surveys and had nothing to add in the majority of cases regarding the very few, grossly underestimated, Yindjibarndi Aboriginal sites that had been identified within the section 18 areas.
4. They do not identify the area as a religious precinct
5. They do not identify all rock shelters and caves that contain internationally significant archaeological and ethnographic cultural data; in fact the number of these sites are grossly underestimated.
6. They do not adequately identify and protect all Aboriginal grave sites within the area.
7. They do not specify all Aboriginal sites that contain sources of ochre
8. They do not identify exclusion zone boundaries that protect Aboriginal sites that contain *Gandi*.
9. They do not contain exclusion zones that protect *Thalu* sites (including *Gurdi*).
10. They do not identify all artefact scatter sites.
11. They do not adequately protect the highly significant water courses and other ethnographic features..



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

FMG have continued to disregard and disrespect the Yindjibarndi people who are represented by the YAC. There are three subjects I would like to raise with you in this correspondence:

1. **The FMG Section 18 application that is currently before the DIA which relates to 'construction of a mining area and associated infrastructure, including a tailings storage facility (TSF) at FMG's Firetail and King's Mining area (Solomon Hub)'**

The YAC wish to object to this Section 18 application in the strongest manner. The YAC request that we are given the opportunity to object to this application both in written and oral form. Our preference is to be given sufficient time to conduct our own independent exhaustive and comprehensive ethnographic and archaeological surveys within the area, which is the subject of this section 18 application, prior to the Minister making a decision on the matter, because we are very concerned for the cultural heritage values, which we believe, are not being adequately represented, and grossly underestimated, by FMG. We understand that once again, FMG has rushed the ethnographic and archaeological surveys, and in addition, they have not consulted with the Yindjibarndi people represented by the YAC, who are the principle knowledge holders for that area..

We believe that we can conduct these heritage surveys and have the final ethnographic and archaeological heritage reports, and the written and oral submissions, available to be considered by the Aboriginal Cultural Material Committee who act on behalf of the Minister for Indigenous Affairs by February the 29th 2012.

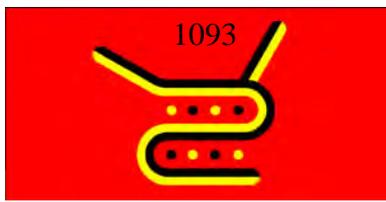
2. **The FMG Section 16 that is currently before the DIA to 'investigate seven Aboriginal heritage sites in the proposed mining area to determine archaeological significance and whether a s18 application will be required'.**

The YAC wish to object to this Section 16 application in the strongest possible manner. The YAC reject the notion that on the one hand, FMG continues to press for section 18 destruction of sites, while on the other hand, FMG describes the Yindjibarndi sites listed for further investigation within the section 16 application area as possessing enough archaeological potential that they "are recommended for further archaeological investigation to assess their archaeological significance prior to potential disturbance by FGML in the Firetail and Trinity project areas" (Alpha Archaeology, 2011: 21).

The YAC rejects the notion that FMG can pick sites that they think are significant without reference or consultation with the Yindjibarndi people who hold the traditional cultural knowledge, and have a significant interest in, the Yindjibarndi Aboriginal sites within the section 16 area.

Once again, the YAC asks to be allowed the space and time to conduct exhaustive independent ethnographic and archaeological heritage surveys within the FMG Solomon precinct section 16 area so that all Yindjibarndi Aboriginal sites are protected as required by the WA Heritage Act 1972 prior to the Minister considering FMG's section 16 application.

We believe that we can conduct these heritage surveys and have the final ethnographic and archaeological heritage reports, and the written and oral



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

submissions with regard to the section 16 application area, available to be considered by the Minister for Indigenous Affairs by February the 29th 2012.

- 3. The FMG Section 18 application made to the ACMC on May 4 2011 Section 18 Application for the 'Firetail Priority Mining Area'¹ and ' Firetail Priority Infrastructure Area'² presented to the ACMC at the Department of Indigenous Affairs Office, which is located at 197 St George's Terrace in Perth, on May 4 2011.**

The YAC presented our objections to this application and the Minister subsequently gave conditional consent to this FMG section 18 application. The conditional consent required FMG to consult with the YAC. As stated in the letters from the YAC to Lisa Maher of FMG dated 13/09/11 and also 05/08/11, to which you were CC'd, FMG has not yet consulted with the YAC regarding the section 18 conditional consent.

The YAC was notified that FMG has requested a review of the Minister's Ministerial consent. In a letter to the Senior Assistant State Solicitor, Mr Trevor Creewel, the YAC confirmed "that representatives of the Yindjibarndi Aboriginal Corporation wish to participate and make submissions in the proceedings which are the subject of this review of the Minister's decision. Our representatives will attend the mediation conference on 6 October at the State Administrative Tribunal at 12 St Georges Terrace, Perth". Therefore we wish to inform you that the YAC will participate in the formal review of the Minister's decision.

In conclusion, as outlined within the email from Mr Philip Davies to you dated 23/08/11, the YAC heritage representatives "are willing to meet with FMG to ensure that these heritage surveys are conducted safely and without interference to the Yindjibarndi survey participants and therefore seek your [DIA] help in mediating this matter between FMG and the YAC".

We would like to meet with you, perhaps around the time we will be in Perth for the State Administrative Tribunal mediation on 6 October 2011, so that we can discuss the arrangements surrounding the conduct of the independent comprehensive ethnographic and archaeological heritage surveys that we would like to conduct prior to the Minister making decisions regarding the FMG section 16 and 18 applications that are currently before the DIA.

We look forward to hearing from you regarding these matters.

Yours sincerely

Mr Michael Woodley
Chief Executive Officer
Yindjibarndi Aboriginal Corporation
08 91821497 Phone
0419 097130 Mobile/08 91821035 Fax/mwoodley@juluwarlu.com.au

¹ 'Firetail Priority Mining Area' Section 18 Application - Tenement ID - M47/1413 - The application folder is dated February 2011 and contains a map establishing the section 18 application area within the tenement

² 'Firetail Priority Infrastructure Area' Section 18 Application - Tenement ID - E47/1447 - application folder is dated February 2011 and contains a map establishing the section 18 application area within the tenement

“MW-120”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked **“MW-120”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



Our Ref: LS-100-I-0642
Your Ref: 11/0211-02

21 September 2011

ATTENTION: MICHAEL WOODLEY

Yindjibarndi Aboriginal Corporation RNTBC
PO Box 111
ROEBOURNE WA 6718

BY POST & EMAIL

Dear Mr Woodley

SOLOMON FIRETAIL PRIORITY MINING AREA: MINISTERIAL CONSENT CONDITION 4

I refer to YAC's letter dated 19 September 2011.

It is apparent that YAC has misunderstand the Ministerial Consent dated 30 June 2011 provided by the Minister for Indigenous Affairs pursuant to s.18 of the *Aboriginal Heritage Act 1978 (WA)*, and in particular has misunderstood Condition 4 of that Consent, which provides as follows:

Prior to conducting the Purpose consult with representatives of the Yindjibarndi Aboriginal Corporation and Wirru-Murru Yindjibarndi Aboriginal Corporation, to the satisfaction of the Registrar, to clarify the status of heritage places on the Land and identify all heritage values associated with places on the Land.

By letter dated 22 July 2011, FMG sought YAC's comments on the status of heritage places within the Land (being the Firetail Priority Mining Area) and heritage values associated with those places.

YAC's response by letter dated 5 August 2011:

1. did not disclose any additional information concerning heritage places on the Land, or additional information concerning heritage values associated with places on the Land; and
2. confirmed that YAC could not provide such additional information without undertaking further archaeological and ethnographic heritage surveys.

Given that YAC has not provided any such additional information, there is nothing further that FMG can do with a view to '*clarif[ing] the status of heritage places on the Land and identify all heritage values associated with places on the Land*'.

In these circumstances, FMG has consulted as required by the Condition 4.

FMG has conveyed this view to the Registrar, who does not disagree with FMG's position.

FMG notes YAC's desire to conduct archaeological and ethnographic heritage surveys over the Land. Provided those surveys do not impact FMG's operations, FMG has no objection to those surveys being undertaken. That is a matter for YAC.

However, in case it is suggested, FMG does not intend being involved in those surveys in any manner, and does not intend being involved with YAC in the preparation of any new Cultural Heritage Management Plan or any alteration to FMG's Cultural Heritage Management Plan. In such circumstances, FMG questions the merit of such further surveys.

FMG notes it has already consulted with Wirlu-Murra Yindjibarndi Aboriginal Corporation and reached a satisfactory outcome.

Yours sincerely
FORTESCUE METALS GROUP LTD



Lisa Maher
Manager, Heritage

“MW-121”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 20 pages is the annexure marked **“MW-121”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

UPDATED VERSION

Office Use Only:	Application	
	Year	Number

Section 18 Notice: Firetail Central, West & Rail Loop

NOTICE UNDER SECTION 18 OF THE *ABORIGINAL HERITAGE ACT 1972*
APPLICATION FOR 'Consent to certain uses'

1. Statement of Notice

To the Aboriginal Cultural Material Committee.

I, Mark Thomas, as an authorised representative of FMG Pilbara Pty Ltd and The Pilbara Infrastructure Pty Ltd (wholly owned subsidiaries of Fortescue Metals Group Ltd), give notice under section 18 of the *Aboriginal Heritage Act 1972* (the Act) that I require to use the Land, as described in Item 5, for the purpose described in Item 6 below.

2. Contact details of Applicant

Contact Name	Roberta Molson				
Position	Heritage Approvals Superintendent				
Organisation Name	FMG Pilbara Pty Ltd				
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth, WA 6004				
Phone	08 9230 1275	Mobile	0420 552 542	Fax	6218 8880
E-mail	rmolson@fmgl.com.au				

Heritage Consultant	Jodie Mitchell				
Organisation Name	Alpha Archaeology Pty Ltd				
Mailing Address	Suite 107, 10 Elizabeth St, Kensington, Vic 3031				
Phone	03 9372 3350	Mobile		Fax	03 9372 3353
E-mail	jodie.mitchell@alphaarc.com				

3. Landowner's Authorisation

Land Parcels 1 – 3

Landowner's Full Name	FMG Pilbara Pty Ltd				
Organisation Name					
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth 6004				
Phone	08 6218 8888	Mobile		Fax	08 6218 8880
E-mail	n/a				

Land Parcel 4

Landowner's Full Name	The Pilbara Infrastructure Pty Ltd				
Organisation Name					
Mailing Address	Level 2, 87 Adelaide Terrace, East Perth 6004				
Phone	08 6218 8888	Mobile		Fax	08 6218 8880
E-mail	n/a				

See **Appendix 1** for both FMG Pilbara Pty Ltd company details and The Pilbara Infrastructure Pty Ltd company details.

4. The Land subject to the s18 Notice

Land Parcel 1

Certificate of Title	Vol		Folio		Diagram / plan / deposit plan no.	
Lot Number and location of subject lot	Lot No. Part				Location	
Reserve No (if applicable)						
Street Number and Name						
Town / Suburb					Postcode	
Tenement ID	M47/1409					
Land Zoning	Vacant Crown Land					
Geographical Coordinates (GDA94)	589,630mE 7,553,000mN					
Other						

Land Parcel 2

Certificate of Title	Vol		Folio		Diagram / plan / deposit plan no.	
Lot Number and location of subject lot	Lot No. Part				Location	
Reserve No (if applicable)						
Street Number and Name						
Town / Suburb					Postcode	
Tenement ID	M47/1413					
Land Zoning	Vacant Crown Land					
Geographical Coordinates (GDA94)	593,880mE 7,553,600mN					
Other						

Land Parcel 3

Certificate of Title	Vol		Folio		Diagram / plan / deposit plan no.	
Lot Number and location of subject lot	Lot No. Part				Location	
Reserve No (if applicable)						
Street Number and Name						
Town / Suburb					Postcode	
Tenement ID	M47/1431					
Land Zoning	Vacant Crown Land					
Geographical Coordinates (GDA94)	594,000mE 7,553,330mN					
Other						

Land Parcel 4

Certificate of Title	Vol		Folio		Diagram / plan / deposit plan no.	
Lot Number and location of subject lot	Lot No. Part				Location	
Reserve No (if applicable)						
Street Number and Name						
Town / Suburb					Postcode	
Tenement ID	Licence to Occupy Crown Land in accordance with Section 91 of the Land Administration Act 1997 (WA) – Lic Number 50213/2004_15_168. This licence is being utilised in conjunction with the Railway and Port Agreement (2004) detailed below in Section 6 of this Notice.					
Land Zoning	Mt. Florance					
Geographical Coordinates (GDA94)	600,660mE 7,552,070mN					
Other						

See **Appendix 2** for tenement reports.

See **Appendix 3** for the "Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004".

5. Map(s) of the Land

Appendix 4: General location of the Land subject to this Notice.

Appendix 5: Solomon Firetail Central, West and Rail Loop map displaying s18 boundary and sites (the subject of this application), previously submitted s18 boundaries, tenements and heritage-surveyed areas.

Appendix 6: Solomon Firetail Central, West and Rail Loop map displaying s18 boundary and sites (the subject of this application), tenements and ethnographic-surveyed areas.

6. The Purpose of the use of the Land

Item	Applicant's description
Concise description (10 words or less)	Construction of a Rail Loop, Roads, OPF, Crushing Hub, ROM Pad and Associated Infrastructure at Fortescue's Solomon Project.
General description of purpose	<p>Fortescue Metals Group Limited's (Fortescue) Solomon Project is an expansion of its current iron ore mining and export operations in the Pilbara region of Western Australia. The Solomon Project is located on the central Hamersley Ranges, and situated approximately 60km north of Tom Price, Western Australia.</p> <p>The 'Purpose' for which the 'Land' subject to this Notice is to be used, is to construct a rail loop and associated infrastructure in the Rail Loop area, Run of Mine (ROM) Pad, Crushing Hub, Ore Processing Facility (OPF) and associated infrastructure in Firetail Central area, Ore and Waste Stockpiles, Roads and associated infrastructure in Firetail West area, at Fortescue's Solomon Project. Proposed infrastructure includes:</p> <ul style="list-style-type: none"> • ROM Pad • Firetail Crushing Hub • Firetail Ore Processing Facility • Ore and Waste Rock Stockpiles • Roads • Rail Loop <p>Refer to the Map in Appendix 5 for an overview of proposed infrastructure placement.</p>
Processing inputs, discharges	<p>The Firetail OPF, conveyor, Crushing Hub and related infrastructure are expected to produce 20 million tonnes of product ore each year following completion.</p> <p>Processing inputs and discharges for the Solomon Project such as water, diesel and oil will be managed as outlined in Fortescue's Construction Environmental Management Plan approved by the Department of Environment and Conservation (DEC). Refer to Appendix 7 for relevant documentation.</p>
Bulk material source	Any bulk materials (such as gravel and borrow material) that are required to be sourced at the Solomon Project will be extracted under approvals issued by the Department of Mining and Petroleum (DMP) or DEC from within the project area.

Department of Indigenous Affairs

Associated infrastructure	<p>The Solomon Project will include the establishment and operation of mining operations at the Firetail and Kings iron ore deposits as well as the construction and operation of the Solomon railway line. Together with any associated infrastructure to support the Solomon Project which includes: an airstrip; access roads; accommodation camps; offices, ablution and change house facilities; a power station; and communications infrastructure.</p> <p>The processed iron ore from the mining area will be transported along the Solomon railway line linking onto the existing Port Hedland to Cloudbreak railway line at chainage 175 to Fortescue's existing Herb Elliot Port facilities in Port Hedland for export.</p>
New or existing project, approvals & associated dates	<p>On 10 November 2004, The State of Western Australia entered into an agreement between Fortescue Metals Group Ltd (FMG) and The Pilbara Infrastructure Pty Ltd (TPI, "The Company") referred to as the "<i>Railway and Port (the Pilbara Infrastructure Pty Ltd) Agreement</i>". The Agreement is ratified by the Parliament of Western Australia Act 2004. By the Act, Section 6 of The Agreement provides that section 18(2) of the Act is modified to include "the Company" in the definition of "the owner of any land". See Appendix 3.</p> <p>Fortescue rely on Section 6 of the State Agreement to demonstrate ownership of the Land for the purposes of the construction of the Solomon railway spur.</p> <p>The key approvals received for the construction of the mining area include:</p> <ul style="list-style-type: none"> • Approval under Part IV of the <i>Environmental Protection Act 1986</i>, obtained in April 2011; • Approval under the <i>Environment Protection and Biodiversity Conservation Act 1999</i>, obtained in April 2011; • Approvals under Section 18 of the <i>Aboriginal Heritage Act 1972</i>. • Approval under the <i>Mining Act 1978</i>, obtained in June 2011; <p>Fortescue will also be seeking further approvals under the following acts for the development of the mining area:</p> <ul style="list-style-type: none"> • <i>Environmental Protection Act 1986</i> (Part V) • <i>Rights in Water and Irrigation Act 1914</i> • <i>Mining Act 1978</i>
Relation to other proposals	n/a
Timeframe for development, staging	<p>Construction of the Firetail Mining Area commenced in September 2011. Site avoidance is to continue, in line with the Solomon <i>Cultural Heritage management Plan</i>, within the land subject to this Notice, until such time as ministerial Consent is received and sites are salvage accordingly.</p>

	<p>Construction timing for associated infrastructure within the proposed mining area is as follows:</p> <ul style="list-style-type: none"> • ROM Pad – October 2011 • Firetail Crushing Hub – December 2011 • Firetail Ore Processing Facility – December 2011 • Ore and Waste Rock Stockpiles – September 2011 • Roads – September 2011 • Rail Loop – November 2011
Extent of activity (m2)	The Land subject to this notice comprises a total area of 2,359,546 m2 (236 hectares).
Previous s18 Notices regarding the Land	<p>To date Fortescue has submitted four (4) Section 18 applications for land adjacent to the Land subject to this Notice (within Solomon Mining area):</p> <ul style="list-style-type: none"> • Solomon Airport, Camps and Admin – ministerial consent received 13 May 2011 (DIA ref: 34-11556). • Firetail Priority Mining Area – ministerial consent received 30 June 2011 (DIA ref: 34-13307). • Firetail Priority Infrastructure Area – pending Ministerial decision. • Firetail Conveyors and Trinity TSF – pending Ministerial decision. <p>To date Fortescue has submitted five (5) Section 18 applications for land adjacent to the Land subject to this Notice (along Solomon rail spur):</p> <ul style="list-style-type: none"> • Yindjibarndi Rail Stage 1 – ministerial consent received 2 June 2011 (DIA ref: 34-12623). • MIB Solomon Rail Stage 1 – ministerial consent received 28 June 2011 (DIA ref: 34-13480). • Kariyarra Solomon Rail Stage 1 – ministerial consent received 28 June 2011 (DIA ref: 34-11558). • MIB Solomon Rail Stage 2 – pending Ministerial decision. • Kariyarra Solomon Rail Stage 2 – Pending Ministerial decision.
Other	n/a

7. Summary of applicant consultation with relevant Aboriginal people and other stakeholders

Consultation	Description
Process of consultation and informant selection	<p>History of consultation between Fortescue and Yindjibarndi</p> <p>In 2007, when Fortescue sought the grant of its initial licences to carry out exploration work in the Solomon area, it initiated a consultation process with the Native Title Claimants for the area, The Yindjibarndi People.</p> <p>Since 2007 the process of consultation undertaken by Fortescue has been driven by the relationship between the parties. This relationship has on some levels been problematic – primarily due to a failure of the parties to reach an agreement over financial compensation for mining.</p> <p>In July 2007, Fortescue negotiated a heritage agreement with the Yindjibarndi People to cover exploration activities. Five months after the signing of this agreement, the Yindjibarndi People advised Fortescue that, until the conclusion of a Land Access Agreement Yindjibarndi People would no longer participate in Heritage Surveys with Fortescue. Yindjibarndi's proposed Land Access Agreement included a prohibitive remuneration package in excess of any amount previously agreed to within the mining industry.</p> <p>Fortescue continued to seek the participation of Yindjibarndi People in heritage surveys and in consultation over heritage matters. Fortescue's attempts at consultation included meetings and discussions with the Yindjibarndi Aboriginal Corporation (YAC) through Juluwarlu Aboriginal Corporation (JAC), Yindjibarndi's chosen heritage representatives.</p> <p>On all occasions Fortescue requested Yindjibarndi to continue surveys while the Land Access Agreement negotiations continued. Yindjibarndi maintained their position against participating in heritage surveys.</p> <p>Fortescue continued to keep DIA informed of these matters and outlined its concerns about Yindjibarndi's refusal to participate in heritage surveys. Fortescue has also sought advice from DIA on how best to meet its obligations under the <i>Aboriginal Heritage Act 1972</i> (AHA) in these circumstances. In addition Fortescue requested that the DIA assist in the facilitation of consultation between the parties.</p> <p>In July 2010 Fortescue was approached by senior Yindjibarndi claimants wanting to engage in heritage matters to protect their country. Fortescue therefore arranged a site visit to the Solomon Project Area, offering the Yindjibarndi participants an opportunity to</p>

see the project area and consult over proposed mining plans.

On 23 November 2010, members of the Yindjibarndi People, dissatisfied with the approach of the JAC and YAC registered the Wirlu-Murra Yindjibarndi Aboriginal Corporation (WYAC). The WYAC certificate of registration from the Office of the Registrar of Indigenous Corporations is included as **Appendix 8**.

Furthermore, at a community meeting held on 16 March 2011, a majority of the Yindjibarndi People voted in favour of executing a Land Access Agreement with Fortescue. Subsequent to this positive response, Fortescue have continued to engage with the Yindjibarndi People via the WYAC representative body in the development and execution of a Land Access Agreement.

On 17 June 2011 the National Native Title Tribunal (NNTT) passed a decision granting a number of Fortescue's mining and exploration tenements in the Solomon Project area. This decision supported Fortescue's position that they had negotiated in good faith with the Yindjibarndi People. In addition, the decision supported Fortescue's approach to dealing with both representative bodies (YAC & WYAC) with regard to Yindjibarndi land. A summary of the NNTT decision, as compiled by Fortescue's Land Access Lawyer, is included as **Appendix 9**.

Fortescue's position with regard to consultation with the Yindjibarndi People has been further supported by receipt of ministerial consent for to three previously submitted Section 18 submissions over land in Yindjibarndi country. In conjunction with these Section 18 submissions, on 4 May 2011, Fortescue made a presentation to the ACMC providing additional insight into the history of consultation with the Yindjibarndi People. This presentation is included as **Appendix 10**. Refer to Section 6 of this Notice for an overview of previous Section 18 submissions.

Since July 2010, regular consultation between WYAC and Fortescue has seen Yindjibarndi Traditional Owners participating in heritage surveys on an ongoing basis.¹ In addition to a senior Yindjibarndi man being employed as part of Fortescue's Solomon Heritage Field team, discussions are progressing regarding the engagement of Yindjibarndi Heritage Monitors, who will play a key role in the management and monitoring of heritage sites on Yindjibarndi country.

Positive consultation with WYAC has also resulted in the development of a *Cultural Heritage Management Plan* (CHMP) for Solomon Project, which provides an important procedural framework for ongoing collaboration over a range of heritage matters. A presentation on the CHMP development, discussed with WYAC on 8

¹ This is expected to continue ongoing with two groups of 6-8 Yindjibarndi Traditional Owners working regular survey swings.

June 2011, is included as **Appendix 11**. The resulting CHMP is included as **Appendix 12**.²

A copy of the Solomon Project CHMP was forwarded to the YAC on 26 May 2011 inviting input and comment; however Fortescue has not yet received a response. This correspondence is included at **Appendix 13**.

Throughout this period, and continuing through 2011, Fortescue has consistently extended invitations to the YAC to participate in heritage surveys and provide comment on known heritage sites on the Land. Examples of such correspondence are included in **Appendix 14**.³

YAC have continued to ignore or decline Fortescue's invitations to engage in heritage matters. A recent example of YAC's response to Fortescue requests for comment is included in **Appendix 15**.

Additional consultation relating directly to the Land

Fortescue met with the WYAC Heritage Sub-Committee, on 13 September in Roebourne. Amongst other matters, this Section 18 application was discussed in detail. This included discussion on sites to be impacted by the Purpose and confirmation that the group was satisfied with the level of consultation over the Land. A copy of the presentation is included at **Appendix 16**.

In addition, Fortescue formally notified the Yindjibarndi People (through WYAC and YAC legal representatives) of its intention to submit this Section 18 Notice on 16 September 2011. This correspondence is included at **Appendix 17**.

Upon receiving no response from the YAC, Fortescue attempted to make contact by phone with the YAC legal representative, Simon Millman on 15 September 2011. A message was left with Mr Millman's Assistant, however no response was received. This was followed up with an email reiterating Fortescue's previous request for comment in response to this Section 18. This email is included as **Appendix 18**.

Although the problematic relationship with the YAC has impacted on the process for consultation, significant progress has been made in 2011 through regular and detailed consultation with Yindjibarndi Traditional Owners from the WYAC membership. Despite the YAC's persistent refusal to engage, Fortescue has continued to provide YAC with the information and opportunity to consult about heritage places and related values on the Land.

² Fortescue Metal's Group Limited, *Cultural Heritage Management Plan for Solomon project area in the Pilbara region of WA*, FMG, Perth, July 2011.

³ Refer to Appendix 14 for examples of correspondence from Fortescue to YAC requesting involvement in heritage surveys and heritage matters relating to the Solomon Project Areas.

The above summary and related documents demonstrate that Fortescue has undertaken extensive consultation with Yindjibarndi People over the Solomon Project area and the Land the subject of this Notice. Fortescue submits that the information provided to the ACMC is sufficient to establish the existence of sites on the Land and the significance of those sites.

Archaeological Surveys

Throughout the extensive history of archaeological surveys over the Land, all areas on the Land have been accessed for inspection during pedestrian surveys. In some instances, sections of the Land have been surveyed more than once through drill line surveys then subsequent block surveys. In 2011 Fortescue engaged Alpha Archaeology to conduct heritage surveys in the Solomon Project area and this included some of the Land the subject of this notice (notably in the western portion). Alpha Archaeology also conducted reinspection and reassessment of all sites on the Land to a Section 18 level, assessing past reporting over the Land in the process. Alpha's report, detailing the results of surveys and Section 18 level recording of sites on the Land is included as **Appendix 26**.

The archaeological sites on the Land, that were originally identified through surveys prior to Alpha's engagement, were reported in surveys between 2008 and 2011. Although Alpha Archaeology provides Section 18 level reporting of all sites in their report (see **Appendix 26**), the reports detailing previous identification of the sites have been provided for reference:

- Glendenning, W., *Report of an Archaeological Survey of a Mineral Exploration Project at Hammersley Range*, Western Heritage Research, July 2008 (refer to **Appendix 19**);
- Glendenning, W., *Report of an Archaeological Survey of a Mineral Exploration Project Within Block 1, Firetail North Project Area, Hammersley Range*, Western Heritage Research, March 2009 (refer to **Appendix 20**);
- Czerwinski, P., *Aboriginal Heritage Survey Report: Firetail YIN_023 & YIN_026*, Australian Cultural Heritage Management, SA, July 2009 (refer to **Appendix 21**);
- Tickle, R., *Preliminary Advice on the Results of an Archaeological Survey to Avoidance Level of Nominated Drill Lines Located Within Survey Request No. YIN 28*, Veritas Archaeological & History Service, Muswellbrook, July 2009 (refer to **Appendix 22**).
- Tickle, R., *Report of a Survey to Avoidance Standard of Solomon Rail Loop, Survey Request YIN_036*, Veritas Archaeological & History Service, Muswellbrook, July 2010 (refer to **Appendix 23**).
- Singleton, S. & Tickle, R., *Report of an Archaeological Survey to Avoidance Standard of part of Firetail Area: Survey Request 34.5*, Veritas Archaeology & Eureka, NSW, July 2011 (refer to **Appendix 24**).

Please refer to **Appendix 25** for a table summarising previous reporting of sites and their re-identification and reassessment.

The Section 18 level recordings, conducted by Alpha Archaeology in 2011, bring together information provided through the previously mentioned heritage surveys. The archaeologists and Traditional Owners who participated in the surveys over the Land are listed in Table 1 below. The Alpha Archaeology Report (September 2011)⁴ is included in **Appendix 26**.

Table 1: Archaeologists & Yindjibarndi Traditional Owners involved in archaeological surveys over the Land

Survey date	Archaeologists	Traditional Owners
30 June – 5 July 2008	Wayne Glendenning, Mark Cooney	Yindjibarndi representatives were invited to participate but declined to do so
22 September – 3 October 2008	Wayne Glendenning, Jim Dawson	Yindjibarndi representatives were invited to participate but declined to do so
28 April 2009 – 6 May 2009	Phil Czerwinski, Guadalupe Cincunegui	As coordinated by YAC: Angus Mac, Thomas Jacobs, David Woodley, Darren Jacobs, Ken Sandy, Booby Willis, David Gerrold, Middleton Cheedy
10 July 2009 – 20 July 2010	Rob Tickle, Terry Moore	Yindjibarndi representatives were invited to participate but declined to do so
10 May – 13 May 2010 & 5 June – 8 June 2010	Rob Tickle, Terry Moore	Yindjibarndi representatives were invited to participate but declined to do so
14 May & 4 June & 21 – 26 September 2010	Rob Tickle, Sue Singleton, Terry Moore, Phil Williamson	Jimmy Horace (elder), Shaun Derschow, Isaac Guinness, Keiren Long, Robert Mather, Bobby Willis, Ken Sandy (elder).
9 – 20 May 2011	Emlyn Collins, Rebecca Yit, Mark Williams, Bruce Numode, Nick Ellis, Allison Isepy and Helen Melville	Ken Sandy, Stephen Adams, Bobby Willis, Paydon Sandy, Robert Toby, Aaron Wilson, Kevin Phillips and Francis Phillips.
20 June – 1 July 2011	Rebecca Yit, Elizabeth McFarlane, Phoebe Heddell-Stevens, Allison Isepy, Kate Duca, Alana Colbert	Brian Phillips, David (Henry) Gerald, Kieran Long, Christian Sandy, Edmund Sandy, Payden Sandy, Kendall Nannup, Robert Mather
4 – 15 July 2011	Rebecca Yit, Alexander Timms, Mark Williams, Bruce Numode, Nick Ellis, Pauline Hams	Bobby Willis, Andrew James, William James, Jefferey Adams, Steven Adams
18-19 July 2011	Elizabeth McFarlane, Helen Melville, Lian Flannery, Allison Isepy, Kate Duca, Alana Colbert	Ken Sandy, Stephen Hubert, Dennis Hubert, Kenneth Mather, Shaun Derschow, Edmund Sandy, Payden Sandy, William Long
1 – 12 August 2011	Alexander Timms, Bruce Numode, Phoebe Heddell-Stevens, Nick Ellis	Glen Aubrey, Ethan Sandy, Charlie Sandy, Wesley Munda, Brian Phillips, Clarence Woodley
15 – 26 August 2011	Phillip Roberts, Roark Muhlen-Schulte, Elizabeth McFarlane, Lian Flannery, Alana Colbert, Mark Williams	Ricky Sandy, Robert Toby, Dwayne Toby, Edmund Sandy, Aiden Hughes, Curtis Allan, Christian Moody

⁴ Mitchell et. al., *Section 18 Application for Fourteen Aboriginal Heritage Sites within the Firetail Central, Firetail West and Rail Loop Project Areas*, Solomon Mining and Infrastructure Area, Western Australia, Alpha Archaeology Pty Ltd, Kensington VIC, October 2011.

Please also note that the following statement, shown on a number of older Heritage Survey Requests over Yindjibarndi Land (included in **Appendix 14**), was included at the request of Yindjibarndi Traditional Owners, and Wirlu-Murra Yindjibarndi Aboriginal Corporation (WYAC):

If, during the survey process, the parties are prevented from accessing parts of the survey area due to terrain walking difficulties, it is expected that the Traditional Owners and Archaeologists agree that the aforesaid parts of the survey area are deemed surveyed.

This methodology has only been agreed to protect the safety of Traditional Owners and heritage consultants conducting surveys over the Land in extreme situations, such that it can reasonably be said that heritage sites would not be found in the area due to complete inaccessibility (i.e. sheer cliff faces).

Having confirmed the above intention, Fortescue can confirm that in all surveys over the Land the subject of this Notice, the need to apply the above methodology has not been necessary, therefore all areas on the Land have been accessed for inspection and are reported on in the numerous heritage reports provided.

Ethnographic surveys

An ethnographic survey was undertaken covering the Land subject to this notice. Details of this survey, reporting no ethnographic sites, are presented in the Brad Goode and Associates Report (August 2011)⁵ – see **Appendix 27**. A subsequent visit seeking ethnographic comment on archaeological sites within the Land was conducted by MGA Consulting. See (September 2011)⁶ report included in **Appendix 28**.

Table 2: Anthropologists & Yindjibarndi Traditional Owners involved in ethnographic surveys over the Land

Survey	Survey dates	Anthropologists	Traditional Owners
Yin_070, YIN_071 & YIN_072	27 June 2011 – 1 July 2011	Brad Goode	Ken Sandy, Clifton Mack, Ricky Sandy, Don Walker and Kenny Diamond
YIN_084	5 September – 6 September 2011	Michael Gallagher	Ken Sandy, Vince Adams, Shaun Derschow, Jimmy Horace, Clifton Mack, Birchell Munda, Charlie Sandy, John Sandy, Ricky Sandy, Robbie Toby, Captain Wilson, Bruce Woodley

⁵ Goode, B., *A Report of an Ethnographic Aboriginal Heritage Survey of the Solomon Project in the Eastern Pilbara Region of Western Australia*, Brad Good & Associates, Dunsborough, August 2011, page 4.

⁶ Gallagher, M., *A Report of an Ethnographic Consultation to Comment on Sixteen Archaeology sites in Fortescue's Solomon Project*, MGA Consulting, September 2011.


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List of stakeholders consulted	As listed in Tables 1 & 2 and as detailed in archaeological reports referenced above (see Appendices 19, 20, 21, 22, 23 & 24) and ethnographic report (see Appendices 27 & 28).
Aboriginal people's issues and/or concerns	Please refer to full details of the consultation process and outcomes with the Yindjibarndi People in the above sections.
Issues / problems encountered during consultation process	Please refer to full details of the consultation process and outcomes with the Yindjibarndi People in the above sections.
Outcomes of consultation	Following on from Fortescue's consultation (as detailed in above sections), a letter was received on 16 September 2011 from WYAC's legal representatives confirming the Yindjibarndi People's 'non-objection' to this application. This letter is included at Appendix 29 .

8. Summary of potential effects on Aboriginal sites and possible management responses

Heritage Impact	Description																																																												
Sites to be impacted by the activities undertaken as described in the Purpose	<p>FMG will be required to impact 16 Aboriginal sites located within the Land. A map showing the sites subject to this Section 18 is included in this notice as Appendix 5. These sites are:</p> <table border="1"> <thead> <tr> <th>Site ID</th> <th>Site Type</th> <th>Significance</th> <th>Level of Impact</th> </tr> </thead> <tbody> <tr> <td>YIN WH13</td> <td>Rock Shelter, Stone Arrangement</td> <td>Low</td> <td>Full</td> </tr> <tr> <td>YIN 09-005</td> <td>Ochre Quarry Complex</td> <td>High</td> <td>Full</td> </tr> <tr> <td>YIN 09-006</td> <td>Ochre Quarry Complex</td> <td>High</td> <td>Full</td> </tr> <tr> <td>YIN10-108</td> <td>Rockshelter, partial Walled Niche</td> <td>Low</td> <td>Full</td> </tr> <tr> <td>YIN10-110</td> <td>Rockshelter, partial Walled Niche</td> <td>Low</td> <td>Full</td> </tr> <tr> <td>YIN10-113</td> <td>Rockshelter, partial Walled Niche</td> <td>Low</td> <td>Full</td> </tr> <tr> <td>YIN10-119</td> <td>Grinding Patch, Rockshelter, Artefact Scatter</td> <td>Low</td> <td>Full</td> </tr> <tr> <td>YIN11-032</td> <td>Rock Shelter, Stone Arrangement</td> <td>Low</td> <td>Full</td> </tr> <tr> <td>YIN11-002</td> <td>Artefact Scatter</td> <td>Medium</td> <td>Full</td> </tr> <tr> <td>YIN11-001</td> <td>Artefact Scatter</td> <td>Low</td> <td>Full</td> </tr> <tr> <td>YIN11-005</td> <td>Artefact Scatter</td> <td>Low</td> <td>Full</td> </tr> <tr> <td>YIN09-027</td> <td>Artefact Scatter</td> <td>Medium</td> <td>Full</td> </tr> <tr> <td>YIN WH02</td> <td>Artefact Scatter</td> <td>Medium</td> <td>Full</td> </tr> <tr> <td>YIN10-039</td> <td>Artefact Scatter</td> <td>Low</td> <td>Full</td> </tr> </tbody> </table> <p>Full details of the sites on the Land are provided in the Alpha Archaeology Report in Appendix 26 (September 2011).⁷</p>	Site ID	Site Type	Significance	Level of Impact	YIN WH13	Rock Shelter, Stone Arrangement	Low	Full	YIN 09-005	Ochre Quarry Complex	High	Full	YIN 09-006	Ochre Quarry Complex	High	Full	YIN10-108	Rockshelter, partial Walled Niche	Low	Full	YIN10-110	Rockshelter, partial Walled Niche	Low	Full	YIN10-113	Rockshelter, partial Walled Niche	Low	Full	YIN10-119	Grinding Patch, Rockshelter, Artefact Scatter	Low	Full	YIN11-032	Rock Shelter, Stone Arrangement	Low	Full	YIN11-002	Artefact Scatter	Medium	Full	YIN11-001	Artefact Scatter	Low	Full	YIN11-005	Artefact Scatter	Low	Full	YIN09-027	Artefact Scatter	Medium	Full	YIN WH02	Artefact Scatter	Medium	Full	YIN10-039	Artefact Scatter	Low	Full
Site ID	Site Type	Significance	Level of Impact																																																										
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YIN WH02	Artefact Scatter	Medium	Full																																																										
YIN10-039	Artefact Scatter	Low	Full																																																										
Strategies to minimise or avoid identified sites	<p>When planning project operations, Fortescue's policy is to minimise the impact to cultural heritage and the environment. Refer to section 1.4 of the Solomon Hub Cultural Heritage Management Plan (CHMP) in Appendix 12.⁸</p>																																																												
Management commitments to sustainable heritage protection	<p>Fortescue engages a number of heritage management principles to ensure that every reasonable effort is made to protect and manage Aboriginal heritage sites. Refer to section 4 of the Solomon Hub CHMP (see Appendix 12).</p>																																																												
Local, regional	n/a																																																												

⁷ Mitchell et. al., *Section 18 Application for Fourteen Aboriginal Heritage Sites within the Firetail Central, Firetail West and Rail Loop Project Areas*, Solomon Mining and Infrastructure Area, Western Australia, Alpha Archaeology Pty Ltd, Kensington VIC, October 2011.

⁸ Fortescue Metal's Group Limited, *Cultural Heritage Management Plan for Solomon project area in the Pilbara region of WA*, FMG, Perth, July 2011.

or cumulative
impacts

9. Applicant Response to Recommendation

Recommendations from Consultation / Heritage Survey Report (s)	Applicant Response to Recommendations
<p><u>Archaeological Report</u></p> <p>It is recommended that FMGL ensure that its employees and contractors (as appropriate) are:</p> <ol style="list-style-type: none"> 1. Advised of the revised boundaries and site types of Aboriginal sites YIN09-005, YIN09-006, YIN09-027, YIN WH02, YIN10-039, YIN10-108, YIN10-110, YIN10-113, YIN10-119, YIN11-001, YIN11-002, YIN11-005, YIN11-032 and YIN WH13, 2. Informed that YIN09-005, YIN09-006, YIN09-027, YIN WH02, YIN10-039, YIN10-108, YIN10-110, YIN10-113, YIN10-119, YIN11-001, YIN11-002, YIN11-005, YIN11-032 and YIN WH13 constitute Aboriginal archaeological sites to which the Act may apply and should, therefore be avoided; 3. The DIA should be advised of the existence of these site places through the formalised Aboriginal Cultural Materials Committee site registration process. Accordingly, the relevant DIA site registration form has been completed for these sites and lodged with the DIA. <p>The recording of sites YIN09-005, YIN09-006, YIN10-039, YIN10-108, YIN10-110, YIN10-113, YIN10-119, YIN11-001, YIN11-005, YIN11-032 and YIN WH13 provides sufficient data to understand aspects of the sites' history, type and</p>	<p>Fortescue agrees with all recommendations.</p>

<p>context. However, it is recommended that:</p> <ol style="list-style-type: none"> 1. Residue analysis and mitigative salvage of cultural material at sites YIN09-027 and YIN WH02 and YIN11-002 be undertaken 2. Such an application is acceptable to the relevant Yindjibarndi Traditional Owners. 	
<p><u><i>Ethnographic Reports</i></u></p> <p><u>Brad Goode and Associates⁹</u></p> <ol style="list-style-type: none"> 1. As a result of the above survey it is recommended that as no new ethnographic sites of significance, as defined by section 5 of the AHA, were identified within survey request areas: Yin_070 Fire Tail North, YIN_071 Fire Tail West, Trinity TSF & Conveyors and Yin_072 Solomon Rail Loop, that the proposed mining and infrastructure development should proceed as planned. 2. In terms of FMG's wish to seek ministerial consent pursuant to an application under section 18 of the AHA to use the land that contains several archaeological sites within survey request areas: Yin_076 and Yin_077 it is further recommended that consent should be granted as at present there are no objections from the WYAC. 3. It is recommended that FMG provide the WYAC heritage subcommittee with regular information regarding water management procedures as the project proceeds. 4. It is recommended that FMG temporarily store all salvaged archaeological material until an 	<p>Fortescue agrees with all recommendations.</p>

⁹ Recommendations related only to The Land outlined in this Section 18.

adequate place can be found in country to repatriate the material. The final 'in country' repository should be decided by the WYAC once the mine plan is finalised and the archaeologists have consulted with the Yindjibarndi group about the options and potential locations for artefact storage.

MGA Consulting

1. It is recommended that the development of the proposed works on the Land proceed;
2. It is recommended that a condition of Ministerial consent be the salvage of artefacts that are made tools, grinding stones and others of special archaeological interest in consultation with Yindjibarndi people and an archaeologist prior to disturbance;
3. It is recommended that some of the ochre in sites YIN 09-005 and Yin 09-006 be salvaged for the use of Yindjibarndi people;
4. It is recommended that the salvaged artefacts be stored securely in the vicinity of their original location until a suitable, permanent place is found for them in consultation with Yindjibarndi people and an archaeologist.

Fortescue agrees with all recommendations.

10. Attachments

Attachments	Description
Appendix 1:	- FMG Pilbara Pty Ltd and The Pilbara Infrastructure Pty Ltd company details
Appendix 2:	- Tenement reports
Appendix 3:	- State Agreement – Railway and Port Agreement Act 2004
Appendix 4:	- General location of the Land subject to this Notice
Appendix 5:	- Solomon Firetail Central, West and Rail Loop map displaying s18 boundary and sites (the subject of this application), previously submitted s18 boundaries, tenements and <u>heritage-surveyed</u> areas
Appendix 6:	- Solomon Firetail Central, West and Rail Loop map displaying s18 boundary and sites (the subject of this application), tenements and <u>ethnographic-surveyed</u> areas
Appendix 7:	- Fortescue's Construction Environmental Management Plan approved by the Department of Environment and Conservation (DEC)
Appendix 8:	- WYAC certificate of registration from the Office of the Registrar of Indigenous Corporations
Appendix 9:	- Summary of the NNTT decision, as compiled by Fortescue's Native Title lawyer
Appendix 10:	- Presentation to ACMC on previous Section 18s
Appendix 11:	- Presentation on the CHMP development, discussed with WYAC on 8 June 2011
Appendix 12:	- Cultural Heritage Management Plan (CHMP) for Solomon Project
Appendix 13:	- Letter to YAC regarding comment / input on CHMP
Appendix 14:	- Example correspondence to YAC requesting survey participation & consultation on heritage matters.
Appendix 15:	- Recent response letter from YAC refusing to engage with FMG
Appendix 16:	- 13 September 2011 presentation to WYAC on Section 18 application
Appendix 17:	- Letters to YAC and WYAC regarding notification to submit Section 18.
Appendix 18:	- Email to YAC following up on Section 18 notification letter
Appendix 19:	- Glendenning, W., July 2008 Archaeological Report
Appendix 20:	- Glendenning, W., March 2009 Archaeological Report
Appendix 21:	- Czerwinski, P., July 2009 Archaeological Report
Appendix 22:	- Tickle, R., July 2009 Archaeological Report
Appendix 23:	- Tickle, R., July 2010 Archaeological Report
Appendix 24:	- Singleton, S. & Tickle, R., July 2011 Archaeological Report
Appendix 25:	- Summary table of recording and reporting of sites on the Land
Appendix 26:	- Alpha Archaeology, Archaeology report
Appendix 27:	- Goode, B., August 2011 Ethnographic Report
Appendix 28:	- Gallagher, M., September 2011 Ethnographic Report
Appendix 29:	- WYAC letter of non-objection

11. Copyright

Copyright	<i>I licence the Department of Indigenous Affairs, the ACMC and their representatives to use the contents of the Notice and any attachments for any purpose, to reproduce, to modify and adapt the Notice or attachments (including converting them into different formats), and to communicate the Notice or attachments to the public (including via a public web site). I confirm that I have obtained all licences and consents necessary to grant this licence.</i>
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12. Declaration

I declare that I have completed all sections of the Notice and declare that I have read and understood the information submitted and the recommendations I put to the ACMC.

Name (Full name of applicant. Please print)	<i>MARK THOMAS COMPANY SECRETARY</i>		
Signature		Date	<i>7/10/2011</i>



“MW-122”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 16 pages is the annexure marked “**MW-122**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

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ATTENDEES

Hon Gavin Fielding, Chairperson
Mr Cliff Weeks, (Ex-Officio, Department of Indigenous Affairs)
Dr Ian Macleod, (Deputy Ex-Officio, WA Museum)
Mr Bill Bennell, Member
Ms Vanessa Kickett, Member
Ms Bev Byron, Member
Ms Vanessa Davies
Mr Michael Robinson, Deputy Specialist Anthropologist

APOLOGIES

Mr Ken McCrackan (Ex-Officio, Department of Regional Development and Lands)
Mr Alec Coles (Ex-Officio, Western Australian Museum)

DEPARTMENT OF INDIGENOUS AFFAIRS STAFF

Dr Kathryn Przywolnik, Registrar of Aboriginal Sites
Ms Andrea Barton, A/Executive Officer, ACMC
Ms Christine Bolton, A/Heritage Project Officer
Mr Ryan Crawford, Senior Heritage Officer (Items 3.1 and 3.2)
Ms Megan McCorry, Senior Heritage Officer (Item 3.8)
Mr Cesar Rodriguez, Senior Heritage Officer (Items 3.4, 3.5, 3.6 and 3.7)

OBSERVERS

Mr Aaron Rayner, A/Chief Heritage Officer
Mr John Avery, Aboriginal Cultural Heritage Consultant

OTHER

Mr Phillip Davies, Juluwarlu Aboriginal Corporation (item 3.1)
Ms Lisa Maher, Heritage Manager, Fortescue Metals Group (item 3.1)
Ms Roberta Molson, Heritage Approvals Superintendent, Fortescue Metals Group (item 3.1)
Ms Alexa Morcombe, Group Manager Land Access, Fortescue Metals Group (item 3.1)
Ms Deidre Willmott, Group Manager Strategy and Government Relations, Fortescue Metals Group (item 3.1)
Ms Chau Savas, Corser and Corser (item 3.1)

1. WELCOME AND APOLOGIES

The Chairman welcomed members and staff and declared the meeting open at 9.00 a.m.

2. ENDORSEMENT OF MINUTES OF PREVIOUS MEETING¹¹²⁰

RESOLUTION 2011/187

The Committee resolved that the minutes of the Thursday 29 September 2011 meeting of the Aboriginal Cultural Material Committee be confirmed as a true and accurate record of proceedings subject to the following amendments:

- Item number 2.2 to be changed to item 2.1 and resolution number to be changed accordingly.
- August resolutions 2.1.x to be changed to 2.2.x and corresponding resolution numbers to be changed accordingly.
- P9, second dot point: Should read "The Committee noted and ratified in part the recommendations...".
- P13, items 3.1, 3.2 and 3.3: "The Committee concurred with the professional advice and the recommendations of the Department..." should read as "... professional advice and in part the recommendation...".
- Resolution 2011/163: Remove the word 'also' from Conditions.
- Item 3.2.2: Second dot point to be removed.
- Resolution 2011/171: Requests and Advice should read "The Committee noted and requests that the Minister notes and commends the City...".
- Item 3.8: Declaration of interest should read "...joint shareholder of BHP and family members worked for a subsidiary of Rio Tinto in Africa".
- Item 3.9.2: Second dot point to be removed.
- Item 3.10: Declaration of interest should read "... will abstain from voting...".
- Item 3.11: No declarations of interest were raised for this matter.
- Resolution 2011/181: To read "The ACMC resolved to recommend the issue of a permit".
- Items 6.1 and 6.2: To read "Based on the information provided, the Committee resolved to defer the following site table".

CARRIED

3. NOTICES UNDER SECTION 18 OF THE ABORIGINAL HERITAGE ACT 1972

3.1 FMG Pilbara Pty Ltd on behalf of Mark Thomas, as an authorised representative of FMG Pilbara Pty Ltd (a wholly owned subsidiary of Fortescue Metals Group Ltd) - Construction of a mining area and associated infrastructure, including a tailings storage facility at Fortescue Metals Group's Firetail and King's Mining Areas (Solomon Hub) (11/0755)

Mr Michael Robinson, Specialist Anthropologist and Ms Bev Byron, Member, declared an interest. Following discussion, the Committee agreed that the nature of their interest did not preclude them from deliberation of this item.

Mr Phil Davies, representing the Yindjibarndi Aboriginal Corporation (YAC), made a presentation to the Committee outlining YAC's objection to the Notice submitted by the Fortescue Metals Group (FMG). A written submission from YAC was also circulated to Committee members for consideration.

Representatives from FMG made a brief presentation in support of the Notice, and a PowerPoint presentation was circulated to Committee members for consideration.

Ms Chau Savas, representing the Wurlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC), advised the Committee that WMYAC had been consulted with respect to the Notice and had no objection to it.

3.1.1 Site Assessment

The Committee concurred with the Departmental site assessment recommendations.

RESOLUTION 2011/188

The Committee resolved to recommend that the site assessments listed at **Appendix A** be confirmed and endorsed.

CARRIED

3.1.2 Section 18 Notice

The Committee considered the Notice and, following discussion, resolved to recommend to the Minister for Indigenous Affairs that consent be declined based on the inadequate investigation of sites DIA 30409 (YIN 10_082) and DIA 29610 (YIN 10-61).

RESOLUTION 2011/189 (Decline, Mining)

The Committee resolved to recommend to the Minister that consent be declined in relation to the Notice lodged by FMG Pilbara Pty Ltd ("the Landowner") to use the land described in Item 4 of the Notice as a portion of Tenement M47/1409, a portion of tenement M47/1413 and a portion of tenement M47/1431, as described on the Solomon Firetail and Trinity TSF Map Dwg No: SO_MP_HE_0095, by S. Hendricksen, dated 8 September 2011 in Appendix 5 of the Notice ("the Land"), for the purpose described in Item 6 of the Notice as construction of a mining area and associated infrastructure, including a Tailings storage facility (TSF) at Fortescue Metals Group's Firetail and King's Mining Areas (Solomon Hub) ("the Purpose") based on the insufficient archaeological investigation of DIA 30409 and DIA 29610.

CARRIED

ACTION

ACMC Heritage Project Officer to prepare briefing note to the Minister in accordance with Resolution 2011/189.

ACMC Executive Officer to ensure the Aboriginal Heritage Management System is updated with the relevant details for the resolutions for this section 18 application.

3.1.1 Site Assessments

Item No.	DIA #	Site Name	Site Type	Decision		
				s5	s39(2)	Access
Sites newly reported to be assessed by APMC:						
1	28953	YIN 09-56		a	c	Open
2	29608	YIN 10-19		a	c	Open
3	29610	YIN 10-61		a	c	Open
4	29612	YIN WH10		a	c	Open
5	29611	YIN 10-96		Insufficient information		Open
6	30145	Firetail Rockshelter 18		Insufficient Information.		Open
7	30411	YIN 10_078		a	c	Open
8	30410	YIN 10_090		a	c	Open
9	30409	YIN 10_082		a	c	Open
10	30408	YIN 10_080		a	c	Open
11	30407	YIN 10_079		a	c	Open
12	30406	YIN 10-074		a	c	Open
13	30405	YIN 10-063		a	c	Open
14	30404	YIN 09_028		a	c	Open
15	30402	YIN 08_029		a	c	Open
16	30401	YIN 08_027		a	c	Open
17	30399	YIN 10_118		a	c	Open
18	30398	YIN 10_102		a	c	Open
19	30397	YIN 10_100		a	c	Open

ACMC DECISION SHEET					File reference
Meeting	ACMC Ordinary	Date	13 October 2011	Venue	DIA Conference Rm
Item No	3.1.1	File	11/0755	Presenter	Ryan Crawford

Agenda Item Description

Notice under Section 18 of the AHA – FMG Pilbara Pty Ltd on behalf of Mark Thomas, as an authorised representative of FMG Pilbara Pty Ltd (a wholly owned subsidiary of Fortescue Metals Group Ltd) - Construction of a mining area and associated infrastructure, including a Tailings storage facility (TSF) at Fortescue Metals Group's Firetail and King's Mining Areas (Solomon Hub) - A portion of Tenement M47/1409, a portion of tenement M47/1413 and a portion of tenement M47/1431, approximately 70 kms north of Tom Price, as described on the Solomon Firetail and Trinity TSF Map Dwg No: SO_MP_HE_0095, by S. Hendricksen, dated 8 September 2011 in Appendix 5 of the Notice

Decision:

Resolution (2011/188)

Based on the information provided, the Committee resolved to recommend to the full ACMC that the following site table be confirmed and endorsed:

Item No.	DIA #	Site Name	Site Type	Decision		
				s5	s39(2)	Access
Sites newly reported to be assessed by ACMC:						
1	28953	YIN 09-56		a	c	Open
2	29608	YIN 10-19		a	c	Open
3	29610	YIN 10-61		a	c	Open
4	29612	YIN WH10		a	c	Open
5	29611	YIN 10-96		Insufficient information		Open
6	30145	Firetail Rockshelter 18		Insufficient Information.		Open
7	30411	YIN 10_078		a	c	Open
8	30410	YIN 10_090		a	c	Open
9	30409	YIN 10_082		a	c	Open
10	30408	YIN 10_080		a	c	Open
11	30407	YIN 10_079		a	c	Open
12	30406	YIN 10-074		a	c	Open
13	30405	YIN 10-063		a	c	Open
14	30404	YIN 09_028		a	c	Open
15	30402	YIN 08_029		a	c	Open
16	30401	YIN 08_027		a	c	Open
17	30399	YIN 10_118		a	c	Open
18	30398	YIN 10_102		a	c	Open
19	30397	YIN 10_100		a	c	Open

20	30396	YIN 10_097	a	c	Open
21	30395	YIN 10_092	a	c	Open
22	29607	YIN 09-08	a	c	Open
CARRIED:					
Signed	_____ (Chairman)		Date	___ / ___ / ___	

ACMC DECISION SHEET				File reference	
Meeting	ACMC Ordinary	Date	13 October 2011	Venue	DIA Conference Rm
Item No	3.1.2	File	11/0755	Presenter	Ryan Crawford
Agenda Item Description					
<p>Notice under Section 18 of the AHA – FMG Pilbara Pty Ltd on behalf of Mark Thomas, as an authorised representative of FMG Pilbara Pty Ltd (a wholly owned subsidiary of Fortescue Metals Group Ltd) - Construction of a mining area and associated infrastructure, including a Tailings storage facility (TSF) at Fortescue Metals Group's Firetail and King's Mining Areas (Solomon Hub) - A portion of Tenement M47/1409, a portion of tenement M47/1413 and a portion of tenement M47/1431, approximately 70 kms north of Tom Price, as described on the Solomon Firetail and Trinity TSF Map Dwg No: SO_MP_HE_0095, by S. Hendricksen, dated 8 September 2011 in Appendix 5 of the Notice</p>					
Decision: Decline, Mining					
Resolution (2011/189)					
<p>Resolved to recommend to the Minister that consent be declined in relation to the Notice lodged by FMG Pilbara Pty Ltd ("the Landowner") to use the land described in Item 4 of the Notice as a portion of Tenement M47/1409, a portion of tenement M47/1413 and a portion of tenement M47/1431, as described on the Solomon Firetail and Trinity TSF Map Dwg No: SO_MP_HE_0095, by S. Hendricksen, dated 8 September 2011 in Appendix 5 of the Notice ("the Land"), for the purpose described in Item 6 of the Notice as construction of a mining area and associated infrastructure, including a Tailings storage facility (TSF) at Fortescue Metals Group's Firetail and King's Mining Areas (Solomon Hub) ("the Purpose") based on the insufficient archaeological investigation of DIA 30409 and DIA 29610.</p>					
CARRIED:					
Signed	_____ (Chairman)			Date	___ / ___ / ___

Agenda Item 3.1.1

Site Assessment sections 5 & 39(2) Aboriginal Heritage Act

ACMC Meeting: 13 October 2011 **DIA File No:** 11/0755

Landowners: FMG Pilbara Pty Ltd

Applicant: Mark Thomas, as an authorised representative of FMG Pilbara Pty Ltd (a wholly owned subsidiary of Fortescue Metals Group Ltd).

Land: A portion of Tenement M47/1409, a portion of tenement M47/1413 and a portion of tenement M47/1431, approximately 70 kms north of Tom Price, as described on the Solomon Firetail and Trinity TSF Map Dwg No: SO_MP_HE_0095, by S. Hendricksen, dated 8 September 2011 in Appendix 5 of the Notice.

Purpose: Construction of a mining area and associated infrastructure, including a Tailings storage facility (TSF) at Fortescue Metals Group's Firetail and King's Mining Areas (Solomon Hub).

Reports:

1. Singleton, S., Tickle, R. And T. Moore 2011 Report of an Archaeological Survey to Avoidance Standard part of Firetail and Trinity Area. Veritas Archaeology and History Service: Muswellbrook, New South Wales. **DIA Accession No: 28932.**
2. Tickle, R. 2010 Report of a Survey to Site Avoidance Standard of Firetail, Survey Request YIN 34 Area: Priority Two. Veritas Archaeology and History Service: Muswellbrook, New South Wales. **DIA Accession No: 28933.**
3. Czerwinski, P. 2009 Aboriginal Heritage Survey Report, FMG Solomon (Firetail) Project, Pilbara, WA (YIN_023 & YIN_026). Australian Cultural Heritage Management: Hindmarsh, South Australia. **DIA Accession No: 28133.**
4. Glendenning, W. 2009 Report of an Archaeological Survey of a Mineral Exploration Project within Block 1, Firetail North Project Area, Hammersley Range. Western Heritage Research Pty Ltd: Victoria Park, Western Australia. **DIA Accession No: 28132.**
5. Yit, R. 2011 Report on Re-recording of Aboriginal Heritage Sites within the Firetail and Tailings Projects, Solomon Mining and Infrastructure Area, Western Australia. Alpha Archaeology Pty Ltd: Kensington, Victoria. **DIA Accession No: 28894.**
6. Goode, B. 2011 A Report of an Ethnographic Aboriginal Heritage Survey of the Solomon Project in the Eastern Pilbara Region of Western Australia. Brad Goode and Associates: Dunsborough, Western Australia. **DIA Accession No.: 28895.**
7. Wright, N. And S. Rapley 2011 Preliminary advice of an Inspection of 23 previously recorded Indigenous archaeological sites at Fortescue Metals Group's Firetail Resource within the Solomon project. Archae-aus: Hilton, Western Australia. **DIA Accession No.: TBA.**

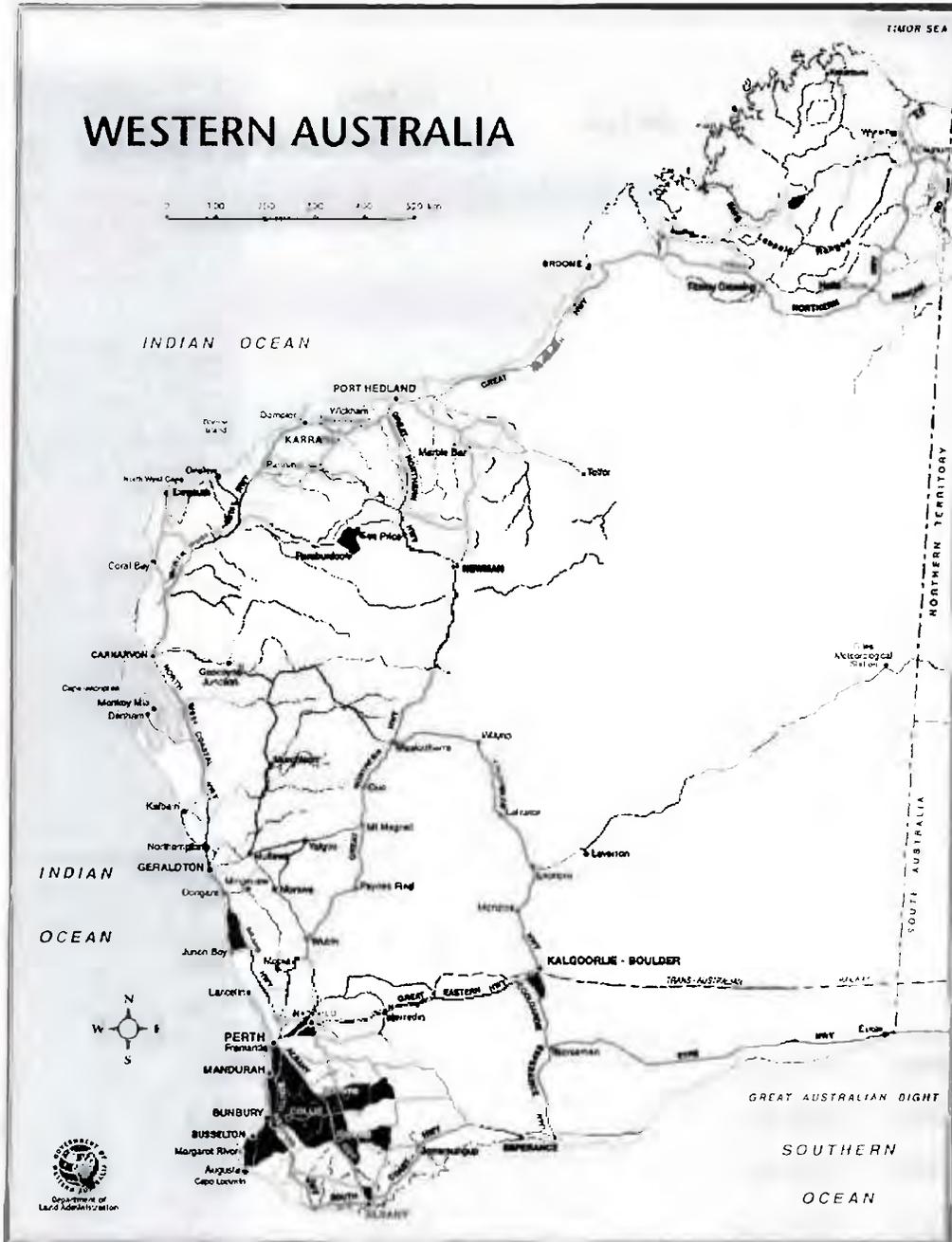
Attachments:

1. Stop the Clock Letter from the Registrar of Aboriginal Sites to Mr Grant Preller Dated 2 September 2011.

2. Letter of Response to Attachment 1 from Ms Roberta Molson to the Registrar, dated 9 September 2011.
3. Letter of Objection to the Registrar from Mr Michael Woodley, CEO Yindjibarndi Aboriginal Corporation, dated 18 September 2011.
4. Letter from Ms Roberta Molson to the Registrar, dated 21 September 2011, regarding the status of DIA 29611 and DIA 30145.

Native Title Claims:

		CLAIM NAME	STATUS	BODY CORPORATE
1	WC03/003	YINDJIBARNDI #1	REGISTERED	YINDJIBARNDI ABORIGINAL CORPORATION



Site Assessments:

Item No.	DIA #	Site Name	Site Type	For Noting			For Decision		
				s5	s39(2)	Access	s5	s39(2)	Access
Sites to be reassessed by APMC:									
1		nil							
Sites newly reported to be assessed by APMC:									
1	28953	YIN 09-56					a	c	
2	29608	YIN 10-19					a	c	
3	29610	YIN 10-61					a	c	
4	29612	YIN WH10					a	c	
5	29611	YIN 10-96					Insuff.		
6	30145	Firetail Rockshelter 18					Insuff.		
7	30411	YIN 10_078					a	c	
8	30410	YIN 10_090					a	c	
9	30409	YIN 10_082					a	c	
10	30408	YIN 10_080					a	c	
11	30407	YIN 10_079					a	c	
12	30406	YIN 10-074					a	c	
13	30405	YIN 10-063					a	c	
14	30404	YIN 09_028					a	c	
15	30402	YIN 08_029					a	c	
16	30401	YIN 08_027					a	c	
17	30399	YIN 10_118					a	c	
18	30398	YIN 10_102					a	c	
19	30397	YIN 10_100					a	c	
20	30396	YIN 10_097					a	c	
21	30395	YIN 10_092					a	c	
22	29607	YIN 09-08					a	c	

Agenda Item 3.1.2

Assessment for a section 18 Notice *Aboriginal Heritage Act*

Category	Assessment by: Ryan Crawford Telephone: 9235 8117	Page Ref
Ownership	Ownership demonstrated (title), signed by owner, Minister or delegated authority	
	<i>DIA is satisfied that land ownership has been verified.</i>	Notice
Consultation	Site informants included, native title claimants, knowledgeable persons, and sample adequacy. Sufficient time, information and inspection to make decision Support or objection, issues and concerns noted in HSR.	
	<p><i>The land subject of the Notice falls entirely within the Yindjibarndi #1 Native Title Claim area. In July 2007 FMG negotiated a heritage agreement with the Yindjibarndi Native Title Claimants for exploration activities in Yindjibarndi Country. In November 2007 FMG was informed by YAC that the Yindjibarndi People would not participate in heritage surveys until a Land Access Agreement (LAA) was signed. The subsequent failure by YAC and FMG to reach an agreement has impacted on the process for section 18 consultation in this area.</i></p> <p><i>In February 2008 FMG advised YAC that heritage surveys without Yindjibarndi involvement would be conducted if participation was predicated on the signing of a LAA. A number of heritage surveys were subsequently conducted without representatives of YAC.</i></p> <p><i>In mid 2010 FMG initiated consultation with representatives of the Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC), which includes three of the seven Yindjibarndi #1 Native Title claimants. Since this time FMG have conducted a number of heritage surveys with Wirlu-Murra representatives, including ethnographic and archaeological surveys across the Land.</i></p> <p><i>During ethnographic consultation Goode reported that WMYAC representatives participating in the ethnographic surveys consistently stated that their history of dispossession has limited the group's ability to 'Know the Country'. Goode also reported that FMG should consider the following mitigation strategies if consent from the Minister is provided to the Applicant:</i></p> <ul style="list-style-type: none"> <i>• All artefact sites of low significance should be salvaged and the artefacts either stored or relocated.</i> <i>• All artefacts sites of merit should be further examined by archaeologists acting under section 16 permits and assisted by Yindjibarndi who consider this type of scientific enquiry of assistance to the understanding of their prehistoric society, occupation and landscape use.</i> <i>• All identified walled niches should be examined further bny male archaeologists and male Yindjibarndi, to determine if ritual objects or skeletal remains exist in these places.</i> <p><i>YAC representatives have only participated in Archaeological Surveys of a number of exploration drill lines across the Land. YAC have provided a</i></p>	<p style="text-align: center;"><i>Notice: 6.</i></p> <p style="text-align: center;"><i>Report 6: 4.</i></p> <p style="text-align: center;"><i>Notice: 10.</i></p>

strong objection to the section 18 Application and consider that the cultural heritage values have not been adequately represented and are grossly underestimated by the Applicant. YAC considers that the archaeological and ethnographic surveys of the Land have been rushed and that the Applicant has not consulted with the principle knowledge holders of the area, the Yindjibarndi people represented by YAC. It is YAC's preference that it be provided sufficient time to conduct its own independent heritage surveys of the Land prior to the Minister making a decision.

**Report 3.
Attach. 3.**

Archaeological surveys have identified 20 sites on the Land and 2 places that may be a site under the AHA. Ethnographic surveys did not identify any ethnographic sites located on the Land.

**Notice: 12.
Report 6.**

**Sites on the
Land**

eg DIA 23567 (Telfer Archaic)

Heritage surveys have identified a total of 20 places on the Land that have been assessed as sites under the Aboriginal Heritage Act 1972 (AHA). Two other places have had an insufficient amount of information reported to date for a determination to occur.

**Register
Report 5**

There are a variety of different site types present on the Land. Six of the sites are recorded as moderately sized low density artefact scatters; 1 site is recorded as a small sized high density artefact scatter; 1 site is recorded as a rockshelter; 5 sites are recorded as a rockshelter with walled niche; 3 sites are recorded as a rockshelter with stone arrangement; 3 sites are recorded as an artefact scatter associated with a rockshelter and 1 site is recorded as a rockshelter with a walled niche and an associated artefact scatter. All of these places have been determined to be sites under sections 5(a) and 39(2)(c) of the AHA.

Table 1

Although the archaeologists have reported that sites on the Land do not contain datable cultural deposits, two sites: DIA 29610 and DIA 30409 were probed to have floor deposits of 19 cm and 17 cm respectively. DIA considers that these two sites may contain subsurface cultural deposits and should be investigated further through excavation pursuant to section 16 of the AHA.

**Report 5: 82,
85, 121, 125.**

Two other places, DIA 29611 and DIA 30145, are identified as rockshelters on the Land. The Applicant has indicated that the two sites are the same place and aerial photography supports this suggestion. However DIA has had insufficient information provided on these places to date to allow for a site determination to occur. DIA 30145 was identified by YAC representatives in June who had conducted a brief heritage survey to meet a request of the ACMC to provide further information on sites on the Land for a separate section 18 Notice regarding the Firetail Priority Mining Area. Only a point location of this place was provided by YAC.

Report 7: 9.

DIA 29611 was originally identified by Veritas during a heritage survey with WMYAC representatives. Veritas identified a millstone within the rockshelter which was later determined by Archae-aus as not being culturally modified. Based on Archae-aus' preliminary advice, the Applicant considered that the place was not a site and had therefore not included it in the Notice as a site on the Land. The Applicant has stated that the rockshelter(s) will not be impacted by the Purpose until such times as sufficient information has been provided by Fortescue to the DIA enabling the DIA Heritage Information Team to update the register to remove this site as a heritage place on the Land.

Attach. 4.

<p><i>The heritage impacts to DIA 30409 and DIA 29610 are unclear as further investigative work is required to allow for thorough consideration of their importance and significance</i></p> <p><i>The Purpose will have a significant impact on the cultural landscape of the area and also on the information potential on past localised Aboriginal occupation, subsistence practices and socio-economic strategies. During ethnographic consultation the Wirlu Murra Yindjibarndi representatives considered the archaeological sites visited to have low cultural significance.</i></p> <p><i>Although artefact scatters and rockshelters with walled niches and stone arrangements are reported as being common in the area, little information has currently been provided regarding the nature and significance of the large number of other identified Aboriginal sites recorded between 2007 and 2010 which surround the Land. This lack of information means it is difficult to contextualise the nature and significance of the place and place features within the surrounding cultural landscape.</i></p> <p><i>The impacts to sites on the Land identified in the Notice could be mitigated if cultural material at each site is salvaged and residue/usewear analysis is conducted on grinding material and artefacts exhibiting retouch.</i></p>	<p>Report 6: 45-46.</p>
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Will the Purpose breach the Act if the Minister does not grant consent

<p>Consequences for State, Heritage and Proponent</p> <p><i>Yes, Aboriginal heritage sites will be disturbed in such a way that would constitute a breach of the AHA if the Minister does not grant consent.</i></p>	
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Reasons for Ministerial consent or decline

<p>Benefits to the State, heritage or Proponent</p> <p><i>It is recommended that the ACMC defer making a recommendation to the Minister in relation to the Notice as:</i></p> <ul style="list-style-type: none"> <i>YAC has asserted that the Applicant has grossly underestimated the cultural heritage values present on the Land and have not adequately represented these values within the Notice. The majority of heritage surveys across the Land have not involved the participation of YAC representatives. YAC has raised a preference that it be provided time prior to the Minister making a decision on the Application to conduct its own independent heritage surveys of the Land in order to clarify the status of cultural heritage values on the Land.</i> <i>Given that WMYAC representatives consistently indicated during ethnographic consultation that a history of dispossession has limited the group's ability to 'Know the Country', there is a question as to whether all sites on the Land have been sufficiently identified and documented.</i> <i>Further archaeological investigation is required at two sites on the</i> 	<p>Attach. 3.</p>
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Land, DIA 30409 and DIA 29610.

- *The conduct of heritage surveys by YAC, archaeological excavations at DIA 30409 and DIA 29610 and the prompt reporting of results to accompany this Notice would enable the ACMC to be confident that all Indigenous heritage values on the Land have been identified and sufficiently documented.*

If consent, what conditions should be applied, removed or amended

Is monitoring, salvage or a management plan required? Conditions should be doable, heritage related and enforceable

That the Applicant (on behalf of the Landowner).

1. *Preserve and protect in situ DIA 30409 and DIA 29610.*
2. *Conduct archaeological excavations of DIA 30409 and DIA 29610 pursuant to an application under section 16 of the Aboriginal Heritage Act (1972) ("the AHA") in order to characterise the nature of subsurface deposits within each rockshelter floor.*
3. *Preserve and protect in situ DIA 29611 and DIA 30145 until the Aboriginal Cultural Materials Committee has made a determination on the status of these places as sites under the AHA.*
4. *Prior to conducting the Purpose engage appropriately qualified archaeologists to work cooperatively with the Aboriginal people identified in the Notice ("the Consultants") to undertake, using methods that are to the satisfaction of the Registrar, the following:*
 - a) *Archaeological salvage of artefact assemblages located within sites on the Land and the thorough recording and archiving of each collected artefact assemblage, including a record of the intra-site spatial distributions of collected cultural materials.*
 - b) *Detailed usewear and residue analysis, where deemed appropriate by qualified archaeologists, of all salvaged retouched artefacts and grinding material.*
5. *Relocate all collected materials to a safe keeping place satisfactory to the Consultants and report to the Registrar on the location and condition of the collected materials.*

Applicant has agreed to all recommendations from the heritage consultants relating to site management and salvage procedures.

6. *Provide all reports resulting from Conditions 2 and 4 to the Registrar on completion of the salvage and analysis.*
7. *Prior to conducting the Purpose engage in consultation with representatives of the Yindjibarndi Aboriginal Corporation (YAC) and the Wiru-Murra Yindjibarndi Aboriginal Corporation to a level that is to the satisfaction of the Registrar, in order to clarify the status of Aboriginal sites and associated values on the Land.*

As well as the above conditions it is recommended that conditions 1 to 5 from the Schedule of Standard Conditions in Attachment 1 are to apply for this resolution.

Requests and Advice

Standard Requests and Advice in Attachment 2 are to apply to this resolution.

End of Assessment

**Proposed
Recommendation**

Resolved to recommend that the APMC defer making a recommendation to the Minister in relation to the Notice lodged by FMG Pilbara Pty Ltd ("the Landowner") to use the land described in Item 4 of the Notice as a portion of Tenement M47/1409, a portion of tenement M47/1413 and a portion of tenement M47/1431, as described on the Solomon Firetail and Trinity TSF Map Dwg No: SO_MP_HE_0095, by S. Hendricksen, dated 8 September 2011 in Appendix 5 of the Notice ("the Land"), for the purpose described in Item 6 of the Notice as construction of a mining area and associated infrastructure, including a Tailings storage facility (TSF) at Fortescue Metals Group's Firetail and King's Mining Areas (Solomon Hub) ("the Purpose").

“MW-123”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-123”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



Wirlu-murra Yindjibarndi Aboriginal Corporation

Media Release

18 October, 2011

Wirlu-murra leaders object to exploitation of Solomon issue

Traditional owners of the Solomon Hub mining region where skeletal remains were discovered in June this year have objected to the exploitation of the issue by Yindjibarndi Aboriginal Corporation CEO Michael Woodley, and to media coverage in the Saturday Age and Sydney Morning Herald.

Spokesman for Wirlu-murra Yindjibarndi Aboriginal Corporation people, Mr Vince Adams, said today that publication of pictures of bones from the skeleton had given great offence to Aboriginal communities in the Pilbara region.

He said the report had relied on statements attributed to Michael Woodley, who did not speak for the Solomon Hub country.

“Michael Woodley’s country is well to the north of that land – and he has no right to speak for the Yindjibarndi people on the issue,” he said

“Senior law men with responsibility for the area have surveyed the sites and recommended appropriate action to protect it. The sites have not been disturbed. There is now a buffer zone around the sites and access is restricted to people with permission from Yindjibarndi elders.”

“The only interference to one of the sites was by Michael Woodley when he moved bones to make a film of a visit by women and children to the site. This was a serious breach of Yindjibarndi law.”

“Mr Woodley is reported as saying that there were 250 sites which are important for religious ceremonies in the area is not correct. Yindjibarndi people have not conducted ceremonies in the area for several generations.”

“In claiming to speak for the Solomon Hub country, he is ignoring the position and responsibilities of Yindjibarndi elders.”

Mr Adams said the Wirlu-murra Yindjibarndi Aboriginal Corporation represented a majority of Yindjibarndi people and objected to the disrespect shown to Yindjibarndi culture by Michael Woodley and by newspapers and reporters who print this material without seeking the views of the majority.

For more information contact Vince Adams or Michael Gallagher on 0408881799

“MW-124”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 24 pages is the annexure marked **“MW-124”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

25/10/11
For Member Jordan
The State Administrative Tribunal
Fax Number: 08 93255099

FAXED

25/10/11
4:27 pm

CC: Mr Ken Green CC: Mr Trevor Creewel
Green Legal Senior Assistant State Solicitor
Lawyers Land Claims
Fax Number: 08 9414 1851 State Solicitor's Office
Fax Number: 08 9481 7169

THIS FAX CONTAINS ONE PAGE

**Re: Application to be joined as a Party to the DR 271/2011 Proceeding -
FMG Pilbara Pty Ltd -v- Minister for Indigenous Affairs**

I refer to the submissions of YAC dated 24 October 2011, which, with the permission of SAT were filed by way of email and fax on 25 October 2011. In particular I refer to paragraph 12 of those submissions.

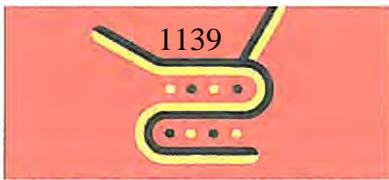
YAC relies on those submissions, and the documents attached to those submissions for the purposes of this application, under s 38 of the *State Administrative Tribunal Act 2004* to be joined as a party to the application, made by FMG Pilbara Pty Ltd (FMG), on 5 August 2011, to the State Administrative Tribunal, for a review under s 18(5) of the *Aboriginal Heritage Act 1972* (AHA) of a decision, made on 30 June 2011, by the Minister for Indigenous Affairs, in respect of a Notice given to the Minister by FMG under s 18(2) of the AHA.

Please be advised that the submission was faxed to your office, Mr Green's office, and the State Solicitor's office, this afternoon without the attachments. This letter, the Yindjibarndi Aboriginal Corporation's submission, and the attachments for the submission, will be mailed to the parties from Roebourne tomorrow.

I would be grateful if the Tribunal could advise of any arrangements for the hearing of YAC's joinder application.

Yours sincerely

Mr Michael Woodley
Chief Executive Officer
Yindjibarndi Aboriginal Corporation
08 91821497 Phone
0419 097130 Mobile
08 91821035 Fax
mwoodley@juluwarlu.com.au
www.yindjibarndi.org.au



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

25/10/11
Mr Ken Green
Green Legal
Lawyers
Fax Number: 08 9414 1851

Mr Trevor Creewel
Senior Assistant State Solicitor
Land Claims
State Solicitor's Office
Fax Number: 08 9481 7169

FAXED
TO GREEN LEGAL
+
STATE SOLICITOR'S OFFICE
25/10/11
4PM
[Signature]

THIS FAX CONTAINS 23 PAGES

RE: Matter Number: DR 271 of 2011
Submissions of Invitee - Yindjibarndi Aboriginal Corporation
Filed Pursuant to the orders made by Member Jordan on 6 October 2011

Dear Mr Green and Mr Creewel,

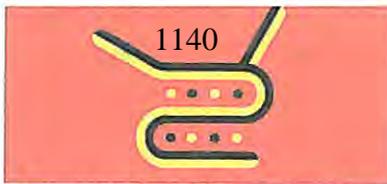
Please find the faxed Yindjibarndi Aboriginal Corporation submission for the State Administrative Tribunal, which includes a cover letter for Member Jordan.

Yours sincerely

[Signature]
Philip Davies
Administration/Anthropologist
Juluwarlu Group Aboriginal Corporation
For and on behalf of the Yindjibarndi Aboriginal Corporation
08 91821497 Phone
0429 110451 Mobile (Phil)
0419 097130 Mobile (Michael)
08 91821035 Fax
pdavies@juluwarlu.com.au
www.juluwarlu.pilbara.net
www.yindjibarndi.org.au

On behalf of the Chairperson, Directors, members and employees of the Juluwarlu Group Aboriginal Corporation

The Juluwarlu Vision - 'To enable Ngarda to sustain a cultural life in contemporary society



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

25/10/11
To Whom it Concerns
The State Administrative Tribunal
Fax Number: 08 93255099

FAXED
TO STATE ADMINISTRATIVE
TRIBUNAL AT
3:44 pm ON 25/10/11

THIS FAX CONTAINS 22 PAGES

**RE: Matter Number: DR 271 of 2011
Submissions of Invitee - Yindjibarndi Aboriginal Corporation
Filed Pursuant to the orders made by Member Jordan on 6 October 2011**

Dear Member Jordan,

I am writing to you on behalf of Mr George Irving, Counsel for the Yindjibarndi Aboriginal Corporation (YAC). The YAC prepared submissions to be tendered to the State Administrative Tribunal in the matter above which, by your orders made on 6 October 2011, were to be filed yesterday. Mr Irving had prepared the submission for filing, and after liaising with your office, tried to fax and email the submission to the SAT at approximately 4.45pm. The submission was not transmitted however, because Mr Irving's fax did not work and the email was not accepted by the SAT computer (apparently SAT does not accept email attachments).

Mr Irving has alerted Mr Ken Green (FMG) and Mr T Creewel (State Solicitors Office) to this effect.

Please find the faxed submission attached to this letter.

Yours sincerely

Philip Davies
Administration/Anthropologist
Juluwarlu Group Aboriginal Corporation
For and on behalf of the Yindjibarndi Aboriginal Corporation
08 91821497 Phone
0429 110451 Mobile (Phil)
0419 097130 Mobile (Michael)
08 91821035 Fax
pdavies@juluwarlu.com.au
www.juluwarlu.pilbara.net
www.yindjibarndi.org.au

On behalf of the Chairperson, Directors, members and employees of the Juluwarlu Group Aboriginal Corporation

The Juluwarlu Vision - 'To enable Ngarda to sustain a cultural life in contemporary society

**IN THE STATE ADMINISTRATIVE TRIBUNAL
WESTERN AUSTRALIA
DEVELOPMENT & RESOURCES STREAM**

DR 271 of 2011

IN THE MATTER of:
An Application to vary and delete
conditions attached to ministerial given
consent under section 18 of the
Aboriginal Heritage Act 1972

BETWEEN

**FMG PILBARA PTY LTD
(ACN 106 943 828)**

Applicant

AND

**MINISTER FOR HEALTH &
INDIGENOUS AFFAIRS**

Respondent

**Matter Number: DR 271 of 2011
Application Lodged: 5 August 2011**

SUBMISSIONS OF INVITEE

- YINJIBARNDI ABORIGINAL CORPORATION RNTBC -

CONCERNING MINISTER'S RECONSIDERATION OF S 18 DECISION

Filed pursuant to the Orders made by Member Jordan on 6 October 2011

Date of Document: 24 October 2011

Filed on behalf of: The Invitee

Filed by:
George M Irving

20 Woolloomooloo Road
Greenmount
Western Australia 6056

Telephone: (08) 9255 2891
Facsimile: (08) 9255 2892
Reference: SAT DR 271/2011

1. FMG's Section 18 Notice

1.1 On 18 February 2011, FMG Pilbara Pty Ltd (ACN 106 943 828) ("FMG") gave notice under s 18(2) of the *Aboriginal Heritage Act* 1972 (the "AHA") ("Notice") to the Aboriginal Cultural Materials Committee, established under s 28 of the AHA ("Committee"), advising that FMG requires to use land, which is the subject of a mining lease, M47/1413, held by FMG (the Land), for a purpose (namely, the construction and operation of a mining area and associated infrastructure known as the "Firetail Priority Mining Area" ("Purpose") which, without the Minister's consent, under s 18(3) of the AHA, would be likely to result in an offence, under s 17 of the AHA, in respect of seven Aboriginal sites that have been identified on the Land.

1.2 FMG's Notice was accompanied by a heritage report from FMG's consultant archaeologist, Rob Tickle, (Veritas: Archaeology and History Service '*Report of an Archaeological Assessment of 10 Aboriginal sites located within the proposed Firetail Priority Mine and Infrastructure Area*', Final Report, December 2010) (the "Final Tickle Report"). This was the primary heritage report submitted by FMG in support of its Notice; however five pages of it (4.21 - 4.25) were devoted to a critical analysis of the methodology used to assess the ethnographic heritage values of the Land. Tickle described the ethnographic work, undertaken by anthropologist David Raftery as: "*sketchy, lacking in specificity and far from comprehensive*"; and, he observed, it appeared "*not all Yindjibarndi people who were authorised to speak for country were consulted or present at the surveys...*" (Final Tickle Report at p 4.22).

1.3 By letter dated 4 March 2011, which is attached as **Annexure A**, the Registrar of Aboriginal Sites advised FMG that the Notice, of 18 February 2011, was deficient in a number of respects, including:

- a. only representatives from the Wirlu-Murra Yindjibarndi Aboriginal Corporation (WYAC) group had been consulted and it was "*unclear whether the survey participants hold the requisite heritage knowledge to sufficiently identify all Aboriginal sites on the Land*" (see: Annexure A at 3-4);

- b. an ethnographic report by David Raftery, indicated that two women were deferred to, as the most senior members of the participants in an ethnographic survey (Annexure A at 4); and this was a cause for concern given -
- i. the observation made in the Final Tickle Report, based on his work with WYAC representatives, that “there was a general acknowledgement about the lack of knowledge, particularly by the women, of traditional life in the Firetail area despite there being a substantial body of archaeological evidence of occupation” (Annexure A at 4);
 - ii. evidence included in FMG Notice, which stated that “*In Yindjibarndi Law women do not carry Law about country - women do not speak for country. In Yindjibarndi Law women cannot make decisions about Yindjibarndi country*” (ibid); and,
 - iii. correspondence from Yindjibarndi Aboriginal Corporation (YAC) indicated that WYAC representatives “*may not possess the knowledge required to identify all sites on the Land*”

1.4 The Registrar advise to FMG (Annexure A at 4) was that:

“In light of these concerns you may wish to delay consideration of the Notice and continue consultation with YAC and JAC, including Ethnographic surveys across the Land with YAC representatives to enable the ACMC to be confident that all heritage values associated with places on the Land have been identified, documented and included within the Notice.”

1.5 FMG’s response to the Registrar’s letter was to withdraw its Notice, dated 18 February 2011, and to lodge a new Notice, dated 17 March 2011. The new notice was accompanied by an edited version of the “Final Tickle Report”, this time dated March 2011 (the “Tickle’s Second Final Report”). Omitted from the Tickle’s Second Final Report was all the previous criticism made by Tickle of the methodology used by David Raftery. FMG explained this omission, in a letter to the Registrar dated 15 March 2011, which is attached as **Annexure B**:

“Fortescue make it a policy not to interfere or dictate outcomes of reports prepared by consultants, however in this instance Fortescue can confirm that as Mr Tickle does not have any ethnographic training, he has been requested to remove these ethnographic assessments from the report as they easily mislead the reader to

believe only minimal consultation and ethnographic assessment was undertaken for the purpose of these Notices.

Fortescue is confident that the ethnographic significance of all areas has been adequately addressed and that no sites of significance have been identified on the Land due to the fact that there is no verified knowledge of any sites with ethnographic significance in this specific valley” (Annexure B, at 3).

- 1.6 However, in Tickle’s Second Final Report, under the heading, “*Omission of Research Material from Review*”, the author still insisted:

“One notable lack of resource material is an in-depth professional ethnographic study for the Firetail and larger Solomon area. This area could have provided a last refuge for Aboriginal people in the Pilbara and thus warrants further anthropological enquiry. Preliminary indications as to the use of the area as a last refuge can be gleaned from the written accounts of pastoralist WP Robinson’s who took up the Mt Florence pastoral station in the 1880s. ... This primary resource material shows that until comparatively recently some Aboriginal people were still living traditional lives in the area of the Solomon project” (at p 2.20, emphasis added).

And, concluded (at p 2.23):

The FMGL Solomon exploration area appears to have been unallocated Crown [land] situated between three pastoral stations since European occupation of the Pilbara [and] may have provided refuge and sanctuary to Aboriginal groups; a place where they could congregate, conduct activities and continued cultural practice in relative safety and independently of the white man”

...

The Firetail/Solomon area may also have played a role in the creation of new pathways between areas of land when traditional travel groups became blocked and fragmented i.e. the provision of safe passage around hostile land connecting one part of country to another. It is likely that ethnographic stories could be associated with such use these stories may be held within living memory of community members. A comprehensive ethnographic heritage assessment may produce evidence that would enable a better understanding of the archaeological material in the Firetail and larger Solomon area (emphasis added).

2 The Land in FMG's Section 18 Notice

- 2.1 The Land in FMG's Notice is the subject of a Native Title Determination Application filed on behalf of the Yindjibarndi People, in the Federal Court of Australia (Federal Court reference No: WAD 6005/03) on 23 July 2003 (the "Yindjibarndi #1 Claim"). The Yindjibarndi #1 Claim covers land and waters in the southern portion of the traditional country of the Yindjibarndi People (the "Yindjibarndi #1 Claim Area"); which adjoins the northern portion of Yindjibarndi country (the "Yindjibarndi Native Title Determination Area") the subject of the 2005 Yindjibarndi Native Title Determination made by Nicholson J in the Federal Court of Australia (in *Daniel v Western Australia* [2005] FCA 536, per) and upheld, by the Full Court of the Federal Court (in *Moses v State of Western Australia* [2007] FCAFC 78).
- 2.2 As the holder of mining lease M47/1413, FMG is, pursuant to s 18(1) of the AHA, deemed to be the "owner" of the Land; notwithstanding, that the Land is, and has always been, unallocated Crown land where, as acknowledged in a recent decision of the Full Court of the Federal Court (in *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011] FCAFC 100 at [31]), the Yindjibarndi People have "*exercised their native title rights and interests without interference by the activities of others in the past or the present*".
- 2.3 Between October 2003 and February 2006, FMG applied for a number of exploration licences in the Yindjibarndi #1 Claim Area; and, in late 2007, FMG applied for the grant of mining lease M47/1413. FMG commenced negotiations with YAC, on behalf of the Yindjibarndi People; with a view to obtaining the consent of the Yindjibarndi People as to the grant of M47/1413, in the context of a broad project to be known as the "Solomon Hub", which required what FMG called a "Whole of Claim Land Access Agreement".
- 2.4 These negotiations broke down in late 2008; and, in December 2008, FMG applied to the National Native Title Tribunal (the "NNTT"), under s 35 of the *Native Title Act* 2003 (Cth) (the "NTA"), for a determination, under s 38 of the NTA, allowing the State of Western Australia to grant M47/1413 to FMG.

3 Findings of the NNTT regarding significant sites in the Land

- 3.1 As relevant to the present proceedings, the uncontested evidence given to the NNTT on behalf of the Yindjibarndi People, which was fully accepted by the NNTT (in *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia*, [2009] NNTTA 91 (13 August 2009) per Member O’Dea at [39]), demonstrated that within the land and waters covered by M47/1413 there exists:
- a. ochre quarries, where Yindjibarndi Lawmen obtain ochre for use in ceremonies (ibid at [50] and [74])
 - b. an area where senior Yindjibarndi Lawmen collect sacred stones, called “*gandi*”, for use initiation ceremonies (ibid at [50] and [71] and [74]);
 - c. numerous caves - some of which contain the physical remains of Yindjibarndi old people, some of which contain their sacred gear, which they used in ceremonies; and others contain various relics, demonstrating use as shelters for Yindjibarndi people over thousands of years (ibid at [71]).
- 3.2 The NNTT held (ibid at [72]) that “*the numerous caves*” constituted “*sites of particular significance*”, within the meaning of the AHA; as did “*the areas where the ochre quarries and Gandi are located*” (ibid at [74]).
- 3.3 The NNTT was “*not prepared... to make specific conditions in relation to sites* because they were “*not precisely located*” (ibid at [80]). However the NNTT made the following observations:

“In summary, the AHA provides for the protection and preservation of a wide range of Aboriginal sites (s 5) and objects (s 6). It is an offence to excavate, destroy, damage, conceal, or in any way alter any Aboriginal site (whether on the Register or not) (s 17) without authorisation (s 18), and that offence is punishable by fine, imprisonment, or both” (ibid at [76]).

“It is a defence to a prosecution under the AHA if the person charged can prove that he or she did not know, and could not reasonably be expected to have known, that the place was a site covered by it (s 62). Obviously, this defence would not be available to [FMG]. Whilst the Register of Sites kept under the AHA does not identify any sites on or in the vicinity of the proposed lease, [FMG] submitted three archaeological site survey reports commissioned by them (GP57, 59 and 60) and a map of the proposed lease (GP61) which locates the 13

rockshelter sites identified by the reports within the proposed lease. Furthermore, the first affidavit of Michael Woodley identifies a further site or sites within the proposed lease – notably the area containing the Gandi or sacred stones which are central to the native title party's ceremonial obligations and are utilised by the native title party each year (ibid at [77]).

3.4 The NNTT made a determination allowing the grant of the M47/1413, upon conditions to the following effect; namely:

- i. Any right of the Yindjibarndi People to access or use the land the subject of the mining lease is not to be restricted except in relation to those parts of the land which are used for exploration or mining operations or for safety or security reasons relating to those activities.
- ii. If FMG gives a notice to the Aboriginal Cultural Material Committee under section 18 of the *Aboriginal Heritage Act 1972* (WA) it shall at the same time serve a copy of that notice, together with copies of all documents submitted by FMG to the Aboriginal Cultural Material Committee in support of the application (exclusive of sensitive commercial and cultural data), on YAC.
- iii. Where FMG submits to the State Mining Engineer a proposal to undertake developmental/productive mining or construction activity, FMG must give to YAC a copy of the proposal, excluding sensitive commercial data, and a plan showing the location of the proposed mining operations and related infrastructure, including proposed access routes.
- iv. Upon assignment of the mining lease the assignee shall be bound by the conditions.

3.5 In making its determination, the NNTT said:

“I accept that [FMG] fully understand their obligations under the AHA and has complied with them to date. I am satisfied they will continue to do so and take whatever action is necessary to avoid interference with sites of particular significance to the [Yindjibarndi People] in accordance with their traditions” (ibid at [78])

3.6 The determination of the NNTT was the subject of appeals to both the Federal Court and the Full Court of the Federal Court. In short, the appellant argued that the grant of the mining lease, and the activities permitted under it would prevent the Yindjibarndi from exercising their rights, under s 116 of the Commonwealth Constitution and under Article 27 of the International

Covenant on Civil and Political Rights, to freely carry out religious observances associated with sites of significance within M47/1413.

4 Observations of Full Court concerning Religious Practices on the Land

4.1 The Full Court of the Federal Court (in *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011] FCAFC 100) noted (at [86]) that:

“The appellants’ case was considered by the Tribunal and the primary judge on the basis that the appellants’ use of ochre and gandi are religious practices. This approach has not been contested by the State or FMG. Further, if the ochre and gandi sites are dug up in the process of mining iron ore, the appellants will be prevented from continuing to access the ochre and gandi.”

4.2 However, the Full Court, like the primary judge held (at [86]) that the Tribunal’s determinations, to allow the mining leases to be granted, would not prevent the Yindjibarndi continuing their religious practices because:

“The future act determinations by the Tribunal were one step. But they alone will not prevent the appellants continuing their religious practices. FMG will only have authority to mine if the State exercises its power under the Mining Act to grant the mining leases. Western Australian State law also provides for yet a further step, namely, an application under the AHA for authority to excavate or disturb an aboriginal site. Only if FMG obtains authority to interfere with the ochre and gandi sites would the appellants be prevented from continuing to observe those religious practices”.

5 The Division within the Yindjibarndi Community

5.1 As indicated earlier, negotiations occurred during 2007 and 2008 between YAC and FMG over the terms of a “Whole of Claim Land Access Agreement”, pursuant to which FMG sought the consent of the Yindjibarndi People to the grant of any mining tenure desired by FMG at any time in the future anywhere within the area of land and waters covered by the Yindjibarndi #1 Claim. In essence, FMG was offering opportunities for training and employment plus annual cash payments of approximately \$3m; and, YAC was seeking uncapped annual payments equivalent to a 2.5% royalty - as a means for ensuring the future survival of the distinctive language, culture and society of the Yindjibarndi People, through the

development of culturally sustainable governance structures and commercial ventures.

- 5.2 The position of YAC in the negotiations with FMG was predicated on what the United Nations has declared to be “*the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world*” (UN Declaration on the Rights of Indigenous Peoples, Article 43); and took into account the industry standard, a 2% - 2.5% royalty, which is regularly paid by larger mining companies to individuals and smaller companies - who hold mere licences to explore for minerals - in return for their agreement to allow the larger mining to exploit resources in their exploration licence area. Examples of this are: the 2.2% royalty paid by Hamersley Iron for a mining tenement held by the late Lang Hancock (see: Dr Mary Edmunds, ‘*They Get Heaps: A study of Attitudes in Roebourne Western Australia*’, published by Aboriginal Studies Press, Canberra, 1994); and, the 2.5% royalty payable to one Derrick Ammon under an agreement with Consolidated Minerals (as described in the judgement of the Supreme Court, in *Ammon v Consolidated Minerals Limited [No 3]* [2007] WASC 232).
- 5.3 Following the breakdown of the negotiations between YAC and FMG, in late 2008; and, notwithstanding that YAC had requested, in November 2007, that all negotiations be conducted through YAC and FMG had acceded to that request; in 2010 FMG commenced negotiating with individual members of the Yindjibarndi People.
- 5.4 On 6 July 2010, YAC was informed that a meeting had just finished between FMG and some members of the Yindjibarndi People; and, that in the course of that meeting Bruce Woodley, Ricky Sandy and Robert Cheedy, and some others, had agreed to recommence heritage surveys for FMG over the area of the proposed Solomon Project in the Yindjibarndi #1 Claim area, including the area the subject of FMG’s Notice.
- 5.5 YAC’s response was to organise a community meeting, held on 8 July 2010; and, on that occasion minutes of the meeting were taken by Dr Jan Kepetas an employee of Juluwarlu Group Aboriginal Corporation, which, under a written

agreement with YAC, manages the day to day affairs of YAC. The Minutes record Bigali Hanlon, who had attended the FMG meeting on the 6th as saying:

“FMG told people at that meeting on Tuesday that they have lost their Court Case, and you can't do anything. That gave people the understanding that their only hope was to do surveys now”

And ,Ms Cheedy as saying:

We didn't understand what was going on in the Tuesday meeting. I was there. I thought they were offering jobs for people. Put your names down here, write down everyone who might be interested in work. Now I see we were being tricked.

The following exchange then took place between Michael Woodley, Tootsie Daniel, Bigali Hanlon, Barry Pat and Kevin Guinness, all of whom are members of YAC:

Michael Woodley: *That country is too important to us. Ten years ago, I went out there with the old people, all gone now. Recording... (weeps) Cannot continue.*

Tootsie Daniel: *Sacred country too. Very sacred.*

Bigali Hanlon: *FMG argue that because we don't go there, do ceremony, we got no rights, but we can't go out there most of us. It's not possible. But we know that country. We know those places. They're part of us and our heritage. It's always been and always will be.*

Michael Woodley: *We all know what our country means to us. It's our life. I go out there. A lot of us are going there. We do the ceremony for the sites. Wimiya and my grandfathers talked that country. They taught us what it means, what to do. The Law, the jawi.*

Barry Pat: *We all together. Must be full house. Can't be divided. Our Law says that. Depends on that.*

Kevin Guinness: *Are we saying no? No surveys?*

Meeting: *We have to say no! (Everyone speaking). What will we do?*

Michael Woodley: *YAC as the prescribed body corporate can tell ACMC whether survey people are the right people. No-one can just put themselves down if they know nothing. We will write to ACMC today and tell them what's going on. FMG are not just doing this to us. They have a record of being mavericks. People will be asked on these surveys to sing jawi, tell story. How can they do that? They don't know. They don't go to Law, most of them. They are not custodians or Law*

men for that country. But what they say, will count – and then FMG can mine the country and kill it.

Barry Pat: Under Yindjibarndi law, man, not woman can speak.. Knowledge people only can speak for country.

Michael Woodley: Worse. There is a lot of powerful and dangerous stuff there. Old Law Grounds. Spirits. Sickness for those who don't know what they're doing. Only Law men can go there safely.

6 Sites in the Land not identified in FMG's Notice or the Minister's Consent

6.1 Based on the absence of any ethnographic value attributed to the Land by WYAC members, FMG's Notice, of 17 March 2011, lists only seven Aboriginal sites in the Land. These seven sites are the only sites, subsequently identified in the Minister's written Consent, dated 30 June 2011.

6.2 FMG's Notice makes no mention of the area, within the Land, where senior Yindjibarndi Lawmen each year collect the sacred stones (*gandi*); nor does it make any mention of the ochre quarries where senior Yindjibarndi Lawmen obtain ochre for use in religious ceremonies. As discussed earlier, each of these areas was held by the NNTT to be sites of significance to the Yindjibarndi People; sites, which the NNTT said, if their locations were identified, would be protected by the AHA. Moreover, as was observed by the Full Court of the Federal Court, the case for the Yindjibarndi was:

"... considered by the Tribunal and the primary judge on the basis that the appellants' use of ochre and gandi are religious practices. This approach has not been contested by the State or FMG. Further, if the ochre and gandi sites are dug up in the process of mining iron ore, the appellants will be prevented from continuing to access the ochre and gandi."

6.3 The locations of two ochre quarries, as well as the area where the *gandi* are collected each year were depicted on a map and included in the "*Yindjibarndi Heritage Report*", dated May 2011 (at p 20), which was presented by YAC to the Committee, in response to FMG's Notice. A copy of that Report is attached as **Annexure C**. None of those sites was identified in the Minister's

Consent. Accordingly, any damage caused to those sites by FMG's Purpose will constitute an offence under s 17 of the AHA.

6.4 Also missing from the list of sites in the Land, in both FMG's Notice and the Ministers Consent, are the locations of 22 significant sites, each of which was precisely identified in the Yindjibarndi Heritage Report (at p 25). The location of each of these sites was recorded by anthropologist, Phillip Davies using a hand held GPS. The first five of the sites in the table replicated below have been struck through Mr Davies was subsequently advised, by FMG, that the first five of these sites are in fact situated just outside of the area affected by the s 18 Notice. This was reflected in the map on page 20 the Yindjibarndi Heritage Report.

Map 1	Site ID	mE	mN
1	Walled Niche 1	+594250.2159	+7554273.239
2	Rock Shelter 5	+594267.9122	+7554351.510
3	Rock Shelter 3	+594282.1106	+7554379.764
4	Rock Shelter 1	+594348.4049	+7554443.019
5	Rock Shelter 2	+594352.6653	+7554413.879
6	Rock Shelter 4	+594349.8578	+7554358.656
7	YIN WH10	+594310.9891	+7554070.069
8	Rock Shelter 6	+594198.4411	+7554274.436
9	Rock Shelter 7	+594212.3589	+7554255.976
10	Cave	+594238.3147	+7554266.780
11	Rock Shelter 8	+594219.8842	+7554237.997
12	Rock Shelter 7	+594223.2035	+7554241.077
13	Rock Shelter 9	+594224.1660	+7554212.399
14	Walled Niche 2	+594225.1682	+7554207.522
15	Cave 1	+594226.2258	+7554194.675
16	Rock Shelter 10	+594227.0191	+7554189.356
17	Rock Shelter 11	+594196.2043	+7554159.541
18	Rock Shelter 12	+594203.9025	+7554153.185
19	Rock Shelter 13	+594193.6772	+7554133.763
20	Rock Shelter	+594183.9650	+7554113.895
21	Cave 3	+594181.6886	+7554095.532
22	Cave 4	+594186.8694	+7554082.217
23	Rock Shelter 16	+594284.8432	+7554061.923
24	Rock Shelter 15	+594317.9870	+7554084.529
25	Rock Shelter 17	+594243.2262	+7554036.823
26	Rock Shelter 18	+594223.9960	+7554012.252
27	Rock Shelter	+594105.1926	+7553878.794

6.5 The remaining 22 of the sites identified in the table each fall squarely within the boundaries of the Land, as shown in the Map. Again, none of these sites

has been identified in the Minister's Consent; and, accordingly, any damage caused to these sites by FMG's Purpose will constitute an offence under s 17 of the AHA.

7 Submissions of YAC in relation to the non-identification of sites in the Minister's Consent

7.1 Pursuant to s 18(2) of the AHA, the Committee is required to:

- a. form an opinion as to whether there is any Aboriginal site on the land;
- b. evaluate the importance and significance of any such site; and,
- c. submit the Notice to the Minister together with its recommendation in writing as to whether or not the Minister should consent to the use of the land for that purpose, and, where applicable, the extent to which and the conditions upon which his consent should be given.

7.2 In evaluating the importance and significance of any site, the Committee is required by s 39(2) of the AHA to take into account:

- a. any existing use or significance attributed under relevant Aboriginal custom;
- b. any former or reputed use or significance which may be attributed upon the basis of tradition, historical association, or Aboriginal sentiment;
- c. any potential anthropological, archaeological or ethnographical interest; and,
- d. aesthetic values.

And, s 39(3) provides that:

Associated sacred beliefs, and ritual or ceremonial usage, in so far as such matters can be ascertained, shall be regarded as the primary considerations to be taken into account in the evaluation of any place or object for the purposes of this Act.

The evidence given to the Committee by and on behalf of YAC clearly demonstrated both former and current use of the Land by Yindjibarndi people and described the associated sacred beliefs, rituals and ceremonial usage of the

land by Yindjibarndi Lawmen. Given the absence of any reference in the Ministers Consent to the sites associated with the sacred beliefs, rituals and ceremonial usage of the land by Yindjibarndi Lawmen it appears that these primary considerations were overlooked or ignored.

- 7.3 Although FMG included with its Notice certain affidavits, sworn by members of WYAC, which at first blush appeared to contradict the evidence that had been given by Michael Woodley in the NNTT determination hearing for the grant of M47/1413; those affidavits were in “template” form, and in substance did not relate to the Land in the Notice.
- 7.4 In contrast, materials given to the Committee by, and on behalf of YAC, referred not only to the uncontested evidence that had been accepted by the NNTT (set out above at [3]-[4]); but also, to uncontested evidence given in the Warden’s Court after the template affidavits were sworn, in a dispute between YAC and FMG over the proposed grant of various miscellaneous licences, some of which concerned the same land the subject of FMG’s Notice. The sworn evidence of Mr Ned Cheedy, chief law boss (“*Nyambali*”) for the Yindjibarndi People, was as follows:

“I am 105 years of age and “Nyambali” for Yindjibarndi because I am the last of the old Yindjibarndi Law Bosses. I gave evidence to the Federal Court, in the Ngarluma and Yindjibarndi hearing, about where I was born and about Yindjibarndi People and our Law and culture and I am making this affidavit now because I might not be around for much longer.

I went through all the Yindjibarndi Law ceremonies a long time ago. I put Michael Woodley’s grandfather, Woodley King, through his Birdarra Law ceremonies; and I also put Michael Woodley through all the Birdarra Law Ceremonies. Together with his grandfather, and the other old Yindjibarndi Law Bosses who have now passed on, I taught Michael Woodley everything we know about Yindjibarndi country, and about Yindjibarndi Law, culture and religion.

Michael Woodley is Tharngu for Garliwinyji Ngurra, which includes Gambulanha and Ganyjingarringunha Ngurra where FMG wants the Solomon mine, and he is also the proper man to speak for Yindjibarndi Country and for Yindjibarndi Law, culture and religion because he is now the man with all the knowledge. Michael still comes to talk to me about these things, out of respect; but, today, Yindjibarndi people and others should listen to and respect what Michael Woodley says about

Yindjibarndi Country and about Yindjibarndi Law, culture and religion, because when he speaks about these things, he is speaking for me and for all the other old Law Bosses who came before me."

- 7.5 A copy of Mr Cheedy's sworn affidavit was provided to the Committee; and is attached as **Annexure D**.
- 7.6 As indicated earlier FMG's Notice also included the Final Report on the Ethnographic Surveys, carried out by FMG's consultant anthropologist, David Raftery. That Report, dated December 2010, is attached as **Annexure E**.
- 7.7 As is apparent from the Raftery Report, the purpose of his survey was "*to identify any ethnographic sites that might be located in [the Firetail Priority Mining and Infrastructure Area], and to glean any additional ethnographic significance of previously recorded archaeological sites*" (Annexure F at 3). Mr Raftery however concluded however that: "*No ethnographic sites were recorded during the survey that this report documents, and nor was any information recorded that added ethnographic significance to previously recorded archaeological sites*" (ibid).
- 7.8 The apparent absence of enthusiasm, on the part of the WYAC members, during the course of the survey, of 25 sites, is perhaps best demonstrated by the five "*Rock shelter*" sites listed in "*Table 3*" of the Report (Annexure E at 13), which is headed: "*Sites not visited, but to which no ethnographic significance was attached*"; and, by the following record, concerning site "*YIN 10-004*", which Mr Raftery described as a "*Rock Shelter, Walled Niche*" (Annexure F at 11) and which the survey team is said to have "*visited*" on "*3/11/2010*" (ibid). Under the heading "*Detail*", Mr Raftery reports that:
- "The actual Walled Niche was not located during the survey; however, custodians visited an area that very closely approximated its location. The survey team made it very clear that they knew of nothing in this particular area that ethnographic significance should be ascribed [sic]. It [sic] was instructed by the survey team that no additional ethnographic significance should be attached to any of the previously recorded archaeological data for this area"* (ibid at 11-12).
- 7.9 The only other recorded comments, during the site visits, concerned a "*scarred tree*", YIN 09-047, which, "*it was suggested...was evidence of the use of a*

yandi dish” (ibid at 11); and, two Pebble Mouse mounds, YIN 09-003 and Yin 09-055, where, “*It was explained that mice burrow into [the] area creating a ‘caving-in’ effect...at night time*”, which “*no one claimed to have witnessed*” (ibid). In the remaining 21 instances, the “Detail” column states: “No comment recorded”.

- 7.10 In contrast to the absence of any ethnographic value attributed to the Land by the WYAC participants, the uncontested affidavit evidence given by Michael Woodley, in the Warden’s Court dispute (which was provided to the Committee and is attached as **Annexure F**), like the evidence he gave to the NNTT, attests to a profound understanding of Yindjibarndi cultural heritage values in the Land (Annexure F, *passim*). Mr Woodley’s evidence identified:
- i. a healing Thalu, called “*Tharndibirndinha Marnda*” (Annexure F at [10.5]);
 - ii. the *gandi* area the subject of the evidence given to the NNTT in 2009, as well as a description of the revelatory ritual used to “find” the *gandi* (ibid at [11.3]-[11.6])
 - iii. the Yindjibarndi “Yamararra” (caves) which “Yindjibarndi ancestors used as burial chambers when senior lawmen passed away”, and where the “physical remains of one [those] ancestors had [just been] found” (ibid at [12.2])
- 7.11 Two documents are attached to Mr Woodley’s affidavit; the first is a map which depicts among others, the sites mentioned above; and, the second is the agreement FMG negotiated with the WYAC members after the meeting mentioned above (at [5.4]). Notably, although the indigenous parties to the agreement are the Applicant for the Yindjibarndi #1 Native Title Claim, and YAC, virtually all compensation under the agreement is promised (in clauses B3 - B7) to the WYAC and its members, for no apparent consideration, other than getting the agreement signed (clause B2). The instructions given to David Raftery by WYAC members at the “*area that very closely approximated*” the location of a rock shelter with a walled niche, behind which may lay the physical remains of Yindjibarndi ancestors, and the

willingness of the WYAC members to judge five unvisited rock shelter sites as holding no ethnographic significance at all, suggests that the consideration given by WYAC members, in return for FMG's promise of compensation, includes the negation of all ethnographic and archaeological heritage values that are in the Land, the subject of FMG's proposed Solomon project.

8 Submissions of YAC concerning the identification of sites in the decision of the Committee and/or the Minister

- 8.1 The Committee's recommendation under s 18 (2) of the AHA is a precondition for the exercise of the Minister's discretion under s 18(3). In such circumstances any decision made by the Committee is clearly open to judicial review; it is therefore reasonable to expect that any request by YAC to be informed of the Committee's decision would be acceded to. YAC made such a request, to the Department of Indigenous Affairs, but YAC's request went unanswered (at best), or was ignored. Given the significance of the sites that were identified to the Committee by, and on behalf of YAC; and, the religious practices associated with those sites, as identified in the decision of the Full Court of the Federal Court (in *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011] FCAFC 100 at [86]), such an outcome beggars belief.
- 8.2 In the circumstances, it is necessary to make two submissions: firstly, there was no rational basis upon which the Committee could identify in its recommendations to the Minister about the Land only the seven sites that were listed in FMG's Notice and likewise no proper basis upon which the Committee could ignore the existence of at least 25 sites established in the evidence presented to the Committee by or on behalf of YAC.
- 8.3 Secondly, and in the alternative, assuming the Committee did make a recommendation to the Minister, which identified the sites established in the evidence presented to the Committee by or on behalf of YAC, there was no proper foundation for the Minister, in his written Consent of 30 June 2011, to identify only the seven sites that were listed in FMG's Notice about the Land.

9 FMG's Application to Delete the Minister's Conditions

- 9.1 The Minister's decision, of 30 June 2011, gave written consent, pursuant to s 18(3) of the AHA (Consent) for FMG to use the Land for the Purpose specified in FMG's Notice. Although the Minister did not, in his Consent, identify the numerous sites that were the subject of the evidence given to the Committee by, and on behalf of, YAC; the Minister did attach conditions to his Consent, which may well result in those sites and any other sites in the Land being properly identified to the Registrar; and, in the archaeological and ethnographic heritage values of such sites being properly assessed.
- 9.2 For the reasons that are perhaps evident from the preceding paragraphs of these submissions, four of the conditions attached to the Minister's Consent, are particularly important to YAC; relevantly, the conditions which required FMG to:
- i. avoid all sites that contain Aboriginal human remains (Condition 1);
 - ii. invite the monitoring of all ground disturbing work by two Yindjibarndi persons chosen by YAC (Condition 2);
 - iii. consult with representatives of YAC, to the satisfaction of the Registrar (prior to the commencement of the Purpose) so as to "*clarify the status of heritage places on the Land and identify all heritage values associated with places on the Land*" (Condition 3); and,
 - iv. provide the Registrar (prior to the commencement of the Purpose) with information on the "*location and archaeological and ethnographic assessments of all rock-shelters and caves located on the Land which shall include copies of all archaeological and anthropological reports over the Land*" (Condition 5).
- 9.3 However, on 5 August 2011 FMG applied to the State Administrative Tribunal (SAT) to review the Minister's decision and to delete each of the above conditions.

- 9.4 YAC was not informed of FMG's application to the SAT until 8 September 2011, when the State Solicitors Office advised YAC that the SAT had ordered that YAC be notified of FMG's application; and, that YAC be invited to attend a mediation session between the parties on 6 October 2011. Those orders were made under a protocol between the former Minister for Indigenous Affairs and the President of the SAT.
- 9.5 On 6 October 2011, YAC representatives attended the mediation session and informed the parties that the conditions attached to the Minister's consent were of great significance since the Minister's decision had not identified the ochre quarries, *gandi* area or any of the many caves and rock-shelters in the Land; consequently without these four conditions those sites would be destroyed without any proper assessment of their heritage values as required by the AHA. The YAC representatives were then asked to leave the room so that the parties could negotiate. At the conclusion of those negotiations the YAC representatives were informed that the legal representatives of the parties had reached agreement about the conditions and that they would ask SAT to invite the Minister to reconsider his decision in light of the agreement.
- 9.6 The YAC representatives formally asked for information about the agreed conditions but were told instructions would need to be obtained for such information to be given to YAC; however no information has been conveyed to YAC about the agreed conditions. YAC was invited to file and serve submissions, on or before 24 October 2011, so that the Minister could take them into account in any reconsideration of his decision.
- 10 The importance to YAC of the original Conditions attached to Minister's Consent of 30 June 2011**
- 10.1 Condition 1, it is submitted, needs no elaboration, since it is almost universally characteristic of human beings to leave, undisturbed, the physical remains of their ancestors. Indeed this characteristic is given expression in s 29 (2) (b) of the *Mining Act* 1978 (WA); which provides that, except with the consent in writing of the owner and the occupier of any private land no mining tenement may be granted over land which is the site of a cemetery or burial ground.

- 10.2 Sadly, it remains the case that “private land”, as presently defined by s 8 of the *Mining Act* precludes the traditional country of the Yindjibarndi People from the beneficial reach of s 29(2)(b) - at least prior to a determination of their native title claim by the Federal Court. Thereafter, in accordance with the decision of the High Court of Australia (in *Western Australia v Ward* [2002] HCA 28 & 213 CLR 1, per Gleeson CJ, Gaudron, Gummow and Hayne JJ (“Ward”), [at [316] and [318]-[319]) the Yindjibarndi People may well enjoy the same rights as their non-indigenous brethren.
- 10.3 Given the evidence of the spiritual relationship that exists at least between some Yindjibarndi People and their “*Ngurra*” (as to which see Annexure F, *passim*) and the emotional attachment evidenced in the passage from the minutes of the Yindjibarndi Community meeting held on 6 July 2010, cited above (at [5.5]), YAC submits that Condition 2, which required FMG to invite two representatives from YAC, and two representatives from WYAC to monitor all ground disturbing activities is an essential condition, at least for YAC. Notably, the SAT was informed on 6 October that WYAC has consented to the deletion of this condition, and all other conditions which FMG seeks to have deleted or modified.
- 10.4 Conditions 3 and 5 go to the same issue. In circumstances where, the determination made by the NNTT, allowing the grant of the mining lease M47/1413, effectively subordinates the exercise of all the native title rights and interests, which may subsequently be recognised in a determination of native title to the interests of FMG - for the duration of all mining activities; and, in circumstances where the destruction of sites of significance in the Land will prevent members of the Yindjibarndi People from freely exercising their religious practices, associated with the Land, YAC submits that a comprehensive identification and assessment of all sites in the Land is absolutely essential to the just resolution of any compensation claim that may lawfully be lodged by or on behalf of the Yindjibarndi People following a determination of the Yindjibarndi #1 Native Title Claim (see: *Ward*, *op. cit.*). In this regard it is submitted that the Minister for Indigenous Affairs has a fiduciary obligation to the Yindjibarndi People to ensure the proper assessment

of all archaeological and ethnographic heritage values in the Land the subject of FMG's Notice, before FMG carries out the Purpose identified in the Notice.

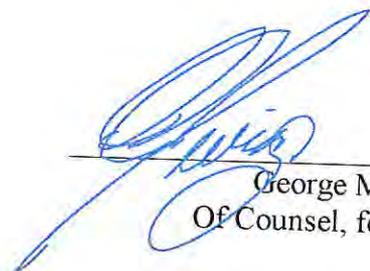
11 Submissions of YAC in relation to any reconsideration of the Minister's decision

11.1 Leaving aside, for present purposes, any questions that might arise about whether a reasonable apprehension of bias attaches to the Minister's comments, on Radio 6 RTR, on or around the morning of 30 June 2011, when in response to a question about the ongoing dispute between FMG and the Yindjibarndi the Minister stated that "*Andrew [Forrest] is a personal friend of mine*"; and, "*I take great advice and great guidance from his wisdom*"; and, "*I do not think his motives towards Aboriginal people are anything but altruistic*"; and, leaving aside questions about whether the failure to inform YAC of the conditions that were agreed by the parties on 6 October 2011 constitutes procedural unfairness or a denial of natural justice, it is simply not possible for YAC to make any submissions about conditions, which may or may not have been agreed, other than by way of reference to the importance of the existing conditions.

12 Submissions of YAC in relation to YAC's joinder as a party to FMG's Application under s 5 of the AHA

12.1 The submissions set out above; and the evidence referred to therein, demonstrate a very real and substantial interest held by YAC members in the Land, the subject of FMG's application, under s 5 of the AHA to review the Minister's decision and to delete the aforementioned conditions.

12.2 It is on this basis that YAC asks to be joined as a party to FMG's application.



George M Irving
Of Counsel, for YAC

“MW-125”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked “**MW-125**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

From: Yindjibarndi Aboriginal Corporation [media@juluwarlu.com.au]
Sent: Friday, 9 December 2011 11:07 AM
To: phil davies
Subject: FMG imposes 'apartheid-like' rules
Attachments: 111209 FMG imposes apartheid-like rules.pdf

FMG imposes 'apartheid-like' rules on Yindjibarndi visits to country

FULL STATEMENT ATTACHED

Having acquired a limited right to mine in Yindjibarndi country, FMG is now demanding that Yindjibarndi people stay out of their traditional country and apply to FMG 'managers' for permission in writing to enter.

The Yindjibarndi Aboriginal Corporation (YAC) has rejected FMG's conditions.

YAC has made it clear to FMG that the purpose of their current visit to *Ganyjingarringunha* (Solomon Hub) is not to prevent FMG from exercising any of its mining rights, but to peacefully go about their cultural business.

This journey of ceremony and cultural recording may be the last opportunity Yindjibarndi elders have to make a full record, which can be used by future generations of Yindjibarndi to restore and revive traditional connections – once FMG's 40 year right to mine ceases, and the enormous task of rehabilitation begins.

FMG's controls would effectively prevent Yindjibarndi traditional owners from recording heritage that is most critically endangered by the expansion of FMG's Solomon mining project; and simultaneously prevent independent archaeologists and anthropologists, who have volunteered their professional assistance, from getting a close-up view of, and recording with digital media, the songs and ceremonies for that country, and the country itself, before it is destroyed by FMG.

"This FMG notice is a throw-back to the pre-1967 laws that controlled when and where our people could go, made us beg for travel permits, and kept us under constant surveillance and the fear of punishment," said YAC CEO, Michael Woodley. "Such laws were abolished half a century ago because they were destructive and unjust, and because the Australian people recognised that they rubbished our Human Rights as the first Australians. Now, in country they wish to mine, FMG want to bring back these dark ages... We are very disappointed by FMG's attempt to impose these 'apartheid-like' conditions."

While on country, Yindjibarndi elders can be reached on satellite phone – 0147 164889

Alternatively, contact **George Irving**, YAC legal counsel – 0417903785 gmirving@tpg.com.au

Link to FMG *Access Authorisation* notice, and other Primary Documents: <http://tiny.cc/cict3>

NB: FULL STATEMENT ATTACHED

For further information

CONTACT

Michael Woodley – CEO YAC – 0419 097 130 mwoodley@juluwarlu.com.au

Phil Davies YAC Anthropologist/Public Officer – 0429 110 451 pdavies@juluwarlu.com.au

For media materials please contact – media@juluwarlu.com.au

NEWS & INFORMATION ARCHIVE

<http://yindjibarndi.org.au/yindjibarndi/>

FACEBOOK

<http://yindjibarndi.org.au/facebook.html>



FMG imposes ‘apartheid-like’ rules on Yindjibarndi visits to country

Having acquired a limited right to mine in Yindjibarndi country, FMG is now demanding that Yindjibarndi people stay out of their traditional country and apply to FMG ‘managers’ for permission in writing to enter.

The Yindjibarndi Aboriginal Corporation (YAC) advised FMG on Wednesday that members were heading to *Ganyjingarringunha* (Solomon mining project) to record the cultural history of the area and to conduct certain religious rituals which are required to be performed each year. However, FMG has demanded that, before going on country, Yindjibarndi people must:

- lodge an official "Access Authorisation Request";
- not bring or use any video or photographic equipment;
- report to security gate officers the make, model, registration numbers and intended routes of all vehicles – on both the *inward* and *outward* journeys;
- report the names of all vehicle occupants;
- report full names of all guests and the organisations they represent.

At the same time as obstructing Yindjibarndi traditional rights of access, FMG states that it will:

- photograph and video all Yindjibarndi sites;
- photograph and video all Yindjibarndi people going about their cultural business and performing their rituals;
- photograph and video all heritage professionals undertaking archaeological and ethnographic work for the Yindjibarndi Aboriginal Corporation (YAC);
- and bar all Yindjibarndi children from entering lands where FMG have a right to mine, thereby preventing them from learning about heritage and rituals within country that Yindjibarndi people call *Ganyjingarringunha*.

YAC has rejected FMG’s conditions.

Link to FMG *Access Authorisation* notice and other Primary Documents: <http://tiny.cc/cict3>

At the end of Thursday, as Yindjibarndi people moved through their country, tracked by an FMG spotter plane and security personnel, FMG followed up their notice of “*Access Authorisation*” with a hand-delivered letter from FMG Lawyer, Mr Ken Green, which threatened to seek “injunctive relief and related costs against one or more of YAC, Juluwarlu and the Travelling Group” if they entered the area where FMG has a right to mine.

This signals FMG’s intention to escalate their strategy of vexatious and intimidating litigation to other targets, including volunteers wishing to help with heritage recording.

The Yindjibarndi Aboriginal Corporation has made it clear to FMG that the purpose of their visit is not to prevent FMG from exercising any of its mining rights, but to peacefully go about their cultural business.

YAC CEO, Michael Woodley, said, “We have come here to record our heritage for our future generations, sing our *jawi* songs for the country, collect ochre for ceremony, check on the safety of and purify our ancestral burials, and *talk to the country*. *Ganyjingarringunha* is the main river travelled by the Yindjibarndi through this mountain country. Our most senior Yindjibarndi elder, Ned Cheedy, came here as a boy and was taught by his elders about its ancient cave burials, men’s sites, ochre sites, springs – right through to his initiation into manhood. He still knows this country like the back of his hands and he has passed on his knowledge to our generation. We are very disappointed by FMG’s attempt to impose these ‘apartheid-like’ conditions.”

In an attempt to negotiate access to *Ganyjingarringunha*, YAC asked FMG to identify the locations of any current mining activity, such as blasting, which might risk the safety of visiting Yindjibarndi people, however, FMG has refused to identify such locations and instead compelled Yindjibarndi people to get permission, or keep out of a “controlled area” covering in excess of 14,000 hectares.

FMG has not indicated by what right (under the Mining Act or any other Act), it seeks to contain and control Yindjibarndi cultural and religious practice in the greater parts of its mining tenements, which are not being actively mined, and that have, to date, survived blasting and massive land disturbance.

These controls would effectively prevent Yindjibarndi traditional owners from recording heritage that is most critically endangered by the expansion of FMG's Solomon mining project; and simultaneously prevent independent archaeologists and anthropologists, who have volunteered their professional assistance, from getting a close-up view of, and recording with digital media, the songs and ceremonies for that country, and the country itself, before it is destroyed by FMG.

Mr Woodley said that FMG had acquired a right to mine Yindjibarndi traditional country without the free prior and informed consent of his people, and there was no legal foundation for FMG's draconian 'conditions': "This notice is a throw-back to the pre-1967 laws that controlled when and where our people could go, made us beg for travel permits, and kept us under constant surveillance and the fear of punishment," said Mr Woodley. "It was laws like this that tried to break the connections of our people to country and all the rituals that are the foundations of our religious beliefs and language. Such laws were abolished half a century ago because they were destructive and unjust, and because the Australian people recognised that they rubbished our Human Rights as the first Australians. Now, in country they wish to mine, FMG want to bring back these dark ages."

Mr Woodley said, "Since FMG came into our country, our people have been treated like unwanted aliens, or foreigners in their own land. To accept their conditions would be to accept FMG's belief that we have no rights in our country except for those that they want to give us. We are not surprised by how low FMG will stoop to boost its profits, but Yindjibarndi people place great faith in the international Declaration on the Rights of Indigenous Peoples, which Australia has endorsed, and the support of the Australian people once they discover what FMG and billionaire Andrew Forrest are actually doing to kill our human right to carry on our traditions."

This journey of ceremony and cultural recording may be the last opportunity Yindjibarndi elders have to make a full record, which can be used by future generations of Yindjibarndi to restore and revive traditional connections – once FMG's 40 year right to mine ceases, and the enormous task of rehabilitation begins.

While on country, Yindjibarndi elders can be reached on satellite phone – 0147 164889
Alternatively, contact George Irving, YAC legal counsel – 0417903785 gmirving@tpg.com.au

Michael Woodley YAC CEO – 0419 097 130 mwoodley@juluwarlu.com.au
Phil Davies YAC Anthropologist/Public Officer – 0429 110 451 pdavies@juluwarlu.com.au

For video, photos & research materials please visit: www.yindjibarndi.org.au
For media materials please contact: media@juluwarlu.com.au



“MW-126”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 7 pages is the annexure marked **“MW-126”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

IN THE STATE ADMINISTRATIVE TRIBUNAL
OF WESTERN AUSTRALIA

DR 271 OF 2011

B E T W E E N:

FMG PILBARA PTY LTD

Applicant

- and -

MINISTER FOR INDIGENOUS AFFAIRS

Respondent

**RESPONDENT'S CHRONOLOGY AND REASONS FOR THE DECISION
ON THE RECONSIDERATION DATED 13 DECEMBER 2011**

Pursuant to Order 3 dated 30 December 2011

RESPONDENT'S CHRONOLOGY

No.	Date	Narrative
1	18 February 2011	Applicant submits notice to Aboriginal Cultural Material Committee ("ACMC") in terms of s.18 of the <i>Aboriginal Heritage Act 1972</i> ("AHA") seeking the Respondent's consent to a proposed use of certain portions of the Applicant's land ("first s.18 notice")
2	4 March 2011	Registrar of Aboriginal Sites ("Registrar") writes to Applicant drawing attention to certain shortcomings in the first s.18 notice
3	17 March 2011	Applicant submits a revised notice to Aboriginal Cultural Material Committee in terms of s.18 of the <i>Aboriginal Heritage Act 1972</i> seeking the Respondent's consent to a proposed use of certain portions of the Applicant's land ("second s.18 notice")

Filed by:

Paul Evans
State Solicitor for Western Australia
Level 16, 141 St Georges Terrace
PERTH WA 6000

Tel: 9264-1192
Fax: 9481-7169
Ref: Trevor Creewel
Email: t.creewel@sso.wa.gov.au

13 January 2012

4	1 June 2011	ACMC makes a decision on the Applicant's s.18 notices and prepares an "ACMC decision sheet" which contains the ACMC's recommendations to the Respondent concerning the Applicant's s.18 application
5	2 June 2011	The Registrar and the Director General of the Department of Indigenous Affairs prepare a briefing note to the Respondent conveying the ACMC's recommendations
6	30 June 2011	The Respondent grants conditional consent to the Applicant ("first decision")
7	5 August 2011	Applicant applies to State Administrative Tribunal ("SAT") for a review of the Respondent's consent
8	2 September 2011	At a directions hearing SAT, <i>inter alia</i> , orders matter to a mediation conference on 4 October 2011 (subsequently altered to 6 October 2011), and orders the Respondent to notify the Yindjibarndi Aboriginal Corporation ("YAC") and the Wirlu Murra Aboriginal Corporation ("WYAC") of the application and of the mediation conference
9	4 October 2011	Mediation conference takes place between Applicant and Respondent. YAC is present as invitee SAT orders, <i>inter alia</i> : <ol style="list-style-type: none"> 1. in terms of s.31 of the <i>State Administrative Tribunal Act 2004</i> ("SAT Act"), the respondent is invited to reconsider his decision on or before 15 November 2011 (subsequently extended to 6 December 2011 and then to 13 December 2011) 2. by 10 October 2011 the Respondent is to invite YAC and WYAC to file at SAT and provide to all parties any submissions they wish to make in respect of the Minister's reconsideration of his first decision, such submissions to be made by 24 October 2011
10	24 October 2011	YAC makes submissions to the Respondent in respect of his reconsideration
11	13 December 2011	Respondent makes reconsidered decision in respect of the Applicant's s.18 application ("reconsidered decision")

RESPONDENT'S REASONS FOR THE DECISION ON THE RECONSIDERATION**Legal provisions governing first decision and reconsidered decision**

1. Notice by the owner of land to the ACMC pursuant to s.18(2) of the AHA sets in train the following mandatory procedure:
 - a) the ACMC shall, as soon as it is reasonably able, form an opinion as to whether there is any Aboriginal site on the land;
 - b) the ACMC shall evaluate the importance and significance of any such site;
 - c) the ACMC shall submit the land owner's notice to the Minister together with the ACMC's recommendation in writing as to whether or not the Minister should consent to the use of the land for that purpose, and, where applicable, the extent to which and the conditions upon which the Minister's consent should be given.

2. When the Minister receives a recommendation from the ACMC pursuant to s.18(2) of the AHA, the Minister is obliged to do the following:
 - a) consider the ACMC's recommendation;
 - b) have regard to the general interest of the community;
 - c) either:-
 - i) consent to the use of the land the subject of the notice, or a specified part of the land, for the purpose required, subject to such conditions, if any, as he may specify; or
 - ii) wholly decline to consent to the use of the land the subject of the notice for the purpose required; and
 - iii) shall forthwith inform the owner in writing of his decision.

(subsection 18(3) AHA)

3. Section 31 of the SAT Act relevantly reads as follows:

"31. Tribunal may invite decision-maker to reconsider decision

- (1) At any stage of a proceeding for the review of a reviewable decision, the Tribunal may invite the decision-maker to reconsider the decision.
- (2) Upon being invited by the Tribunal to reconsider the reviewable decision, the decision-maker may —
 - (a) affirm the decision; or
 - (b) vary the decision; or
 - (c) set aside the decision and substitute its new decision."

4. In the absence of any express provision to the contrary under the SAT Act, in reconsidering the reviewable decision the decision-maker must follow the same procedure as was set out for the making of the original decision.

Matters taken into account by the Respondent in the first decision

5. Pursuant to s.18(3) of the AHA, in making the first decision the Respondent took into account:-
 - a) the recommendation of the ACMC (see Item 4 in the Respondent's Chronology above); and
 - b) had regard to the general interest of the community.
6. There being no apparent reason to disregard or deviate from the ACMC's recommendation, and there being no matter in the general interest of the community which affected the ACMC's recommendation, the Respondent accepted the ACMC's recommendation and granted his conditional consent in terms thereof.

Matters taken into account by the Respondent in the reconsideration

7. Pursuant to the invitation of the SAT to reconsider his decision, the Respondent accepted the invitation, and took into account in the reconsideration the following matters:

- a) the Applicant's application under s.42 of the SAT Act for a review of the first decision; and
 - b) the recommendations of the ACMC (see Item 4 in the Respondent's Chronology above); and
 - c) the submissions of YAC dated 24 October 2011 (see Item 10 in the Respondent's Chronology above); and
 - d) the general interest of the community.
8. Upon his reconsideration, the Respondent decided to vary the first decision in the following ways, and for the following reasons.

Condition 1 of the first decision

9. Condition 1 of the first decision had been inserted in response to a submission to the ACMC by YAC that there was a high likelihood that the land in question had been an Aboriginal burial precinct, and that therefore there was a high likelihood of human remains being present.
10. Condition 1 was inserted in the first decision as an intended added safeguard, additional to Condition 8 in the first decision. However, on reconsideration the Respondent considered that Condition 1 may be void for vagueness and/or impossibility of performance because the Applicant would not know the location of the sites containing Aboriginal remains unless and until excavation was carried out.
11. Further, and in any event, on reconsideration the Respondent considered that the situation described was adequately dealt with by Condition 8 in the first decision.
12. After reconsideration the Respondent therefore decided to omit Condition 1 as it appeared in the first decision.

Condition 3 of the first decision

13. On reconsideration the Respondent considered that the Applicant's objection to Condition 3 was a minor exercise in semantics, and that the Applicant's proposed wording made no substantial difference to either the practical or legal implications of

the condition. The Respondent therefore decided on reconsideration to amend Condition 3 in terms of the Applicant's review application.

Condition 4 of the first decision

14. Condition 4 was inserted in the first decision with the purpose of establishing whether or not Aboriginal sites existed in areas to be excavated. However, on reconsideration, the Respondent considered that the consultations contemplated by Condition 4 would have no effect on the consent as any consultations would have no effect on the ultimate outcome in relation to the sites, ie the condition would not on its own prohibit or prevent sites from being damaged or destroyed. To that extent, the condition might be considered redundant.
15. Further, on reconsideration the Respondent considered that the phrase "clarify the status of heritage places on the Land" was a phrase which might not have any definable meaning, and hence might be found to be void for vagueness.
16. For these reasons, on reconsideration the Respondent decided to delete Condition 4 as it appeared in the first decision.

Condition 5 of the first decision

17. Condition 5 was inserted in the first decision with the intention of obliging the Applicant to provide to the Registrar certain documents which had not been placed before the APMC but in respect of which there was reason to believe these certain documents were in existence.
18. On reconsideration the Respondent considered that this was not an appropriate use of conditions on consent and so, upon reconsideration, Condition 5 was deleted.

Condition 7 of the first decision

19. Condition 7 in the first decision contained a simple typographical error, which was corrected upon reconsideration.

Conditions 2, 6, 8 and 9 of the first decision

20. Having considered those matters listed in paragraph 7 above, the Respondent concluded that there was no reason to vary Conditions 2, 6, 8 and 9 as they appeared in the first decision.

DATED the 13th day of January 2012

A handwritten signature in black ink, appearing to read 'P. Evans', written over a horizontal line.

pp. PAUL EVANS
STATE SOLICITOR FOR WESTERN AUSTRALIA
SOLICITOR FOR THE RESPONDENT

“MW-127”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 4 pages is the annexure marked “**MW-127**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



Australian Government

Department of Sustainability, Environment, Water, Population and Communities

Mr Michael Gallagher
 Anthropologist
 Wirilu-murra Yindjibarndi Aboriginal Corporation
 Via email: mgallagher@iinet.net.au

Dear Mr Gallagher

I refer to two meetings that you and other representatives of the Wirilu-murra Yindjibarndi Aboriginal Corporation (WMYAC) attended in Canberra on 12 December 2011, one with the Minister for the Sustainability, Environment, Water, Populations and Communities, the Hon Tony Burke MP, and the other with the department. Please find below a summary of the meetings for review.

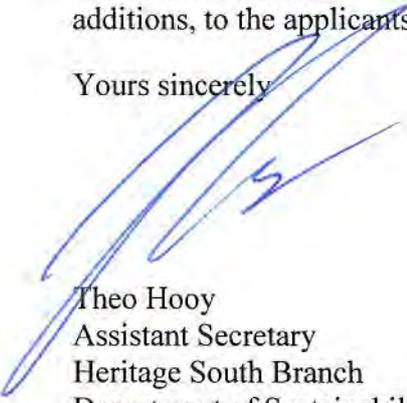
- The WMYAC representatives were provided background to the application made by Mr George Irving on behalf of Michael Woodley and others under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the Act). The WMYAC representatives were informed about the different procedures followed when responding to applications under s.9 and s.10 of the Act. The WMYAC representatives were advised that time limits are not specified in the Act and it can take several months to reach decisions, due to the procedural fairness processes that are involved.
- The WMYAC representatives were told that the Minister is required to provide natural justice to all interested parties and that their submissions would be distributed to all parties. The WMYAC representatives were told that their s.9 submission should address the particular significance of the sites in the application and the seriousness and immediacy of any threats in the specified area.
- The Minister enquired as to what Fortescue was like to work for. The WMYAC representatives advised that Fortescue were very good to work for and that the mine would provide jobs for local people which is very important for the younger people to give a sense of pride at being employed.
- The WMYAC representatives said that the sites which are included in the application are not sacred sites. They also said that they have been involved in all surveys undertaken in the area and have ensured that archaeological sites are protected from mine development work. The WMYAC representatives advised they have decision-making processes in place to protect sites found on surveys. They said that that all decisions relating to sites are cleared by elders and/or committees that are in place to review heritage plans or reports. The WMYAC representatives said that none of their sacred sites have s.18 applications pending under the *WA Aboriginal Heritage Act 1972* as all of their sacred sites have been identified and are protected.
- The WMYAC said the statements in the application in regard to major ceremonies being held on the site and that ochre came from the site are not true and that ceremonies were held in other areas and ochre came from well off site towards Roebourne. The WMYAC

said that no artefacts used in ceremonies come from this site. The Minister asked how much of the area is open to mining. The WMYAC representatives said mining was not a great threat as there was a 100 metre protection buffer in place around sacred sites and that survey work is ongoing. Additional measures have also been put in place to protect sacred sites when blasting was in progress. When blasting occurred WMYAC representatives can be present.

- The WMYAC representatives advised that all reports from surveys have been provided to DIA and the ACMC. They said they believed that the ACMC or DIA have provided the reports to Michael Woodley and the Yindjibarndi Aboriginal Corporation (YAC) for comment. They said that Michael Woodley and the YAC have been invited to participate in heritage surveys; however, Michael Woodley and the YAC had not taken this invitation up.
- In regard to the split in the Yindjibarndi community, the WMYAC representatives said that the split in the Yindjibarndi community was due to the way their native title application was being handled by the YAC, and not the mine development or FMG. The WMYAC representatives noted that it is now difficult for the native title applicant group to function. The WMYAC representatives said that a recent native title decision (*FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia*, [2011] NNTTA 107 (17 June 2011)) sets out that Michael Woodley may not have the authority of the Native Title applicants to act for the claimant group.
- The WMYAC representatives expressed concern that Michael Woodley had written down and disseminated information about their traditions, including male initiation ceremonies. During both meetings female participants left the room for a short period to enable the male participants to talk freely about matters raised by the application that are relevant to male initiations. During this time the male WMYAC representatives advised that they do not go to the area specified in the application to hold ceremonies or put boys through the law. They said that they obtain stones and ochre for initiations from another area, which is a long way from the specified area, towards Roebourne.
- The male WMYAC representatives advised the department that, contrary to the information in the application, they had put Michael Woodley through the law, and that neither he nor Ned Cheedy, a senior elder referred to in the application, had the authority to speak for the area of the Hamersley Ranges that is the subject of the application. The WMYAC male representatives said that Ned Cheedy is blind and is unable to speak or understand English. This has led to him being confused about the location of the mine which is not on his traditional country. The WMYAC male representatives advised the department that Ned Cheedy's country is much further north east of the specified area, at Hooley Station, on Cheedy Creek. The WMYAC representatives discussed how custom dictates who can speak for which country. They said they would provide copies of affidavits in their submission to outline their authority structure.
- The Minister advised that it would be weeks before he could come to a decision in regard to the application and as it is a legal process was not allowed to give any answers yet. However, what the WMYAC had told him was useful as he needed to hear all the voices in this issue.

If you have any corrections or additions to the above summary, please contact Mr Peter Graham on (02) 6274 1788 or peter.graham@environment.gov.au by COB 26 January 2012. After this date we will provide this letter and, if required, corrections and additions, to the applicants as part of procedural fairness processes.

Yours sincerely



Theo Hooy
Assistant Secretary
Heritage South Branch
Department of Sustainability, Environment, Water, Population and Communities
23 January 2012

“MW-128”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked **“MW-128”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



Our Ref: LS-100-I-0714

7 February 2012

**ATTENTION: MR PHIL DAVIES AND MICHAEL
WOODLEY**

Yindjibarndi Aboriginal Corporation RNTBC
21 Hampton Street
ROEBOURNE WA 6718

BY POST & EMAIL

**COPY TO: WIRLU MURRA YINDJIBARNDI ABORIGINAL
CORPORATION**

6 Queen Street
PO Box 73
ROEBOURNE WA 6718

BY POST & EMAIL

Dear Sirs

**WIRLU-MURRA TABLELAND HERITAGE (“WMYH”) TO MANAGE HERITAGE
SURVEY WORK FOR SOLOMON PROJECT AREA**

We are pleased to advise you that as of 2012 WMYH will engage heritage professionals and coordinate the heritage survey program for the area of Yindjibarndi lands covered by Fortescue’s Solomon Project Area.

This is a positive step to ensure that Yindjibarndi people have professional and independent heritage advice, and retain the highest level of control and influence over the heritage sites on that land.

As you are aware, Fortescue is committed to working in partnership with the Yindjibarndi people to undertake comprehensive consultation process and survey program for the Solomon project area.

In an endeavour to continue to facilitate consultation and heritage surveys, Fortescue will:

- provide WMYH with all heritage work instructions (“HWIs”) containing the survey scope, proposed timeframes and maps; and
- copy Yindjibarndi Aboriginal Corporation (“YAC”) into this HWI correspondence.

This will provide YAC with reasonable notice and information to consider the proposed survey works and, where relevant, for YAC to contact WMYH to facilitate its members’ participation in survey work.

Fortescue will continue consult with Yindjibarndi People about Applications or Notices (“Submissions”) submitted in accordance with the *Aboriginal Heritage Act 1972* (“AHA”) for the consideration of the Aboriginal Cultural Materials Committee (“ACMC”).

In an endeavour to ensure this consultation process continues, and to ensure Yindjibardi people are afforded reasonable time and opportunity to provide information or feedback about heritage matters, Fortescue will continue to provide Wirlu-murra Yindjibarndi Aboriginal Corporation and YAC with:

- a reasonable notification period about Fortescue’s proposed Submissions to the Aboriginal Cultural Materials Committee (“ACMC”);
- copies of all Applications and reasonable time and opportunity to provide the ACMC, WMYH or Fortescue with any additional heritage information; and
- contact details for a Fortescue staff member who is available to provide or clarify information about the Submission.

For your ease of reference I have included key contact details below:

NAME OF CONTACT	CONTACT DETAILS	INFORMATION
Roberta Molson	rmolson@fmgl.com.au Ph: (08) 6218 1275	For obtaining information or clarification about:
Lisa Maher	lmaher@fmgl.com.au Ph: (08) 6218 8054	<ul style="list-style-type: none"> • matters raised in this correspondence; • information contained in Heritage Work Instructions; or • Submissions to the ACMC
Bruce Thomas Wirlu murra Yindjibarndi Aboriginal Corporation Business Development Manager	Ph: (08) 9182 1157 Fax: (08) 9116 4712 bthomas@wmyac.com	To facilitate YAC members’ participation in survey work in accordance with relevant HWI’s.

Yours sincerely

FORTESCUE METALS GROUP

LISA MAHER

Manager, Heritage

“MW-129”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

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This and the following 3 pages is the annexure marked **“MW-129”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

Tuesday 11 September 2012

<http://yindjibarndi.org.au/>

FMG 'DECLASSIFIED' THEN DESTROYED YINDJIBARNDI HERITAGE SITES

Recent reports that, Fortescue Metals Group (FMG) is pushing ahead with the “low-cost Firetail deposit” at its Solomon Project, while scaling back other operations, have raised fears of a ‘heritage holocaust’ as FMG scrambles for cash flow to weather the freefall in iron ore price.

These fears follow confirmation in documents released by the Department of Indigenous Affairs (DIA), under the Freedom of Information Act, that FMG has destroyed two Yindjibarndi sites and damaged a third at Solomon with impunity, and has “under-reported” sites in the project area by about 30%.

[111223 Briefing Director General to Minister Indigenous Affairs](#)

[120201 Memorandum Compliance Officer James Cook to Director General Cliff Weeks](#)

When the Yindjibarndi Aboriginal Corporation (YAC), in November last year, accused FMG of damaging Yindjibarndi sites, FMG responded with a Press Release that said: “*Michael Woodley’s allegations that Fortescue has damaged sacred sites are untrue*”. The press release of 7 November 2011 stated, FMG “*categorically rejects offensive claims that it is operating unlawfully regarding Aboriginal heritage sites at its Solomon Hub project.*”

[111107 Fortescue rejects claims of unlawful heritage dealing](#)

However documents released by DIA reveal that the Aboriginal Cultural Materials Committee (ACMC) requested DIA officers to undertake an on-ground inspection at Solomon to resolve “*issues regarding the veracity [and] comprehensiveness of the heritage information provided by FMG*”; and that this inspection confirmed:

- two Yindjibarndi sites were completely destroyed, leaving DIA with “*no possibility of further assessment*”, and another was partially destroyed between September and November last year;
- at least 17 sites had been ‘*declassified*’ by FMG’s heritage consultants; and,
- FMG had “*under reported possible heritage sites on the Solomon Firetail Project Area by about 30%.*”

[111100 DIA On-Ground Sites Investigation Report Solomon](#)

This evidence contradicts FMG’s denials and demonstrates the truth of both Michael Woodley’s allegations and repeated objections by YAC to DIA, over the past 18 months, that FMG was under-reporting and de-classifying sites in the Solomon Project area.

A crucial factor in the exposure of FMG’s breach was the revelation by archaeologist Sue Singleton (of Eureka Heritage, NSW), that FMG had coerced her into removing expert ethnographic information from a report that FMG “*considered prejudicial*” to its business; and the release of Ms Singleton’s database of Yindjibarndi sites, which enabled DIA to detect omissions in FMG’s reports.

Michael Woodley, CEO of YAC, said, “*What is so troubling about these revelations is that they were accidental. If not for the courageous actions of a whistleblower and the media attention this generated last November, DIA officers would not have made their on-ground inspection, and this would have never come to light. We have no doubt that many other sites have been destroyed or damaged, because the heritage protection system in WA is wide open to abuse.*”

[111105 Sue Singleton to Registrar](#)

[111107 Unlawful FMG heritage dealing & massive sites damage at Solomon Project](#)

The FOI documents also reveal that FMG avoided prosecution for destroying the sites by shifting the blame and responsibility on to a senior archaeologist, Rebecca Yit of Alpha Archaeology: “*Fortescue does not deny that the impacting works were undertaken pursuant to, and in accordance with, Permits issued by Fortescue. Those Permits were issued on the basis of (incorrect) information provided by Rebecca Yit of Alpha Archaeology Pty Ltd (Alpha).*”

[120202 Lisa Maher FMG Manager Heritage to Registrar](#)

A Memorandum to DIA Director General, Cliff Weeks, from DIA Compliance Officer James Cook describes FMG’s strategy in subverting WA heritage protection measures: “*FMG’s compliance with the AHA has been variable. As FMG often work to tight timeframes, they often submit information relating to applications under section 18 at very late notice, resulting in insufficient time being given to the department to assess that information.*”

Despite clear evidence of the under-reporting, declassification, and destruction of sites, the Director General of DIA, Cliff Weeks, and the Minister of Indigenous Affairs, Peter Collier, acted against the advice of the ACMC

and adopted a proposal put by FMG for addressing the problem of "declassified" sites. The documents reveal that they also ignored the ACMC's recommendation that the Minister refuse to give his consent for FMG to continue with its development in the Solomon area until all sites had been properly identified and assessed for significance. Instead the Minister approved FMG's application to destroy the sites it had reported, on condition that FMG undertake "a more detailed recording, excavation and analysis of the sites".

YAC's In-House Legal Counsel, George Irving, said:

"The Aboriginal Heritage Act protects all sites of significance to the Indigenous peoples of this State, unless and until the Minister gives his consent for their destruction. Under the Act, an assessment of the significance of any indigenous site, by the ACMC, is a pre-condition to the exercise of the Minister's power to give such consent.

It is apparent from the FOI documents that the ACMC has not been given reliable and relevant information by FMG about sites in the areas it wishes to develop; and, that a large number of sites have either not been reported to the ACMC or have been 'declassified' as sites.

Although the decision made by the Minister requires additional 'recording' and 'analysis' of the sites that were reported by FMG before their destruction, the decision obviously precludes any possibility of the ACMC carrying out its statutory responsibility to assess the significance of those sites, and all other sites in FMG's development area, because the Minister has already given his consent for the development to proceed. It seems clear that the interest of FMG, in extracting the mineral wealth from Yindjibarndi country, is more important to the Minister for Indigenous Affairs than Indigenous sites of significance in that country, which date back more than forty thousand years—that's 35,000 years before Stonehenge."

Other disturbing aspects of this debacle of distress to the Yindjibarndi People, are:

- YAC, the native Title Representative Body (NTRB) of the Yindjibarndi people, was at no point informed by DIA or FMG about the sites that were destroyed;
- Although YAC has sought access to lands within FMG's Solomon Project area in order to identify and precisely record Yindjibarndi cultural sites on several occasions, entry has repeatedly been barred, by physical barricades and legal threats, while DIA has sat on its hands; and
- While the DIA Compliance Unit launched an investigation into possible breaches of the Aboriginal Heritage Act by FMG, and also investigated allegations by Ms Singleton, the outcomes of these investigations have been suppressed, and DIA has backed down from moves to prosecute FMG.

Finally, YAC would like to correct the record with regard to FMG's denigration, in press releases, of Michael Woodley's cultural standing, and claims that he did not have the support of his community. These claims have also been shown to be malicious and misleading by the overwhelming support shown to YAC and Mr Woodley in recent plebiscites, and by an affidavit of evidence sworn by centenarian and Yindjibarndi Lawman of high degree, Mr Ned Cheedy, before his passing earlier this year, which unequivocally affirms the cultural authority of Mr Woodley.

[120829 Yindjibarndi Plebiscite Rejects FMG Meddling](#)
[110408 Affidavit of Ned Cheedy Affirming Mr Woodley](#)

Mr Woodley said that he hoped the broader community would be less credulous of FMG in the future, and demand instead that the Government give real protection to Indigenous heritage:

"I am glad that FMG's attack on me and the credibility of Yindjibarndi Aboriginal Corporation has been shown up for what it is, a smear campaign based on misinformation, however I am bitterly disappointed in the performance of the Minister, Peter Collier, a self-professed 'close personal friend' of Andrew Forrest, and the Director General, Cliff Weeks.

"While it is not surprising that a 'maverick' company like Fortescue is so contemptuous of the Aboriginal Heritage Act, and in so much rush to push through its developments, it is a disgrace that a Minister of the Crown and a departmental head have abandoned our heritage to corporate greed. They have betrayed the confidence of the people of this State and shown themselves to be unfit for office.

"The Aboriginal people of Western Australia should be horrified that Mr Collier is now in charge of reviewing the Aboriginal Heritage Act. On his performance to date we can expect the gutting of an already weak Act. It spells more heartbreak for our people."

[DOWNLOAD Chronology/Digest Of Key Facts From FOI Documents](#)

CONTACT

Michael Woodley YAC CEO—0419 097 130
George Irving YAC In-House Legal Counsel—0417903785

mwoodley@juluwarlu.com.au
gmirving@tpg.com.au

For media materials please contact

media@juluwarlu.com.au

NEWS & INFORMATION ARCHIVE

For background research materials please visit:

<http://yindjibarndi.org.au/yindjibarndi/>

JULUWARLU ARCHIVE

A nationally significant collection of Yindjibarndi knowledge:

<http://yindjibarndi.org.au/juluwarlu/>

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“MW-130”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked **“MW-130”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

National WA

This was published 10 years ago

No legal action for FMG over sacred site desecration

Rania Spooner

September 12, 2012 – 12.34pm

Two sites of Aboriginal cultural significance have been destroyed by Indigenous employment campaigner Andrew Forrest's Fortescue Metals Group at its Solomon Project in the Pilbara, according to documents released under Freedom of Information.

But the WA Department of Indigenous Affairs' has decided not to pursue legal action against the miner under the Aboriginal Heritage Act for the destruction of the two sites and damage caused to a third.

Mixed heritage reports that allowed the damage to take place, have reignited concerns legislative safeguards do not protect heritage sites at a time of rapid resources development in WA.

FMG under-reported and declassified potential sites, often filing heritage material for permits applications with late notice in its rush to move the low cost Firetail deposit ahead, the WA indigenous affairs department director general told WA Indigenous affairs minister Peter Collier in a briefing note.

"The DIA field inspection indicates at least nine sites had not been identified by FMG in this section 18 notice," director general Cliff Weeks wrote.

In another briefing note a senior compliance officer told Mr Weeks FMG and heritage contractor Alpha Archaeology had probably under-reported potential heritage sites at the Solomon Project by about 30 per cent.

FMG acknowledged some sites had been damaged but blamed Alpha Archaeology, which provided information they relied on, in a December letter to the DIA.

It is understood the senior archaeologist behind the report no longer works for Alpha Archaeology.

"Any such impact is regretted, was certainly unintended and arose from incorrect and inaccurate information being provided to Fortescue by one of its independent archaeological firms, Alpha Archaeology," FMG wrote.

"Although Fortescue is not responsible for the information itself, Fortescue apologises without reservation for any impact caused by its ground clearing, which was undertaken in reliance up on this advice and information."

The documents were released by the Yindjibarndi Aboriginal Corporation, a group whose members claim to have been cut out of benefits and land access negotiations with FMG, unlike their relatives from the Wirilu-Murra Yindjibarndi Aboriginal Corporation.

More than \$120 million worth of Solomon contracts had been signed with the Wirilu-Murra, creating at least 30 jobs by late last year.

But widespread jobs cuts were last week announced by the company in response to a dramatic fall in the iron ore price and it is not yet known how the 400-strong Aboriginal workforce has been affected.

FMG branded allegations of site desecration by YAC chief executive Michael Woodley "offensive" and "untrue" in November, also claiming Mr Woodley had lost the support of the majority of the Yindjibarndi people.

The company still maintains the YAC has continued to reject opportunities to put up evidence concerning sacred sites.

While Fortescue acknowledged damage to sites of potential cultural value, the DIA has decided not to prosecute the company, under the Aboriginal Heritage Act.

A spokesman said the DIA had received advice from the State Solicitor's Office not to proceed because of "conflicting opinions from those experts who evaluated the heritage values; available defences to FMG; and insufficient evidence and low prospect of a successful prosecution".

In a statement, Mr Woodley said he believed there were other sites which had been destroyed or damaged in WA because the heritage protection system in the state was "wide open to abuse".

A Fortescue spokesperson said the company took its obligations to protect Aboriginal heritage "very seriously" and had "taken steps to minimise the risk of similar events occurring again".

"While Fortescue always works with Traditional Owners, including Yindjibarndi Elders, who have participated in heritage surveys, YAC continues to refuse to participate in Fortescue heritage identification and protection processes," the spokesperson said in an emailed statement.

“MW-131”

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This and the following page is the annexure marked “MW-131” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Millstream Chichester National Park and Mungaroon Range Nature Reserve

Management Plan No. 69 2011



“MW-132”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 15 pages is the annexure marked **“MW-132”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



Yindjibarndi Aboriginal Corporation (YAC)

Annual General Meeting 10/09/2014

Fifty Cent Hall – Roebourne

MINUTES

Attendances:

219 YAC Members attended the meeting in person (their attendances being recorded on the Register of Members by highlighting their names in green as they entered the venue); and, 135 valid proxies were received. As there was a quorum, the meeting proceeded.

The meeting was also attended by:

Jarrod Baker and Ben Mahler, from KordaMentha Forensic;

Michael Woodley (YAC Acting CEO);

Philip Davies (Registration Desk);

Rhys George (Minutes);

Shane Gallagher and Cassie Davies (assistance with Proxy cards and vote counting);

Chris Harrison (CFO) Financial Reports;

George Irving (PLO) Legal Advice and assistance to Chair.

Meeting commenced 10:37 am

The acting Chairman, Middleton Cheedy, opened meeting with a prayer.

Middleton asked the members to act in a cooperative and respectful manner and for non-members to leave the meeting. The non-members were identified and left meeting. See Register

A minutes silence was observed for past Elders and those who had passed away.

There was a discussion as to whether the KordaMentha Forensic Report would be tabled and discussed at the start of the meeting or where it was listed on the agenda.

Resolution 1 – YAC AGM 10/09/14

That KordaMentha deliver their Forensic Report as agenda item 1 while the minutes from the last AGM are being printed for distribution

Moved: Michelle Adams

Seconded: John Sandy

Passed Unanimously

AGENDA ITEM ONE:**KordaMentha Report**

George Irving introduced KordaMentha representatives and provided background information as to why the Forensic Report was written and explained that the Report had been posted out to all members as required by a Deed of Settlement and Release in the Supreme Court action brought by two members against YAC.

KordaMentha made their presentation on the forensic investigation into YAC finances. This included outlining:

- The tasks they were asked to accomplish,
- How they carried out the investigation,
- The report findings,
- Suggestions and recommendations.

KordaMentha answered questions from the floor regarding,

- The payments to Juluwarlu Group Aboriginal Corporation (JGAC),
- Approval process of payments;
- Potential / actual conflicts of interest,
- How the report came about,
- Payments over \$100,000 – specifically purchase of 45 Roe Street;
- Benefits of the payments - could not be assessed by them, only the YAC members could make that determination.
- Report was only dealing with YAC payments, not on how JGAC might have spent / distributed the funds it received.

Chris Harrison spoke to the forensic report and gave an overview of the Review. Chris stated that;

- With Respect to the YAC payments
 - All payments have to go through the bank. Chris asked the KordaMentha executives to confirm the fact that they had been given all the bank statements for the investigation period – which they confirmed as correct;

- With Respect to Board Approval for Payments
 - Chris asked the KordaMentha executives to confirm that a vast majority of payments had been approved by the Board – they said yes.
- With Respect to the Management Fee Paid to JGAC:
 - YAC had no staff to manage its affairs, hence JGAC was appointed to manage YAC's affairs;
 - One of the Plaintiffs was on the YAC board when the JGAC Management Agreement was formerly approved,
 - The other Plaintiff was at the meeting
 - The motion to approve the Management Agreement was unanimously approved,
 - Annual YAC financials tabled at YAC AGM's and lodged with ORIC clearly state not only that a Management Fee was paid to JGAC, but also the amount paid which was \$270,000 per year;
 - At an AGM Michael Woodley made a presentation where the amount was clearly stated and the members were in unanimous approval for JGAC to continue to manage YAC affairs; and,
 - The Management Agreement was terminated in July 2013 when YAC engaged its own administrative staff.
- With Respect to the KordaMentha's Suggestions in the power-point presentation:
 - George Irving made the statement and Chris Harrison agreed that there were no suggestions and / or recommendations in the KordaMentha Report – KordaMentha executives confirmed this statement;
 - In response to a question from the floor about what the Board was doing in relation to the suggestions made by KordaMentha in the power-point presentation Chris Harrison said the suggestions were outside the scope of their brief and therefore out of order.

KordaMentha continued to answer questions from the floor until there were no further questions.

Resolution 2 – YAC AGM 10/09/14

That the KordaMentha Report and PowerPoint presentation be tabled and the recommendations in the PowerPoint presentation be acknowledged.

Moved: Michelle Adams

Seconded: Paul Aubrey

Passed Unanimously

The KordaMentha representatives were thanked and they left the meeting.

AGENDA ITEM TWO:**Apologies and Proxies**

Michelle Adams presented apologies for Vince Adams, Penny Little, Jimmy Horace, Grace Jeffries and Esther Mingo.

At the request of the Chair, George Irving explained the process for proxies. Each proxy form was tabled, and read out. However some proxy givers were in attendance, which meant that their proxies were invalid. Additionally some proxies had been given to non-members which meant that they too were invalid. A Yellow Proxy card was given to each valid proxy holder and George Irving explained that for the purpose of voting, members holding proxy cards should hold their cards up at the time of voting.

Resolution 3 – YAC AGM 10/09/14

That the valid proxies be accepted and it be acknowledged that the proxy cards have been handed out for voting.

Moved: Krista Mather

Seconded: Margaret Read

Passed Unanimously

After the motion some concerns were raised in relation to three or four proxies. The meeting waited for confirmation that these proxies were signed by the proxy givers. This was confirmed and the meeting moved on.

There was a request for the current YAC directors to sit at the front of the meeting. The directors moved to the front of the meeting.

AGENDA ITEM THREE:**Check Register of Members**

The Chairperson asked if anyone wished to physically check the register of members. There was no response from the members.

A further discussion took place regarding proxy votes and how the process would be applied. The process was again explained by George Irving.

Break**AGENDA ITEM FOUR:****Confirm Minutes of last meeting**

George Irving invited members to pick up a copy of the previous minutes from the front of the meeting room, if they did not already have a copy, so they could follow; and, at the request of the Chair, George Irving then read out the minutes and resolutions of the previous annual general meeting.

Michelle Adams commented that the minutes should have been sent out earlier, not just before the meeting.

Resolution 4– YAC AGM 10/09/14

That the minutes be accepted as an accurate reflection of the previous AGM.

Moved: Charlie Cheedy

Seconded: Terrance Warrie

Many in favour and three against.

Middleton Cheedy declared the motion carried.

AGENDA ITEM FIVE:

Any business arising from minutes

Concerns were raised at the use of a deceased person's name on an official document. It was explained that this was unfortunate; however they must stay on because it is a legal document. Concern was raised at people using deceased people's names on other documents distributed in town. There was a general agreement that this should not happen.

AGENDA ITEM SIX:

Presentation of reports

The Chairperson presented a verbal report which covered heritage surveys and the start of a new heritage book. He also spoke on how through YAC operations they are trying to hold on to their home (Yindjibarndi Country).

Pansy Sambo provided a verbal report. Pansy said they have come together to see what Yindjibarndi people want and she hopes they will reach agreement. Pansy's report commented on the signed agreements with RTIO and Rutila, governance training and accountability to ORIC.

Russell Sandy reported that Ngaarda Radio is for all people and that we should get over our issues and work together.

Tootsie Daniels reported people want the knowledge of the Yindjibarndi people and that Yindjibarndi people need to trust each other with vision and faith. Tootsie said how the old people established the vision that the community needs to build on.

Rosemary Woodley reported that we are all Yindjibarndi and should not be blaming Michael Woodley and Lorraine Coppin for problems in the community. Rosemary said that she had dedicated her life for to the community.

Stanley Warrie welcomed people and family. He said he wanted to fight for rights for my people and see all the people benefit. We have some small mining deals and need to get the best deal for all of us.

At the end of the reports there were some community comments which included:

- Yindjibarndi people need to work together and for the same goals,

- We should have one representative from each family on the Board of Directors,
- We need to stop fighting, and
- Talk on how we move forward.

George Irving spoke about the native title claim and the need for being one group to make a strong claim. George gave a summary of his experience and explained that the native title claim is not a 'test case' as was suggested in one of the flyers that had been circulated recently.

AGENDA ITEM SEVEN:

General Directors, CEO and Managers reports

CEO stated due to time constraints he would not table his report. There was a general consensus that that there was still a lot of business to complete.

AGENDA ITEM EIGHT:

YACs Annual Financial Report

Chris Harrison presented the financial reports for the 2012/13 financial year and went through the report page by page. He asked if there were any questions but there were none. The accounts were taken as accepted.

AGENDA ITEM NINE:

Other Business

No other business was discussed.

AGENDA ITEM TEN:

Appointment of Directors

A discussion took place regarding the appointment of directors and how to build a consensus in the community on who should be elected. Charmain Adams talked about family representation and if this could be done within the ORIC rules. It was pointed out that the nominations could not be added to at the meeting so that all families were represented.

Michael Woodley asked the members if they would like to adjourn the meeting at approximately 4.35pm due to the lateness of the day. No one moved the motion.

Allery Sandy stated that people have a right to have a vote and want to vote, (some people agreed).

Michael Woodley asked are members happy to go with the names nominated. This was discussed.

Michael said that they could present nominations as they were received by date, however this could

favor the current YAC directors and supporters so they would vary the nominations in fairness to the other group. There was a general agreement that this was fair.

At the request of the Chair, George Irving assisted in running the appointment process of Directors. The rules regarding voting and consensus as set out in the YAC Constitution were explained.

Nomination: Middleton Cheedy

George Irving advised that Middleton Cheedy had been nominated by Max Hubert and seconded by Bruce Hubert and that Mr Cheedy had given his consent in writing to be a director. The nomination was therefore valid.

Members were invited to talk for and against the appointment as a director.

Michelle Adams spoke in support of Middleton because he is an elder.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour of motion; clear consensus of support,

Against; zero.

George Irving, Declared the Motion Carried

Nomination: Charmaine Adams

George Irving advised that Charmaine Adams had been nominated by John Sandy and seconded by Ken Sandy and that Ms Adams had given her consent in writing to be a director. The nomination was therefore valid.

Members were invited to talk for and against the appointment as a director.

Comment that Charmaine was a good speaker.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour of motion; clear consensus of support,

Against; 17.

Middleton Cheedy, Declared the Motion Carried

Nomination: Russell Sandy

George Irving advised that Russell Sandy had been nominated by Lesley Walker and seconded by Brockwell Guinness and that Mr Sandy had given his consent in writing to be a director. The nomination was therefore valid.

Members were invited to talk for and against the appointment as a director.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; 170,

Against; 5.

Middleton Cheedy, Declared the Motion Carried**Nomination: Robin Ranger**

George Irving advised that Robin Ranger had been nominated by Maudie Jerrold and seconded by Amy Jerrold and that Mr Ranger had given his consent in writing to be a director. The nomination was therefore valid.

Members were invited to talk for and against the appointment as a director.

Robin keeps Carnarvon Yindjibarndi people informed.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; 119,

Against; 78.

Below general agreement for consensus and below 75% needed on a poll.

Middleton Cheedy, Declared the Motion Lost**Nomination: Roseanne Mippy**

George Irving advised that Roseanne Mippy had been nominated by Curtis Lockyer and seconded by Terrance Warrie and that Ms Mippy had given her consent in writing to be a director. The nomination was therefore valid. Members were invited to talk for and against the appointment as a director.

Roseanne is an Onslow representative that was previously with ATSIC.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; 119,

Against; 77.

Below general agreement for consensus and below 75% needed on a poll.

Middleton Cheedy, Declared the Motion Lost

Nomination: Ken Sandy

George Irving advised that Ken Sandy had been nominated by May Adams and seconded by Jayne Ranger and that Mr Sandy had given his consent in writing to be a director. The nomination was therefore valid. Members were invited to talk for and against the appointment as a director.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; 105,

Against; 92.

Below general agreement for consensus and below 75% needed on a poll.

Middleton Cheedy, Declared the Motion Lost

Bigali Hanlon arrived. The proxy for her vote was taken away.

Nomination: Kevin Guinness

George Irving advised that Kevin Guinness had been nominated by Gabrielle Cheedy and seconded by Jayden True and that Mr Guinness had given his consent in writing to be a director. The nomination was therefore valid.

Members were invited to talk for and against the appointment as a director.

Comments: Kevin has heart for Yindjibarndi people, he is a fair person, he completed ORIC Director's course.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; 122,

Against; 44. Chairman called for a Poll to be taken.

Poll: Vote for; 123

Vote against; 72.

Below 75% required on a poll.

Middleton Cheedy, Declared the Motion Lost

Nomination: John Sandy

George Irving advised that John Sandy had been nominated by Robin Ranger and seconded by May Adams and that Mr Sandy had given his consent in writing to be a director. The nomination was therefore valid.

Members were invited to talk for and against the appointment as a director.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

Vote for; 105,

Vote against; 102.

Below general agreement for consensus and below 75% needed on a poll.

Middleton Cheedy, Declared the Motion Lost**Nomination: Stanley Warrie**

George Irving advised that Stanley Warrie had been nominated by Esther Pat and seconded by Kim Whalebone and that Mr Warrie had given his consent in writing to be a director. The nomination was therefore valid. Members were invited to talk for and against the appointment as a director.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; 120,

Against; 56.

Chairman called for a Poll to be taken.

Poll: Vote for; 123,

Vote against; 37.

Middleton Cheedy, Declared the Motion Carried**Nomination: Michelle Adams**

George Irving advised that Michelle Adams had been nominated by Allery Sandy and seconded by Jayne Ranger and that Ms Adams had given her consent in writing to be a director. The nomination was therefore valid.

Members were invited to talk for and against the appointment as a director.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; 91,

Against; 100.

Below general agreement for consensus and below 75% needed on a poll.

Middleton Cheedy, Declared the Motion Lost

Nomination: Tootsie Daniels

George Irving advised that Tootsie Daniels had been nominated by Wendy Warrie and seconded by Margaret Read and that Ms Daniels had given her consent in writing to be a director. The nomination was therefore valid. Members were invited to talk for and against the appointment as a director.

Russell Sandy, Pansy Sambo and Rosemary Woodley spoke for Tootsie and said she had completed governance training.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; 147,

Against; 0.

Middleton Cheedy, Declared the Motion Carried

Nomination: Allery Sandy

George Irving advised that Allery Sandy had been nominated by Ken Sandy and seconded by Vince Adams and that Ms Sandy had given her consent in writing to be a director. The nomination was therefore valid. Members were invited to talk for and against the appointment as a director

Russell Sandy said that Allery was a good speaker who spoke for all people.

Break

Alum Cheedy spoke saying there are two options, continuing with the process tonight or adjourning the meeting.

Paul Aubrey put forward a motion that the AGM be adjourned until the 25th of September 2014.

Resolution 5 – YAC AGM 10/09/14

That the AGM be adjourned until the 25th of September 2014 at PCCY '50 cent' hall, Roebourne.

Moved: Paul Aubrey

Seconded: John Sandy

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour 30,

Against 97

Middleton Cheedy, Declared the Motion Lost

Paul Aubrey and approximately 30 other members left the meeting.

Nomination: Jill Tucker

George Irving advised that Jill Tucker had been nominated by Janice Sandy and seconded by Aileen Sandy and that Ms Tucker had given her consent in writing to be a director. The nomination was therefore valid. Members were invited to talk for and against the appointment as a director.

Jill said that she would work to get a good outcome for Yindjibarndi people.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; clear consensus of support,

Against; 0.

Middleton Cheedy, Declared the Motion Carried

Nomination: Allery Sandy

The consideration of Allery Sandy's nomination, which was interrupted by the break, was continued.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; 9,

Against; 91.

Middleton Cheedy, Declared the Motion Lost

Nomination: Angus Mack

George Irving advised that Angus Mack had been nominated by Michael Woodley and seconded by Lorna Walker and that Mr Mack had given his consent in writing to be a director. The nomination was therefore valid.

Members were invited to talk for and against the appointment as a director.

Tootsie Daniels, Russell Sandy, Stanley Marion Cheedy spoke for Angus.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; clear consensus of support,

Against; 0.

Middleton Cheedy, Declared the Motion Carried

Nomination: Pansy Sambo

George Irving advised that Pansy Sambo had been nominated by Alice Guinness and seconded by Maisie Ingie and that Ms Sambo had given her consent in writing to be a director. The nomination was therefore valid. Members were invited to talk for and against the appointment as a director.

Tootsie Daniels, Bigali Hanlon, Russell Sandy, Stanley Warrie, Marion Cheedy and Rosemary Woodley spoke for Pansy.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; clear consensus of support,

Against; 0.

Middleton Cheedy, Declared the Motion Carried

Nomination: Sonya Wilson

George Irving advised that Sonya Wilson had been nominated by Marion Cheedy and seconded by Jane Cheedy and that Ms Wilson had given her consent in writing to be a director. The nomination was therefore valid.

Members were invited to talk for and against the appointment as a director.

Charmaine, Pansy and Jane spoke for Sonia.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; clear consensus of support,

Against; 0.

Middleton Cheedy, Declared the Motion Carried

Nomination: Lyn Cheedy

George Irving advised that Lyn Cheedy had been nominated by Joyce Hubert and seconded by Lorraine Coppin and that Ms Cheedy had given her consent in writing to be a director. The nomination was therefore valid.

Members were invited to talk for and against the appointment as a director.

Jane Cheedy, Tootsie Daniels, Rosemary Woodley and Jill Tucker spoke for Lyn.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; clear consensus of support,

Against; 0.

Middleton Cheedy, Declared the Motion Carried**Nomination: Rosemary Woodley**

George Irving advised that Rosemary Woodley had been nominated by Matthew Ingie and seconded by Simon Lockyer and that Ms Woodley had given her consent in writing to be a director. The nomination was therefore valid. Members were invited to talk for and against the appointment as a director.

Tootsie Daniels, Bigali Hanlon and Middleton Cheedy spoke for Rosemary.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; clear consensus of support,

Against; 0.

Middleton Cheedy, Declared the Motion Carried**Nomination: Lynette Philips**

George Irving advised that Lynette Philips had been nominated by Judith Coppin and seconded by Richard Lockyer and that Ms Phillips had given her consent in writing to be a director. The nomination was therefore valid. Members were invited to talk for and against the appointment as a director.

George Irving asked for a show of hands to determine whether there was consensus and reminded proxy holders to hold up their proxy cards.

In favour; clear consensus of support,

Against; 0.

Middleton Cheedy, Declared the Motion Carried

It was noted that 12 Directors had now been appointed to sit on the YAC Board as required in the YAC Constitution by registered members of YAC.

It was further noted that 104 votes including proxies were still available at the close of the meeting.

Middleton Cheedy declared the AGM closed at 7:36pm.

CHAIRPERSON'S DECLARATION REGARDING THE ACCURACY OF THESE MINUTES:

I, Lyn Cheedy, Chairperson of the Yindjibarndi Aboriginal Corporation, declare that the minutes set out on the pages above, including such amendments as are approved by the members and initialed by me, accurately reflect the business conducted at the 2013 Annual General Meeting of the Corporation held on 10 September 2014.

Signed:



Date:

10/ November 2014.

Lyn Cheedy

Chairperson of the Yindjibarndi Aboriginal Corporation

“MW-133”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

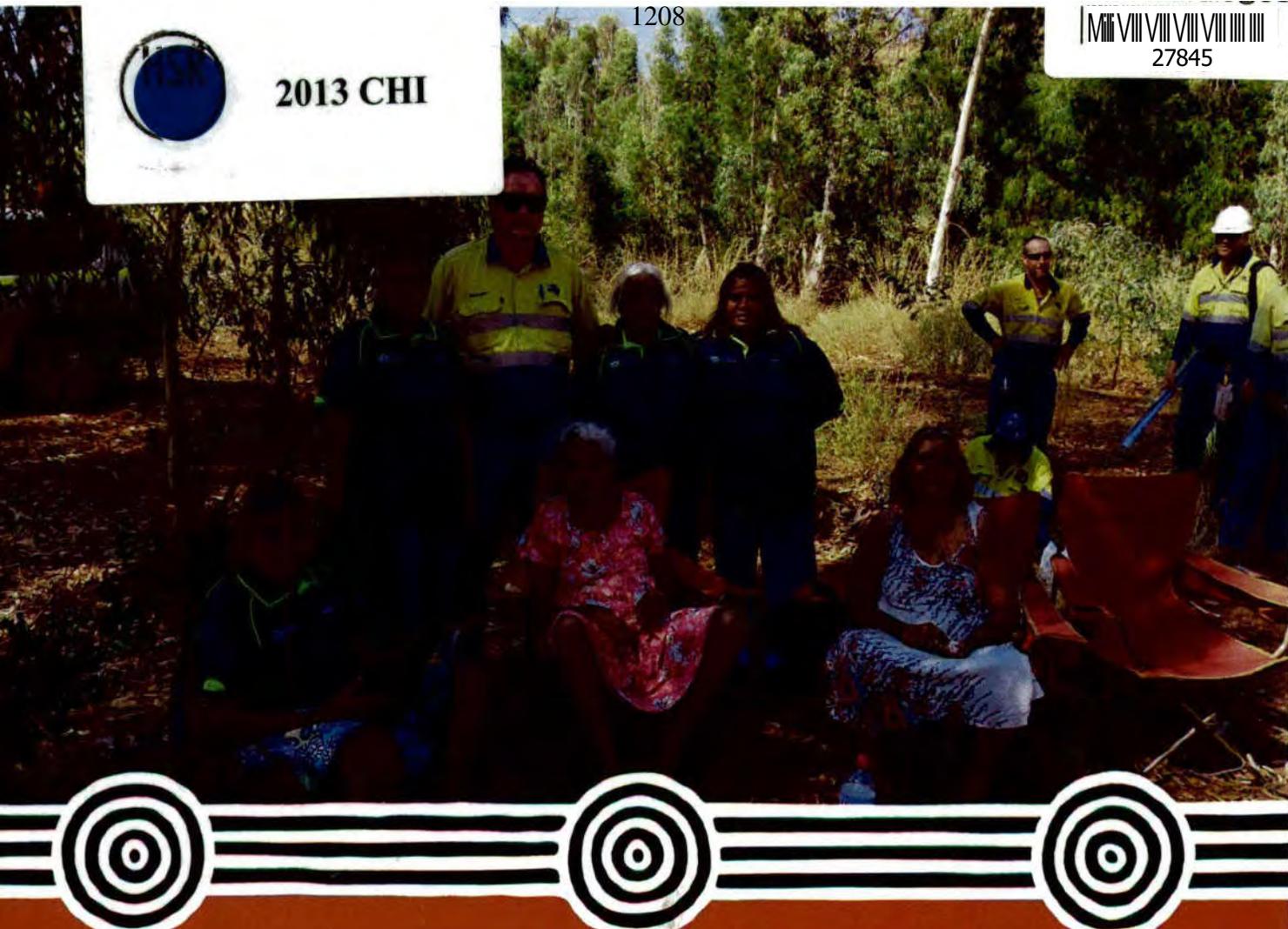
Respondents

This and the following 25 pages is the annexure marked **“MW-133”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



2013 CHI

1208



REPORT OF THE CONSULTATION PROCESS AND PRIOR HISTORY OF THE DOCUMENTATION OF KANGEENARINA CREEK, CONDUCTED BY THE YINDJIBARNDI TRADITIONAL OWNERS AND TERRA ROSA CULTURAL RESOURCE MANAGEMENT PTY LTD FOR FORTESCUE METALS GROUP LTD AND WIRLU-MURRA TABLELAND HERITAGE PTY LTD ON BEHALF OF THE WIRLU-MURRA YINDJIBARNDI ABORIGINAL CORPORATION

Consultation with the Yindjibarndi Traditional Owners
Detailing the Heritage Values within Kangeenarina Creek

February 2013

Author: Scott Chisholm

RECEIVED 22

FEB 2013

BY: ISM



TERRA ROSA
CULTURAL RESOURCE
MANAGEMENT

AUTHOR CONTACT DETAILS

Contact: Scott Chisholm
Company: **Terra Rosa Cultural Resource Management Pty Ltd**
Contact Details: PO Box 299, Hamilton Hill, Western Australia 6963

TRADITIONAL OWNER CONTACT DETAILS

Contact: Wirlu-murra Tablelands Heritage Company on behalf of
Represented Party: **Yindjibarndi Traditional Owners**
Contact Details: 6 Queen Street, Roebourne, Western Australia 6718

PROPONENT CONTACT DETAILS

Name: Roberta Molson
Company: **Fortescue Metals Group Ltd**
Contact Details: Level 2, 87 Adelaide Terrace, East Perth, Western Australia 6004



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COORDINATE CAPTURE

The Author advises that all co-ordinates quoted in this document were initially obtained with a Garmin hand held GPS, using the MGA 94 datum. All UTM coordinates provided are located within MGA Zone 50K, unless otherwise stated.

ACKNOWLEDGEMENTS

The Author would like to acknowledge and thank the following people in this Report:

- The Yindjibarndi Traditional Owner representatives who participated in the Survey;
- Wirilu-Murra Tableland Heritage Pty Ltd;
- Wirilu-Murra Yindjibarndi Aboriginal Corporation; and
- Fortescue Metals Group Ltd.



CONSULTATION ATTENDEES

The on-country site visit was attended by Yindjibarndi Traditional Owners, representatives of Wirilu-Murra Yindjibarndi Aboriginal Corporation, senior FMG project personnel, FMG field staff and a heritage consultant from Terra Rosa Cultural Resource Management. The following individuals participated in, and provided logistical support for, the on-country consultation:

On-country consultation: 27 November 2012

TERRA ROSA CULTURAL RESOURCE MANAGEMENT	
Scott Chisholm	

YINDJIBARNDI TRADITIONAL	OWNERS
Diana Smith	John Sandy
Jayne Ranger	Ken Sandy
Jill Tucker	Ricky Sandy
Rodney Adams	Berry Malcolm
Maudie Jerrold	Aileen Sandy
Sylvia Allan	Jill Tucker
Diana Smith	

WIRLU-MURRA YINDJIBARNDI ABORIGINAL CORPORATION	
Bruce Thomas	Jeanette Tavelli

FORTESCUE METALS GROUP LTD	
Alexia Morcombe	Tom Weaver
Lisa Maher	Max Coyne

Anthony Kirk

The heritage subcommittee meeting in Roebourne was attended by Yindjibarndi Traditional Owners (including nominated elders), representatives of Wirilu-Murra Yindjibarndi Aboriginal Corporation, senior FMG project personnel and a heritage consultant from Terra Rosa Cultural Resource Management. The following individuals participated in the heritage subcommittee consultation regarding Kangeenarina Creek:



Heritage subcommittee meeting: 28th January 2013**TERRA ROSA CULTURAL RESOURCE MANAGEMENT**

Scott Chisholm

YINDJIBARNDI TRADITIONAL OWNERS

Diana Smith

Jimmy Horace

Aileen Sandy

Rodney Adams

Jill Tucker

Paul Aubrey

Rodney Adams

Berry Malcolm

Allery Sandy

Vince Adams

Ken Sandy

Bruce Monadee

Celia Sandy

Sylvia Allan

WIRLU-MURRA YINDJIBARNDI ABORIGINAL CORPORATION

Michael Gallagher

Jeanette Tavelli

FORTESCUE METALS GROUP LTD

Alexia Morcombe

Tom Weaver

LIST OF ACRONYMS

The following list of acronyms are utilised throughout the Report. Definitions have been provided below for reference.

ABBREVIATION	DEFINTION
DIA	Department of Indigenous Affairs
FMG	Fortescue Metals Group Ltd
GPS	Global Positioning System
HWI	Heritage Work Instruction
MGA	Map Grid of Australia
NNTT	National Native Title Tribunal
PDA	Proposed Development Area
Terra Rosa CRM	Terra Rosa Cultural Resource Management Pty Ltd
The Act	<i>The Aboriginal Heritage Act 1972 (WA)</i>
Traditional Owners	Yindjibarndi Native Title Claimants (NNTT No. VVC03/3)
Wirilu-Murra Tableland Heritage	Wirilu-Murra Tableland Heritage Pty Ltd
WMYAC	Wirilu-Murra Yindjibarndi Aboriginal Corporation



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1 PROJECT BRIEF

Wirilu-Murra Tableland Heritage Pty Ltd (Wirilu-Murra Tableland Heritage) on behalf of Wirilu-Murra Yindjibarndi Aboriginal Corporation (WMYAC) and the Yindjibarndi Traditional Owners, commissioned Terra Rosa Cultural Resource Management Pty Ltd (Terra Rosa CRM) to conduct consultation in regards to the Kangeenarina Creek System and the heritage values contained therein, within the Fortescue Metals Group Ltd (FMG) Solomon Project Area.

FMG's Solomon Project Area is located approximately 60 km north-northeast of Tom Price and 191 km south-east of Karratha in the Pilbara region of Western Australia. The Kangeenarina Creek System is located on the north-western boundary of the current Solomon Project Area (see Map 1). The Yindjibarndi Traditional Owners have an active native title claim over the Project Area (NNTT no. WC03/3).

FMG wishes to impact on the Kangeenarina Creek System as a result of dewatering in the Kings Project further to the south of the system, but in the long term also proposes to mine within the extant boundaries of the creek itself. During past consultations the Yindjibarndi Traditional Owners had expressed concerns about the creek as it relates to the wider heritage landscape within the Solomon area. This, combined with EPA approvals that specified that FMG must attempt to conserve the standing bodies of water within the bed and banks of Kangeenarina Creek resulted in a Heritage Restricted Area being instated around the creek itself (see Map 1).

FMG has considered numerous engineering options to preserve the water levels within these pools, as per the EPA approvals, but has found them to be prohibitively expensive and not guaranteed to provide for the preservation of the standing water. As such, FMG opened further consultations with WMYAC to discuss impact of the new proposal on the heritage values within Kangeenarina Creek and the wider area. This new proposal largely involves creating a hydraulic barrier downstream from the Solomon Project Area to ensure that water flow from the Creek System, to the main body of the creek and further downstream to the Fortescue River, is maintained.

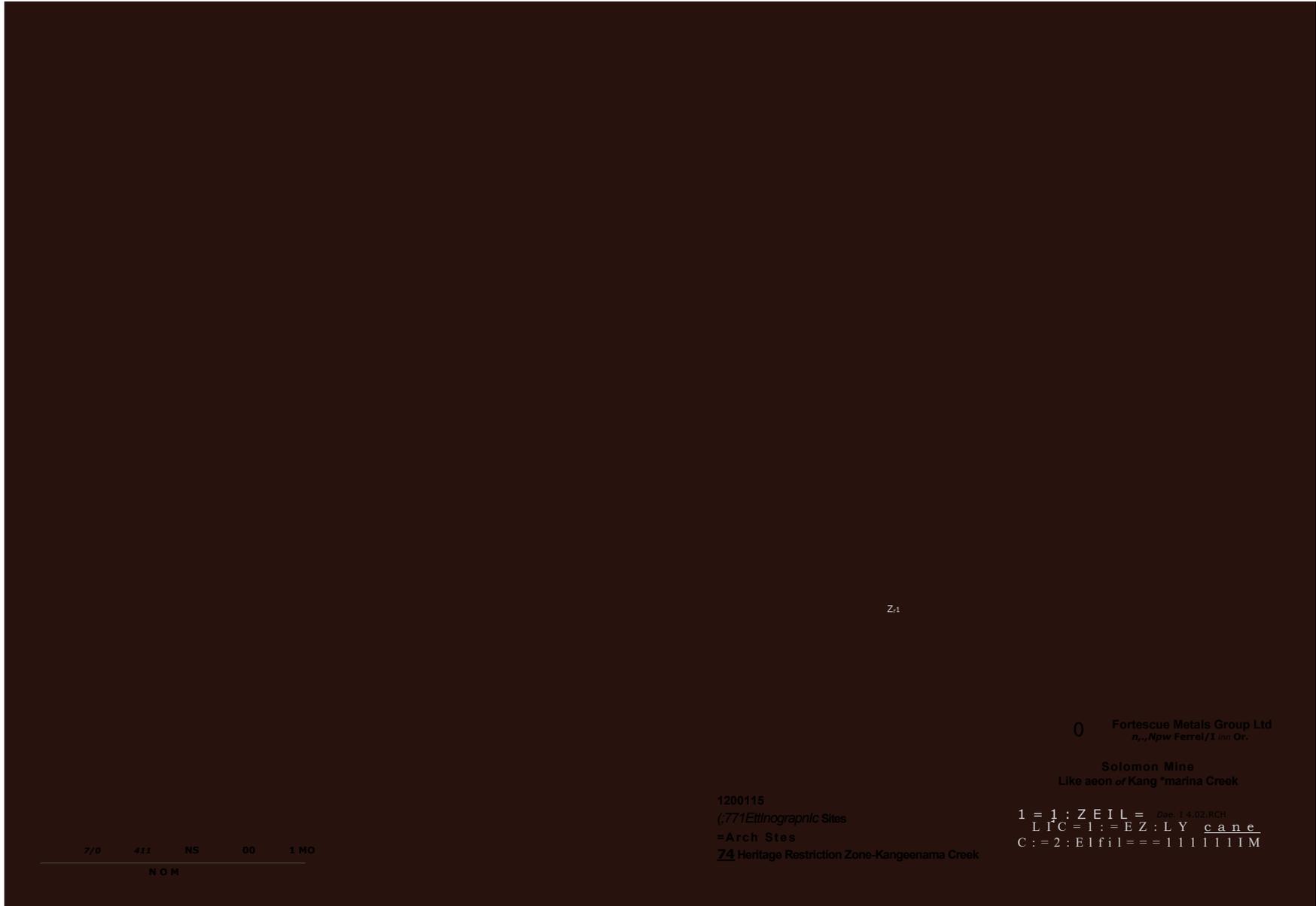
The heritage consultation was conducted over a field trip in November 2012 (see Plate 1) and a community meeting in Roebourne in January 2013. During the on-country consultation and site visit, representatives of the Yindjibarndi Traditional Owner group were in attendance, including the nominated heritage subcommittee directors of WMYAC, along with WMYAC's chosen legal representatives, a heritage consultant from Terra Rosa CRM and senior project staff from FMG. All parties were also present during the subsequent community meeting. FMG field staff provided logistical support during the site visit.

Plate 1: Consultation within Kangeenarina Creek

1.1 LIMITATIONS TO THE CONSULTATION

During the initial consultation the Yindjibarndi Traditional Owners requested that key elders be consulted in regard to the creek as it was considered that the community would require a consensus decision in regards to the cultural status of the creek. As such, attendees at the subsequent community meeting included several senior Yindjibarndi Traditional Owners that held specific knowledge for the broader Solomon Region and the Lore surrounding it. Given that the results of the field visit and the community consultation were consistent, (as with past consultation - see Section 3) it is considered that the consultation has been broad and inclusive enough to be considered a definitive record of the cultural values of Kangeenarina Creek.

Map 1 Kangeenanna Creek



2 METHOD

The ethnographic consultation regarding Kangeenarina Creek occurred across the course of an on-country site visit with nominated Yindjibarndi Traditional Owners in November 2012, and subsequent consultation with nominated Yindjibarndi Traditional Owners at the heritage subcommittee meeting held in January 2013.

Prior to field work, a preliminary desktop assessment was undertaken to provide an overview of heritage research undertaken to date within the area.

Ethnographic assessment of the site was conducted as per relevant statutory requirements and guidelines pertaining to the protection of heritage sites within Western Australia.

A formal debrief meeting upon conclusion of the on-country consultation afforded representatives of the Yindjibarndi Traditional Owner group the opportunity to discuss and comment upon the recorded outcomes of the site assessment, including mitigation strategies and recommendations for heritage management within the area. The heritage subcommittee meeting provided further opportunity for discussion and comment by the broader Yindjibarndi Traditional Owner group, included elders who were identified as holding knowledge for the Solomon area.

The consultation methodology was approved and endorsed by the parties that participated in the on-country assessment, and by the Traditional Owners in attendance at the subsequent heritage subcommittee meeting.

2.1 LEGISLATION AND HERITAGE AGREEMENTS

The Australian Federal Government and the Western Australian State Government maintain legislation applicable to the identification, protection and management of Aboriginal heritage places. At a Federal level, and applicable to heritage places across Australia, is a heritage protection regime including the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (ATSIHPA), *Australian ICOMOS Burra Charter 1999* and the *Australian Natural Heritage Charter 2002*.

Of these frameworks, only the ATSIHPA is mandated as legislation, with the Natural Heritage Charter and the Burra Charter used to detail best practice methodologies for the identification, protection and management of Aboriginal heritage places. Federal legislation provides an overarching framework for the preservation of heritage sites and places, and is intended to resolve any inadequacies that may exist within State legislation.

At a State level, the *Western Australian Aboriginal Heritage Act 1972* (the Act) outlines the legislation applicable to Aboriginal objects and heritage places. All sites, even those that have not been formerly identified or registered with the Department of Indigenous Affairs (DIA), are protected by the Act. Violations of the Act may still result in prosecution, regardless of the registration status of the site.

2.2 DESKTOP RESEARCH METHODOLOGY

Desktop research for heritage values relies largely on the Register of Sites maintained by the DIA, which provides an indication as to the presence and nature of any heritage values previously recorded and registered within the area of interest.



Prior to on-country consultation, the boundaries of the area of interest are entered into the DIA Aboriginal Heritage Inquiry System (AHIS) to ascertain the presence and extent (where available) of any Aboriginal heritage sites or other heritage places registered within the area. Aboriginal heritage sites are those areas that have been assessed by the Aboriginal Cultural Materials Committee (ACMC) as constituting sites under the Act. Other heritage places include potential sites for which data has been lodged with the DIA but is pending assessment by the ACMC (status L), potential sites for which insufficient information has been provided for accurate assessment by the ACMC (status I), and stored data pertaining to areas of heritage value that have been assessed by the ACMC as not constituting heritage sites under the Act (status S). The site status codes utilised by the DIA are provided below.

DIA SITE STATUS ABBREVIATIONS

C <i>Closed</i>	F <i>Female only</i>	I <i>Insufficient information</i>
L <i>Lodged</i>	M <i>Male only</i>	MI <i>Initiated males only</i>
N <i>No restriction</i>	O <i>Open</i>	R <i>Registered site</i>
S <i>Stored data</i>	V <i>Vulnerable</i>	

The AHIS search is also utilised to ascertain whether any heritage surveys have previously been conducted within the area of interest, and if any heritage reports containing information relevant to the area have been registered with the DIA.

Following the AHIS search, relevant site files and heritage reports held by the DIA are accessed and studied. Some of the information held by the DIA is not publically accessible due to cultural sensitivity (status C) or due to temporary access suspension as a result of DIA administrative processes. In such cases, the inability to access information is noted in the desktop research results of the final heritage report prepared by Terra Rosa CRM.

Unpublished material (that is, heritage reports not registered with the DIA) that is available for review is also researched prior to field work. FMG provided a number of reports detailing outcomes of previous consultation and research conducted regarding the area of interest and the broader cultural landscape. An overview of the relevant material is provided below in the desktop research results (see Section 3).

2.3 FIELD METHODOLOGY

The objective of the on-country consultation was to establish whether the Yindjibarndi Traditional Owner group consider Kangeenarina Creek to be a place of cultural importance or significance, and if necessary to establish the extent and nature of any heritage values within the immediate area. Additionally, the consultation was conducted so as to establish, as necessary, any heritage management recommendations for the area, and to disseminate any such recommendations to FMG.

The consultation group conducting the assessment of nominated representatives of the Yindjibarndi Traditional Owner group, who assert the right to speak for the area of interest being examined, and one heritage consultant from Terra Rosa CRM.

Ethnographic consultation occurred consistently throughout the on-country assessment in open discussions with the Yindjibarndi Traditional Owners. The attending heritage consultant recorded in detail any ethnographic comment offered by the Traditional Owners and engaged lines of questioning to ascertain as much relevant site information as possible, including the importance and significance of sites. Ethnographic comment was also invited regarding the wider area surrounding the area of interest in order to identify any potential peripheral impacts of the proposed development.

Further to identifying heritage concerns within the targeted area, the Traditional Owners were invited to discuss any concerns regarding the proposed development, and to specify recommendations regarding the Project. Heritage management recommendations and concerns, as expressed by the Traditional Owners, were recorded in detail.

At the end of the consultation, a thorough debrief of all documented outcomes was conducted with the attending Yindjibarndi Traditional Owner representatives. During the debrief, the recorded results of the consultation were presented back to the Traditional Owner representatives to ensure that all cultural heritage concerns had been accurately captured.

The ethnographic consultation was conducted to the satisfaction of the Traditional Owner representatives that were present.

2.3.1 Heritage Report Review Process

Outcomes of the heritage research are reviewed by WMYAC prior to dissemination of results to FMG. This includes brief, preliminary information provided immediately following field work, as well as the full and final heritage report that details the desktop and field work results. The review process ensures that culturally sensitive information is appropriately indicated, the recommendations discussed amongst the consultation group are assessed by a wider representative group and any amendments are made in accordance with the Traditional Owners' suggestions. The review process allows for WMYAC, on behalf of the Traditional Owners, to provide Terra Rosa CRM with feedback on the report, which is subsequently taken into account during the final editing of the report. Terra Rosa CRM responds to feedback based on professional standards, and reports impartially as an independent party on the research results of heritage assessments.

3 DESKTOP RESEARCH

3.1 PREVIOUS HERITAGE SURVEYS RELATING TO KANGEENARINA CREEK

The Solomon Area has been subject to numerous heritage surveys and assessments since commencement of the project. Summated below are relevant heritage reports pertaining directly to Kangeenarina Creek as an area of ethnographic value, and to the wider ethnographic constitution of the Solomon landscape. Kangeenarina Creek itself has not, to date, been registered with the DIA.

3.1.1 Summaries of Relevant Heritage Reports

The three previous surveys summarised below have focused on the creeks and waterways within the Solomon Area:

3.1.1.1 Davies, P. 2009 Ethnographic Report on a Work Program Heritage Survey for Proposed Exploration Drill Lines and Access Track on E47/1333, E47/1334 and E47/1447 and Exploration License held by Fortescue Metals Group Pty Ltd Prepared for Juluwarlu Group Aboriginal Corporation and Yindjibarndi Aboriginal Corporation

This report details the results of an ethnographic consultation with representatives of the Yindjibarndi Aboriginal Corporation, which focused on a work program within Solomon (not defined by maps). The scope of consultation was broadened to include general ethnographic comment on the significance of water sources to Yindjibarndi. While no specific references are drawn to Kangeenarina Creek, it is asserted that "*Wundu, Bawa and Jinbi — Rivers, waters and springs are highly significant as one of our Yindjibarndi's main natural resources essential for maintaining Yindjibarndi cultural, heritage, diversity and religious beliefs*" (p. 15). Water courses are also referred to as containing Yindjibarndi Spirits. Kangeenarina Creek is not explicitly referenced by this assertion, nor is there any detailed information provided on the cultural importance and significance of individual bodies of water, beyond the broad heritage significance of water bodies to the Yindjibarndi People.

3.1.1.2 Goode, B. and Gifford, P. 2011 A Report of an Ethnographic Aboriginal Heritage Survey of the Solomon Project in the Eastern Pilbara Region of Western Australia. A Report Prepared for Fortescue Metals Group Ltd.

This report details the results of an ethnographic survey commissioned by FMG, and conducted by Brad Goode, to examine several "block" areas within the Firetail Project Area, provide significance assessments to facilitate a pending Section 18 application lodged by FMG, and to discuss some of the broader heritage concerns within the Solomon Project with the Yindjibarndi People, including a proposed Section 16 application lodged by Alpha Archaeology.

In relation to Kangeenarina Creek, the report details that the creek itself and the associated pools were of "generalised cultural significance" and that because of this an operational buffer (not defined) should be observed where no works would take place. It is further acknowledged, however, that "while the reported significance relates to spiritual beliefs, no specific mythological narrative could be detailed regarding this waterway" and "without a

specific mythological narrative it is unlikely that Kangeenarina Creek would receive a positive assessment as a site under the section 5b of the AHA" (pp. 2-3).

Conversely, the report also recommend further that if FMG was to follow the EPA restrictions in regards to the creek, the buffer would not be necessary, and that disturbance such as drilling and tracks should be monitored by WMYAC representatives and that any mining development of the creek should be subject to further consultation with WMYAC.

In the body of the report, the author describes the on country consultation around the creek, stating that the Yindjibarndi People identified all water courses and river systems as created by the *Barrimirndi* (serpent). As Kangeenarina Creek is a part of the Fortescue River System, it is considered inter-related to this being, however, it was not determined by the Survey Team that the serpent was resident within the pools along the creek, as it is considered to be in *Yinda* [sic] within the wider Fortescue River system. The author does point out however, that the Yindjibarndi are required to perform propitiatory rituals in relation to access to the pools. The author states that the Yindjibarndi People assert Satellite Springs is of high significance to the Yindjibarndi People, and that they expressed concern that future developments that affect the creek may have peripheral impacts on the water levels within Satellite Springs.

Finally, the group asserted that there may be other Yindjibarndi People that hold knowledge of the creek and its related systems, and requested further consultation with WMYAC to enable the group as a whole to make a decision in regards to the status of the creek.

Ambiguities within the report generate uncertainty as to the heritage status of the creek and the proposed mitigation and management strategies agreed upon for the area.

3.1.1.3 Gallagher, M. 2001 Report of an Ethnographic Consultation to Comment on Sixteen Archaeological sites in the Firetail West, Central and Loop areas in Fortescue's Solomon Project, Prepared for the Wirlu-murra Tableland Heritage Pty Ltd and Fortescue Metals Group Limited.

While this report focuses mainly on the inspection of the archaeological sites in the listed Project Areas, it does on page 13 detail a further consultation in regards to trying to clarify some ambiguities put forward in the Goode and Gifford report discussed above. This was in response to queries from the Registrar of Aboriginal sites, and as such the Survey Team revisited Kangeenarina Creek. The result of this consultation was that the Yindjibarndi Traditional Owners present, again asserted that there was no known narrative specific to the creek itself, and therefore did not constitute a site under Section 5 of the Act.

3.2 THE IDENTIFIED CULTURAL LANDSCAPE

In addition to the above reports, there have been two other ethnographic surveys that provide some cultural context regarding the broader landscape surrounding Kangeenarina Creek. Furthermore, numerous archaeological reports have been generated and detail several sites identified in the area. These are discussed below.

3.2.1 Summaries of Ethnographic Surveys Relevant to the Broader Cultural Landscape

3.2.1.1 *Coldrick, B. and McDonald, E. 2010 Report of an Ethnographic Survey of FMG's Mining Tenements on Hamersley Station, Pilbara, Western Australia Prepared for the Windiwari Guruma Aboriginal Corporation and Fortescue Metals Group Ltd..*

This was a broad scale ethnographic survey conducted with senior Guruma Traditional Owners of the areas around Fortescue's tenements, and identifies numerous areas of ethnographic significance within the tenements. This includes several burials and mythological sites. Of particular note to this report are *Pajimungkarinha* (Kangeenarina Well) and Satellite Springs, both of which are situated on tributaries of Kangeenarina Creek. *Pajimungkarinha* (Kangeenarina Well) is described as a traditional water hole that is now a station well, and contains a scar tree and various stone tools. While this site is 18 km south of the current impacts to the creek, it is worth noting in the context of feedback from the Yindjibarndi Traditional Owners as discussed in Section 4. Satellite Springs is described as a site for which the precise location had been lost for some time. As a result of consultation in 2009, the site was relocated within the current registered area, and a 3 km buffer zone around the site was requested. The Guruma Traditional Owners present during the survey acknowledged the significance and importance of Satellite Springs due to the presence of the pool itself, the hydrological system that it represents and the complex rock art within the site. The site was mapped to encompass all drainage channels and pools within the vicinity of the site.

3.2.1.2 *Czerwinski, P. 2012 Ethnographic Site Verification Report, Satellite Springs, FMG YIN 100 Survey Request, Solomon Mine Site, Pilbara, WA*

This report details a helicopter borne survey that was looking at reassessing the boundaries of Satellite Springs to determine whether the boundaries of the site were sufficient to protect the heritage values of the area. As a result of the survey it was ascertained that the Yindjibarndi Traditional Owners were satisfied with the boundaries as previously recorded.

3.2.2 Archaeological Surveys conducted within the area of Kangeenarina Creek

Fourteen archaeological sites are located within the vicinity of Kangeenarina Creek, as detailed in Table 1 below. These sites consist of a variety of classifications, including artefact scatters, scared trees, grindstones and rockshelters. The diversity of classifications suggests that the area around the creek was the site of relatively intensive past habitation.

Consultation with the Yindjibarndi Traditional Owners Detailing the Heritage Values within Kangeenarina Creek

Table 1: Archaeological site types and associated reports within the vicinity of Kangeenarina Creek

Site ID	Site Type	Report Reference
YIN11-033 to YIN11-037	Rock Shelter, Artefact Scatter, Stone Arrangement, Grinding Stone	cluster of 5 sites within Satellite Springs boundary) Alpha Archaeology, <i>Final Report Stages 1-16 (Volume 2)</i> , October 2012
YIN10-068	Artefact Scatter	Veritas & Eureka, <i>Report of an Arch Survey Request No: 41, Areas A, B & C</i> , August 2011
YIN10-069	Mill Stone	Veritas & Eureka, <i>Report of an Arch Survey Request No: 41, Areas A, B & C</i> , August 2011
YIN10-071	Artefact Scatter, Mill Stone	Veritas & Eureka, <i>Report of an Arch Survey Request No: 41, Areas A, B & C</i> , August 2011
YIN10-072	Artefact Scatter, Mill Stone	Veritas & Eureka, <i>Report of an Arch Survey Request No: 41, Areas A, B & C</i> , August 2011
YIN10-070	Artefact Scatter	Veritas & Eureka, <i>Report of an Arch Survey Request No: 41, Areas A, B & C</i> , August 2011
YIN11-039	Rock Shelter, Artefact Scatter	Alpha Archaeology, <i>Final Report Stages 1-16 (Volume 2)</i> , October 2012
YIN12-007	Rock Shelter, Artefact Scatter, Grinding Stone	Alpha Archaeology, <i>Final Report Stages 17-20</i> , October 2012
YIN11-023	Artefact Scatter, Scarred Tree, Nulla-nulla	Alpha Archaeology, <i>Final Report Stages 1-16 (Volume 2)</i> , October 2012
YIN11-024	Rock Shelter, Artefact Scatter, Grinding Stone	Alpha Archaeology, <i>Final Report Stages 1-16 (Volume 2)</i> , October 2012
YIN11-025	Scarred Tree	Alpha Archaeology, <i>Final Report Stages 1-16 (Volume 2)</i> , October 2012
YI N11-021	Rock Shelter, Artefact Scatter	Alpha Archaeology, <i>Final Report Stages 1-16 (Volume 2)</i> , October 2012
YIN11-022	Rock Shelter, Artefact Scatter	Alpha Archaeology, <i>Final Report Stages 1-16 (Volume 2)</i> , October 2012
YI N11-055	Rock Shelter, Artefact Scatter	Alpha Archaeology, <i>Final Report Stages 1-16 (Volume 2)</i> , October 2012
YIN11-053	Artefact Scatter	Alpha Archaeology, <i>Final Report Stages 1-16 (Volume 2)</i> , October 2012

4 RESULTS

The on-country consultation with the Yindjibarndi Traditional Owners and the subsequent community consultation were undertaken in November 2012 and January 2013 respectively.

On 27 November 2012, on-country consultation was undertaken between representatives of the Yindjibarndi Traditional Owners, their legal representative Integra Legal, their heritage representative Terra Rosa CRM and Fortescue Metals Group (FMG). The purpose of the consultation was to discuss management of Yindjibarndi heritage interests within the FMG Solomon Project Area, and specifically the likely impacts of FMG's Kings Project on the Kangeenarina Creek system.

The Yindjibarndi Traditional Owners present were given a thorough briefing of the Kings Project, as well as the history of consultation around the Kangeenarina Creek. Several Yindjibarndi Traditional Owners had been present during past consultation regarding the creek. The majority of the consultation centred on a key development in FMG's strategy in regards to this area. As relayed by FMG representatives on the ground, the ongoing protection of the creek, and specifically the hydrology of the area, would be compromised by the western extension of the Kings Project. Initially, it was thought that a "grouting" system of high density drill holes filled with concrete under high pressure would provide an alternative to bedrock to keep the water from subsiding to the east (towards the Kings Pit) but a small trial of this method had left a porous barrier that would not suffice to maintain the integrity of the subterranean water flow through the creek system. Further, the environmental disturbance along the upper branch of this creek (as referred to by the Yindjibarndi Traditional Owners) would be significant as a large portion of land would need to be cleared for the drilling.

FMG presented a second option to the Yindjibarndi Traditional Owners that constituted dewatering the upper creek, but creating a hydrogeological barrier at a narrowing of the creek to the north of the mining disturbance area between two ridgelines. It was thought that by topping up the water table upstream the integrity of the creek system would be better preserved. In this way, as relayed by FMG, a 3 km section of the upper creek system would be impacted by the Kings Project in its totality (as once dewatered the mine would likely extend through this area in a 5 to 7 year time period) but the lower regions would be conserved and protected.

Importantly to the Yindjibarndi Traditional Owners FMG asserted that the Satellite Springs site, one which is of high cultural significance to the Yindjibarndi People, would NOT be directly impacted by any dewatering activities as the springs are fed by waters from a different aquifer, and not tied to the flows of the upper reaches of Kangeenarina Creek.

During the site visit to the creek and the subsequent meeting at Castle Camp, the Yindjibarndi Traditional Owners discussed the impact of the Kings Project on Kangeenarina Creek, and the heritage values of the wider environment. The Yindjibarndi Traditional Owners conclusions of this consultation were:

- 1 . The Yindjibarndi Traditional Owners reinforced earlier conclusions that the area of Kangeenarina Creek that will foreseeably be impacted by the Kings Project development is not considered to bear substantive heritage values as defined under the Act. However, the creek does bear cultural significance due to its association with

Satellite Springs and its association with the intangible presence within the landscape of creative beings associated with Kangeenarina Creek and the broader Solomon area.

While not opposed directly to the proposed Kings Project development, the Yindjibarndi Traditional Owners would like the opportunity to convene a meeting of the Yindjibarndi community to discuss the impacts of the proposal on Kangeenarina Creek. It is proposed that the meeting involve community members only and take place in the WMYAC office in Roebourne. Such a meeting would facilitate the establishment of:

- a. The final status of the creek as a heritage site or not a site under the meaning of the Act according to the Yindjibarndi Traditional Owners.
 - h. Community understanding and acceptance of the change of FMG's plans in regards to the creek, and for the Yindjibarndi Traditional Owners to accept and project a unified stance in regards to the likely impacts upon the creek;
 - c. A forum in which to clearly broadcast to the community all relevant information provided to WMYAC and its consultants;
 - d. An elected Survey Team to conduct the Site Identification and Section 18 consultation regarding Kangeenarina Creek (see below).
3. In order to inform the above meeting and discussions, the Yindjibarndi Traditional Owners request the following:
 - a. Detailed analysis of the hydrological report that Satellite Springs would not be impacted by the developments further upstream;
 - h. A discussion between FMG and Terra Rosa CRM regarding other projects where FMG has partnered with Traditional Owner groups in water monitoring and other similar monitoring programs.
 4. Subsequent to the above, the Yindjibarndi Traditional Owners would like to conduct an ethnographic survey of the areas to be directly affected by the proposed development. Of particular concern to female Yindjibarndi Traditional Owners is the areas in which bore sites are to be drilled.
 5. The Yindjibarndi Traditional Owners request that FMG staff, senior environmental officers and hydrological specialists be present during the above consultation.
 6. The results of the ethnographic consultation would be supplied in a formal heritage report to the DIA to inform any application made under Section 18 of the Act to utilise the land within Kangeenarina Creek and to implement the proposed hydrological buffer within the lower portion of the upper creek system. The detailed analysis of this meeting would also be included within this Report to fully document the history of consultation. This is conditional to approval and endorsement by the wider WMYAC group.
 7. The Yindjibarndi Traditional Owners request that negotiations are undertaken with FMG regarding compensation possibly in the form of caring for country, ranger programs, ongoing monitoring, and training and development to ensure that the remainder of the Kangeenarina Creek system is co-operatively managed into the

future by FMG and WMYAC. This may take the form of a management plan focused specifically on the creek and associated areas that will be monitored by WMYAC for the duration of the Kings Project and throughout rehabilitation of the area.

Plate 2: Senior FMG staff member discussing the project proposal with Yindjibarndi Traditional Owners within Kangeenarina Creek



The subsequent community meeting was conducted within the WMYAC office in Roebourne. During this meeting the Project was outlined to everyone present, the proposed hydraulic activities outlined and the heritage status of the creek discussed.

It was the conclusions of this consultation that, consistent with the past work, Kangeenarina Creek is **not** considered to be an Aboriginal Heritage Site to which the Act would pertain. As explained by senior Yindjibarndi Traditional Owners, the creek is an inherent part of the fabric and context of the country within it is situated, but it is of no more nor less specific significance than the areas that surround it. Pointing out the presence of artefacts along the creek, it is clear to the Yindjibarndi Traditional Owners that the creek was in fact an area of past cultural activities, in the same way that any areas containing water resources would be. While this is of significance to the Yindjibarndi Traditional Owners as it exhibits occupation over time by the Old People and is considered to be a direct material link to their ancestors, there is no known, specific ethnographic association with the creek.

As stated by a Yindjibarndi Traditional Owner that sang the story for that country, there are "no *thalu*, no *yinta* there" (ceremonial sites and sacred pools), referring to the fact that as stated previously, the creek is not an area inhabited by the *Barrimirndi*. By singing the song for the area the Yindjibarndi Traditional Owner detailed how Kangeenarina is mentioned as a place between places, on the way to Satellite Springs, part of a song line, and the context of the story, but not an area that is of special or sacred significance in and of itself. This discussion and conclusion was endorsed by the entirety of the Yindjibarndi Traditional Owner group present. While the song was known, some of the areas referred to were not, as stated by the owner of the song "story been taken out. Grandfather not give me that story". Given the presence of other heritage sites along Kangeenarina Creek (such as *Pajimungkarinha* (Kangeenarina Well)) it can be seen that contemporary Yindjibarndi society consider the creek to be a place of some importance and significance. However, in the context of the broader landscape, the Yindjibarndi People do not consider the site of sufficient importance or significance to be established as a site under the Act.

While in past surveys this has been communicated as potentially contradictory statements, it is clear to the satisfaction and consensus of the Yindjibarndi Traditional Owners consulted that Kangeenarina Creek is not considered amongst Yindjibarndi People to be a heritage site.

Having established the heritage status of the creek, the Yindjibarndi Traditional Owners then discussed whether further consultation was needed in regards to the creek, and what mitigative measures and management strategies would need to be implemented in regards to the creek itself. More importantly to the Yindjibarndi Traditional Owners, discussion was undertaken regarding how it can be ensured that Satellite Springs will not be affected by the planned activities. Additionally, the recommendations and conclusions from the on-country meeting were discussed, and reviewed.

Yindjibarndi Traditional Owners' conclusions of the consultation carried out in January 2013 are listed below:

1. The Yindjibarndi Traditional Owners reinforced earlier conclusions that the area of Kangeenarina Creek does **not** constitute a heritage site.
2. In light of the consultation conducted to date the Yindjibarndi Traditional Owners asserted that they do not require further on-country consultation in regards to any Section 18 Application made to disturb the creek.
3. That if the creek is disturbed, the Yindjibarndi Traditional Owners request monitors to be present during all ground disturbing works. This request is made in light of the fact that while the *Barrimirndi* is not resident within Kangeenarina Creek, it still utilises the creek as a pathway, and Yindjibarndi People should be present to ensure that it is not disturbed by this activity.
4. That if the creek is disturbed, the Yindjibarndi Traditional Owners request to be informed of the details of the hydrogeological barrier by an expert representative from FMG.
5. That the performance of this barrier is monitored in order to ensure that the creek maintains environmental and hydrological integrity.
6. That FMG fund WMYAC to conduct a cultural mapping exercise that would look at

documenting areas of known cultural significance and importance to the Yindjibarndi People.

7. That FMG consider a proposal from WMYAC to co-manage the Satellite Springs system and the heritage values present within the area.
8. That FMG develop or revisit a cultural heritage management plan in light of the above in conjunction with WMYAC.
9. That FMG continues to consult with the Yindjibarndi Traditional Owners in regards to the development of Kangeenarina Creek and the broader Solomon Project.

5 RECOMMENDATIONS AND CONCLUSIONS

The following conclusions and recommendations are resultant of the consultation process and provided with the approval and endorsement of the Yindjibarndi Traditional Owners who participated and WMYAC and its consultants and representatives:

Yindjibarndi Traditional Owners conclusions of this consultation were:

1. The Yindjibarndi Traditional Owners reinforced earlier conclusions that the area of Kangeenarina Creek does **not** constitute a heritage site.
2. In light of the consultation conducted to date the Yindjibarndi Traditional Owners asserted that they do not require further on site consultation in regards to any Section 18 Application made to disturb the creek.
3. That if the creek is disturbed, the Yindjibarndi Traditional Owners request monitors to be present during all ground disturbing works. This request is made in light of the fact that while the *Barrimirndi* is not resident within Kangeenarina Creek, it still utilises the creek as a pathway, and Yindjibarndi People should be present to ensure that it is not disturbed by this activity.
4. That if the creek is disturbed, the Yindjibarndi Traditional Owners request to be informed of the details of the hydrogeological barrier by an expert representative from FMG.
5. That the performance of this barrier is monitored in order to ensure that the creek maintains environmental and hydrological integrity.
6. That FMG fund WMYAC to conduct a cultural mapping exercise that would look at documenting areas of known cultural significance and importance to the Yindjibarndi.
7. That FMG consider a proposal from WMYAC to co-manage the Satellite Springs system and the heritage values present within the area.
8. That FMG develop or revisit a cultural heritage management plan in light of the above in conjunction with WMYAC.
9. That FMG continues to consult with the Yindjibarndi Traditional Owners in regards to the development of Kangeenarina Creek and the broader Solomon Project.

6 REFERENCES

- Coldrick, B. and McDonald, E. 2010 *Report of an Ethnographic Survey of FMG's Mining Tenements on Hamersley Station, Pilbara, Western Australia* Prepared for the Windiwari Guruma Aboriginal Corporation and Fortescue Metals Group Ltd..
- Czerwinski, P. 2012 *Ethnographic Site Verification Report, Satellite Springs*, FMG YIN_100 Survey Request, Solomon Mine Site, Pilbara, WA
- Davies, P. 2009, *Ethnographic Report on a Work Program Heritage Survey for Proposed Exploration Drill Lines and Access Track on E47/1333, E47/1334 and E47/1447 and Exploration License held by Fortescue Metals Group Pty Ltd* Prepared for Juluwarlu Group Aboriginal Corporation and Yindjibarndi Aboriginal Corporation
- Goode, B. and Gifford, P. 2011 *A Report of an Ethnographic Aboriginal Heritage Survey of the Solomon Project in the Eastern Pilbara Region of Western Australia*. A Report Prepared for Fortescue Metals Group Ltd.
- Gallagher, M. 2001 *Report of an Ethnographic Consultation to Comment on Sixteen Archaeological sites in the Firetail West, Central and Loop areas in Fortescue's Solomon Project*, Prepared for the Wirlu-murra Tableland Heritage Pty Ltd and Fortescue Metals Group Limited.

“MW-134”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 26 pages is the annexure marked “**MW-134**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

**Wirilu-Murra Yindjibarndi Aboriginal Corporation
ICN 7483**

ANNUAL FINANCIAL REPORT

FOR THE YEAR ENDED

30 JUNE 2022

Wirilu-Murra Yindjibarndi Aboriginal Corporation
Financial Report
30 June 2022

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These financial statements are the consolidated financial statements of the consolidated entity consisting of Wirilu-Murra Yindjibarndi Aboriginal Corporation and the entities it controls. The financial statements are presented in Australian dollars.

Wirilu-Murra Yindjibarndi Aboriginal Corporation is an incorporated domiciled in Australia.

Its registered office is:
Wirilu-Murra Yindjibarndi Aboriginal Corporation
6 Queen Street
ROEBOURNE WA 6178

The financial statements were authorised for issue by the Directors on 27 October 2022. The Directors have the power to amend and reissue the financial statements.

**Wirlu-Murra Yindjibarndi Aboriginal Corporation
Directors' Report
For the year ended 30 June 2022**

The Directors present their report, together with the financial statements, on the consolidated entity (referred to hereafter as the 'consolidated entity') consisting of Wirlu-Murra Yindjibarndi Aboriginal Corporation (referred to hereafter as the 'parent entity') and the entities it controlled at the end of, or during, the year ended 30 June 2022.

1. Directors

The names of the Directors in office for this financial year and up to the date of this report were:

Ken Sandy
Allery Sandy
John Sandy (Resigned 29 November 2021)
Rodney Adams
Paul Aubrey
Vince Adams
Gloria Lee (Appointed 29 November 2021)

2. Directors' Meetings

The Directors held meetings on the following dates:

08 July 2021, 23 August 2021, 13 September 2021, 25 November 2021, 14 December 2021, 18 January 2022, 25 January 2022, 15 February 2022, 05 April 2022.

3. Distributions paid to members during the year:

There were no distributions paid to members.

4. Secretary

Ms. Jessica Wilson is qualified to carry out the duties of Secretary from her experience in business administration in positions she previously held.

5. Wirlu-Murra Yindjibarndi Aboriginal Corporation's Principle Activities

Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC), as one of the traditional owners of the Pilbara, continues to seek to create a positive future for the betterment of the Yindjibarndi community. Consequently, it pursues immediate and long-term goals with both industry and government to provide social and economic benefits including education, training and employment; better health; availability of, and improved housing; and cultural benefits by honoring, protecting and sustaining Yindjibarndi land and culture, and preserving Yindjibarndi heritage; whilst also becoming educated and proficient in operating its own businesses in the resource industry, and other industries which operate across the Pilbara.

These activities for this financial year included joint venture and contracting services, cross cultural training, heritage preservation through provision of heritage services, Yindjibarndi knowledge building and promoting, vocational training and good governance training.

Further, through its community work WMYAC is committed to supporting and facilitating the education of its youth and adult population, both in their heritage and culture, and within the non-Indigenous education system; and also to the establishment of a safe house for children and other community members; supporting its youth in gaining education, training and employment; provision of affordable housing and access to health care, and the provision of community support in all areas to alleviate the need or suffering of any Yindjibarndi person.

**Wirru-Murra Yindjibarndi Aboriginal Corporation
Directors' Report
For the year ended 30 June 2022**

6. Review of Operations

For the financial year 2022, Wirru-murra Group perform well across all its activities and actively participate in building capacity and capability across its operations by delivering mining support services across various projects in a safe and efficient way for the betterment of, the Yindjibarndi community. These activities are:

Eastern Guruma – Wirru-Murra Joint Venture: The Enterprise in conjunction with its joint venture partner Eastern Guruma Pty Ltd continuous to undertake Mining Services Contracts involving road maintenance and resource definition works. .During the financial year, the JV secured additional \$10 million of work,

Solomon Bus Hire Contract: It has been in operations since 2013 and on the 1st July WME was awarded a 5 year + 1 year extension option. The contract continues to perform well

Master Maintenance Service Agreement – The contract continuous to perform well and it is currently on its 4th year of a 5 year contract with a 1 year extension option. As of June 2022, the Enterprise employs approximately 60 trades personnel.

Training and Employment: WMYAC continues to liaise with the community to provide training and employment opportunities. To June 2022, WMYAC employs approximate 20 full-time and casual employees in Roebourne.

WMYAC operates a gardening and landscaping team of 5 Yindjibarndi members, undertaking work in Karratha and Roebourne.

Corporation: The Corporation continues to provide funeral, critical ill, education, utilities and food assistance to members. In addition, the Corporation has supported a number of community groups including Mingullatharndo Community housing expansion, Big aRT, the Aboriginal Medical Service, sporting teams, local church.

At Reporting Date, WMYAC Group employed 150 FTE's with 27% Aboriginal participation.

7. Significant Changes

Good Governance and Management: The WMYAC Board is committed to continuing to improve and implement strong, transparent and good governance that delivers financial sustainability across its business units and Corporation.

The WMYAC Board and WMYAC employees will continue to ensure everyone is trained in the management of an Indigenous Corporation and the delivery of its objectives, and to possess a better understanding of their obligations to an Indigenous Corporation and the wider Yindjibarndi community.

Current management have the necessary skills, qualifications and experience to manage and pass on their practical knowledge of financial management and processes of a business of this size. These skills are being passed on to the directors at every board meeting improving the Board's skills in the management of the Corporation.

WMYAC continuous to implement a strong and detail six-month cash flow forecast which is updated weekly to better manage its financial commitments.

Likely developments in WMYAC's operations in future financial years and the expected results of those operations:

The Board is of the opinion that WMYAC and its entities will continue to maintain its existing works, continue to grow its operations across other service lines and delivering a positive financial return for its members.

In addition, WMYAC has identified and continuous to identify new business opportunities with potential partners that may provide the business with different skills sets to grow and therefore, further contribute to WMYAC ongoing success while providing employment opportunities to the Yindjibarndi community.

Wirru-Murra Yindjibarndi Aboriginal Corporation
Directors' Report
For the year ended 30 June 2022

8. Environmental Performance

WMYAC's operations are not regulated by any significant environmental regulation under a Commonwealth, state or territory law.

9. Audit

No officer of WMYAC was at any time during the year, a partner in the audit firm or a director of the audit consolidated entity which undertook an audit of WMYAC for this financial year.

10. Auditor's Declaration

A copy of the auditor's declaration under section 339-50 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006 for the audit for this financial year is enclosed.

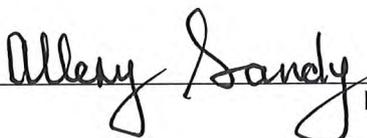
11. Application under section 169-5 of the Act

No applications have been made under section 169-5 of the Corporations (Aboriginal and Torres Strait Islander) Act 2006, and none were granted.

12. Additional Disclosures to the Financial Report

WMYAC has adopted the Australian financial reporting standard AASB 1053 Tier 2 simplified disclosure level. There is no additional information necessary to provide a true and fair view of the financial position and performance of the Corporation.

Director:



Director

Dated:

27 October 2022

**Wirilu-Murra Yindjibarndi Aboriginal Corporation
Directors' Declaration
For the year ended 30 June 2022**

The Directors of Wirilu-Murra Yindjibarndi Aboriginal Corporation (WMYAC) declare that at its meeting held it resolved:

1. the attached financial statements and notes comply with Australian Accounting Standards – Simplified Disclosure Requirements, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007* and other mandatory professional reporting requirements;
2. there are reasonable grounds to believe that the corporation and consolidated entity will be able to pay their debts as and when they become due and payable;
3. that, in their opinion, the attached financial statements and notes give a true and fair view of the consolidated entity's financial position as at 30 June 2022 and of its performance for the financial year ended on that date;

Signed in accordance with a resolution of the board of directors.

Director:



Director

Dated: 27 October 2022
Perth, WA



RSM Australia Partners

Level 32, Exchange Tower
2 The Esplanade Perth WA 6000
GPO Box R1253 Perth WA 6844

T +61 (0) 8 9261 9100

F +61 (0) 8 9261 9111

www.rsm.com.au

AUDITOR'S INDEPENDENCE DECLARATION

As lead auditor for the audit of the financial report of Wirlu-Murra Yindjibarndi Aboriginal Corporation for the year ended 30 June 2022, I declare that, to the best of my knowledge and belief, there have been no contraventions of:

- (i) the auditor independence requirements of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* in relation to the audit; and
- (ii) any applicable code of professional conduct in relation to the audit.

RSM AUSTRALIA PARTNERS

MATTHEW BEEVERS
Partner

Perth, WA
Dated: 28 October 2022

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RSM Australia Partners

Level 32, Exchange Tower
2 The Esplanade Perth WA 6000
GPO Box R1253 Perth WA 6844

T +61 (0) 8 9261 9100

F +61 (0) 8 9261 9111

www.rsm.com.au

**INDEPENDENT AUDITOR'S REPORT
TO THE MEMBERS OF
WIRLU-MURRA YINDJIBARNDI ABORIGINAL CORPORATION**

Opinion

We have audited the financial report of Wirlu-Murra Yindjibarndi Aboriginal Corporation (“the Corporation”) and its subsidiaries (the Group), which comprises the consolidated statement of financial position as at 30 June 2022, the consolidated statement of profit or loss and other comprehensive income, the consolidated statement of changes in equity and the consolidated statement of cash flows for the year then ended, and notes to the financial statements, including a summary of significant accounting policies, and the directors' declaration.

In our opinion, the accompanying financial report of the Group is in accordance with the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* and the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007*, including:

- (i) giving a true and fair view of the Group's financial position as at 30 June 2022 and of its financial performance for the year then ended; and
- (ii) complying with Australian Accounting Standards – Simplified Disclosure Requirements

Basis for Opinion

We conducted our audit in accordance with Australian Auditing Standards. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Report* section of our report. We are independent of the Corporation in accordance with the auditor independence requirements of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* and the ethical requirements of the Accounting Professional and Ethical Standards Board's APES 110 *Code of Ethics for Professional Accountants* (the Code) that are relevant to our audit of the financial report in Australia. We have also fulfilled our other ethical responsibilities in accordance with the Code.

We confirm that the independence declaration required by the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, which has been given to the directors of the Corporation, would be in the same terms if given to the directors as at the time of this auditor's report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

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Responsibilities of the Directors for the Financial Report

The directors of the Corporation are responsible for the preparation of the financial report that gives a true and fair view in accordance with Australian Accounting Standards – Simplified Disclosure Requirements and the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* and the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007* and for such internal control as the directors determine is necessary to enable the preparation of the financial report that gives a true and fair view and is free from material misstatement, whether due to fraud or error.

In preparing the financial report, the directors are responsible for assessing the ability of the Group to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting unless the directors either intend to liquidate the Group or to cease operations, or have no realistic alternative but to do so.

Auditor's Responsibilities for the Audit of the Financial Report

Our objectives are to obtain reasonable assurance about whether the financial report as a whole is free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with the Australian Auditing Standards will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of this financial report.

A further description of our responsibilities for the audit of the financial report is located at the Auditing and Assurance Standards Board website at: https://www.auasb.gov.au/auditors_responsibilities/ar4.pdf. This description forms part of our auditor's report.



RSM AUSTRALIA PARTNERS

MATTHEW BEEVERS
PartnerPerth, WA
Dated: 28 October 2022

Wirilu-Murra Yindjibarndi Aboriginal Corporation
 Consolidated Statement of Profit or Loss and Comprehensive Income
 For the year ended 30 June 2022

	NOTE	2022 \$	2021 \$
Revenue			
Service Income	3	34,795,369	30,214,096
Other Income	3	148,800	220,322
Expenses			
Cost of Sales	4	(23,094,730)	(21,070,669)
Employee Expenses	4	(568,513)	(652,485)
Consulting Expenses	4	(463,436)	(494,132)
Other Expenses	4	(7,305,683)	(5,593,162)
Profit Before Taxes		3,511,807	2,623,970
Income Tax Benefit		-	-
Profit after Income Taxes for the year attributable to the members of Wirilu-Murra Yindjibarndi Aboriginal Corporation		3,511,807	2,623,970
Other Comprehensive Income for the year, net of tax		-	-
Total comprehensive income for the year attributable to the members of Wirilu-Murra Yindjibarndi Aboriginal Corporation		3,511,807	2,623,970

The above Consolidated Statement of Comprehensive Income should be read in conjunction with the accompanying notes

Wirru-Murra Yindjibarndi Aboriginal Corporation
 Consolidated Statement of Financial Position
 As at 30 June 2022

	NOTE	2022 \$	2021 \$
ASSETS			
CURRENT ASSETS			
Cash and Cash Equivalents	5	12,882,810	11,015,503
Trade and Other Receivables	6	3,410,328	3,011,828
Prepayments		273,895	242,153
TOTAL CURRENT ASSETS		<u>16,567,033</u>	<u>14,269,484</u>
NON-CURRENT ASSETS			
Investment Properties	7	2,157,889	1,667,893
Property, Plant, and Equipment	8	6,332,941	7,941,591
TOTAL NON-CURRENT ASSETS		<u>8,490,830</u>	<u>9,609,484</u>
TOTAL ASSETS		<u>25,057,863</u>	<u>23,878,968</u>
LIABILITIES			
CURRENT LIABILITIES			
Trade and Other Payables	9	3,402,252	3,456,709
Employee Benefits	10	851,337	892,807
Interest Bearing Liabilities	11	2,273,029	2,840,966
TOTAL CURRENT LIABILITIES		<u>6,526,618</u>	<u>7,190,482</u>
NON-CURRENT LIABILITIES			
Interest Bearing Liabilities	11	1,504,065	3,173,113
TOTAL NON-CURRENT LIABILITIES		<u>1,504,065</u>	<u>3,173,113</u>
TOTAL LIABILITIES		<u>8,030,683</u>	<u>10,363,595</u>
NET ASSETS		<u>17,027,180</u>	<u>13,515,373</u>
EQUITY			
Retained Earnings		17,027,180	13,515,373
TOTAL EQUITY		<u>17,027,180</u>	<u>13,515,373</u>

The above Consolidated Statement of Financial Position should be read in conjunction with the accompanying notes

Wirlu-Murra Yindjibarndi Aboriginal Corporation
Consolidated Statement of Changes in Equity
For the year ended 30 June 2022

	Retained Earnings \$	Total \$
Balance at 30 June 2020	10,891,403	10,891,403
Profit after income tax expense for the year	2,623,970	2,623,970
Other comprehensive income for the year, net of tax	-	-
Total comprehensive income for the year	2,623,970	2,623,970
Balance at 30 June 2021	13,515,373	13,515,373
Profit after income tax expense for the year	3,511,807	3,511,807
Other comprehensive income for the year, net of tax	-	-
Total comprehensive income for the year	3,511,807	3,511,807
Balance at 30 June 2022	17,027,180	17,027,180

The above Consolidated Statement of Changes in Equity should be read in conjunction with the accompanying notes

Wirru-Murra Yindjibarndi Aboriginal Corporation
Consolidated Statement of Cash Flows
For the year ended 30 June 2022

	NOTE	2022 \$	2021 \$
CASH FLOWS FROM OPERATING ACTIVITIES			
Receipts for services (inclusive of GST)		38,025,139	31,088,618
Payments to suppliers and employees (inclusive of GST)		(28,780,627)	(22,694,348)
Payments for community support		(2,623,737)	(1,917,073)
Interest and other finance costs paid		(207,927)	(238,570)
Interest received		67	13,045
Net cash provided by operating activities	12	6,412,915	6,251,672
CASH FLOWS FROM INVESTING ACTIVITIES			
Payments of property, plant, and equipment		(1,272,672)	(1,816,221)
Net cash used in investing activities		(1,272,672)	(1,816,221)
CASH FLOWS FROM FINANCING ACTIVITIES			
Repayment of borrowings		(3,272,936)	(2,463,201)
Net cash used in financing activities		(3,272,936)	(2,463,201)
Net increase in cash held		1,867,307	1,972,250
Cash at the beginning of the year		11,015,503	9,043,253
Cash at the end of the year	5	12,882,810	11,015,503

The above Consolidated Statement of Cash Flows should be read in conjunction with the accompanying notes

Wirilu-Murra Yindjibarndi Aboriginal Corporation
Notes to the Financial Statements
For the year ended 30 June 2022

NOTE 1. SIGNIFICANT ACCOUNTING POLICIES

These consolidated financial statements and notes represent those of Wirilu-Murra Yindjibarndi Aboriginal Corporation and its controlled entities ("consolidated entity").

The financial report was authorised for issue on 27 October 2022 by the board of directors.

New, revised, or amending Accounting Standards and Interpretations adopted

The consolidated entity has adopted all of the new or amended Accounting Standards and Interpretations issued by the Australian Accounting Standards Board ('AASB') that are mandatory for the current reporting period.

Any new or amended Accounting Standards or Interpretations that are not yet mandatory have not been early adopted.

Basis of Preparation

The financial statements are general purpose financial statements that have been prepared in accordance with Australian Accounting Standards – Simplified Disclosure Requirements of the Australian Accounting Standards Board, the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* ("CATSI"), the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2007* and other mandatory professional reporting requirements

Australian Accounting Standards set out accounting policies that the Australian Accounting Standards Board has concluded would result in financial statements containing relevant and reliable information about transactions, events and conditions. Material accounting policies adopted in the preparation of the financial statements are presented below and have been consistently applied unless otherwise stated.

Except for cash flow information, the financial statements have been prepared on an accruals basis and are based on historical costs, modified, where applicable, by the measurement at fair value of selected non-current assets, financial assets and financial liabilities.

Historical cost convention

The financial statements have been prepared under the historical cost convention.

Critical accounting estimates

The preparation of the financial statements requires the use of certain critical accounting estimates. It also requires management to exercise its judgement in the process of applying the incorporated association's accounting policies. The areas involving a higher degree of judgement or complexity, or areas where assumptions and estimates are significant to the financial statements, are disclosed in note 2.

Revenue recognition

The consolidated entity recognises revenue as follows:

Revenue from contracts with customers

Revenue is recognised at an amount that reflects the consideration to which the company is expected to be entitled in exchange for transferring goods or services to a customer. For each contract with a customer, the company: identifies the contract with a customer; identifies the performance obligations in the contract; determines the transaction price which takes into account estimates of variable consideration and the time value of money; allocates the transaction price to the separate performance obligations on the basis of the relative stand-alone selling price of each distinct good or service to be delivered; and recognises revenue when or as each performance obligation is satisfied in a manner that depicts the transfer to the customer of the goods or services promised.

Wirru-Murra Yindjibarndi Aboriginal Corporation
Notes to the Financial Statements
For the year ended 30 June 2022

Variable consideration within the transaction price, if any, reflects concessions provided to the customer such as discounts, rebates and refunds, any potential bonuses receivable from the customer and any other contingent events. Such estimates are determined using either the 'expected value' or 'most likely amount' method. The measurement of variable consideration is subject to a constraining principle whereby revenue will only be recognised to the extent that it is highly probable that a significant reversal in the amount of cumulative revenue recognised will not occur. The measurement constraint continues until the uncertainty associated with the variable consideration is subsequently resolved. Amounts received that are subject to the constraining principle are recognised as a refund liability.

Rendering of services

Revenue from a contract to provide services is recognised over time as the services are rendered based on either a fixed price or an hourly rate.

Grants

Grant revenue is recognised in profit or loss when the consolidated entities satisfies the performance obligations stated within the funding agreements.

If conditions are attached to the grant which must be satisfied before the consolidated entity is eligible to retain the contribution, the grant will be recognised in the statement of financial position as a liability until those conditions are satisfied.

Rent

Rent revenue from investment properties is recognised on a straight-line basis over the lease term. Lease incentives granted are recognised as part of the rental revenue. Contingent rentals are recognised as revenue in the period when earned.

Interest

Interest revenue is recognised as interest accrues using the effective interest method. This is a method of calculating the amortised cost of a financial asset and allocating the interest income over the relevant period using the effective interest rate, which is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset to the net carrying amount of the financial asset.

Other revenue

Other revenue is recognised when it is received or when the right to receive payment is established.

Income Tax

As the incorporated association is a charitable institution in terms of subsection 50-5 of the Income Tax Assessment Act 1997, as amended, it is exempt from paying income tax.

Current and non-current classification

Assets and liabilities are presented in the statement of financial position based on current and non-current classification.

An asset is current when: it is expected to be realised or intended to be sold or consumed in normal operating cycle; it is held primarily for the purpose of trading; it is expected to be realised within 12 months after the reporting period; or the asset is cash or cash equivalent unless restricted from being exchanged or used to settle a liability for at least 12 months after the reporting period. All other assets are classified as non-current.

A liability is current when: it is expected to be settled in normal operating cycle; it is held primarily for the purpose of trading; it is due to be settled within 12 months after the reporting period; or there is no unconditional right to defer the settlement of the liability for at least 12 months after the reporting period. All other liabilities are classified as non-current.

Deferred tax assets and liabilities are always classified as non-current.

Wirilu-Murra Yindjibarndi Aboriginal Corporation
Notes to the Financial Statements
For the year ended 30 June 2022

Cash and Cash Equivalents

Cash and cash equivalents include cash on hand, deposits held at call with banks, other short-term highly liquid investments with original maturities of three months or less, and bank overdrafts. Bank overdrafts are shown within short-term borrowings in current liabilities on the statement of financial position.

Trade and Other Receivables

Trade receivables are recognised initially at cost and are subsequently measured at cost less any provision for impairment. Most sales are made on the basis of normal credit terms and are not subject to interest.

At the end of each reporting period, the carrying amounts of trade and other receivables are reviewed to determine whether there is any objective evidence that the amounts are not recoverable. A provision for impairment is established when there is objective evidence that the consolidated entity will not be able to collect all amounts due according to the original terms of the receivables.

Investment properties

Investment properties principally comprise of freehold land and buildings held for long-term rental and capital appreciation that are not occupied by the consolidated entity. Investment properties are measured on the cost basis and depreciated on a straight-line basis to write off the cost of the investment over its useful life of 40 years.

Investment properties are derecognised when disposed of or when there is no future economic benefit expected.

Transfers to and from investment properties to property, plant and equipment are determined by a change in use of owner-occupation. The existing carrying amount of property, plant and equipment is used for the subsequent accounting cost of investment properties on the date of change of use.

<i>Class of Fixed Asset</i>	<i>Depreciation rate</i>
Investment buildings depreciated over 40 years	2.5%

Property, Plant and Equipment

Property, plant and equipment are measured on the cost basis less depreciation and impairment losses.

The carrying amount of property, plant and equipment is reviewed annually by directors to ensure it is not in excess of the recoverable amount from these assets. The recoverable amount is assessed on the basis of the expected net cash flows that will be received from the assets' employment and subsequent disposal. The expected net cash flows have been discounted to their present values in determining recoverable amounts.

Subsequent costs are included in the asset's carrying amount or recognised as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the consolidated entity and the cost of the item can be measured reliably. All other repairs and maintenance are charged to profit or loss during the financial period in which they are incurred.

Depreciation

The depreciable amount of all fixed assets is depreciated on a declining balance basis.

Wirru-Murra Yindjibarndi Aboriginal Corporation
Notes to the Financial Statements
For the year ended 30 June 2022

The depreciation rates used for each class of depreciable assets are:

<i>Class of Fixed Asset</i>	<i>Depreciation rate</i>
Buildings depreciated over 20 years	5%
Motor Vehicles	18.75% - 20%
Office Furniture and Equipment	10.25% – 33.33%
Hardware & Software	25%
Buses	20%

The assets' residual values and useful lives are reviewed, and adjusted if appropriate, at each statement of financial position date.

An asset's carrying amount is written down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount.

An items of property, plant and equipment is derecognised upon disposal or when there is no future economic benefit to the incorporated association. Gains and losses on disposals are determined by comparing proceeds with the carrying amount. These gains or losses are included in profit or loss. When revalued assets are sold, amounts included in the revaluation reserve relating to that asset are transferred to retained earnings.

Right-of-use assets

A right-of-use asset is recognised at the commencement date of a lease. The right-of-use asset is measured at cost, which comprises the initial amount of the lease liability, adjusted for, as applicable, any lease payments made at or before the commencement date net of any lease incentives received, any initial direct costs incurred, and, except where included in the cost of inventories, an estimate of costs expected to be incurred for dismantling and removing the underlying asset, and restoring the site or asset.

Right-of-use assets are depreciated on a straight-line basis over the unexpired period of the lease or the estimated useful life of the asset, whichever is the shorter. Where the company expects to obtain ownership of the leased asset at the end of the lease term, the depreciation is over its estimated useful life. Right-of use assets are subject to impairment or adjusted for any remeasurement of lease liabilities.

The consolidated entity has elected not to recognise a right-of-use asset and corresponding lease liability for short-term leases with terms of 12 months or less and leases of low-value assets. Lease payments on these assets are expensed to profit or loss as incurred.

Impairment of Assets

At each reporting date, the group reviews the carrying values of its tangible to determine whether there is any indication that those assets have been impaired. If such an indication exists, the recoverable amount of the asset, being the higher of the asset's fair value less costs to sell and value in use, is compared to the asset's carrying value. Any excess of the asset's carrying value over its recoverable amount is expensed to the statement of comprehensive income.

Trade and Other Payables

Trade payables represent the liabilities for goods and services received by the consolidated entity that remain unpaid at the end of the reporting period. They are recognised at their transaction price. Trade payables are subject to normal credit terms (30–60 days) and do not bear interest.

Provisions

Provisions are recognised when the consolidated entity has a present (legal or constructive) obligation as a result of a past event, it is probable the consolidated entity will be required to settle the obligation, and a reliable estimate can be made of the amount of the obligation. The amount recognised as a provision is the best estimate of the consideration required to settle the present obligation at the reporting date, taking into account the risks and uncertainties surrounding the obligation. If the time value of money is material, provisions are discounted using a current pre-tax rate specific to the liability. The increase in the provision resulting from the passage of time is recognised as a finance cost.

Wirilu-Murra Yindjibarndi Aboriginal Corporation
Notes to the Financial Statements
For the year ended 30 June 2022

Short-term employee benefits

Liabilities for wages and salaries, including non-monetary benefits, annual leave and long service leave expected to be settled within 12 months of the reporting date are recognised in current liabilities in respect of employees' services up to the reporting date and are measured at the amounts expected to be paid when the liabilities are settled.

Defined contribution superannuation expense

Contributions to defined contribution superannuation plans are expensed in the period in which they are incurred.

Dividends

Dividends are recognised when declared during the financial year and no longer at the discretion of the consolidated entity.

Lease liabilities

A lease liability is recognised at the commencement date of a lease. The lease liability is initially recognised at the present value of the lease payments to be made over the term of the lease, discounted using the interest rate implicit in the lease or, if that rate cannot be readily determined, the company's incremental borrowing rate. Lease payments comprise of fixed payments less any lease incentives receivable, variable lease payments that depend on an index or a rate, amounts expected to be paid under residual value guarantees, exercise price of a purchase option when the exercise of the option is reasonably certain to occur, and any anticipated termination penalties. The variable lease payments that do not depend on an index or a rate are expensed in the period in which they are incurred.

Goods and Services Tax ("GST")

Revenues, expenses and assets are recognised net of the amount of GST, except where the amount of GST incurred is not recoverable from the Tax Office. In these circumstances, the GST is recognised as part of the cost of acquisition of the asset or as part of an item of the expense. Receivables and payables in the statement of financial position are shown inclusive of GST.

Cash flows are presented in the cash flow statement on a gross basis, except for the GST component of investing and financing activities, which are disclosed as operating cash flows.

Commitments and contingencies are disclosed net of the amount of GST recoverable from, or payable to, the tax authority.

Employee benefits

Short-term employee benefits

Liabilities for wages and salaries, including non-monetary benefits, annual leave and long service leave expected to be settled wholly within 12 months of the reporting date are measured at the amounts expected to be paid when the liabilities are settled.

Other long-term employee benefits

The liability for annual leave and long service leave not expected to be settled within 12 months of the reporting date are measured at the present value of expected future payments to be made in respect of services provided by employees up to the reporting date using the projected unit credit method. Consideration is given to expected future wage and salary levels, experience of employee departures and periods of service. Expected future payments are discounted using market yields at the reporting date on national government bonds with terms to maturity and currency that match, as closely as possible, the estimated future cash outflows.

Defined contribution superannuation expense

Contributions to defined contribution superannuation plans are expensed in the period in which they are incurred.

Wirilu-Murra Yindjibarndi Aboriginal Corporation
Notes to the Financial Statements
For the year ended 30 June 2022

Parent Entity Information

These financial statements present the results of the consolidated entity only. Supplementary information about the parent entity is disclosed in Note 14.

Principles of Consolidation

A controlled entity is any entity over which Wirilu-Murra Yindjibarndi Aboriginal Corporation has the power to govern the financial and operating policies so as to obtain benefits from its activities. In assessing the power to govern, the existence and effect of holdings of actual and potential voting rights are considered.

A list of controlled entities is contained in Note 13 to the financial statements.

As at reporting date, the assets and liabilities of all controlled entities have been incorporated into the consolidated financial statements as well as their results for the year then ended. Where controlled entities have entered (left) the consolidated entity during the year, their operating results have been included (excluded) from the date control was obtained (ceased).

All inter-group balances and transactions between entities in the consolidated entity, including any unrealised profits or losses, have been eliminated on consolidation. Accounting policies of subsidiaries have been changed where necessary to ensure consistency with those adopted by the parent entity.

Joint Arrangements

Under AASB 11 Joint Arrangements, investments in joint arrangements are classified as either joint operations or joint ventures. The classification depends on the contractual rights and obligations of each investor, rather than the legal structure of the joint arrangement. The consolidated entity only has joint operations.

Joint Operations

The consolidated entity recognises its direct rights to the assets, liabilities, revenues, and expenses of joint operations and its share of any jointly held or incurred assets, liabilities, revenues and expenses. These have been incorporated in the financial statements under the appropriate headings. A list of joint operations is contained in Note 14 to the financial statements.

Note 2. Critical accounting judgements, estimates and assumptions

The directors evaluate estimates and judgments incorporated into the financial report based on historical knowledge and best available current information. Estimates assume a reasonable expectation of future events and are based on current trends and economic data, obtained both externally and within the group.

Estimation of useful lives of assets

The consolidated entity determines the estimated useful lives and related depreciation and amortisation charges for its property, plant and equipment. The useful lives could change significantly as a result of technical innovations or some other event. The depreciation and amortisation charge will increase where the useful lives are less than previously estimated lives, or technically obsolete or non-strategic assets that have been abandoned or sold will be written off or written down.

Coronavirus (COVID-19) pandemic

Judgement has been exercised in considering the impacts that the Coronavirus (COVID-19) pandemic has had, or may have, on the incorporated association based on known information. This consideration extends to the nature of the products and services offered, customers, supply chain, staffing and geographic regions in which the incorporated association operates. Other than as addressed in specific notes, there does not currently appear to be either any significant impact upon the financial statements or any significant uncertainties with respect to events or conditions which may impact the incorporated association unfavourably as at the reporting date or subsequently as a result of the Coronavirus (COVID-19) pandemic.

Wirru-Murra Yindjibarndi Aboriginal Corporation
Notes to the Financial Statements
For the year ended 30 June 2022

	2022 \$	2021 \$
NOTE 3. REVENUE AND INCOME		
Service Revenue		
Services & Contracting Revenue	34,795,369	30,214,096
Total Service Revenue	<u>34,795,369</u>	<u>30,214,096</u>
Other Income		
Support Income	148,733	207,277
Interest Income	67	13,045
Total Other Income	<u>148,800</u>	<u>220,322</u>
Total Revenue and Income	<u><u>34,944,169</u></u>	<u><u>30,434,418</u></u>

Disaggregation of revenue

The disaggregation of revenue from contracts with customers is as follows:

Provision of labour	23,429,990	20,832,358
Equipment rental	9,593,396	7,726,912
Maintenance works	1,419,428	1,388,858
Other	352,555	265,968
Total	<u><u>34,795,369</u></u>	<u><u>30,214,096</u></u>

All revenue is earned through the provision of services or equipment in Australia.

Wirru-Murra Yindjibarndi Aboriginal Corporation
Notes to the Financial Statements
For the year ended 30 June 2022

	2022	2021
	\$	\$
NOTE 4. EXPENSES		
Cost of Sales	23,094,730	21,070,669
Consulting Expenses		
Legal Expenses	35,371	61,633
Other Consulting Expenses	428,065	432,499
Total Consulting Expenses	463,436	494,132
Employee Benefits Expenses	568,513	652,485
Other Expenses		
Depreciation	3,538,682	2,567,531
Community Support Expenses	2,623,737	1,917,073
Interest and Other Bank Charges	207,927	238,570
Meeting Expenses	101,167	168,409
Office Expenses	80,598	73,022
Insurance Expenses	76,644	51,141
Motor Vehicle Expenses	47,357	52,057
Travel and Accommodation	36,247	49,546
Short term lease expenses	14,303	17,330
Other Expenses	579,021	458,483
Total Other Expenses	7,305,683	5,593,162
Total Expenses	31,432,362	27,810,448

Wirilu-Murra Yindjibarndi Aboriginal Corporation
Notes to the Financial Statements
For the year ended 30 June 2022

	2022	2021
	\$	\$
NOTE 5. CASH AND CASH EQUIVALENTS		
Cash at bank	12,882,810	10,486,558
Cash on deposit	-	528,945
	<u>12,882,810</u>	<u>11,015,503</u>
NOTE 6. TRADE AND OTHER RECEIVABLES		
	2022	2021
	\$	\$
CURRENT		
Trade and other receivables	<u>3,410,328</u>	<u>3,011,828</u>
NOTE 7. INVESTMENT PROPERTIES		
	2022	2021
	\$	\$
Investment properties at cost	2,207,084	1,679,237
Less: accumulated depreciation	(49,195)	(11,344)
	<u>2,157,889</u>	<u>1,667,893</u>
Opening balance	1,667,893	-
Additions	539,191	1,679,237
Depreciation	(49,195)	(11,344)
Closing balance	<u>2,157,889</u>	<u>1,667,893</u>
NOTE 8. PROPERTY, PLANT, AND EQUIPMENT		
	2022	2021
	\$	\$
Land	674,760	674,760
Buildings	374,027	343,969
Less: accumulated depreciation	(62,452)	(49,158)
Total buildings	<u>311,575</u>	<u>294,811</u>
Motor vehicles, buses and equipment - at cost	8,259,728	7,452,884
Less: accumulated depreciation	(4,114,731)	(2,583,757)
Total motor vehicles	<u>4,144,997</u>	<u>4,869,127</u>
Office equipment - at cost	147,007	139,023
Less: accumulated depreciation	(125,201)	(113,359)
Total office equipment	<u>21,806</u>	<u>25,664</u>
Right of use asset	4,772,443	3,736,492
Less: accumulated depreciation	(3,592,640)	(1,659,263)
Total right of use asset	<u>1,179,803</u>	<u>2,077,229</u>
Total property, plant, and equipment	<u>6,332,941</u>	<u>7,941,591</u>

Wirru-Murra Yindjibarndi Aboriginal Corporation
Notes to the Financial Statements
For the year ended 30 June 2022

NOTE 8. PROPERTY, PLANT, AND EQUIPMENT

Reconciliations

Reconciliations of the written down values at the beginning and end of the current financial year are set out below:

	Opening Balance	Additions	Disposals	Depreciation	Closing Balance
	\$	\$	\$	\$	\$
Land	674,760	-	-	-	674,760
Buildings	294,811	30,058	-	(13,294)	311,575
Motor vehicles, buses and equipment	4,869,127	806,844	-	(1,530,974)	4,144,997
Office equipment	25,664	7,984	-	(11,842)	21,806
Right of use	2,077,229	1,035,951	-	(1,933,377)	1,179,803
Total	7,941,591	1,880,837	-	(3,489,487)	6,332,941

	2022	2021
	\$	\$

NOTE 9. TRADE AND OTHER PAYABLES

CURRENT

Trade payables	1,468,623	1,041,077
Accrued expenses	949,772	681,671
Payable to the ATO	686,557	1,075,195
FMG Loan	250,000	250,000
Other payables	47,300	408,766
Total trade and other payables	3,402,252	3,456,709

NOTE 10. EMPLOYEE BENEFITS

Employee Benefits	851,337	892,807
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NOTE 11. INTEREST-BEARING LIABILITIES

CURRENT

Hire purchase liabilities (i)	1,122,798	1,082,826
Lease liabilities	1,150,231	1,503,140
Loan	-	255,000
	2,273,029	2,840,966

NON-CURRENT

Hire purchase liabilities (i)	1,446,949	2,569,748
Lease liabilities	57,116	603,365
	1,504,065	3,173,113

Total interest bearing liabilities	3,777,094	6,014,079
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- (i) This balance represents hire purchase commitments incurred for the acquisition of new equipment under a facility provided by ANZ. Repayments are made monthly and interest is charged at rates between 3.03% and 4.66% depending on the equipment being financed. The facilities have a remaining term of between 3 and 4 years.

Wirilu-Murra Yindjibarndi Aboriginal Corporation
Notes to the Financial Statements
For the year ended 30 June 2022

NOTE 12. RECONCILIATION OF CASH FLOW FROM OPERATIONS WITH PROFIT

	2022	2021
	\$	\$
Net profit	3,511,807	2,623,970
Depreciation expense	3,538,682	2,567,531
Movements:		
(Increase)/decrease in receivables	(398,500)	667,245
(Increase)/decrease in prepayments	(31,742)	23,409
(Decrease)/increase in trade and other payables	(207,332)	369,517
Net cash provided by operating activities	<u>6,412,915</u>	<u>6,251,672</u>

NOTE 13. CONTROLLED ENTITIES CONSOLIDATED

Subsidiaries of Wirilu-Murra Yindjibarndi Aboriginal Corporation:

Subsidiary	Country of Incorporation	Percentage Owned (%)	
		2022	2021
Wirilu-Murra Yindjibarndi Services Pty Ltd	Australia	100%	100%
Wirilu-Murra Enterprises Pty Ltd	Australia	100%	100%

NOTE 14. PARENT INFORMATION

The following information has been extracted from the books and records of the parent entity and has been prepared in accordance with Australian Accounting Standards.

	2022	2021
	\$	\$
STATEMENT OF FINANCIAL POSITION		
ASSETS		
Current assets	280,415	767,121
Non-Current assets	11,808,256	8,931,256
TOTAL ASSETS	<u>12,088,671</u>	<u>9,698,377</u>
LIABILITIES		
Current liabilities	101,501	381,070
Non-Current liabilities	-	-
TOTAL LIABILITIES	<u>101,501</u>	<u>381,070</u>
EQUITY	<u>11,987,170</u>	<u>9,317,307</u>
STATEMENT OF COMPREHENSIVE INCOME		
Total Comprehensive Loss	<u>1,556,784</u>	<u>1,651,125</u>

Guarantees

Wirilu-Murra Yindjibarndi Aboriginal Corporation has not entered into any guarantees, in the current or previous financial year, in relation to the debts of its subsidiaries.

Contingent Liabilities

The parent entity had no contingent liabilities as at 30 June 2022 and 2021.

Capital Commitments - Property, Plant, and Equipment

The parent entity had no capital commitments for property, plant and equipment as at 30 June 2022 and 2021.

Wirru-Murra Yindjibarndi Aboriginal Corporation
Notes to the Financial Statements
For the year ended 30 June 2022

NOTE 15. COMMITMENTS

As at the reporting date, the consolidated entity did not have any contractual capital commitments.

As at the reporting date, the consolidated entity had the following operating lease commitments:

	2022	2021
	\$	\$
<i>Lease commitments – operating</i>		
Committed at the reporting date but not recognised as liabilities, payable:		
Within one year	7,991	9,850
One to five years	-	-
More than five years	-	-
	7,991	9,850

These operating lease commitments relate to the lease for office premises in Perth, Western Australia.

NOTE 16. INTEREST IN JOINT OPERATIONS

The consolidated entity has recognised its share of jointly held assets, liabilities, revenues and expenses of joint operations. These have been incorporated in the financial statements under the appropriate classification. Information relating to joint operations that are material to the consolidated entity are set out below

Name	Principal place of business	Ownership Interest (%)	
		2022	2021
Eastern Guruma Pty Ltd and Wirru-Murra Enterprises Pty Ltd Joint Venture	Australia	50%	50%

NOTE 17. CONTINGENT LIABILITIES

The consolidated entity had no contingent liabilities as at 30 June 2022 and 30 June 2021.

Wiru-Murra Yindjibarndi Aboriginal Corporation
Notes to the Financial Statements
For the year ended 30 June 2022

NOTE 18. KEY MANAGEMENT PERSONNEL COMPENSATION

The totals of remuneration paid to key management personnel (KMP) of the Group during the year are as follows:

	2022	2021
	\$	\$
Key management personnel compensation	695,302	612,792

NOTE 19. REMUNERATION OF AUDITORS

	2022	2021
	\$	\$
<i>Audit services – RSM Australia</i>		
Audit of the financial statements	34,000	31,500
Total	34,000	31,500

NOTE 20. RELATED PARTY TRANSACTIONS

Key management personnel

Disclosures relating to key management personnel are set out in note 18.

Transactions with related parties

There were no transactions with related parties during the current and previous financial year.

Receivable from and payable to related parties

There were no trade receivables from or trade payables to related parties at the current and previous reporting date.

Loans to/from related parties

There were no loans to or from related parties at the current and previous reporting date.

NOTE 21. EVENTS AFTER THE REPORTING PERIOD

The impact of the Coronavirus (COVID-19) pandemic is ongoing, it is not practicable to estimate the potential impact, positive or negative, after the reporting date. The situation is rapidly developing and is dependent on measures imposed by the Australian Government and other countries, such as maintaining social distancing requirements, quarantine, travel restrictions and any economic stimulus that may be provided.

No other matter or circumstance has arisen since 30 June 2022 that has significantly affected, or may significantly affect the incorporated association's operations, the results of those operations, or the incorporated association's state of affairs in future financial years.

NOTE 22. CORPORATION DETAILS

The registered office and principal place of business of the corporation is:

Wiru-Murra Yindjibarndi Aboriginal Corporation
6 Queen Street
ROEBOURNE WA 6178

“MW-135”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 16 pages is the annexure marked “**MW-135**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

THE BREAK



Fortescue
The New Force in Iron Ore

ISSUE
04

THROUGH

Unlocking Potential



Fortescue signs unique Land Access Agreement

INSIDE

2011 Christmas
Party Photos

T155 Project
Updates

Fortescue in the
Community

A message and a Happy New Year from our CEO, Nev



Happy New Year!

Welcome to 2012 at Fortescue. I trust that all of you in our Fortescue Family, had a happy and safe Christmas and New Year.

For those who were on shift or elected to work over the holiday season, I personally thank you for your hard work and commitment. I speak on behalf of the whole Fortescue team when I say your valuable contribution didn't go unrecognised.

I'm very pleased to report that the end of 2011 was celebrated on a high note, with our Operations Team proving once again that a 'can do' attitude will overcome any challenge that we face.

In the month of December, we achieved a new record of 29 vessels loaded with 5.3 million tonnes shipped to our customers. That result helped hit a run rate of almost 64 million tonnes per annum for December. Across the whole quarter, we sustained a run rate in excess of 55 million tonnes per annum. We've set the bar high for 2012 but I believe setting ourselves stretch targets and then achieving them is what makes our Fortescue Family attitude so remarkable.

Our Fortescue Family also includes our construction partners, who are working hard to achieve the target of building and expanding infrastructure to take our capacity to 155 million tonnes per annum by June 2013.

In December the track laying for our mainline duplication commenced and the port expansion is progressing well. At Solomon, construction work continues on its rapid schedule and the workforce is set to peak at 3000 toward the end of this quarter. Christmas Creek is also achieving significant milestones as work continues on the second OPF.

In early January our operation and construction sites experienced Tropical Cyclone Heidi, which crossed the Pilbara coast and brought heavy wind and rain with her. I commend all of our people on your patience and understanding during this time, and the teamwork between our sites and the Fortescue Centre in Perth was great to see.

Our highest priority was as always, to keep our workforce safe, and our Flights and Accommodation, Operations and Emergency Services Team worked very hard to ensure this and reinstate our operations back to normal as quickly as possible.

Our greatest differentiator is our culture and our greatest challenge is to maintain and strengthen

this as we grow to 155 million tonnes per annum and beyond. To develop a further understanding and awareness about what makes Fortescue tick we held our inaugural Fortescue Future Forum toward the end of last year.

This was attended by almost 150 people and provided us with an opportunity to identify what drives Fortescue, and how we can go about preserving and building on the positive attributes. At the forefront of the open and honest discussion was building on our family values and encouraging the 'can do' and 'will do' attitude that Fortescue has become renowned for.

During February, the whole Fortescue Family will be able to contribute their thoughts about our culture and values in a companywide survey. This will be available online and on paper – so no one will miss out. Similar Fortescue Future Forums are also scheduled for sites in the first half of this year. I look forward to the sharing the outcomes of these Forums with the team.

So enjoy the stories which highlight our recent success and examples of Fortescue values in this issue of the Breakthrough and I wish you and your loved ones a fantastic year ahead in 2012.

Solomon targets in 2012

Fortescue has an enviable record of rapidly bringing new projects online. Solomon will be no different, as one of the most accelerated and cost-efficient iron ore projects in Australia.

First ore is on schedule to be delivered in August, well ahead of original schedule, with full production of 60 million tonne per annum (mtpa) on target for July 2013.

To ensure the Solomon site can be fully operational from July and meet these targets, the team is working hard to achieve operational readiness.

The outcome of the Solomon Mining and Operations contract, currently out to tender, will be known by March. Any successful bid will have to demonstrate a clear competitive edge, over and above what Fortescue can deliver for this site, in terms of cost efficiency and speed to deliver.

This month will see the start of an enormous six-month inbound logistics effort for Solomon. It's estimated that around one million freight tonnes will be delivered to site between January and August 2012.

This ongoing inbound logistics effort will involve 45 sea vessels - ranging up to 22,000 tonne capacity - plus land movements of 400 oversized movement trailers and 3,000 conventional trailers. Safety will be a top priority for the Solomon Logistics Team, as well as delivering these materials to schedule.

Construction work will continue on its rapid schedule, peaking in March with a 3,000-strong workforce from over 30 partner organisations.

Solomon's three temporary camps – Fly, Dally and Castle – are all

now fully operational. Solomon's permanent camp, accommodating up to 1500 people in double-storey units, will be fully operational in June with first rooms available in February.

Solomon's airstrip will be operational in March to enable faster access to the site for the peak construction workforce flying in from that time.

All major mine infrastructure will be fully commissioned by the year end with the Firetail Ore Processing Facility (OPF) and Train Loadout to be commissioned in August, followed by the Kings Valley OPF in December.

Heritage protection will remain a top priority at Solomon throughout the year. Regular consultations will be held with the Wirlu-murra Yindjibarndi Aboriginal Corporation and Eastern Guruma Community Reference Group, as Fortescue continues to focus on working collaboratively with these groups to protect and manage Heritage sites at Solomon.

In 2012, the Solomon Team will also be looking into business opportunities for these groups within the longer-term operations at Solomon.



Earthworks at the Firetail OPF site



Michael Brown is one of five of the Brown family working at Fortescue.

Keeping Fortescue in the family

It's not uncommon to work alongside a relative in any industry, but an incredible family story was identified recently.

The Fortescue family amazingly includes five committed members (dad and four sons) of the Brown family.

Graeme Brown is Solomon Deputy Project Director. Graeme's son Paul Brown is the Mining Manager for Solomon, Michael is the Workshop Superintendent for Downer EDI at Christmas Creek, Joseph is also a leading hand for Downer in the same workshop.

James is due to mobilise to Solomon site early this year, his role will be Crane Coordinator/Rigging Superintendent for one of the Major SMP contractors.

On what it means to have Fortescue in the family Graeme said, "We see it as a privilege to be directly contributing to the growth of the company."

Record continual concrete pour for CSI, FormAction and Holcim at Christmas Creek



The concrete pour lasted 30 hours and a total of 2,350 man hours.

At 6pm on the 18th of December, CSI, together with its subcontractors FormAction and Holcim finished pouring a 1,400 cubic metre concrete slab for the coarse ore stockpile tunnel for Christmas Creek expansion.

Package Manager for the second OPF Mike Pennycook said, "This was a technically challenging pour that was so big that the concrete had to be cooled to prevent cracking.

"The slab is 65 metres long, nearly 14 metres wide and 1,600mm thick. 50 Mpa low heat cement was used and 85 tonnes of ice was added to the concrete to keep its temperature below 25 degrees during the heat of the day when ambient temperatures were as high as 44 degrees.

"Alipatic alcohol was used to reduce evaporation to prevent cracking and crusting of the surface. An insulation and sprinkler system has also been installed to control moisture during the first week of curing," Mike said.

The pour was carried out successfully without incident by 58 people per shift over a 30 hour period and a total of 2,350 man hours.

FormAction Projects Manager Dave Cooper said, "The pour was FormAction's biggest continual pour in the Western Australian company's nine year history.

"Fortescue Chairman Andrew Forrest was on site and congratulated the team on the terrific effort at the end of the final shift," Dave said.



The cone crusher installation at the second Christmas Creek OPF.

installation of major processing equipment for the expansion project in the second Ore Processing Facility (OPF) at Christmas Creek.

The crushers were ordered from Metso in March 2011, well before the design and construction of the second OPF was awarded to CSI.

Metso pulled out all stops and had the crushers ready for delivery from its Geraldton workshop in October, just seven months after award.

CSI was responsible for expediting design, construction and delivery of the crushers to site, enabling them to efficiently coordinate the delivery into their construction works.

Each crusher weighs 110 tonnes and the installations were achieved safely and swiftly without incident.

This is a great achievement with every part of the supply chain performing well including: Metso, CSI, Fortescue Procurement and the site teams.

A record delivery for crushers

On the 9th of December 2011, three MP1000 cone crushers arrived at Christmas Creek as part of the Phase Two site expansion to 60 million tonnes per annum (mtpa).

Rocks pass through the Primary Crusher and undergo a scrubbing process before being received by the

cone (or Secondary) crushers. Here, rocks of approximately 300mm in size are reduced in size through further crushing to 60-80mm.

The crushers were installed directly from the truck and into the new Secondary and Tertiary Crushing Building. This signifies the first

Unique Land Access Agreement for North Star

At the end of last year Fortescue signed a unique land access agreement with the Njamal People for the North Star project.

The production sharing agreement will involve a joint venture created between the Njamal Native Title holders and Fortescue to run a mining operation on an ore body adjacent to the main North Star mine.

Fortescue is particularly proud and excited about this agreement as it signifies a new phase of collaboration between Aboriginal groups and mining companies in the Pilbara region of Western Australia.

"We look forward to developing more of this unique style of agreement alongside our commitments to Aboriginal training and employment within our own projects," Chairman Andrew Forrest said.

"At the signing on the 23rd of December there was a high level of optimism between the Njamal elders

and our team. There is a great deal of respect between the two groups and I was proud and excited to be part of signing this ground-breaking agreement."

The agreement, originally proposed by the Njamal People has been under negotiation for almost four years.

"Self-determination, business opportunities, training and employment are the keys to ending the Indigenous disparity and that's what will flow from the unique agreement," Chief Executive Officer Nev Power said.

The Njamal People said the agreement provided commercial opportunities and a base for economic self-determination as well as putting in place exclusion zones to protect sites of cultural importance.

"Culture comes first for us. The old Njamal People who have left us who worked hard to get us here would be proud of this agreement. This agreement is our future for the next generation," Njamal elder Doris Eaton said.

What is North Star?

North Star is one of the largest magnetite deposits in Australia located just 100 kilometres south of Herb Elliott Port at Port Hedland and approximately 25 kilometres east of our rail line.

When combined with nearby Glacier Valley it contains over 3.2 billion tonnes, which would rank in the top 10 of the largest magnetite deposits in the world.

Feasibility studies are being conducted based on a production target of 20-30 million tonnes per annum (mtpa) of blast furnace grade pellet feed. The result is a forecast mine life of over 20 years.

Our thoughts are with the Tickle family

After a long battle with cancer, Kerry Tickle, the wife of Fortescue's long serving and loyal archeologist Rob Tickle, passed away peacefully on Saturday 3rd December, with her husband and their youngest daughter Katherine by her side.

Rob has kept in touch with his Fortescue friends from his home in New South Wales, and contacted us to let us know of Kerry's passing.

"It has been a very difficult year with hopes and disappointments, but Kerry accepted what was happening and was at peace with her church," he said.

Our thoughts of love and strength are with Rob and his family after saying farewell to their beloved wife and mother.

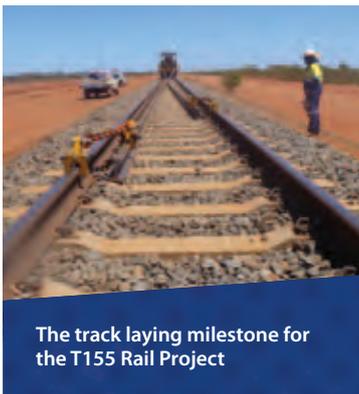


Njamal Elders with members of the Fortescue team after signing the Land Access Agreement that provides the Native Title group with a unique business opportunity.

Track laying commences for T155 Rail

The T155 Rail project continues to achieve for the T155 Rail project took place on Sunday 11th December when contracting partner McConnell Dowell commenced laying sleepers from the 30 kilometre mark towards the Port.

T155: Track Construction Area Manager Graham Oliver said, "MacDow started laying sleepers late in the afternoon of 11th December and within five days had laid 4,169 metres of sleepers as well as delivery of 27 x 325 metre rail strings distributed to site via the rail train.



The track laying milestone for the T155 Rail Project

"Macdow has now laid almost 10 kilometres of track but is expected to ramp up track laying after primarily focusing on building turnouts so far this year," Graham said.

The Rail team also took delivery of a new consignment of 246 ore cars which takes the total fleet to 1,486.

The new additions to the fleet provide the team with six rakes of 240 ore cars and 46 spares for maintenance. All the better for keeping the Cloudbreak, Christmas Creek and the Port on their toes.

Living the Fortescue values

At Fortescue we pride ourselves on our sense of community. We strive to create a culture of caring, of watching out for our workmates and helping out our neighbours.

Atul Garg, Senior Contracts Specialist – Energy is living these values in every way. Atul was recently awarded the 2011 Malcolm Grant Volunteer of the Year Award by Neighbourhood Watch Australasia.

After migrating to Australia in 1992, Atul threw himself into his local community. Following his Fortescue day, Atul spends another 4 or 5 hours each evening on community work. In addition to his ongoing involvement with Neighbourhood Watch, he has volunteered for organisations such as the Prostate Cancer Foundation of Australia, Winthrop Murdoch Community group, the Hindu Association of Western Australia (Inc), the Indian Society of Western Australia (Inc) and the Carers Advisory Council.

Atul's contribution has been widely recognised over the years with many awards presented by various organisations and both State and

local governments. An outstanding community leader, Atul has always acknowledged the participation of hundreds of volunteers in all his community work.

"I have been a lucky leader and it is the other volunteers who actually have more merit and deserve appreciation, without them I could not have achieved anything," he said.



Atul is also the primary carer for his wife, Poonam who is legally blind, and the couple have two grown sons Ronny and Hemant.

TOP: His Worship Russell Aubrey, Mayor of City of Melville presenting Atul with the Mayor's Valued Citizen Award for his 16 years service to Neighbourhood Watch.

BELOW: Executive Manager Community Engagement and Crime Prevention Bernie Durkin and Neighbourhood Watch State Coordinator Brian Durkin (both from WA Police) nominated Atul for the 2011 Neighbourhood Watch Australasian Award.



Fortescue improving housing availability in Roebourne

Fortescue's Facilities team is in the process of acquiring a number of blocks of land in Roebourne as part of Fortescue's Indigenous Employment and Engagement Strategy.

Fortescue is aiming to construct new homes on the blocks, to improve housing availability for indigenous employees residing in the Roebourne area.

Planning for the project is underway and the Department of Housing has given Fortescue access to a number of housing designs that were prepared in consultation with the Roebourne community.

The project will be completed in two stages, with the first stage set to commence in the New Year and the second kicking off in May 2012.

Christmas Creek airstrip

Soon the days of flying to Cloudbreak to get to Christmas Creek will be over. It was recently announced that Decmil has been awarded the contract to build an airstrip at Christmas Creek as part of the expansion works.

Construction of the airstrip's earthworks, runway and facilities will start this month and are expected to finish by mid-year.



Getting the most out of Cloudbreak's Surface Miners

How would your car perform operating 24 hours, 7 days a week, negotiating rock hard ground, with the air con on full power in stifling heat?

Not very well we imagine! This is exactly the challenge Fortescue faces day in – day out in getting the most out of our mining machinery at Cloudbreak.

That's why Fortescue's Business Improvement team at Cloudbreak has joined forces with the other teams on site to develop and implement ideas for improving availability, production rates, and utilisation of all machinery on-site.

This practice is referred to as Overall Equipment Effectiveness, or OEE.

OEE is calculated by looking at the availability, utilisation and rate of production of a piece of machinery.

The team have already successfully increased the OEE of our excavators and diggers from 59% to 75%, equating to 1.5 – 3 million tonnes (mt) of extra waste moved per year.

Now the team are turning their attention to our 2500 and 4200 Surface Miners, with the aim of increasing OEE on our Surface Miners from 46.5% to 60%. This will equate to an extra 9mt of ore milled per year.

Phase one of the project, which looked at 'Availability', is now complete, with a number of low cost – big return improvements and benefits to celebrate.

These achievements were only possible thanks to the input and participation of many departments from across Cloudbreak, who came together regularly to share ideas and track progress.

The team are now looking to improve production rates and utilisation of the Surface Miners. Congratulations to all involved in this fantastic initiative.

Do you have a story about innovation at Fortescue? Email communications@fmgl.com.au

Fortescue's Festive Fiesta

Another magnificent Christmas Party was held in Perth last year. Actually, there were two! On the 3rd and the 10th the foreshore came alive as the Fortescue marquee rang out with mariachi sounds, Mexican smells and lots of laughter from all the Fortescue party-goers celebrating another busy, successful year.

A record number of guests attended this year, with more than 1,400 choosing to celebrate on the 3rd and another 1,800 on the 10th.

Spokesperson for the organising committee, Ann-Marie Lowry, was pleased with the big turnout, telling us, "The parties went very well, we trust everyone enjoyed themselves. The vast majority of people behaved in the manner we expect at Fortescue, so we're pleased to call the events a success."

The Christmas party is always a great opportunity for our Fortescue family to get together, for once all in the same place, to celebrate the year gone by and enjoy a few hours of relaxation and some Christmas cheer.



Flipside provided the party with some great dancefloor tunes



The Christmas Parties in Perth and Port Hedland were a great opportunity to relax and socialise with friends and colleagues.



Santa arrived to the Port Hedland party in style



Traditional Mexican dancers entertained the party guests



12 months of milestones – a whirlwind 2011



January – the year gets off to a typically ground-breaking start when the first ore on train is announced from the Nullagine Iron Ore joint venture – this is the first time a junior iron ore miner has been able to transport iron ore on a third party's rail infrastructure in the Pilbara.

February – a site office is established at Solomon in preparation for an exciting new chapter in the Fortescue story. First ore is shipped from the Nullagine Iron Ore joint venture.

March – we've acquired 1,000 tenements, so it's looking as though we'll be busy for a while yet.

April – one million tonnes were mined, railed and sailed in just one week – go team!

May – from vision to reality! By May we had shipped 100 million tonnes in three years.

June – we achieved our Summit 300 target. Set in June 2009, Fortescue committed to providing 300 training and job opportunities for Aboriginal or Torres Strait Island descent employees within two years. "Real employment opportunities are the key to ending the Indigenous disparity which has long plagued Australia. The disparity we all thought would be with us forever can in fact be stopped," Chief Executive Officer Andrew Forrest said.

July – 18th, eight years to the day since he founded Fortescue, Andrew Forrest became Chairman of the Fortescue board, and passed the CEO baton to Nev Power. First sod was also turned at Solomon in June – a big end to the first half of the year.

August – 55 million tonne per annum (mtpa) run rate achieved through August across mine, rail and port operations. This run rate is upheld consistently in coming months, proving the strength and consistency of Fortescue.



September – a 100% Australian prefabricated transfer station weighing 330 tonnes arrives at Port. Project Director Peter Thomas tells us that "the arrival of the first of the new transfer stations is another exciting milestone for the Port expansion team."

October – against the predictions of the market, our Finance team has a spectacularly successful foray into the US market, raising \$1.5 billion (bn) of Senior Unsecured Notes in just a few hours, securing our expansion to 155mtpa. The excitement in the office is tangible.

November - Fortescue's champion Port Team breaks the Port Hedland Harbour record, shipping an amazing 247,906 tonnes of iron ore on the 15th. This effort betters the last record (set by BHP Billiton with the Cape Infinity in June 2011) by an impressive 48 tonnes.

December – the inaugural Fortescue Future Forum is held in recognition of our strong desire to retain our unique culture, despite our unprecedented growth.

Eastern Guruma Elder Eva Conners turns the first sod at Solomon.

My Fortescue Story - Loran Withers

"As I am thinking of the words to sum my Fortescue story, my mind wanders to a documentary I saw recently about a Canadian asbestos mining operation. The fibrous mineral is mined without stringent safety policies, then sold for a fantastic profit to Indian companies who display little or no regard to the health and wellbeing of their workers.

Images of undernourished workers in India handling the asbestos in make-shift factories without any safety protection. While the conditions in the Canadian mine are sub-standard, those in India are operating in appalling conditions.

Workers are exposed to millions of airborne asbestos fibres, with inhalation and the subsequent asbestosis killing many. This reminds me how lucky I am. How lucky we all are, to live in such a great country, to work for a company who provide a safe working environment with policies, procedures and ongoing training. This empowers us to make the right decisions, giving us the confidence to assess risk and the right to prevent a situation which puts ourselves or our fellow workers in harm's way.

We have choices every day and we work for a company that allows us to have the freedom to speak up, yet these workers in India are kept in the dark and wonder why they are sick and dying. I am grateful and thankful every day.

I began my journey with Fortescue in 2006 as a shy and reserved kitchen hand at Fortescue's Exploration camp, not knowing a great deal about mining life. Fortescue offers the underdog opportunities and



Thanks to Loran Withers for sharing your Fortescue Story, for anyone else with their own Fortescue Story please email the Communications Team (communications@fmg.com.au)

opens doors, with the right 'can do' attitude, anything is possible.

Five years on I work with the geology department, having worked as a mine technician for 2 years, and more recently as a pit technician. I now assist the geologists by providing a communication link between geology and production in the pits. This has allowed me to understand the ore body and learn the lay of the land we mine and work with.

"I can truly say one of Fortescue's values which stuck with me was to never give up."

This experience has given me a greater appreciation of the challenges the Technical department face, and how cooperation can be used to overcome them. My time with Fortescue has not been without bumps along the way – in the middle of my time here I was made redundant when the recession hit. Luckily, I gained 18 months employment with Morris catering, improving my appreciation for the hard work which goes into running the camp facilities.

Knowing I had a lot to offer, I strived for a year to re join Fortescue, wanting to be a part of the company moving forward. While biding my time until the company ramped up, I can truly say one of Fortescue's

values which stuck with me was to 'never give up'.

Through patience and perseverance, for the past two years I have been back on board with Fortescue, now working within the geology department. Working away has allowed me to save a deposit for on an apartment at the age of 25, having owned my apartment for 2 years and working hard at paying it off.

Not only has working for Fortescue provided me with financial support through the years, it has helped me grow as a person - from a shy and naive 22 year old entering the world of mining, I have developed into a confident and independent young woman. It isn't always smooth sailing but the trials and tribulations we face along the way make us who we are today.

If I could change anything about Fortescue with a click of my fingers, I would alter the attitudes of those among us who do not reflect the Fortescue values; integrity, honesty and truth in their words and actions, empowerment and enthusiasm. I'd also like to add being thankful to the values that Fortescue promote. Handling yourself with grace and honesty when confronted by difference is something I'd like to see more of."

Recent Port Hedland milestones

210,000 is the record tonnes of ore hauled in one day by the Rail team on January 3rd.

248,106 is the number of tonnes loaded onto the Wugang Innovation, a record for Herb Elliott Port and the Port Hedland Harbour (our previous record was 247,906 tonnes in November 2011).

246 new ore cars delivered recently, taking the total fleet to 1486.



The fleet of ore cars accommodates six rakes (or trains) of 240 ore cars with 46 spares.



Top: Clint Hounsham, Below (L - R): Aaron Turner, James McFarlane, Shontelle Curtis, Martin Slavik, Mathan Middleton, Chris Taylor and Clint Hounsham

Blood Donation

Needles aren't everyone's favourite thing, but that didn't deter a group of willing Fortescue volunteers from giving blood recently.

Organised by Rob Evans from Strategic Planning, the group intends to donate regularly and with the Red Cross providing Tim Tams, sandwiches and a door to door pick up service, there's really no excuse.

A big congratulations to Rob, John Mezzino, Shontelle Curtis, Nathan Middleton, Christopher Taylor, Martin Slavik, Clint Hounsham, Aaron Turner and James McFarlane who kicked off 2012 in a most charitable style.

The Red Cross provide a critical service to Australians, with more than 27,000 blood donations needed every week in order to treat people in need.

If you are interested in donating blood you can visit the Red Cross website – www.redcross.org.au

Tom Price Paraburdoo Business Association discusses opportunities with Fortescue

Opportunity and choice for local business were high on the agenda for discussion when the Tom Price Paraburdoo Business Association hosted representatives from Fortescue at a business dialogue in Tom Price on Tuesday the 29th November.

Bob Stump and Rhys Edwards from the TPPBA toured members of the Fortescue team through Tom Price, as well as the Mine Road and Boonderoo Road light industrial areas.

A presentation from the TPPBA focused on the factors affecting Pilbara businesses and the capability of local business to take advantage of future opportunities.

Fortescue gave an update on the Solomon iron ore project, 70

kilometres north of Tom Price, and discussed with the group topics including their Aboriginal engagement strategy, local buy position and procurement direction.

"It was clear that Fortescue is very interested in working with the business association towards positive outcomes for local businesses and, consequently, the community," Bob Stump said.

"The local businesses that attended came away much better informed about the Solomon project and the choices that local business will be faced with in the future regarding expanding or establishing new businesses in the area. Being informed enables local businesses to create a more sustainable future for Tom Price."

Fortescue's Scott Hansen said that the Solomon project gives Tom



Price existing and future businesses an opportunity and choice to develop local capability within the community.

"A positive side-effect of Solomon will see opportunities emerge for companies to establish non-critical services in the Tom Price community," he said.

"We will continue to engage via one on one discussions with local businesses and through the local Tom Price Paraburdoo Business Association," Scott said.

VTEC Graduation in Roebourne

On Friday the 9th December Fortescue celebrated the achievements of its Aboriginal trainees who graduated from our Vocational Training and Employment Centre (VTEC) in Roebourne.

The graduates successfully completed Certificate II in Infrastructure and Resources Surface Extraction at the Pilbara Institute's Minurmarghali Mia campus and will start work at Fortescue's Solomon minesite this month.

"We are incredibly proud of these graduates; they have taken a major



The Roebourne VTEC Graduates

step towards changing their lives. The training and employment program in Roebourne is another example of Fortescue's commitment to this community and the Yindjibarndi people," Fortescue CEO Nev Power said.

These graduates will be employed by Fortescue and contracted to Theiss in operator roles at Solomon.

They join another 37 Aboriginal trainees who have graduated in Roebourne, taking the total number of Roebourne community members to train and gain employment opportunities with Fortescue and our partners to 45.

A further five Aboriginal trainees are expected to complete their training early in the New Year.

a billion

opportunities

Fortescue has made a commitment to award \$1 billion worth of contracts to Aboriginal contractors by the end of 2013.

Typically, commitments like this make us a stand-out innovator in our industry. We seek to end disparity for Aboriginal people by helping to forge sustainable futures for Native Title groups.

We do this by offering training, participation and inclusion in the mining process. Most importantly, we offer jobs.

Heath Nelson, Fortescue's Principal Aboriginal Advisor, gave us the basis of the strategy behind the 'billion opportunities' program.

"In line with our land access agreements, our contracts have tangible economic outcomes for the Native Title groups.

"These contractual outcomes create a footprint within our operations for Native Title groups to build their capacity and capabilities – this footprint is written into the terms and conditions of each of our contracts.

"There is a strong willingness from Native Title groups to be involved in our business and our approach enables them to also be involved in decisions about what's happening in their country," he said.

This year, as we expand to 155 million tonnes per annum (mtpa)

there will be numerous opportunities for Aboriginal businesses to actively participate in Fortescue's growth through direct contracts, Joint Ventures or sub-contracts with Fortescue's major contractors.

Since 2010, Fortescue has awarded contracts to Aboriginal contractors worth more than \$325 million.

If you would like more information about the program or you need some advice about how to involve an Aboriginal contractor or Joint Venture in a project, please contact Heath Nelson (email hnelson@fmgl.com.au).



Members of the NRW team with Wirlu-Murra Yindjibarndi People

Welcome to Country for Fortescue Family

Recently at Solomon's Castle Camp, the Wirlu-murra Yindjibarndi People welcomed NRW Indigenous employees to Country.

NRW's Indigenous employees consist of people from several Aboriginal groups throughout Australia, some of these groups being Nyoongar from the South West of WA, Yamatji from the Mid West of WA, Torres Strait Islanders and Aboriginal people from Queensland and NSW.

"Working, or just being in, another Aboriginal group's Country, can be fraught with all kinds of difficulties," said Michael Thompson (aka Tommo) from Fortescue's Heritage Team.

An important part of Aboriginal Cultural Protocol is the Welcome to Country' where the Traditional Owners welcome and accept strangers to their Country. This helps to alleviate some of the worry that people experience and hopefully

makes people feel more comfortable and welcome on Country.

The most difficult of the potential hurdles initially is acceptance from the Traditional Owners of that particular Country. and from 'The Old People' belonging to the Country.

'The Old People' are the spirits of the ancestors, along with various other Dream Time entities presiding over the Country.

Tommo told us that these different spirits or entities are known to visit, particularly at night, people strange to the Country.

Aboriginal people are particularly vulnerable to what is known as 'getting a visit' which can be anything from a vivid dream to a restless night. These events can be quite unnerving and often very disturbing.

A Welcome to Country ceremony was organised by Fortescue's Heritage team at the Castle Camp, where

Wirlu-murra Yindjibarndi Elders graciously undertook to welcome the strangers to their Country, Yindjibarndi Country.

In response, the employees welcomed to Country were extremely appreciative and respectful of the time and effort, and the acceptance of the Wirlu-murra Yindjibarndi Elders to allow them to work and reside at the Castle Camp on Yindjibarndi Country.

This ceremony has also been performed by Niyaparli Elders at Christmas Creek for employees, in particular Indigenous employees from other parts of Australia such as Downer EDI Mining employees from Fitzroy Crossing.

For more information on the Welcome to Country or Cross Cultural Awareness training contact Heritage Promotions Officer Michael Thompson (email mthompson@fmg.com.au or mobile 0407 199 358).

HEY!

Have you got a good news story, has your team achieved a significant milestone or do you have an example of the Fortescue values in our workplace?

Send your story to Fortescue Communications:
E: communications@fmgl.com.au



Fortescue
The New Force in Iron Ore

Lync proving useful for collaboration

It seems that the team at Cloudbreak is leading the way on using the collaboration service Lync, which was recently rolled out to all Fortescue workstations.

General Manager Cloudbreak Kevin McLean said that Cloudbreak has taken to the service like a duck to water and with some team members based in Perth and on site, it's making collaboration easier. The program is much more than just an Instant Messenger (IM) system though, it also has the capability to make voice calls, video conference and share your desktop screen with your colleagues – regardless of their location.

Chief Information Officer Vito Forte said, "Lync is just one of the many new technologies that we're introducing to improve the way we collaborate and bring more flexibility into our environments with New World of Work."

Fortescue on Facebook

Have you checked out Fortescue on Facebook yet? 'Like' us and you'll receive regular company updates straight to your Facebook profile.

The message is simple - the Facebook page is for all of us, including the public to enjoy regular updates, celebrate and promote the milestones that we all work so hard to achieve.



As an Ambassador for Fortescue we remind you to be professional and pursue appropriate channels such as speaking to your Manager or Human Resources for work related or personal issues.

You can also follow us on Twitter @FortescueAust.

Heartfelt message from a Black Saturday survivor

When country Victoria was ravaged by the Black Saturday bushfires in 2009 Fortescue stepped in to help, providing financial support, temporary accommodation, equipment to assist with the clean up and recovery process and facilities such as a kitchen, bathrooms and a laundry block. Two years on, we're delighted to pass on this message of thanks from one of the affected residents of Kinglake.

"My name is Jacques Domingue and I have been a resident in the Kinglake area which was affected by the Black Saturday bushfires in February 2009 for eighteen years.

I lost everything in the fires, I was uninsured therefore I am learning to rebuild my life. I am most grateful and fortunate to have escaped with my life unscathed.

I would like to take this opportunity to thank you all for your amazing contribution with everything especially the showers and laundry facilities, it has been a tremendous help to me and our community.

Sometimes thank you does not express our true feelings however your kindness and generosity in our darkest hour is sincerely and deeply appreciated.

All the very best for the festive season to all the staff at Fortescue Metals Group and their families."

**- Jacques Domingue,
Kinglake resident.**

“MW-136”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 4 pages is the annexure marked **“MW-136”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



Issue 01 – January 2013

A message from the CEO



Nev Power, Fortescue CEO, with Yindjibarndi Elders Berry Malcolm, Jill Tucker, Bruce Monadee, Maudie Gerald and Aileen Sandy.

I am very excited to be able to provide you all with this first of what will be a regular update on Fortescue's activities, and in particular our activities in and around your community.

As you probably know, we have made fantastic progress at our flagship Solomon mine, and on Saturday 1 December we celebrated the first ore on the new Fortescue Hamersley train line out of Solomon. This is a significant milestone for our company and for your community and I am extremely proud of all we have achieved together.

Fortescue has a record of working to engage Aboriginal people in our business and operations. In addition to our relationship with Yindjibarndi, we have seven agreements with Native Title groups across the Pilbara including the Eastern Guruma on whose land the Solomon mine is also located. At the end of the September quarter, Aboriginal people comprised 10.4% (420 employees) of Fortescue's workforce and almost 10% (517 employees) of its contracting partners.

Fortescue is also committed to developing sustainable businesses for Aboriginal people. Fortescue's 'Billion Opportunities' program aims to award \$1bn in contracts to Aboriginal businesses by December 2013. Contracts and subcontracts totalling \$546m had already been awarded by the

end of last quarter, including a contract with NYFL that has a total value of \$220m.

As Solomon production continues to ramp up, there will be further contracting and employment opportunities for Yindjibarndi. I encourage anyone interested in joining with our company to register with our VTEC office at the TAFE. Or, if you have a business and are interested in working with us, contact our Aboriginal Business Centre Manager, Heath Nelson (see 'Fortescue Business Development' on page 2).

I hope you find this Newsletter useful, and I look forward to our continued success.

Nev Power

Solomon Update

On Saturday 1 December, Fortescue celebrated a defining moment in the company's history with the first train departing the Solomon iron ore mine bound for Port Hedland. The journey marks the first time a mining company outside of Australia's two major iron ore producers has accessed the iron ore-rich Hamersley Ranges.

Chairman Andrew Forrest and Chief Executive Officer Nev Power joined Fortescue employees, contracting partners and representatives of Yindjibarndi, Eastern Guruma and Banjima people at Solomon on Saturday to open the line before the train, carrying 240 wagons and 23,000 tonnes of ore from the Firetail deposit, made its maiden journey to Herb Elliott Port. The opening of the rail marks the opening of production from the Solomon mine.

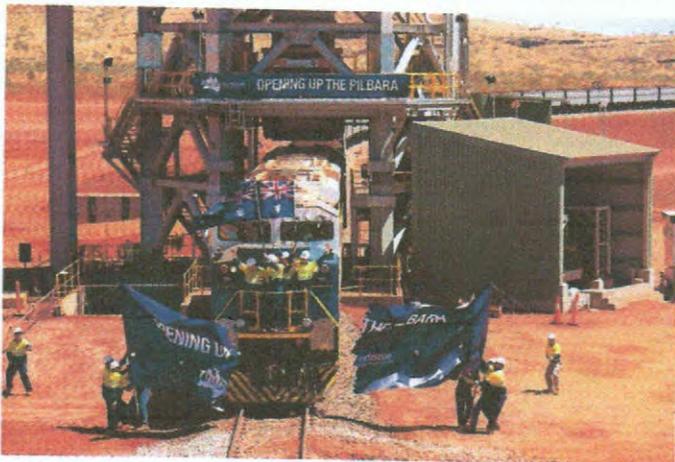
With the recent changes to Fortescue's operations, the scope of the Solomon project has changed. Work on the King's circuit has been deferred until after the work on Firetail has been completed. The aim is still for 20mtpa out of Firetail by the end of March 2013.

Fortescue awarded Leighton Contractors Pty Ltd the mining and operations (M&O) contract for its Firetail deposit at Solomon during September. The five-year contract will deliver whole-of-mine

management at Firetail, including operating and maintaining the mining fleet, ore handling plants and associated infrastructure.

Fortescue has awarded Solomon contracts to the value of \$240 million to businesses with links to Yindjibarndi. Many of these are joint ventures or sub-contracts, and include services such as early earthworks, tailing dam construction, logistics, and heritage. See **'Fortescue Business Development'** (below) for further information.

The Solomon rail expansion continues, with the recent installation of six bridge beams for the Great Northern Highway Overpass and the level crossing installation on the Great Northern Highway Solomon Spur.



Opening of Solomon rail line

Fortescue Business Development

Fortescue's approach to business is to promote sustainable development for this generation and many more generations to come through economic sustainability, business and contract opportunities for Aboriginal people.

Heath Nelson is the Manager of Fortescue's Aboriginal Business Centre. Heath's role is to connect Aboriginal contractors with opportunities within Fortescue or with Fortescue's other contractors. He can be contacted on 08 9230 1286 or by email at hnelson@fmgl.com.au if you would like to discuss business opportunities with Fortescue.

There are contract opportunities for Yindjibarndi in relation to the Leighton's contract at Solomon. These opportunities are in areas such as road maintenance, dust suppression and transport services, amongst others. The value of these

contracts opportunities will increase when work on the Kings expansion recommences. The WMYAC are currently negotiating business opportunities with Leighton's and the Solomon mine.

Heritage

Fortescue's heritage team has undergone some dramatic changes over the last few months.

With Fortescue focused on the development of Solomon and Christmas Creek mining projects, the heritage team has been streamlined. The changes have also seen a reduction in our heritage survey program across all areas, with no current heritage survey program in exploration areas.

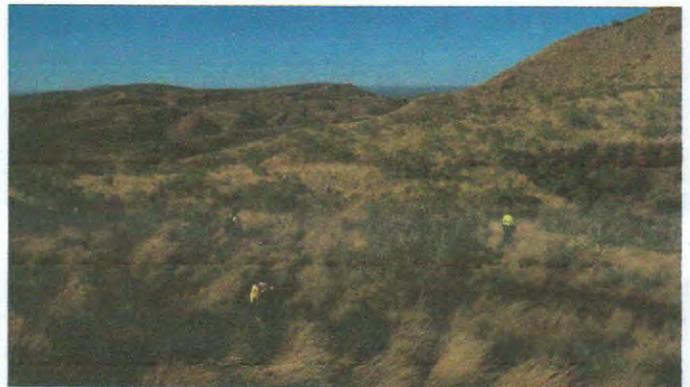
Our focus continues to be on supporting heritage survey teams, and protecting and managing cultural heritage in partnership with the traditional owners from these key areas.

We now have a small field and approvals team that works across all Fortescue project areas. There are two to three heritage team members based at Christmas Creek and Solomon at any time.

Fortescue employs three heritage compliance officers: two locals from the Nyiyaparli group, and one from Yindjibarndi. In addition, thus far in 2012 we have worked in partnership at various times with Kariyarra, Eastern Guruma, MIB, Yindjibarndi, Puutu-Kunti Kurrama and Pinikura and Nyiyaparli monitors.

We continue to deliver Cross Cultural Awareness Training, which is provided to all Fortescue staff and key contractors.

The heritage team are pleased to answer any questions or provide information about the heritage department, surveys or cultural heritage management. You can contact the heritage team on 08 6218 8888.



Native title

Fortescue continues to build a fantastic relationship with Yindjibarndi people through the Wirlu-murra Yindjibarndi Aboriginal Corporation. In recent months, we have hosted several visits to Solomon to talk about native title issues and also to show Yindjibarndi people around this incredible mining operation.

On the way to and from Roebourne we are privileged to hear the stories of country and culture shared by the senior Yindjibarndi elders. To see the places where the old people were born and raised, and to hear them talk with such passion and knowledge about their law and culture is a rare privilege.

Like many in the community, we are deeply saddened by the aggressive, adversarial approach being taken by those who do not support Fortescue's vision which is shared by the WMYAC, of a Roebourne community that is empowered through training, employment and business opportunity.

We are very proud of all that we have achieved, and of the more than 60 lives that have been transformed through employment on our project, and every day we see the positive impact of our work. We will continue to work with Yindjibarndi through the WMYAC, and we urge anyone who wants to share in the opportunities of the Fortescue operation to drop into VTEC or to contact the Aboriginal Business Centre.



VTEC

The vision of Fortescue's Vocational Training and Employment Centre (VTEC) is to change lives

through training and employment. VTEC delivers industry, company and job-specific pre-employment programs that focus on preparing Aboriginal people for upcoming jobs. It also provides health support to help Aboriginal people with their fit for work requirements.



VTEC Graduation

The VTEC offices in Hedland and Roebourne are committed to supporting current employees and those on the employment wait list. Training courses were not run in the last quarter of 2012 but will recommence in February 2013.

Currently, all medically fit VTEC graduates have been placed in employment. Some are on the Aboriginal Health Program waiting to be cleared and will then progress to the employment list.

A total of 91 people from Roebourne have completed training and been placed in employment since Roebourne VTEC opened in 2011. There are currently 42 Fortescue employees that come from Roebourne, and a further 10 that are employed with Fortescue contractors.

Roebourne VTEC is running Cert II Surface Extraction courses in February and April 2013, and all Yindjibarndi People are encouraged to apply. Pre-course literacy and numeracy testing is already underway, so contact Roebourne VTEC for application forms if you are interested in being involved.

The drivers licence program is still running. Please contact VTEC in Pt Hedland (9158 5300) or Roebourne (9158 5891) if you would like to use this service.

Two new support positions have been created to assist Fortescue employees with housing. Fortescue employees are encouraged to contact

VTEC in Roebourne and in Hedland if housing assistance is required.

VTEC Services is currently continuing with both garden maintenance and pest management. A busy bee was recently organised by VTEC Services at Roebourne TAFE. There was a fantastic turnout on the day, with nearly 30 people weeding, raking, pruning and planting to give the TAFE a clean-up. Thanks to all who attended, it was well worth all the hard work!

Port Expansion

Fortescue celebrated the opening of the second train unloader at Herb Elliott Port in September. The train unloader is a key component of Fortescue's expansion at the port.

Since opening, more than one million tonnes have already been unloaded through the second train unloader. More trains are now being unloaded at a rapid rate and will support an increase in tonnes from Cloudbreak and Christmas Creek, as well as Solomon when its construction is complete.

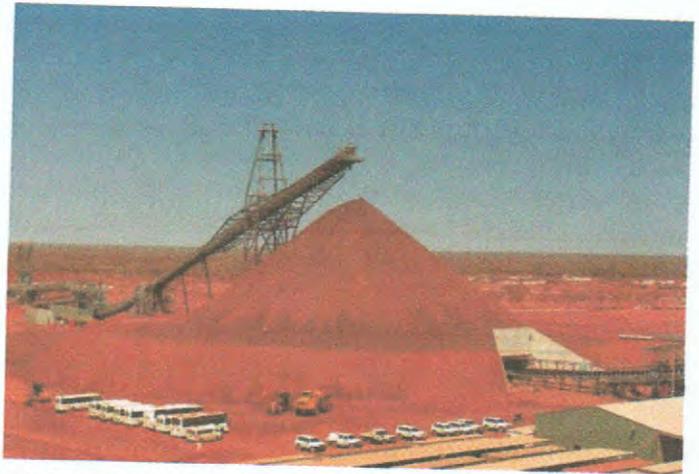
The construction of the third train unloader is going full steam ahead, with completion expected by the end of November.

Cloudbreak/Christmas Creek

Fortescue has marked another milestone in its expansion to 115 mtpa with the introduction of first ore through the second ore processing facility (OPF) at Christmas Creek.

The second Christmas Creek OPF has taken only 14 months from the start of construction to first ore on 28th September 2012. It is now fully commissioned, and increases the capacity of Christmas Creek to more than 50mtpa and the combined output of Christmas Creek and Cloudbreak to 95mtpa.

As part of the Christmas Creek expansion, a number of additional infrastructure projects have been completed, including doubling capacity of the operations village, the construction of a remote crushing hub and 6.3 kilometre overland conveyor, a new airstrip, expanded roads and infrastructure, and an expansion of the power plant.



Christmas Creek Mining Operations

Fortescue's ground breaking water management team has recently won top honours at the International Water Association's (IWA) prestigious Project Innovation Awards. The global award continues the widespread recognition of Fortescue's innovative Managed Aquifer Recharge (MAR) scheme, which has been implemented at Cloudbreak and Christmas Creek.

The groundwater system at both sites extends beneath the Fortescue Marsh. Excess groundwater derived from advance dewatering at both sites is managed by the *Papa Warringka* water management scheme. The scheme is based on groundwater reinjection, which allows Fortescue to return almost 75% of extracted water back into local aquifers instead of discharging it. This greatly reduces the impact of mining on groundwater levels and water quality.

Fortescue's water management approach has been previously recognised by the Australian Water Association and the Western Australian Department of Water as leading the mining industry in terms of mine site water management. Fortescue also received international recognition in July when it won the Operations/Management Category of the 2012 IWA Project Innovation Awards (PIA) at the Asia Pacific Awards.

“MW-137”

No: WAD 37 of 2022

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Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 5 pages is the annexure marked “**MW-137**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



COMMUNITY & ARTS

MINING

🕒 21/02/2013 - 14:50

Aboriginal contractors win \$200m FMG deal

By [Mark Beyer](#)

Experienced Aboriginal contracting group [Eastern Guruma](#) has teamed up with a new entrant to the sector, [Wirlu-murra Yindjibarndi Aboriginal Corporation](#), to win a \$200 million contract in the Pilbara.

The joint venture will undertake mining services work in partnership with Leighton Contractors over five years at [Fortescue Metals Group's Solomon mine](#).

It will also begin a six month earthworks package at Fortescue's Kings deposit in partnership with a major mining contractor, starting mid-year after the contractor is selected.

[Eastern Guruma](#) has been a partner in several successful joint venture operations in the Pilbara, often with mining and civil contractor [NRW Holdings](#).

This joint venture marks the first step into the mining industry for WMYAC.

Roebourne-based YMYAC is separate from another Roebourne-based group, the [Yindjibarndi Aboriginal Corporation \(YAC\)](#), which has been campaigning against Fortescue’s expansion plans.

And it is different again from a third business-focused group, the [Ngarluma Yindjibarndi Foundation Ltd \(NYFL\)](#), which has previously partnered with [Eastern Guruma](#), contractors [Brierty](#) and [NRW Holdings](#), and catering and maintenance company [Compass Group](#), to win work with [Rio Tinto](#) and Fortescue.

Fortescue chief executive [Nev Power](#) said in a statement that it was great to see two Aboriginal contractors join forces to build their business capability within the mining industry.

“There are a phenomenal number of opportunities in the mining industry for Aboriginal people,” he said.

“I’m extremely proud that these two groups, traditional owners of the land where the Solomon mine is located, will work together for the greater economic benefit of their communities.”

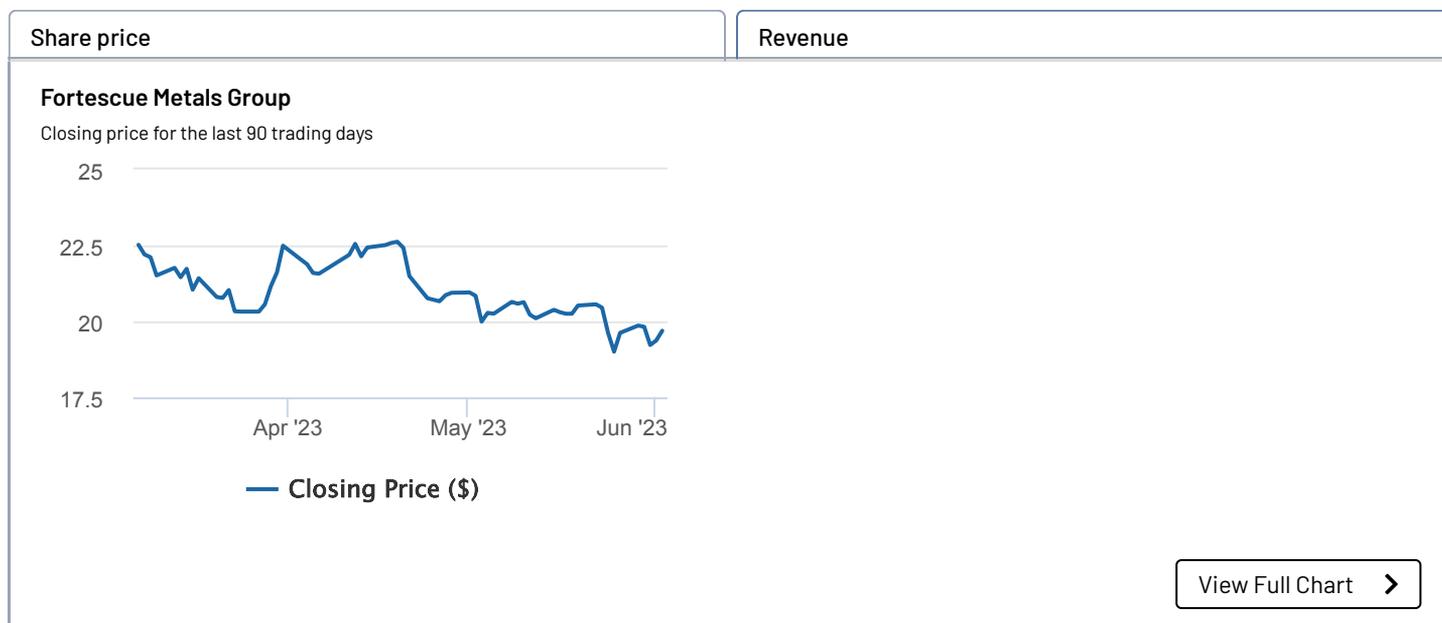
WMYAC acting chairperson Maudie Jerrold said she was delighted that WMYAC had been instrumental in realising this opportunity for Yindjibarndi people to work with and learn from [Eastern Guruma](#) and Leighton.

“Yindjibarndi people will see immediate and long term benefits including education, training, jobs and more importantly for us, to learn more about operating our own businesses in the mining industry,” she said.

[Eastern Guruma](#) Director Sue Boyd said the joint venture would provide employment, training and other business opportunities for Aboriginal people.

It is anticipated that the joint venture will draw on Fortescue’s Vocational Training and Employment Centre (VTEC) in Roebourne.

Related Data & Insights



Mining Services list sponsored by



Data & Insights

Mentioned Organisations

Primary Minerals

Fortescue Metals Group

Business News 30, Exporters and Public Companies - Resources WA

Eastern Guruma

Indigenous Businesses

Wiru-murra Yindjibarndi Aboriginal Corporation

Indigenous Corporations

CPB Contractors

Contractors and Foreign-owned Companies

NRW Holdings

Contractors, Mining Services and Public Companies - Industrial WA

Yindjibarndi Aboriginal Corporation

Indigenous Corporations

Ngarluma Yindjibarndi Foundation

Indigenous Corporations

Brierty

Former Companies

Compass Group

Rio Tinto

Exporters and Public Companies - non WA

Mentioned People

Nev Power

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Traditional Owners form historic mining joint venture

21 February 2013



(L-R) Ron Villaflor, Sue Boyd, Isak Buitendag, Michelle Adams, Tanya Stephens, Nev Power, Jill Tucker, John Sandy, Charmaine Adams, Maudie Jerrold, Bruce Woodley, Bruce Thomas, Ken Sandy

PERTH, Western Australia: Two Aboriginal contractors in the Pilbara region of Western Australia have formed an historic joint venture to undertake \$200 million worth of mining contracts at Fortescue Metals Group's Solomon mine.

Two Aboriginal contractors, Eastern Guruma and Wirlu-murra Yindjibarndi Aboriginal Corporation (WMYAC), agreed to work together at Solomon, 60 kilometres north of Tom Price, to capitalise on growing opportunities in the mining industry and to build their business capability. Eastern Guruma and WMYAC will work alongside existing contractors at Solomon, including Leighton Contractors.

The joint venture, which is scheduled to commence work in March 2013 and operate over five years, marks one of the first times that two Traditional Owner companies have come together to form a business partnership.

Fortescue Chief Executive Officer Nev Power said that it was great to see two Pilbara Aboriginal contractors join forces to build their business capability within the mining industry. "There are a phenomenal number of opportunities in the mining industry for Aboriginal people. I'm extremely proud that these two groups, Traditional Owners of the land where the Solomon mine is located, will work together for the greater economic benefit of their communities."

Eastern Guruma has been a partner in several successful joint venture operations in the Pilbara. However, this joint venture marks the first business opportunity in the mining industry for WMYAC.

WMYAC Acting Chairperson, Maudie Jerrold, said she was delighted that WMYAC had been instrumental in realising this opportunity for Yindjibarndi people to work with and learn from Eastern Guruma and Leighton.

“There is a big chance here for our Yindjibarndi people to create a positive future for our children and their children. Yindjibarndi people will see immediate and long term benefits including education, training, jobs and more importantly for us, to learn more about operating our own businesses in the mining industry,” Maudie said. “This opportunity cannot be lost and the WMYAC Board is solid in its commitment to ensure it happens.”

Eastern Guruma Director Sue Boyd said the joint venture would provide employment, training and other business opportunities for Aboriginal people, to ensure that the younger generation have been set up for the future, be self-reliant and to carry with pride that we are looking after our people to get jobs and get out of the poverty that is always highlighted in the media.

The joint venture will undertake mining services work in partnership with Leighton Contractors for the five year term of their mining and operations contract. It will also begin a six month earthworks package at the Kings deposit at Solomon starting in mid-2013. The earthworks will be completed in partnership with a major mining contractor which is expected to be awarded in coming months.

It is anticipated that the joint venture will draw on Fortescue’s Vocational Training and Employment Centre (VTEC) in Roebourne to develop and train new members of the workforce and continue to build the skills and the economic viability of the town.

Mr Power said that growing up in Western Queensland he would often see young people leave their Aboriginal communities as they searched for work in regional centres or capital cities. By providing opportunities in the Pilbara, Aboriginal people can remain within their communities.

“Fortescue is partnering with Roebourne and surrounding communities to provide accessible and sustainable employment opportunities to its members,” said Mr Power. “I hope that this opportunity might set a precedent for other Traditional Owner groups and I look forward to a successful long term partnership with Eastern Guruma and Wirlu-murra Yindjibarndi Aboriginal Corporation.”

Media Contact:

Yvonne Ball

Mobile: 0417 937 904

Email: yball@fmgl.com.au

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6 May 2013

The Companies Officer
ASX Limited
2 The Esplanade
Perth WA 6000



Dear Sir

Fortescue Celebrates Opening of Firetail Mine

Fortescue Metals Group (ASX: FMG, Fortescue) today celebrates one of the most significant milestones in its 10-year history with the official opening of the Firetail iron ore mine at Solomon.

Mines and Petroleum Minister Bill Marmion joins Fortescue Chairman Andrew Forrest and Chief Executive Officer Nev Power at Solomon, 60km north of Tom Price, to formally open the first stage of the US\$3.2 billion development. "Today we're celebrating the opening of Fortescue's third mine in five years, an achievement that consolidates our position as one of the world's leading producers of iron ore and a vital supplier for our Asian customers," Mr Forrest said.

Mr Power said the 60 million tonne per annum (mtpa) Solomon mine was a major component of Fortescue's expansion to 155mtpa by the end of this calendar year.

"Firetail will produce 20mtpa of iron ore while the second stage of the development, the Kings mine, will produce another 40mtpa. This represents a valuable source of new production from long life, low cost mining operations that allow us to blend with Chichester ores to create an enhanced product for our customers – the new Fortescue Blend," Mr Power said.

Fortescue began commissioning the Firetail ore processing facility last month and production is expected to ramp up quickly, increasing Fortescue's capacity to 115mtpa. Mining at Firetail has been under way since late last year with ancillary in-pit crushing used to produce ore and commissioning feed for the processing and train load-out facilities. Fortescue celebrated the first train carrying ore from Firetail on the new Fortescue Hamersley Line in December 2012.

Mr Forrest said the discovery of Solomon by Fortescue geologists Neil Clarke and Doug Kepert in 2005 was a perfect example of the company's innovative spirit and can do attitude. With the help of a 1965 geological map and the ingenuity to challenge the obvious, Neil and Doug followed ancient river systems from outcropping ore west towards the coast instead of east and north towards Fortescue Valley as experts suggested and discovered one of Australia's premium iron ore deposits. With the focus then on the Solomon region, Neil subsequently discovered Firetail, again from clues deciphered from age old mapping.

“Neil and Doug had the courage to challenge preconceived notions and think outside of the box,” Mr Forrest said. “It’s that kind of spirit that created Fortescue and it continues to drive the company forward today. Their discovery also demonstrates how underexplored the Hamersley Ranges are and the enormous potential that remains.”

Mr Power praised the performance of Fortescue employees and contracting partners, who are delivering an outstanding development project in a safe environment. Solomon has a 12 month total recordable injury frequency rate of 4.3 per million man hours worked.

Mr Power also highlighted Fortescue’s commitment to local content. “So far, 80% of Fortescue’s construction expenditure at Solomon has been with Australian suppliers with the bulk of that spend in Western Australia, demonstrating Fortescue’s commitment to building Australian industry capability.”

Representatives of the Yindjibarndi and Eastern Guruma People, traditional owners of land at the Solomon Project participated in the celebrations. The development of Solomon is providing opportunities for local Aboriginal communities through sustainable employment and business development. In February, Fortescue was proud to announce the formation of an historic joint venture between the Traditional Owners and their respective businesses which will undertake up to \$200 million worth of mining contracts at Solomon over five years.

Mr Power said the joint venture will utilise Fortescue’s Vocational Training and Employment Centre in Roebourne to develop and train members of the local Aboriginal community.

“More than 11% of Fortescue’s direct workforce is Aboriginal and we have so far awarded \$630 million of contracts to Aboriginal businesses as part of our Billion Opportunities Program,” Mr Power said. “Fortescue is looking forward to a successful long term partnership with Eastern Guruma and Wirlu-murra Yindjibarndi Aboriginal Corporation and we hope to form similar partnerships in the future.”

Yours sincerely

Fortescue Metals Group

Mark Thomas

Company Secretary

Media contact:

Yvonne Ball

Mobile: +61 (0) 417 937 904

Email: yball@fmgl.com.au

“MW-140”

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Picture: WMYAC members at a recent Heritage Survey

Heritage Work

Wiru-murra has been using the deep knowledge of the WMYAC elders to carry out heritage surveys. Since July 2012 WMYAC has participated in 21 heritage surveys which have identified 10 ethnographic sites and 223 archaeological sites. In this time 146 sites have been salvaged.

Last week the new board approved the development of the Wiru-murra Cultural Resource Strategy in Partnership with FMG and Terra Rosa Cultural Resource Management. The project aims to design a community-driven research program within Yindjibarndi country that will enable the Wiru-murra to document, promote and interpret the wider cultural landscape that the Solomon area is part of. The Wiru-murra Heritage Subcommittee has decided to call it the Kangeenarina Project.

After the plan for the project is approved it is proposed that a cultural mapping exercise be conducted across the entirety of the Yindjibarndi #1 native title claim, identifying a number of key sites that the Yindjibarndi would like further analysed.

The Wiru-murra Tablelands Heritage Company aims to be the focus of capacity building projects that would enable it to manage a ranger program, a co-management board and Traditional Owner training.

Exciting New Business Opportunities for Wiru-murra

A number of exciting business opportunities have finally come to fruition for Wiru-murra this year. WMYAC is very proud to announce that so far in 2013 we have signed a number of contracts including a joint venture with Eastern Guruma to undertake \$200 million worth of works and services at Fortescue Metals Group's Solomon mine.

Wiru murra is committed to developing further business initiatives that will provide support and ongoing opportunities for all Yindjibarndi people.

Wiru-murra is excited to update you on the following business enterprises that have been signed this year.

Transport Contract

Wiru -murra has signed a four year transport contract with Leighton Contractors to provide bus services for Leighton workers at the Solomon mine.

Cultural Training

In joint venture with Eastern Guruma, WMYAC has been delivering a cross cultural training program for Leighton for the past 10 weeks. The contract will be ongoing for a minimum of four years.

Tailings Storage Facility

Wiru-murra has signed a contract with Viento, also in joint venture with Eastern Guruma, to build a tailings storage facility for the Solomon project. The project is expected to commence soon.

Mining Services Contract

In February, Wiru murra and Eastern Guruma signed the agreement to provide mining services work in partnership with Leighton for five years. The work includes road maintenance and earthworks.

Let's all work hard to make the most of these opportunities.

Annual General Meeting a Success



Paul Aubrey WMYAC's new Chairman. Picture: Jasmine Bamford

There was a big turnout to the Wiru murru annual general meeting late last month with a 141 of our members there to hear our new Chairperson Paul Aubrey give a report on the great progress WMYAC is making.

Paul gave a summary of WMYAC's financial performance and the strong revenue streams from our increasing number of enterprises, which importantly are beginning to deliver benefits to members. Paul also reinforced the key objectives that shape what we do at Wiru murra, which are:

- To build support for WMYAC through native title, enterprise and community development;
- To build recognition of WMYAC's authority regarding Yindjibarndi traditional matters;
- To develop strategic partnerships with resource companies;
- To actively participate in Yindjibarndi native title.

At the AGM the WMYAC board members who have a wealth of experience were also confirmed. The directors are: Charmaine Adams, Paul Aubrey, Jimmy Horace, Maudie Jerrold, Gloria Lee, Penny Little, Jayne Ranger, Aileen Sandy, Allery Sandy, John Sandy, Ken Sandy and Jill Tucker.

You can see a copy of Paul's presentation on our website www.wmyac.com

AUTHORISATION OF THE RIO TINTO INDIGENOUS LAND USE AGREEMENT

TUESDAY 18 JUNE AT 9.30 AT 50 CENT HALL

YAC has called a meeting to authorise an agreement with Rio Tinto that none of us have seen.

What can you do about it? Come along to 50 Cent Hall and ask some questions.

- When did negotiations for the agreement commence and who has negotiated this agreement on behalf of the Yindjibarndi people?
- What consultation has occurred with Yindjibarndi elders on this agreement?
- Who has seen and read the agreement?
- What's really in the Rio Tinto deal? Why does it have to cover all of the determination area as well as the claim area?
- How does it affect Native Title rights and interests? How will our aboriginal heritage be protected?
- Where will the money go? Who will get the financial benefit? How will the benefits be managed on behalf of all of the Yindjibarndi people?
- Will non-YAC members get a voice at this meeting or be told to shut up like so many times before?

Before you decide about the Rio Tinto agreement come to the meeting and help Wirlu-murra represent all Yindjibarndi people to ask questions and try and get some answers.

Wirlu-murra encourages independence, participation and engagement. Wirlu murra wants to develop strategic partnerships with the resource sector, including Rio Tinto.

Wirlu-murra wants all Yindjibarndi people to be informed about Yindjibarndi matters, including the agreement. Wirlu-murra wants to make sure that there is proper management and decision making for all Yindjibarndi rights and interests.

Make sure you are there at the meeting to support Wirlu-murra to make sure Yindjibarndi people are properly informed and heard before any decision is made.

Wirlu murra Yindjibarndi Aboriginal Corporation

6 Queen Street - PO Box 249 - Roebourne WA 6718

Phone: (08) 9182 1157

Our office is open from 9am – 5pm daily

For more information on the Wirlu-murra Yindjibarndi Aboriginal Corporation

please visit our website <http://www.wmyac.com>

“Family and community walking together united to strive for a better future.”

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Wirlu-murra Wangka



"Family and community walking together for a better future."

ISSUE 5

MAY 2014



YAC Annual General Meeting

Members may be wondering what's happening with the YAC AGM

Despite YAC indicating it plans to hold the meeting next month, over 300 Yindjibarndi people are still waiting for answers on the status their membership applications.

Wirlu-murra will continue to push hard for answers from YAC to ensure that all Yindjibarndi people are given an opportunity to participate in the meeting and have a voice on issues that relate to them.

Wirlu-murra wants what's best for our community and that's a self-sufficient future for all Yindjibarndi people.

Once the date of the YAC AGM has been confirmed, Wirlu-murra will inform all members. Those who are eligible to attend the YAC meeting are encouraged to participate.

Wirlu-murra attends Solomon opening

Wirlu-murra members were invited to the official opening of Fortescue's Kings Valley project at the Solomon Hub in March.

Among the guests were elders from Wirlu-murra as well as members who are already working at the Solomon mine site.

At the event, WMYAC was acknowledged for the role it has

played in supporting education and training opportunities for young people in Roebourne.

The opening of the Kings Valley project at the Solomon Hub, marks the completion of the US\$9.2 billion expansion of its Pilbara operations.

The project will produce 40 million tonnes per annum of Channel Iron Deposit.

Allery Sandy on ABC 24 for International Women's Day



Yindjibarndi Elder Allery Sandy was recently interviewed by ABC 24 for a feature on International Women's Day.

Allery spoke about why the women from Wirlu-murra are working so hard to create a better future for the Yindjibarndi people.

"Many negative things have been said about Roebourne, but there are positive people living in our community. When we work together as a whole, supporting and listening to each other and respecting each other we will achieve what we are aiming for," Mrs Sandy told the ABC.

“MW-142”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

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STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-142”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



To all Yindjibarndi

**Yindjibarndi Meeting Tuesday the 4th of May 2021 at the
Ngurin Centre Roebourne**

Start time 10am

The Yindjibarndi Aboriginal Corporation (YAC) & Wiru-murra Yindjibarndi Aboriginal Corporation (WMYAC) are calling a meeting to resolve our dispute.

On Thursday the 29th of April 2021 Middleton Cheedy, Stanley Warrie, Angus Mack, Michael Woodley, Ricky Sandy, John Sandy, Paul Aubery and Rodney Adams meet with Tom Weaver Group Manager, Community & Government Fortescue Metals Group (FMG).

At this meeting the Yindjibarndi men have reached an agreement to work together for the interest of all Yindjibarndi on all matters relating to FMG.

Tom Weaver will be attending on behalf of FMG to answer any question about FMG's commitments moving forward.

This notice is to let Yindjibarndi members know that a meeting is scheduled for Tuesday 4th of May 2021, and that we apologise for the short notice.

For our people to be strong and united we believe this meeting is important to attend and we hope many of you will attend.

Thank you.

“MW-143”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

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Respondents

This and the following 6 pages is the annexure marked **“MW-143”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

Minutes of the Yindjibarndi meeting held at the Ngurin Centre, Roebourne

Tuesday 04th of May 2021

Participants: representatives of Yindjibarndi, Wirlu-Murra and FMG:

The purpose of this meeting is as an Information session for all Yindjibarndi people to work out the best way to come together and work with FMG towards an Indigenous Land Use Agreement (ILUA)

The joint Yindjibarndi and Wirlu-Murra heritage team sat at the front of the room and addressed the crowd.

Joint Yindjibarndi and Wirlu-Murra heritage team:

Middleton Cheedy, John Sandy, Michael Woodley, Paul Aubrey, Stanley Warrie and Angus Mack

Guests from FMG:

Tom Weaver: Group Manager, Community & Government;

Nerrelli Nickolic – who is a member of FMG's Native Title Agreements team

The estimate for the number of Yindjibarndi people at the meeting was approximately 150

Meeting commenced at 12.20pm.

Michael Woodley (MW) opened the meeting with a minute of silence.

MW addressed those present and asked for everyone to be Gumawarni (together in a good way). I have been nominated by this group to be the spokesperson and run this meeting to put forward what we have agreed regarding taking Yindjibarndi forward to reach an agreement with FMG. I also want to give some feedback on our discussions we had about heritage matters on FMG operations, which the WMYAC representatives have agreed to have YNAC manage the heritage works from this point on having representatives from both groups partaking in the heritage works. In regards to my discussions with Elizabeth Gaines CEO for FMG she meet with me and Angus Mack 3-weeks ago to talk about FMG's desire to have an ILUA with YNAC / YAC and would like to try get this done by the end of this year. I told them for us to achieve this it is YNAC & YAC position to have WMYAC with us early in our negotiations with FMG on the ILUA discussions.

Paul Aubrey (PA) addressed those present – this is not a meeting at which we vote. This is a meeting for information. We all need to inform our community sincerely so we can move forward together. I can feel the energy and power in the room. I don't know if I should cry or jump for joy.

John Sandy (JS) – we want everyone to be positive – we are going to make this happen – we don't want to be negative.

MW – this is a team thing if we want to succeed.

MW invited Tom Weaver (TW), FMG to introduce himself and to be available to answer any questions from the floor.

TW – introduced himself and spoke about his background and role with FMG

TW - FMG is very positive and will attempt to reach an agreement – my role with FMG is Group Manager: Community and Government. I'm not here to make any promises today, but we do promise to try and reach an agreement. Let's look forward, not back.

Michelle Adams (MA) – what has been pushing this need for FMG to reach an agreement with the Yindjibarndi?

TW – there is not any one thing, there are many – such as Juukan Gorge, Black Lives Matter, changes to the Aboriginal Heritage Act, the fact we are all getting older and it is time to make a change ...

JS – we are here to try and make it happen together and want you the members to have trust in this group of people to lead us down that path.

Stanley Warrie (SW) – we are going to push FMG to an agreement – everyone is watching them now – we need to get an agreement for all of the people here.

Ellery Sandy (ES) – we come here as Yindjibarndi people, not Wirlu-Murra – today is about listening, we've had enough – I've had enough and I'm asking everyone to work together.

Pansy Sambo (PS) – who is the FMG lady at the back of the room – would you please ask her to come to the front and introduce herself.

TW introduced Nerreli Nickolic (NN) and she spoke about her background and role with FMG.

Tootsie Daniel (TD) – to PA – through the Chair, how long have you known TW?

PA – I have known him about 10 years, probably a little bit less than MW has.

JS – to let you know, we haven't formed any committee, we don't have a Chairperson, this is not a formal meeting, this is an open meeting.

Margaret Read (MR) – I am proud to be here today – we are all one family – Thank you – move forward from here.

MW – are there any more questions for TW and NN?

MA – is there a timeframe on reaching an agreement (an ILUA)?

TW – No – no dates or milestones ideally we like to have it done this year, but we are not constraint by a timeline.

MA – every ILUA has to be registered - where do ILUA's get registered?

TW – in this case there must be at least 2 parties – FMG and Yindjibarndi Ngurra Aboriginal Corporation (YNAC) which is the Prescribed Body Corporate (PBC). However, there can be other parties to an ILUA, like Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC) and the Western

Australian Government. All ILUA's are registered with the National Native Title Office which is the Federal (Australian) Government.

SW – what is the view of the FMG Directors about reaching an agreement with Yindjibarndi?

TW – I have been sent by FMG to represent FMG views. I am acting on behalf, and with the authority, of the FMG CEO and the FMG Directors. The CEO has authorised me to come here today.

TW – (in answer to a question) – Elizabeth Gaines is the CEO of FMG.

ES – this is up to us, not the whitefellas. Are we going to start fresh? I want my family to agree to this.

MW – one more thing Tom before we ask you and Nerreli to leave – (addressing the meeting room) – Elizabeth Gaines is available to come and meet with all of us on Tuesday the 01st of June 2021.

Lyn Cheedy (LC) – I have a statement – the heritage work, and all of this stuff that's gone on – it has only supported one side of the Yindjibarndi family – I have difficulty trusting FMG and the Wiru-Murra group.

TW – we all have the same feelings – we have to work so that we can trust each other.

At 12.56pm, all at the meeting agreed for TW and NN to leave the meeting.

MW – as stated earlier we have all agreed to work on heritage together.

MW – now we will need to work together to achieve an ILUA with FMG. How we get there is up to this group – everyone has a right to speak, to vote and to give their opinion. FMG want to reach an agreement by the end of this year.

Bigali Hanlon (BH) – why is Elizabeth coming to meet with us?

MW – to break bread with the people – with the understanding that FMG has a 12-year history with the Yindjibarndi.

LC – for so many years we have been a separate family ...

MW - (to Lyn Cheedy) – Mum, I have to stop you here. I want you to stop saying this.

LC – No – I want to say this ...

MW – If I can break in here. We all need to feel comfortable in this room. As much as possible we need people to park their feelings. You know what's going to happen if we are all going to talk about this? We will waste the day talking about these things. Everyone in this room is hurting. Let's not raise these same issues. All of us have made a commitment to come together just by coming here today – by being here – that's a commitment - let's not waste this opportunity.

Fabian Cheedy (FC) – it is a good choice for all of us to come together. If we don't come together, we might go on for another 12 years not getting anywhere – and then where will be? We can't be negative for another 12 years.

MA – this is to do with native title.

PA – we may not be able to be best friends again overnight, but we can be over time. And we could become one of the most powerful groups in Australia (people from the floor agreed and said we could become to most powerful group in the world).

MW – I have some **Points for Discussion**, which we are calling **Guiding Principles** that I want to raise with you all.

MW – we need to get united first before we can talk to FMG.

I want to bring up the points and I would like to know if you agree with these 5 points?

For us to go forwards, do you agree that we need:

1. To unite the Yindjibarndi.

There was a general chorus from those present that they agree. Nobody said they disagreed

2. To work in the best interest of Yindjibarndi.

There was a general chorus from those present that they agree. Nobody said they disagreed

3. To put aside all differences and to end this dispute.

There was a general chorus from those present that they agree. Nobody said they disagreed

4. To focus on the Yindjibarndi big picture.

There was a general chorus from those present that they agree. Nobody said they disagreed

5. To make the best ILUA deal with FMG for all Yindjibarndi.

There was a general chorus from those present that they agree. Nobody said they disagreed

There was a consensus in the room that all agreed with these 5 points. Everyone was given the opportunity to voice their disagreement, but nobody disagreed.

MW – so for us to go forwards and make an agreement with FMG, we need to do these 5 points listed above, together.

MW – and I want to contrast those 5 points with some points that would result in us going backwards.

If we go backwards as a group:

1. We achieve more pain and sorrow.
2. We continue to become distanced from one another.
3. We let our children, grandchildren and great grandchildren down.
4. We give no hope for the future in developing the Yindjibarndi Nation.
5. We close our eyes to the current situation of Yindjibarndi people today who are struggling with health issues and everyday challenges.

6. We bring down the Yindjibarndi Nation, break our family structure, ignore our Birdirra, abandon our Ngurra, and forget our old people.

Jill Tucker (JT) – we have had a hard time and we should come together now – don't be hard and selfish – are we serious - we need to work together, let's move on.

MW – that wangka must stop. We need to Gumawarni – everyone has a similar story – and we are serious because everybody in this room came to the meeting.

JS – we want to be positive, not negative. You have to let us work together.

FC – we have lost a lot of people – we need to stand together and make a good agreement with FMG. If you have bad feelings then put them in a cupboard and open another door.

MW – so we all agree to the 5 points above. For us to achieve those 5 points we need to do some things. One is to drop the court case that is being run against YAC.

PA – we will drop the court case.

JS – if everything goes well then we will drop the court case – but we have to go through a process to do this.

TD – I love all my people – if we work together against FMG then you need to support us.

LC – I have a question for John Sandy and Paul Aubrey – what does dropping the court case depend on?

JS – we didn't make that case – that was FMG - this is just part of the process – we can't just rip up that Mirli-Mirli ...

MW – we will work together and try to take all these burdens off before we meet with Elizabeth Gaines on the 01st of June 2021. If we can't take all these burdens off, then we can't meet with Elizabeth Gaines on the 01st of June.

MW – there are also membership issues – we can let all Yindjibarndi into YNAC if we are acting together as one united group.

JS/PA/MW – (talking amongst themselves) – yes if we continue to work together then we can deal with all of these issues – let in members/take off court cases.

MW – addressing the meeting room – moving forward I suggest we meet again before we meet with Elizabeth Gaines. (After some discussion, the meeting participants agreed to meet again on Tuesday the 18th of May, 2021).

MW – so it's agreed that we meet again as an Yindjibarndi community on Tuesday the 18th of May, 2021. The men will work together on the agenda for the next meeting.

BH – may we should all work on the agenda for the next meeting?

MW – we need to look at the list of the 5 points for moving forward and address the issues that are blocking us achieving those 5 points.

It was suggested from the floor that we should book the Roebourne 50 Cent Hall for the Yindjibarndi meeting to be held on the 18th of May, 2021.

This was agreed as a good idea by consensus from the meeting participants.

MW – I will organise to book the Roebourne 50 Cent Hall for the next meeting and circulate the agenda for the meeting.

MA – I am wanting to know if we can express the hurt we feel by writing down what we want to say?

MW – no – because we all have something to say – we will be here all day or all week.

MA – I want to state that Ngurrarra's have rights in Native Title. They should speak for their own parts of country and others shouldn't speak for them.

MW – let's not go down that road – we are all Yindjibarndi.

TW and NN were invited back into the meeting at 1.25pm.

TD – question for you Tom – when the Aboriginal people come together for meetings we also have a feed – did you know that?

TW – yes I know that, but FMG hasn't done that for this meeting because this is your meeting. If FMG enters into formal negotiations with the Yindjibarndi then we will have a budget for that.

PA – we hope you leave this meeting with your hearts a bit lighter and your minds open.

MW – (to TW) – The Yindjibarndi will be meeting again on Tuesday the 18th of May, 2021. Would it be possible to get some documents from FMG regarding the ILUA negotiations before then?

TW – yes we will be able to do that. I will continue to contact you on what you may require.

MW – Thank Tom and Nerrili for coming.

MW – (addressing everyone present) we have organised a Bar-B-Que for everybody so please stay for that. Thanks to all the Yindjibarndi for coming here today at short notice. Hopefully we will all go on this journey together.

Meeting closed 1.46pm.

“MW-144”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked **“MW-144”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

From: [Michael Woodley](#)
To: [Tom Weaver](#); [John Sandy](#); [Rodney Adams](#); paubrey@wmyac.com; [Phil Davies](#)
Cc: [Nerolie Nikolic](#); [Laura Woodall](#); [Maxine Wilmott](#)
Date: Thursday, 27 May 2021 1:55:23 PM
Attachments: [93095FA9-6F5E-4849-917A-5C3EFBAA34F5\[274\].png](#)
[93095FA9-6F5E-4849-917A-5C3EFBAA34F5\[358\].png](#)

Wanthiwa Tom,

Following from the earlier points sent through to you – some of these points will as we in visage shape the agenda with our meeting on the 1st with Elizabeth.

Program for the day – meeting location Roebourne 50c Hall.

- Introduction.
- Yindjibarndi overview regarding the meeting / negotiations with FMG.
- Truth and reconciliation (address).
- CEO – FMG address to the Yindjibarndi on working together.
- Joint discussion on the below points.
 - Relationship built on having a strong Partnership.
 - Legacy / Yindjibarndi self-determination.
 - FMG's strong influence and support on a joint legacy and sustainability.
 - Yindjibrnid Ngurra encompasses culture / heritage / environment / water / people.

If there is any other points from FMG that you like would like to add, please feel free to include.

Can you also let us know what time we would be expecting FMG in Roebourne, so that we can coordinate the meeting via a timetable.

Rgds,
Michael.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



Yindjibarndi Aboriginal Corporation

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From: Michael Woodley <mwoodley@yindjibarndi.org.au>
Date: Wednesday, May 12, 2021 at 3:26 PM
To: Tom Weaver <tweaver@fmgl.com.au>, John Sandy <josandy@wmyac.com>, Rodney Adams <radams@wmyac.com>, "paubrey@wmyac.com" <paubrey@wmyac.com>, Phil Davies <pdavies@yindjibarndi.org.au>
Cc: Nerolie Nikolic <nnikolic@fmgl.com.au>, Laura Woodall <lwoodall@fmgl.com.au>, Maxine Wilmott <maxine.wilmott@fmgl.com.au>
Subject: Re: proposed draft framework

Wanthiwa Tom,

Points for our discussion for the 1st (Breaking of the Bread Meeting).

- Truth and reconciliation.
- Relationship built on having a strong Partnership.
- Legacy / Yindjibarndi self-determination.
- FMG's strong influence and support on joint legacy.
- Water and Yindjibrnid cultural / heritage / Ngurra.

These are our points for discussion with Elizabeth. We also stated at our last conversation with Elizabeth that this meeting will occur in Roebourne 50c hall.

Rgds,
Michael.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



Yindjibarndi Aboriginal Corporation

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From: Tom Weaver <tweaver@fmgl.com.au>

Date: Sunday, May 9, 2021 at 1:23 PM

To: Michael Woodley <mwoodley@yindjibarndi.org.au>, John Sandy <josandy@wmyac.com>, Rodney Adams <radams@wmyac.com>, "paubrey@wmyac.com" <paubrey@wmyac.com>, Phil Davies <pdavies@yindjibarndi.org.au>

Cc: Nerolie Nikolic <nnikolic@fmgl.com.au>, Laura Woodall <lwoodall@fmgl.com.au>, Maxine Wilmott <maxine.wilmott@fmgl.com.au>

Subject: Fwd: proposed draft framework

Good afternoon gents

Please see attached DRAFT agreement framework as discussed. Please feel free to provide any feedback, comments or suggestions.

I will be interstate this week but contactable on email and mobile. During the week commencing 16 May I will be on annual leave and mostly uncontactable, but Nerolie will be available should you require assistance.

While not urgent, could you also please provide meeting arrangements for our initial discussion on 1 June? We had discussed this occurring in Karratha, but note that it may now happen in Roebourne.

Thanks and kind regards,

Tom Weaver

0417 684 712

“MW-145”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 4 pages is the annexure marked **“MW-145”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

Minutes of the Yindjibarndi Working Group meeting held at the WMYAC office, Roebourne

Thursday 13th of May 2021

Joint Yindjibarndi working group team:

Present:

Rodney Adams, Middleton Cheedy, John Sandy, Michael Woodley, Paul Aubrey, Stanley Warrie and Phil Davies (minutes)

Paul Aubrey made the comment that his best email address is paubrey01@gmail.com

Meeting commenced at 11.25 am.

Paul Aubrey (PA) opened the meeting. PA said that the Wirlu-Murra members and Elders had got together yesterday (12/05/21) and went through the draft Agreement/Engagement ILUA Negotiation Framework proposed between FMG and the Yindjibarndi. Generally there was agreement on the document, but they had some queries and suggestions.

PA also said that they wanted to speak to the YNAC about some meetings that John and Rodney need to attend next week which clash with the proposed Yindjibarndi community meeting scheduled to be held in Roebourne next Tuesday 18/05/21. John Sandy (JS), Rodney Adams (RA) and PA had spoken about the fact PA had told Michael Woodley (MW) about the clash of meeting date, and then Tom Weaver (TW) and MW had spoken about it. José, the WMYAC CEO, had suggested to JS, PA and RA that the heritage working group members get together so they could talk face to face. That was when PA rang MW this morning and asked to hold this meeting.

MW said that he didn't mean to stir the pot by calling TW, but he thought it was important for JS and RA to attend the scheduled Yindjibarndi community meeting because they are leaders in the community and everyone had agreed at the first FMG/WYMAC/Yindjibarndi community meeting held on 04/05/21, that the date for the next community meeting would be Tuesday 18/05/21. PA said they would have preferred for MW to call JS or RA first before calling TW. MW said he will do this from now on.

PA said WMYAC has other key people that won't be able to attend the Yindjibarndi community meeting on the 18th of May. He said Ken Sandy (KS) will be working and Ricky Sandy (RS) will be in court in Hedland.

MW said it is really important for JS to be there and suggested that KS speak to FMG to see if he could attend the community meeting instead of having to attend work. He also urged RA to speak with Vince Adams (VA) to encourage VA to attend the meeting. RA said he would talk to VA.

PA said his brother would be attending the meeting and that he would help PA run the meeting. Everyone agreed we would work together to run the meeting fairly for all those who attend.

JS said he and RA won't be able to attend the Yindjibarndi community meeting on 18/05/21 in Roebourne because they have made a prior commitment on behalf of WMYAC in Perth. He said he and RA will have to give their apologies.

DRAFT Agreement/Engagement Negotiation Framework

PA and MW commenced to go through the draft agreement framework to be used for the pending FMG/Yindjibarndi agreement negotiation, as they were discussed by the Wirilu-Murra members and Elders yesterday.

Originally FMG had sent their draft agreement framework (attached to these minutes).

YNAC had made some revisions to FMG's proposed framework and sent their revised agreement framework document back to FMG (attached to these minutes).

The Wirilu-Murra members and Elders went through the most recent agreement framework ILUA negotiation document as it was proposed by YNAC, noting the changes made by YNAC.

PA went through his notes from the meeting held with the Wirilu-Murra members and Elders, with MW, JS, RA, Stanley Warrie (SW), Middleton Cheedy (MC) and Phil Davies (PD).

Paul's notes included the following comments:

- WYMAC agreed with YNAC that any agreement made with FMG will not be for all of Yindjibarndi country. Therefore the agreement will only be for those parts of Yindjibarndi country where FMG operates currently;
- WYMAC commented that we (all of the Yindjibarndi) need to have and enforce good governance;
- That we (all of the Yindjibarndi) take a pragmatic approach to the ILUA that we hope to negotiate, ensuring it will provide fairness and transparency for all Yindjibarndi;
- That WMYAC can continue its contracting businesses;
- That there is an independent Yindjibarndi trust set up to manage the ILUA;
- That WMYAC would like more information on how to gain membership for YNAC.

MW made the following comments in response:

- We absolutely agree on the following:
 - Good, transparent and honest governance;
 - A unified structure which incorporates all of us. We have experience in setting up a good governance structure in which all assets and businesses are owned by the Yindjibarndi nation;
 - Implementing a working group;
 - Taking a pragmatic, and also a realistic, approach;
 - That the ILUA needs to be fair;
 - That the WMYAC keep their contracting businesses as they are, and that we might be able to help use our negotiations to help them grow.
 - That through the negotiations we may also make arrangements which benefit Cheeditha Energy and Yurra;
 - On an independent trust being set up owned by Yindjibarndi, and that the Yindjibarndi people will manage the trust, and it will be run for the benefit of all Yindjibarndi people;
 - That if everyone comes together and works towards getting a good agreement with FMG and that we are all gumawarni, then the YNAC membership will open up to all Yindjibarndi people.

MW also made these additional comment:

- That the WMYAC didn't mention anything about dropping the court cases against YAC.

In response to the court case issue JS said he would be meeting the lawyers in Perth on Wednesday 19/05/21 to talk to them about dropping the court cases. He said that in any case, he would put the legal cases on hold. JS said it isn't just as easy as that to drop the court cases.

PA responded and said he didn't see any reason why the court cases can't be dropped.

MW said for all of us to gumawarni we have to be transparent and not have any hidden agendas between the parties. He said we shouldn't have anything to hide so we can be honest and open with each other. MW said that if the court cases are still going on, then it will be difficult to negotiate an agreement together, because that will be hanging over our head; it will be a sticking point.

General Comments:

- All agreed that one of the main things the Yindjibarndi people need is an accommodation and service facility in Perth where people can go and stay where they get looked after;
- All agreed the 18/05/21 meeting agenda should have the 'questions from the floor' as being last (the meeting flyer is attached to these minutes).

Meeting closed 12.30 pm.



To all Yindjibarndi

Yindjibarndi Meeting on the 18th of May 2021

Roebourne 50c Hall - Start Time 9:30am

From the meeting held on Tuesday the 4th of May 2021 at the Ngurin Centre Roebourne - the Yindjibarndi members decided to have another meeting to come together and negotiate an ILUA with FMG.

Agenda:

- Minutes from our previous meeting (4th of May 2021).
- Questions from the floor.
- Develop a working uniting structure.
 - Points for today (guiding principles).
 - Healing and forgiveness.
 - Memberships.
 - Legal cases.
 - Conflict and pecuniary interest.
- Negotiating Team.
 - Nominations
 - Voting.

Thank you.

“MW-146”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 12 pages is the annexure marked “**MW-146**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

**Minutes of the Yindjibarndi Community Meeting held at the Roebourne 50Cent Hall,
Roebourne**

Tuesday 18th of May 2021

The Yindjibarndi men who make up the joint Yindjibarndi working group heritage team sat up the front of the meeting room to lead today's meeting.

The joint Yindjibarndi working group heritage team:

Paul Aubrey, Michael Woodley, Stanley Warrie, Ricky Sandy, Jason Aubrey, Middleton Cheedy, Angus Mack and Phil Davies (minutes)

Attendance List:

The attendance list is attached. A total of 122 Yindjibarndi people attended.

Apologies:

Charmaine Adams, Glen Aubrey, Noel Aubrey, John Sandy and Rodney Adams.

Meeting commenced at 10.35am.

Michael Woodley (MW) commenced the meeting and thanked everyone for coming. He called for one minute of silence in memory of all the people the community has lost.

MW asked that everyone had the right to speak but that we all need to be respectful of one another. The agenda for the meeting was listed on a big TV screen at the front of the meeting.

(The meeting flyer and agenda are attached to these minutes).

Gillian Aubrey (GA) asked for all mobile phones to be turned off.

MW asked for the church leaders to come to the front and pray on behalf of everyone involved in the meeting today. Middleton Cheedy, Allery Sandy and Jane Cheedy came out to the front of the room and led the prayers. They were supported by Marion Cheedy.

Jason Munda (JM) came up to the front of the room and began saying that everyone is getting sick because people have been doing the wrong thing. He wants something done about it.

Paul Aubrey (PA) asked him to settle down and not to bring those things here to this meeting. Paul was also supported by Jason Aubrey (JA) and Allery Sandy (AS). AS grabbed JM and escorted him to the back of the meeting room.

PA asked everyone to park their feelings.

Lynette Phillips (LP) asked about membership for her family. MW and PA both said that the membership issues are listed on the agenda.

AS asked the men at the front to explain how this process had started and where we are up to.

PA gave a summary of what had happened so far. PA's statements were supported by MW.

MW asked for the minutes of the previous Yindjibarndi community meeting, which was held at the Ngurin Centre on Thursday 04/05/21, to be put up on the TV screen and read out for the benefit of everyone who weren't able to attend that meeting.

Phil Davies read out the minutes from the Yindjibarndi community meeting held at the Ngurin Centre on 04/05/21.

(The 04/05/21 minutes are attached to this document).

Esther Mingo (EM) commented that we have been having too many arguments and we have come here to come together.

Maudie Jerrold (MJ) – said I am sitting here ½ and ½ - the thing is this has been too long.

AS said that we want to work together and come together.

MJ – I think this is a good idea – are we signing this yet?

Tootsie Daniel – we are only just talking about this now.

MW – we are not even there yet – before we meet with the FMG boss we have to show some unity here.

MJ – righteo – I have had my say.

Margaret Read (MR) – the board of the YAC, made up of 7 women and 5 men has run the corporation well and to the best of their abilities.

MJ – so if we all come together what will happen to the offices, the corporations?

PA – we realise and understand that there is a lot of water to go under the bridge yet.

MJ – what's going to happen to the organisations?

Sonia Wilson (SW) – mum – you are getting too far ahead.

MJ – don't talk over me.

MW – nothing is going to happen to the corporations. There will be no changes to any of the current organisations. Any benefits that we receive from an agreement we make with FMG will go into an independent trust. Whoever from the Yindjibarndi people that are elected to run, manage and make their decisions on behalf of the trust, regarding how the trust money is spent, will do so in the best interests of the Yindjibarndi people.

GA – what is going to happen with the 2 PBC's? We are all members of YAC, but not YNAC, so what is going to happen about that?

MW explained the 2 PBC's, YAC and YNAC, to those present.

MW - they have resulted from the 2 different determinations. We want everyone who is Yindjibarndi to be members of both corporations.

MW – any money from an FMG agreement will go into an independent trust, as this is important to stress.

MW asked Phil Davies to highlight the 5 guiding principles mentioned in the minutes of the previous meeting so they could be seen by everyone on the TV screen

The following 5 guiding principles were highlighted and discussed.

MW went through each of the 5 guiding principles as laid out in the previous meeting and set out below.

For us to go forwards, do you agree that we need:

1. **To unite the Yindjibarndi.**
2. **To work in the best interest of Yindjibarndi.**
3. **To put aside all differences and to end this dispute.**
4. **To focus on the Yindjibarndi big picture.**
5. **To make the best ILUA deal with FMG for all Yindjibarndi.**

MW asked the question to everyone present: do you think these 5 principles are valid for us to go forward?

Jill Tucker (JT) – that meeting doesn't ring any bells for me.

People from the floor of the meeting said to Jill – “you were there at the meeting”.

JT – I never said yes. We've got to work together in a good way.

MW – said OK, let's go through the points again. Do you think #1 is a valid point?

PA supported MW and so PA read out the points.

1. **PA – Do we all agree to unite the Yindjibarndi people?**
People on the floor called out yes. Nobody said no.
2. **PA – Do we all agree to work in the best interest of Yindjibarndi?**
People on the floor called out yes. Nobody said no.
3. **PA – Do we all agree to put aside all differences and to end this dispute?**
People on the floor called out yes. Nobody said no.

TD – I don't think anything should be confidential.

PA – that's true Aunty – we want to be transparent.

Gabrielle Cheedy (Gab A) – what about those things in the court – (talking to Paul Aubrey) are you going to take that off?

PA – that is on the agenda – I will answer that later if that's OK.

PA – Do you all agree with Point 3? (to put aside all differences and to end this dispute?)

People on the floor called out yes. Nobody said no.

4. PA - do we all agree to focus on the big picture?

People on the floor called out yes. Nobody said no.

5. PA – do we all agree to make the best ILUA deal with FMG for all Yindjibarndi?

People on the floor called out yes. Nobody said no.

Mae Adams (Mae A) – How come it has taken us so many years?

PA – firstly because it took a lot of years to get the native title through the courts. PA asked Phil when that happened.

Phil Davies (PD) answered that it was last year on the 29th of May 2020 when FMG's appeal was dismissed by the High Court. That decision meant that the Yindjibarndi native title determination for exclusive possession was finalised.

MW – it was only 4 – 6 weeks ago when FMG approached the YNAC to see if Yindjibarndi wanted to make an ILUA.

PA – spoke up and said that it was MW who told FMG that the Wirilu-Murra group must be involved in the negotiations from the very start.

MW – FMG approached the YNAC and said they wanted to do an agreement, and they weren't going to include Wirilu-Mura at all. I told them that we have to include Wirilu-Murra Yindjibarndi members from the start if this thing is going to work.

JA – this is the best thing MW has ever done – he told the FMG CEO Elizabeth Gaines, that we need to negotiate this agreement as one people.

Lorraine Coppin (LC) – asked if we are going to vote on the 5 points?

MW – asked for everyone in favour of the 5 points please raise their hand – many people raised their hand.

MW – asked if anyone wanted to vote against the 5 points, or any of the 5 points. No-one raised their hand.

TD – we need to be all together and show Elizabeth Gaines how powerful we are.

AS – I just want to raise this at the moment – my grandson, Brandon Cook, would like to just be a member of YAC to represent the Pat family. He doesn't want any of the benefits, he just wants to be a member to represent his family.

Brandon Pat (BP) – I just want to represent my family.

MW – no worries – the board will decide that.

MW – now going back to the agenda for today. We have read the minutes, we have had the questions from the floor, we have agreed on the 5 points moving forward.

MW - we want the Yindjibarndi people to pick the negotiating team. We want to put the power in your hands.

MW – We have been through the healing and forgiveness process and I believe most of us are happy about how we all feeling about this.

MW – we would like to talk about membership now.

MW – because of the split in the community we have got used to dealing with the membership issues in the white fella way. Your lawyers talk to our lawyers and vice versa about Yindjibarndi issues. We don't want to do that anymore. We want to give the power back to the people. We can manage ourselves. We want anyone who is a Yindjibarndi person eligible to be a member, to be a member. We need to do this Yindjibarndi way. Ngaarda to Ngaarda. Not lawyer to lawyer.

At this stage Jason Munda (JM) once again interrupted the meeting.

PA stopped JM and said this is the second time you raise this matter if you keep going I will have to go outside with you and that's where you and me will stay throughout this meeting.

MW – the legal cases WMYAC have against YAC don't help us Gumawarni. We need to remove all the burdens when we negotiate with FMG.

Mae A – I don't know what that means.

MW - Right now WYMAC has several legal cases against YAC – and to negotiate with a clean slate we need to get rid of these legal cases. We need to show good faith and that everyone is genuine and therefore need to declare our interest.

LP – so what MW is saying is that WMYAC must remove the legal cases so we can work together with a clean slate.

Bigali Hanlon (BH) – forgiveness is a very strong word. How am I going to move forward with a court case against me. Because that is what it is. We have a court case against all of us personally. Because the white fellas have put this on all of Yindjibarndi. White fellas are very tricky.

BH – you have to stop those court cases for good, and not be tricky.

EM – we need to come together.

GA – we can't do anything at the moment. All the WMYAC Directors will have to come together and make a decision. We can't rush these things. We just can't drop it. It is not as simple as that.

PA – John Sandy and Rodney Adams are in Perth today and they are meeting with our (WMYAC) lawyers tomorrow about these legal matters.

PA – me personally, I would like to say to David Sanders from Bennett & Co – “hey David, can you please drop these court cases ...”

PA – hopefully they can be dropped before the 01st of June (when the Yindjibarndi community is scheduled to meet with Elizabeth Gaines in the Roebourne 50 Cent Hall).

BH – I hope you can drop the court cases before the 01st of June.

JA – as a WMYAC member I want the court cases dropped.

BH – isn't it about time you fellas became the bosses for your lawyers?

MW – so it looks like WMYAC is going through an internal process about whether they drop the court cases or not. But if the court cases are still on then WMYAC members can't negotiate on behalf of Yindjibarndi with FMG on an ILUA.

PA – as a Director of WMYAC – I have to listen to my members. If the members are telling me to drop the court cases then that is what we have to do.

AS – we (WMYAC) are going to make our decision. We come here to be together and now you saying we can't be involved with negotiations unless we drop our legal case's. I thought we are here only to take about the negotiations with FMG and not dropping our court case.

MW – you can't negotiate with FMG and also have a court case.

MA – why not?

MW – because it does not demonstrate good faith.

MA – but thought we are going to let the process run.

MW - the process has already started. FMG said they want to make an agreement with YNAC & YAC. And they showed willingness that they wanted to do this by the end of this year if possible.

MW – we have to remember why we are all here today, both groups. When Angus Mack and I met with Elizabeth Gaines from FMG, she told of FMG's willingness to sit down and talk about an ILUA – I've raised the issue of WMYAC and where do they sit in all of this – Elizabeth said maybe we can bring them in somewhere in the process later on down the track – I said it would be good from a Yindjibarndi point of view that they (WMYAC) were involved from the very start and we would welcome that. This why WMYAC are here with us.

MA – I come here as an Yindjibarndi and I need to be involved.

MW – this is why we have these meeting to get all Yindjibarndi involved, and if you think it is important to be involved by having no burdens or strings attached in this process then WMYAC have to drop the court cases to make this a clean process. Nobody negotiates with a court case hanging over their heads in particular when it bring into question conflict and pecuniary interest. Not FMG, not any Whitefella company and it certainly shouldn't be Aboriginal corporations. It is not a good sign of good governance to have those interest's overshadowing our process. We have to wipe the slate clean so we go in there together with one purpose in mind with one interest in our sights. With a clear mind and a clear goal.

MW – so if the court cases are not dropped by the 1st of June when we meet with Elizabeth Gaines the WMYAC members can come to the meeting, but you can't be selected for the negotiating committee.

PA – so what MW is saying – as Yindjibarndi people WMYAC members can come to the meeting with Elizabeth Gaines on the 1st of June. But we won't be able to be on the negotiating team because of our conflict of interest.

MW – we can't have a WMYAC supporter or member on the negotiating team because you will be holding a gun to our heads at the same time you have a relationship with FMG.

JA – when somebody is trying to move forward we can't hold an ace up our sleeve. We don't want to go back to square one. When we are negotiating we don't want one group holding an advantage over the other.

GA – so how many court cases are there against YAC?

MW – 2

GA – and what are they for?

PA – one is for costs and one is for governance.

GA – to pave the way we should pay something to the juddangali. Just pay them little by little. Maybe so we can give them a decent headstone.

JA – if we continue on gumawarni and come together, we can pay for everyone's headstones.

MR – that's why we want compensation – so we can pay for everyone.

JA – this is not about money for me – it is about Ngurra country.

MW – are there any other questions about this?

MW – we want to come to the negotiation with FMG as one member, pick the negotiating team and then negotiate – clear of conflict between ourselves and also clear of any conflict with FMG – we need a clean slate to do the best on behalf of the Yindjibarndi people, now and into the future.

MW – if we can come together gumawarni, then the members will vote on who will be on Yindjibarndi's negotiating team. We want the power to be with the members and we want to put our trust in them to pick the best people for the job.

MW – if WMYAC doesn't drop the court cases against YAC, then the boards of YAC and YNAC will carry on the negotiating process with FMG – they will make up the negotiating committee. Elizabeth Gaines is coming on the 01st of June - if the court cases are not dropped, then you are all welcome to come, but the boards of YAC and YNAC will negotiate on the Yindjibarndi people's behalf.

PA and JA – so what MW is saying – if you drop the court cases – get rid of the gun – the people will vote for the negotiating team, which will involve all of us.

MW – and for the record – that is what we want to do – we want everyone to be involved and work from a clean slate – no conflicts within our own community and none with FMG – so we can all work together – and we want the Yindjibarndi people to vote for the team they think will deliver them the best deal with FMG.

TD – the negotiating committee needs to implement a cultural protocol.

PA – once we organise a negotiating committee, the sky is the limit.

JA – I will tell what will happen if we don't drop those court cases and if we still have a conflict in our community. FMG will sniff that out. If FMG think there is some constraint within the Yindjibarndi community they will take advantage of it. If they find there is a dispute, if they find a weakness, they will exploit it, and we will lose our position. FMG will try and get this deal as cheaply as possible and they will do everything in their power to do so.

JA – FMG don't care about us – they will try and get the lowest deal.

PA – we want the best deal too. We want to be guma.

JA – you look around here now – we have success here again because we have come together. As long as we are in the same boat, rowing in the right direction, we will be OK. We are going OK at the moment.

Kevin Guinness (KG) – what are we going to negotiate – what are we going to sign – the whole of Yindjibarndi country?

MW, PA and JA all answered – no we are not signing all of our country to FMG – we will only negotiate on the area where they have their current operations.

KG – we need to get a good deal.

JA – we need to make sure we only negotiate and agree on the holes they dig – not on all of Yindjibarndi country.

JA and PA – we will be negotiating for the land use only.

Charlie Cheedy (CC) – so in the negotiation process where does YAC sit? Is it 2 negotiating teams? It should go back to the Directors – we already have a team of Directors.

MW – in the spirit of gumawarni – we want to give the opportunity for the people to lead us. If we can't do that because of the court cases and conflicts then the YAC board and YNAC board will negotiate on behalf of the people.

CC – so if the court cases are dropped, we will all vote for who is on the negotiating committee.

MW – yes.

AS – so the bottom line is – until we (WMYAC) get rid of the legal cases against YAC, we can't be part of the negotiating team.

AS – when John Sandy and Rodney Adams come back with the Wangka from Perth, we will discuss it at the WMYAC Directors Meeting.

MW – we still have 2 weeks before we meet with Elizabeth Gaines – we would like to have you fellas involved in our negotiations.

MW – thanked everyone for coming and lunch was ready.

Meeting closed 12.33 pm.



To all Yindjibarndi

Yindjibarndi Meeting on the 18th of May 2021

Roebourne 50c Hall - Start Time 9:30am

From the meeting held on Tuesday the 4th of May 2021 at the Ngurin Centre Roebourne - the Yindjibarndi members decided to have another meeting to come together and negotiate an ILUA with FMG.

Agenda:

- Minutes from our previous meeting (4th of May 2021).
- Questions from the floor.
- Develop a working uniting structure.
 - Points for today (guiding principles).
 - Healing and forgiveness.
 - Memberships.
 - Legal cases.
 - Conflict and pecuniary interest.
- Negotiating Team.
 - Nominations
 - Voting.

Thank you.

ca

Date: . . .

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Yinjibarandi Meeting 18.5.21 Attendance.

Jessica Allan,	Lynsey McDonald
Bianca Dann	JACOB MINGO
Berry Malcolm	Yasmin Ranger
May Adams	JAYDENE RANGER
JILL TUCKER.	SARA RANGER
Sally Walker	CEDINA RANGER
Janine Bailey	KEELEY RANGER
Renee Wally	Amber McHugh
Lynda Ryder	ERIN MILLER
Gloria Lee.	Malton Miller ✓
Alley Sandy	CHRIS. WILBERT JUN
Michelle Adams.	HENRY MILLER.
Totsie Daniel.	DAVID WOODCOCK
Gillian Aubrey	STEPHEN. HUBERT
Aileen Sandy	Roseat Cheedy
Rebecca Willis	HARRY MILLS
Marlene Harold	MICHAEL CHARLTON
Stuart Ranger	Clifford Guinness
Dion RANGER	MATHEW INGIE
Charley McDonald	RODERICK JACOBS
Kim Franklin	Roslyne. Ranger
WARREN AEB DOSSA.	Billy-Jack Ranger
MALCOLM RYAN	SHANE MOODY
LYNETTE PHILLIPS	Gelsa. Corbin
JIMMY HORACE	Vicky Wilson
Ethan Sandy	Curtis Lockyer
Jason Munda	Hesley Walker.
REBECCA RYAN	
Pamela Mingo	
MAXINE MINGO	
ALFRED RANGER	

W

Date: . . .

Page:

18/5/2021.

CHARNIE CHEEDY

Kevin Guinness

Bigali Hanlan

Gabby Cheedy

Graham Rodation

Esther Pat.

Terrell Cheedy.

Nisha Cheedy

Lyn Cheedy

Tenellia Lockyer

Jane Cheedy

Maisie Ingie

Shakaya Warrie

Kaye Warrie

Marion Cheedy

Ashton Cheedy

Esther Pat

Kevin Guinness

Charlie Cheedy

Aaron Wilson

Margaret Read

Dyanne Lyn..

Daisy Ann Walker

Brenda Greenwood

STELLA HUBERS

Wendy Hubert

Joyce Hubert.

Diana Smith

maudie Jensen.

Ethel Ranger

SHIEFEE DICKERSON

18/5/2021

Esther Mungo

JANICE GUINNESS

Lilly Togo

Ivy Wilson

Sonya Wilson

Joyce Wilson

Clifford Guinness

Latrell Moody

Doma Willis

ACCAN MACK

TERRANCE WARRIE

Daniel TRUE

Angus Mack

MIDDLETON CHEEDY

Stanley Warr

Jason Aubrey

RICKY SANDOZ

PAUL ANBREY

Michael Woolley

Shane. Moody

Gelissa Coppin

Woedin Wilson

Lynette Wilson

Richard Togo

Vicky Wilson

MARY WATSON

“MW-147”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 4 pages is the annexure marked “**MW-147**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Minutes of the Yindjibarndi Working Group meeting held at the WMYAC office, Roebourne

Friday 28th of May 2021

Joint Yindjibarndi working group team:

Present:

Rodney Adams, John Sandy, Paul Aubrey, Ken Sandy, Michael Woodley and Stanley Warrie.

Apologies:

Ricky Sandy, Middleton Cheedy, Angus Mack, Official minute taker Phil Davies.

Meeting commenced at 11.20 am.

Paul Aubrey (PA) opened the meeting. PA said that the Wirlu-Murra Directors, members and Elders had got together and went through the proposal from our last Yindjibarndi community meeting held on the 18th of May 2021. It was a tough meeting as some of the elders / members were a bit negative about agreeing to everything. So I thought it would help by putting up some of the pros and cons and I felt that the pros outweighed the cons.

John Sandy (JS) said before you carry on maybe I give some feedback on the meeting in Perth with our lawyers. We meet with our lawyers and we've decided to keep the cases on, we dragged it out but we can't drop it, as there is too much work and cost in this short time to do this.

Michael Woodley (MW) that is sad to hear, but regardless of that our position is still the same and that YAC & YNAC are very positive about WMYAC as Yindjibarndi members being involved with the meeting on the 1st with FMG. Nothing more I can really add to that.

PA – we are trying to get rid of all the cases but we need time. So lets continue to try and mediate these issues and let's hope that the timeline moving forward will give us the time to do this.

PA – other concerning matters from our elders are the legal cost to WMYAC if we drop this case, what cost are we facing and can we be sure that this can be sorted out by YAC / YNAC sharing this cost.

MW – that's a matter for the YAC & YNAC board.

PA – elders & board query, can you also give some guarantee that the cost of the two elders (SA) & (AS) be meet by YAC as they have worked hard over the years.

MW – that's a matter again for the YAC board.

PA – read from his mobile phone the points WMYAC made re the pros and cons.

MW - said is he could have a copy so that he don't have to rush writing it all down if its already written.

JS – forwarded MW a copy of the photo of the pros and cons via text from his phone.

MW – suggested that we go through the each of the points of the pros and fill in other matters that the WMYAC men had re the conversation with their elders/directors and members.

MW – lets also break it down in-terms of what they mean.

Points of the pros:

- Representation
 - Framework Deed.
 - Joint negotiations.
 - Inclusiveness.
- Decision on Country
 - Truth in surveys.
 - Sharing information.
- Shared Payment
 - Court cases
 - Mediate / negotiate
 - Sharing cost if case is dropped.
- Acceptance
 - Being one Yindjibarndi.
- Headstone
 - For the late (SA) so we can give her and the family support.
 - Money for funerals so that the elders and the families are being cared for when they leave us.
- Survey concerns
 - No survey concerns.
- Mediation
 - We can resolve the two court cases out of court.
- Instalments
 - If the cost to drop the case is a lot maybe together we can pay by instalments.

Points of the cons:

- Cost to WMYAC
 - Legal cost to WMYAC.
 - And it will cost us in the long run.
- YAC wins
 - As YNAC have already won the court case re Native Title against FMG, a lot of members will feel that they have lost too.

Stanley Warrie – can I have a say. If we keep going down this path will keep us divided. We are all Yindjibarndi when you say things like this the Whiteman wins. We should be signing a good deal for all of us and shut the door on this division.

PA – this not to do with this things, its giving you some feedback on what was discussed at our last meeting.

MW – thanks, lets keep going with the list of Cons.

- Membership:
 - YNAC won't become a member of YNAC.
- No Transparency:
 - We will have no information.
- No Presentation:
 - No Participation
 - No involvement
- Intimidation:
 - At meetings
 - Some of the personalities make people feel uncomfortable and afraid
 - MW is one example
- 1st of June:
 - To quick in trying to fulfil some of the requirements (legal cases, working together, membership, conflict & pecuniary interest)

JS – said that the elders wanted the cost matter to be dealt with now and YAC have to pay the cost.

MW – said he wanted give a quick breakdown of the legal case on what was YNAC's position and the process we are taking. This was his limited understanding of the legal case as a non-lawyer. We know the original amount was around \$900K.

PA – I thought it was less then that, because we did get correspondence from our lawyers asking for further discovery.

MW – that is in-relation to further evidence of where did the funds really come from. We are now asking for proof that these two elders actually paid for the legal cost.

PA – this case has been running now for how long – 7 / 8 years.

MW – if our lawyers put any of you WMYAC directors on the stand and ask you who paid for the legal cost what would be the real answer.

PA – yep, WMYAC paid for all of the cost.

MW – let me try and break it down for you all.

- The Justice Pritchard decision awarded cost against YAC.
- The cost came back to us by WMYAC / lawyers was around \$900K.
- As the cost wasn't an indemnity cost it takes off 30% which roughly works out to be around \$700K.
- We have issues with the cost associated to Integra Legal's which is around \$300K as we see there wasn't an agreement made between WMYAC and Integra Legal – so we are confident that we can wipe this cost out, which will leave them with the remainder cost of \$400K.
- The \$400K that highlighted as cost to Bennett & Co we will argue that these cost need to be justified by the two elders.
- We now have advice that we also challenge this cost of \$400K because of this fact.

- We know that it will continue to be in the courts for a while yet, and we don't know how many years that will be.
- The other part to all of the funds put towards this case is money that belongs to WMYAC members. This will also have to be highlighted.

Ken Sandy (KS) – take this matter back to the WMYAC board again and this time let's tell our lawyers to come here, no more talking over the phone. We have to get some straight answers to this thing.

MW – I agree as your lawyers will be able to give you all the answers.

MW – what I know is the current legal actions and the times lost dealing with these issues that have really benefited our lawyers and kept us divided, now whether it's right or wrong we can argue that and some of the cases are justifiable, but we can continue to do legal and waste more time and money and as Uncle Stanley said keep us divided or we can see what's now in front of us; this opportunity we have with FMG on making a good ILUA that will benefit all of us.

PA – thanks for that, we now will go back and ask for further information and get back you with our position.

MW – would you be able to do this before the 1st of June.

PA – no, I think we will need more time than that – you look disappointed MW.

MW – no sad. but we respect your position and no worries from our side with your internal process.

PA - Is there anymore points you and Uncle Stanley want to raise.

MW – two more points for me.

- Are we still conducting the heritage surveys together.
- And now WMYAC have decided to keep the legal actions on foot, you realize that you won't be able to take part in the negotiations with FMG and you're happy for this role to be managed by the board of YNAC & YAC, but you are all still welcome to come to the meeting on the 1st of June as we would like to see you all there.

PA – I think this is still our position. John and Rodney confirmed. JS & RA – preferred that these surveys be done by the heritage working group.

PA, JS, RA all agreed that the YNAC and YAC will be leading the negotiating process with FMG.

MW – to reaffirm our position the door is still open for WMYAC Yindjibarndi members to participate in the negotiating process with YNAC & YAC with FMG.

Meeting closed 1pm.

“MW-148”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked **“MW-148”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

Truth and Reconciliation Statement

Colonial occupation and government policies have separated Yindjibarndi from our Ngurra. The Yindjibarndi Nation has lived through many different challenges, personal sacrifices and the idealism that we were considered inferior and only domestically suited to bondage and shame.

Our journey in finding our place in a country that had become silenced from the silencing of the voices that sang to the morning; broken by the breaking up of families and removal of the kids laughter's by taken the children away; these images still live in the hearts and minds of many First Nation Australians.

Former Australian Prime Minister of John Howard said in his speech on the 26 May 1997
OPENING ADDRESS TO THE AUSTRALIAN RECONCILIATION CONVENTION MELBOURNE; At the heart of this reconciliation process among Australians lies three fundamental objectives:

1. The first is a shared commitment to raise the living standards and broadening the opportunities available to the most disadvantaged group in Australian society and that is indigenous Australians and that must be done as part of a broader commitment to providing equality of opportunity to all Australians.
2. A second objective is a realistic acknowledgment of the inter-related histories of the various elements of Australian society;
3. And a third is a mutual acceptance of the importance of working together to respect and appreciate our differences and to ensure that they do not prevent us from sharing the future.

We see these three objectives not only achievable but more relevant now then ever, we can 'for lack of a better word' kowtow and do nothing or we can grab the bull by the horns and become leaders in forging a better path of understanding, collectiveness and what it is to be real by our actions when we speak of truth and reconciliation.

In our heart of hearts it is always wrong to be self-serving and we can no longer appease the radical voices that vigorously opposes Native Title laws and process to have First Nation Australians legally recognized. We cannot unashamedly say things that don't align with the values on where this Nation is poised to track, and become unrealistic when someone seriously argues that Aboriginal and Torres Strait Islander people as a group are not profoundly disadvantaged, which falsely and incoherently sews the seeds of despair that then forms the ideal that gives reasons to quit.

The fundamental truth spent in the day in the shoes of a First Nation Elder, members or a leader who cares for his people and love his Ngurra is defined by;

- the many funerals in our community we attend, tells us we can't quit;
- the many obstacles we face to live a happy healthy life, tells us we can't quit;
- the innocent smiles on the faces of our children, tell us we can't quit;

- the occupation of mining companies on our Ngurra, tells us we can't quit; and,
- for the reasons we are Yindjibarndi, tells us we can never quit.

The long walk on the 21st of November 2004:

Former Essendon footballer, Uncle Michael Long began a historic walk of more than 650km from his home in Melbourne to Parliament House in Canberra. Mr Long was motivated by the struggles of his people after attending the funeral of a Community member. The Long Walk, inspired by Mr Long to Canberra, was to get the lives of Aboriginal & Torres Strait Islander people back on the national agenda.

Today is an historic day for the Yindjibarndi Nation and Fortescue Metals Group (FMG). The long walk for us starts today, we are very pleased to have the CEO with us today and appreciate the commitment shown by FMG. Although today gives us a few hours together, the journey has been much longer, and unlike Michael Long we have selfishly wasted the time, which could have resulted in a more productive and resourceful outcome without the fight.

Everyone involved in that dispute has to take responsibility, our actions are our own.

If we are seriously genuine about moving forward, we the Yindjibarndi must as a matter of recognition address the issues that have laid bear our *Marni*, the Nations flag. It is time we put back its pride and dignity and enter into a new phase of grace and glory, because no matter what happens with these talks with FMG we can never go back to the ways of a Pro-Western impact on how we communicate and behave.

Truth and reconciliation begins with parties willing to tell the truth and reconcile no matter the consequences.

In truth:

1. In truth, we turn to FMG to step up, and to accept the truth and to embrace the people of the *Ngurra* as Exclusive Native Title Rights holders in the same way you have embraced our sovereign wealth.
2. In truth, we think that FMG should face the truth by accepting that the past 12 years of dispute has not been without your involvement.
3. In truth, we believe FMG is responsible for its actions in treating the Yindjibarndi PBC's with disregard.

How FMG chooses to accept the above three points is a matter entirely for FMG. In the cause of reconciliation we hold no personal feeling towards FMG. We have to do two things today; try hard to forgive, and work hard to forget. If FMG are willing, then the Yindjibarndi are up to the challenge and ready to move past this first step. We know the journey is going to be challenging and this is another mountain we must overcome.

The Yindjibarndi Nation has never been afraid of any challenge. We have proven our resilience and we have shown everyone in this room today the strength to find common ground to work in the best interest for all Yindjibarndi.

There is only one Yindjibarndi to the many mountains we have to climb, and if we are to accomplish these feats we have to do this together and with our partners.

Nelson Mandela said:

“I have walked that long road to freedom. I have tried not to falter; I have made missteps along the way. But I have discovered the secret that after climbing a great hill, one only finds that there are many more hills to climb. I have taken a moment here to rest, to steal a view of the glorious vista that surrounds me, to look back on the distance I have come. But I can only rest for a moment, for with freedom come responsibilities, and I dare not linger, for my long walk is not ended.”

Yindjibarndi and FMG lets climb that hill together, lets steal a view and let us look back into the distance and let us say our long walk has ended.

Thank you.

“MW-149”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked **“MW-149”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

From: [Michael Woodley](#)
To: [Phil Davies](#)
Date: Thursday, 3 June 2021 1:22:07 PM
Attachments: [210601 - Re Truth and Reconciliation Yind FMG v1.pdf](#)
[93095FA9-6F5E-4849-917A-5C3EFBAA34F5\[443\].png](#)

Wanthiwa Phil,

I've attached FYI - speech I wrote re Truth and Reconciliation, and below the agenda with points raised to FMG.

- Introduction. (introduce the YAC & YNAC board of directors and FMG Elizabeth Gaines / team)
- Yindjibarndi overview regarding the meeting / negotiations with FMG. (address by CEO Michael Woodley)
- Truth and reconciliation (address by Michael Charlton Yindjibarndi member).
- CEO – FMG address to the Yindjibarndi on working together.(Elizabeth Gaines)
- Joint discussion on the below points.
 - Relationship built on having a strong Partnership. (Trust and Commitment – to the Yindjibarndi is the essence of a true partnership)
 - Legacy / Yindjibarndi self-determination. (Yindjibarndi are concerned that in the hype of mining and wealth creation with Iron Ore prices being \$200 dollars a tone – legacy should be front and centre in supporting the rights of the Yindjibarndi to be self-determining)
 - FMG's strong influence and support on a joint legacy and sustainability. (if Yindjibarndi are to be successful in having a partnership with FMG we need the support of FMG, your influence with Governments and your knowledge / know how in developing a legacy based on a economic platform for the Yindjibarndi).
 - Yindjibrnid Ngurra encompasses culture / heritage / environment / water / people. (based on our 5-Yindjibarndi principles 1 Birdirra initiation ceremony and the Burndud. 2 Galharra our 4 skin group system that governs and dictates our relationship we have with each other and to our Ngurra. 3 Nyinardt a reciprocal relationship between Yindjibarndi and the Ngurra. 4 Language our Wangka everything that is Yindjibarndi is energized and moderated by the Wangka. 5 Ngurra our home where for the Yindjibarndi life starts and end.

Some of Elizabeth Gaines points from her address.

- February 2013 where she was appointed to FMG's Board.
- The dispute happened before her time.
- As a child grew up in the Kimberley as her father worked in education.
- FMG are absolutely committed in making a ILUA with Yindjibarndi.
- Andrew Forrest has endorsed this process and understand the importance of reaching an agreement.
- Today is about working together.
- Benefits for the entire community.
- We want a successful outcome.
- I'll stay close to the negotiations but will let my team lead.
- Having a direct conversation / acknowledgment the Yindjibarndi that is important.
- Start fresh with a new start.
- We come with good faith.

Rgds,

Michael.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



Yindjibarndi Aboriginal Corporation

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“MW-150”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 8 pages is the annexure marked **“MW-150”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

From: [Michael Woodley](#)
To: [Tom Weaver](#)
Cc: [Phil Davies](#); [Maxine Wilmott](#); [Laura Woodall](#); [Nerolie Nikolic](#); [Narelle Adams](#)
Date: Wednesday, 16 June 2021 11:10:24 AM
Attachments: [image001.png](#)
[image002.png](#)
[5095FA9-6F5E-4849-917A-5C3EFBAA34F5\[1\].png](#)

Wanthiwa Tom,

Thank you for the email and confirming the process re negotiations.

In-light of the WMYAC matter, and as stated to you in our catch-up in Roebourne the directors remain open to our engagement with WMYAC and supportive to in-regards to them partaking in the high-level negotiations.

We are happy to meet as proposed in the next couple of weeks. I'll await Max to be in touch.

Rgds,
Michael.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



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From: Tom Weaver <tweaver@fmgl.com.au>
Date: Tuesday, June 15, 2021 at 4:10 PM
To: Michael Woodley <mwoodley@yindjibarndi.org.au>
Cc: Phil Davies <pdavies@yindjibarndi.org.au>, Maxine Wilmott <maxine.wilmott@fmgl.com.au>, Laura Woodall <lwoodall@fmgl.com.au>, Nerolie Nikolic <nnikolic@fmgl.com.au>, Narelle Adams <naradams@fmgl.com.au>
Subject: RE: Revised agreement framework

Good afternoon Michael

Thank you for your email, and thank you for the opportunity to catch up in your office last week - while the content of our potential agreement was not discussed, taking time to understand each other is important as we continue to build the relationship between Fortescue and Yindjibarndi.

We too were very pleased with the 50 Cent Hall meeting on 1 June. It represents a significant practical and symbolic step in our attempts to reach an agreement. Thank you and your team for working to pull it together, and for chairing what was a well-run meeting.

Fortescue is content to proceed with the steps you have outlined, below. I will ask Max to be in touch to discuss time/s for our next meetings - perhaps we could schedule the next 2-3 so that we have time available now? (I am taking some leave from 28 June - 9 July and so would ideally like to secure our next meeting date in the next couple of weeks if possible).

As discussed last week, one area that will need a resolution is the involvement of the WMYAC leadership group in the negotiation process. You will recall that in our initial meeting, Elizabeth and I were careful to note that, given their extensive membership base, WMYAC would need to be involved and supportive of the process if we are to reach an agreement that is durable and acceptable both to Fortescue and Yindjibarndi. In our discussion we noted that Fortescue would be content to start the process without WMYAC 'in the room', but that at some point, this would need to change. It was your sensible suggestion

that WMYAC were involved from the outset of negotiations.

While it is regrettable that conditions for WMYAC's involvement have not been able to be agreed between yourselves, Fortescue's view is that we remain committed to commencing the negotiation process, on the understanding that:

- a. Fortescue will keep communicating transparently with all Yindjibarndi on the process including keeping WMYAC informed of the process and progress; and
- b. At some point in the negotiation (its difficult at this early stage to say what that point is), the WMYAC leadership group will need to have an active role in the negotiation process.

We acknowledge and thank you for the work done so far to 'bridge the gap' with WMYAC, and we encourage you to continue your constructive dialogue and have provided the same encouragement to the WMYAC leadership group. Fortescue is available to consider suggestions for any practical and appropriate way that we may support this important reconciliation process.

Thanks again Michael. I look forward to our next conversation.

Kind regards,
Tom

Tom Weaver
Group Manager, Community & Government
Fortescue Metals Group

Direct: +61 8 9230 1392
Mobile: +61 417 684 712

Level 2, 87 Adelaide Terrace
East Perth WA 6004
Email: tweaver@fmgl.com.au
Web: <http://www.fmgl.com.au>



From: Michael Woodley <mwoodley@yindjibarndi.org.au>
Sent: Wednesday, 2 June 2021 3:36 PM
To: Tom Weaver <tweaver@fmgl.com.au>
Cc: Phil Davies <pdavies@yindjibarndi.org.au>; Maxine Wilmott <maxine.wilmott@fmgl.com.au>; Laura Woodall <lwoodall@fmgl.com.au>; Nerolie Nikolic <nnikolic@fmgl.com.au>; Narelle Adams <naradams@fmgl.com.au>
Subject: Re: Revised agreement framework

Wanthiwa Tom,

Thank you on behalf of Yindjibarndi for yesterdays meeting. We very much appreciated Elizabeth's time and her willingness to engage openly.

The moment for day that became symbolic, was the breaking of the bread (damper) spellbound as it captivated the whole group.

In moving forward with our negotiations process the Yindjibarndi meet today and we are happy to report the following.

1. The Board of YAC and YNAC are happy to take lead in negotiating with FMG.
2. Finalizing the Proposed Agreement Framework.
3. Negotiating Budget and Timeline.
4. Negotiating location Roebourne (Ganalili Centre) we can discuss other locations at our first meet.

If there are other points which need to be added, please feel free to include.

I look forward to your response - call me if you want to discuss.

You will also notice that I have removed the WMYAC members from the email trail, as they will no longer take part in this

process.

Rgds,
Michael.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



Yindjibarndi Aboriginal Corporation

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From: Tom Weaver <tweaver@fmgl.com.au>
Date: Friday, May 28, 2021 at 2:15 PM
To: Michael Woodley <mwoodley@yindjibarndi.org.au>
Cc: John Sandy <josandy@wmyac.com>, "paubrey@wmyac.com" <paubrey@wmyac.com>, Phil Davies <pdavies@yindjibarndi.org.au>, "radams@wmyac.com" <radams@wmyac.com>, Maxine Wilmott <maxine.wilmott@fmgl.com.au>, Laura Woodall <lwoodall@fmgl.com.au>, Nerolie Nikolic <nnikolic@fmgl.com.au>, Narelle Adams <naradams@fmgl.com.au>
Subject: RE: Revised agreement framework

Good afternoon Michael and all

My apologies for causing confusion, Michael. I was referring to pages 2-3 of the proposed agreement framework document attached to my previous email (and reattached here). You will see that the comments you've made in response to our questions (reflected in the attached markup) relate only to matters raised on page 1.

We are pleased that you agree that governance and related structures will form part of the negotiations/discussion. We would not presume that governance structures and processes are covered in other ILUA's between Yindjibarndi and other proponents (that we have no visibility of).

The Fortescue team will be available in Roebourne from 10.30am on Tuesday. The team will comprise:

- Elizabeth Gaines - Chief Executive Officer
- Tim Langmead - Director, Community, Environment and Government
- Narelle Adams - Executive Assistant to the Director, Community, Environment and Government
- Tom Weaver - GM Community and Government
- Nerolie Nikolic - Senior Manager, Indigenous Communities and Regulatory Affairs

Gents, Fortescue is very committed to exploring whether an agreement with Yindjibarndi is possible - and I think this commitment is evident in the proactive way that Elizabeth and I have engaged and the seniority of the team made available for Tuesday's meeting. Like all of you, we see this meeting as an important step in hopefully moving into the negotiation phase.

As with all engagements in this process, Fortescue's involvement is conditional on the continuation of the existing agreement between ourselves that these discussions are on a strictly without prejudice basis, there will be no cameras or media present, and none of us are going to make public commentary about the process unless we all agree. We also trust that all present will conduct themselves in a courteous and professional manner.

Please let me know if you would like Fortescue at the 50 Cent Hall at 10.30am, or whether you have business to conduct before we arrive. Also, please let me know if you need any assistance with any catering or the like as we'd be happy to contribute.

Kind regards,
Tom

Tom Weaver
Group Manager, Community & Government
Fortescue Metals Group

Direct: +61 8 9230 1392
Mobile: +61 417 684 712

Level 2, 87 Adelaide Terrace
East Perth WA 6004
Email: tweaver@fmgl.com.au
Web: <http://www.fmgl.com.au>



From: Michael Woodley <mwoodley@yindjibarndi.org.au>
Sent: Thursday, 27 May 2021 8:15 PM
To: Tom Weaver <tweaver@fmgl.com.au>
Cc: John Sandy <josandy@wmyac.com>; paubrey@wmyac.com; Phil Davies <pdavies@yindjibarndi.org.au>;
radams@wmyac.com; Maxine Wilmott <maxine.wilmott@fmgl.com.au>; Laura Woodall <lwoodall@fmgl.com.au>; Nerolie
Nikolic <nnikolic@fmgl.com.au>
Subject: Re: Revised agreement framework

Wanthiwa Tom,

I'm a bit puzzled to what you mean when you say I did not include comments on your mark-up to pages 2 & 3 of the 'deed' document. Are you referring to the 'Yindjibarndi & FMG Negotiations Framework Deed' that we used at the first meeting? If so, I note the document was a single page only. If you're referring to the document we've been working on lately, I note it only has two-pages. Can you pin-point me directly to this matter.

As for the removal (from the current document) of the parts that dealt with governance structures to manage compensation, please be assured that Yindjibarndi consider robust, sustainable and transparent trust structures which are essential to ensure self-determination and the transmission of equitable intergenerational benefits for future Yindjibarndi, and one that is managed to serve the Yindjibarndi community professionally and with the highest standards of best practice to ensure accountability, transparency, responsiveness, rule of law, stability, equity and inclusiveness, empowerment, and broad-based participation.

We agree that these issues will necessarily be the subject of discussions/negotiations under the "Compensation provisions" of the proposed ILUA. However we see no reason to include, up-front, in a 'framework document', the compensation mechanisms that have been included in previous ILUAs. The same can be said about the removal of suggested '*structures that will facilitate communication and receive compensation*'. We did not remove 'discussion' of such things, as you say, and we fully intend such discussions. We just consider it unnecessary to include in a framework document the kind of structures that have been included in previous ILUAs.

Rgds,
Michael.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



Yindjibarndi Aboriginal Corporation

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From: Tom Weaver <tweaver@fmgl.com.au>

Date: Thursday, May 27, 2021 at 2:24 PM

To: Michael Woodley <mwoodley@yindjibarndi.org.au>

Cc: John Sandy <josandy@wmyac.com>, "paubrey@wmyac.com" <paubrey@wmyac.com>, Phil Davies <pdavies@yindjibarndi.org.au>, "radams@wmyac.com" <radams@wmyac.com>, Maxine Wilmott <maxine.wilmott@fmgl.com.au>, Laura Woodall <lwoodall@fmgl.com.au>, Nerolie Nikolic <nnikolic@fmgl.com.au>

Subject: FW: Revised agreement framework

Good afternoon Michael and all

Michael, Maxine has incorporated your changes as comments in the attached. I note that your email did not include comments on our mark-up to pages 2 & 3 of the 'deed' document?

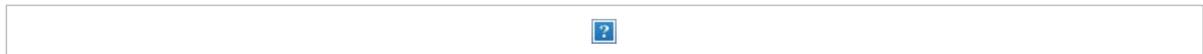
I note some of the matters that are fundamental to us (such as agreeing structures to manage compensation and governance of same) have been removed from the document in your markup. In any agreement, Fortescue needs to have confidence that any compensation will be transparently managed for the benefit of the native title holding group and so understanding and agreeing these structures will necessarily form part of any negotiation.

Kind regards,
Tom

Tom Weaver
Group Manager, Community & Government
Fortescue Metals Group

Direct: +61 8 9230 1392
Mobile: +61 417 684 712

Level 2, 87 Adelaide Terrace
East Perth WA 6004
Email: tweaver@fmgl.com.au
Web: <http://www.fmgl.com.au>



From: Michael Woodley <mwoodley@yindjibarndi.org.au>

Sent: Wednesday, 26 May 2021 7:46 PM

To: Tom Weaver <tweaver@fmgl.com.au>; John Sandy <josandy@wmyac.com>; Phil Davies <pdavies@yindjibarndi.org.au>; Rodney Adams <radams@wmyac.com>; paubrey@wmyac.com

Cc: Laura Woodall <lwoodall@fmgl.com.au>; Maxine Wilmott <maxine.wilmott@fmgl.com.au>; Nerolie Nikolic <nnikolic@fmgl.com.au>

Subject: Re: Revised agreement framework

Wanthiwa Tom,

Our response to your track-changes as Tom's comment (TC) with Our response (OR).

- TC.
 - An agreement that is fair and equitable is a central point for Fortescue and cannot be removed.
- OR.
 - We think being consistent with Fortescue and Yindjibarndi values broadens our negotiations without limiting anyone's position or beliefs, we believe the statements "fair and equitable" limits the broader thinking to either party's beliefs of what is fair and equitable, therefore believe it should be removed.
- TC.
 - The document is not a Deed. It is YAC/YNACS statement of principles for negotiation. We expect it for what it is, but there are some statements in there that Fortescue and YAC will not agree on and so it shouldn't form part of a joint agreement framework.
- OR.
 - We agree the document is not a deed. We expect Fortescue's position based on our position to agree to disagree.
- TC.
 - Having confidence that all Yindjibarndi will benefit from our agreement is a non-negotiable for Fortescue.
- OR.
 - This point is non negotiable for Yindjibarndi as well, as all Yindjibarndi have the right to benefit.
- TC.
 - An ILUA will need to apply to all current and future operations and so will need to apply to all Yindjibarndi lands. As long as this is understood, we do not oppose this change.
- OR.
 - We agree on that bases.
- TC.
 - We think there is merit in including WM as a party to the agreement for negotiation purposes. If, as trust is built, it becomes apparent that this is not required, then WM May fall away as a party. But, they should be considered to be a party for the time being.
- OR.
 - We respectfully disagree as the Yindjibarndi PBC's need to carry out its official position and legal obligations to act responsibly as a Registered Native Title Body Corporate (RNTBC) on behalf of all Yindjibarndi.
- TC.
 - Can you please explain why you have removed discussion of all of the structures that will facilitate communication and receive compensation ?
- OR.
 - These are matters for Yindjibarndi to deal with once and if an ILUA is reached, and we don't want to be putting forth expectations without addressing first some of the more high priority matters.

In-regards to the meeting agenda I will have something to you tomorrow.

Please feel free to call me if you want to discuss.

Rgds,
Michael.

Regards,
Michael Woodley

Chief Executive Officer – CEO
 Yindjibarndi Aboriginal Corporation (YAC)
 Telephone (08) 9182 1141
 Mobile: 0419 097 130
 Email: mwoodley@juluwarlu.com.au
 Website: www.yindjibarndi.com.au



Yindjibarndi Aboriginal Corporation

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From: Tom Weaver <tweaver@fmgl.com.au>

Date: Wednesday, May 26, 2021 at 12:04 PM

To: Michael Woodley <mwoodley@yindjibarndi.org.au>, John Sandy <josandy@wmyac.com>, Phil Davies <pdavies@yindjibarndi.org.au>, Rodney Adams <radams@wmyac.com>, "paubrey@wmyac.com" <paubrey@wmyac.com>

Cc: Laura Woodall <lwoodall@fmgl.com.au>, Maxine Wilmott <maxine.wilmott@fmgl.com.au>, Nerolie Nikolic <nnikolic@fmgl.com.au>

Subject: RE: Revised agreement framework

Good afternoon all

Ahead of next week's meeting, could we please be provided with the following?

1. Feedback on our comments to the agreement framework (pls see below and attached)
2. An agenda/meeting structure and list of attendees for Tuesday

I look forward to hearing from you.

Thanks and regards,
 Tom

Tom Weaver
Group Manager, Community & Government
Fortescue Metals Group

Direct: +61 8 9230 1392
Mobile: +61 417 684 712

Level 2, 87 Adelaide Terrace
 East Perth WA 6004
 Email: tweaver@fmgl.com.au
 Web: <http://www.fmgl.com.au>



From: Tom Weaver <tweaver@fmgl.com.au>

Sent: Thursday, 13 May 2021 11:08 AM

To: Michael Woodley <mwoodley@yindjibarndi.org.au>; John Sandy <josandy@wmyac.com>; Phil DAVIES

<pdavies@yindjibarndi.org.au>; Rodney Adams <radams@wmyac.com>; paubrey@wmyac.com

Cc: Laura Woodall <lwoodall@fmgl.com.au>; Maxine Wilmott <maxine.wilmott@fmgl.com.au>; Nerolie Nikolic <nnikolic@fmgl.com.au>

Subject: Fwd: Revised agreement framework

Good afternoon gents

Please see attached document which compares the original with the version sent back from Michael, and includes a number of comments and questions. There are a couple of non-negotiables from Fortescue's perspective, and other proposed changes that we'd like to better understand.

I am in and out of meetings this afternoon, and travelling most of the day tomorrow. I will return calls if I can't pick up this afternoon. I am on annual leave next week, but Nerolie will be available to answer queries in my absence if required.

Thanks and regards,
Tom

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“MW-151”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “**MW-151**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



Our Ref: 100-HE-1175
Your Ref:

Mr Michael Woodley
Chief Executive Officer
Yindjibarndi Aboriginal Corporation and
Yindjibarndi Ngurra Aboriginal Corporation
21 Hampton Street
ROEBOURNE WA 6718

Mr John Sandy Corporation Manager,
Mr Rodney Adams, Director
Mr Paul Aubrey, Director
Wirru-murra Yindjibarndi Aboriginal Corporation
6 Queen Street
ROEBOURNE WA 6718

By email: mwoodley@yindjibarndi.org.au, josandy@wmyac.com, radams@wmyac.com,
paubrey@wmyac.com

28 July 2021

Dear Michael, John, Rodney and Paul

Yindjibarndi mediation proposal

First, I caveat this correspondence with an admission that the **below is my understanding** of the current state of affairs based on discussions between us all and invite you to correct me if I have missed or misunderstood anything.

From recent conversations with each of you I understand that the inability to resolve matters outstanding between WMYAC and YAC/YNAC is currently proving a barrier to the progress of negotiations between Fortescue and the Yindjibarndi People.

I note that I have been advised by John and Rodney that resolution of the outstanding matters 'is not about money'; and Michael has advised me that the organisations he leads have said time and again that they are prepared to satisfy WMYAC's requests to resolve the outstanding matters outstanding.

While these statements are positive, despite the goodwill, it appears the two sides are unable to reach a mutually satisfactory agreement. This impasse means that YAC/YNAC are unwilling to cooperate with WMYAC in negotiations with Fortescue, and it means that WMYAC are unwilling to settle WA Supreme Court-related legal claims against YAC/YNAC.

To try and create a circuit-breaker to the above, I have offered to each of you that Fortescue will meet the cost of an independent commercial mediator to bring together representatives of your respective



organisations to resolve the outstanding matters so that we may all move forward with the negotiations.

I understand from our discussions that

- (a) the WMYAC representatives are willing to attempt to reach a mediated settlement to resolve **all** outstanding matters; and
- (b) Michael will need to take the proposal for mediation to the YAC and YNAC Boards for consideration and/or endorsement. Michael will put this proposal to the Boards, tomorrow, 29 July.

John, Rodney, Paul: I **enclose** the letter sent by yourselves in late June in which you outline the matters that you and the Yindjibarndi People you speak for would like to see resolved. From my conversation with Michael, I understand that it would be helpful if you could specify exactly what you are looking for eg the publication of consolidated accounts for ...which entity/s? Membership...what exactly do you want etc If the mediation is to succeed these things will need to be very clear and understood in advance.

Michael, I look forward to hearing from you after your meetings with your Board, tomorrow.

Gents, I trust that Yindjibarndi People can come together with a skilled professional mediator to resolve these matters so that we can all move forward together. As per above, please let me know if I have misrepresented or misunderstood any aspect of our discussions in this correspondence. And, as ever, please contact me any time.

Yours sincerely

FORTESCUE METALS GROUP

A handwritten signature in blue ink, appearing to read 'Tom Weaver'.

TOM WEAVER

Group Manager, Communities

Enc.

Attachment 1 Yindjibarndi Members Concern Letter 20210625

“MW-152”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “**MW-152**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

From: [Michael Woodley](#)
To: [Tom Weaver](#); [John Sandy](#); radams@wmyac.com; paubrey@wmyac.com
Cc: [Phil Davies](#)
Subject: Re: Yindjibarndi mediation proposal correspondence
Date: Friday, 30 July 2021 1:53:31 PM
Attachments: [image001.png](#)

Wanthiwa Tom, and all.

Thank you for your time today regarding our conversation to the matters concerning Yindjibarndi (YAC / YNAC & WMYAC). The below are conclusions from the Directors meeting yesterday.

Firstly, on behalf of the Directors of YAC & YNAC we would like to say thank you for the offer to assist with mediation between Yindjibarndi.

In our meeting the Directors of YAC & YNAC have decided on the following.

- They will not partake in mediation for the reasons as discussed.
- The Directors have agreed though to proceed with the negotiations with FMG.
- The Directors have agreed to leave the door open if WMYAC are willing to work collectively for all Yindjibarndi.

In-regard to heritage surveys.

- The YAC & YNAC will continue to work with WMYAC as per the arrangements.

In moving forward, we look forward to working with FMG in reaching an ILUA for all Yindjibarndi.

Rgds,
Michael.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)

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From: Tom Weaver <tweaver@fmgl.com.au>
Date: Wednesday, July 28, 2021 at 12:28 PM
To: Michael Woodley <mwoodley@yindjibarndi.org.au>, John Sandy <josandy@wmyac.com>, "radams@wmyac.com" <radams@wmyac.com>, "paubrey@wmyac.com" <paubrey@wmyac.com>
Cc: Tom Weaver <tweaver@fmgl.com.au>
Subject: Yindjibarndi mediation proposal correspondence

Good afternoon Michael, John, Rodney and Paul

As discussed, please see **attached** letter regarding Yindjibarndi mediation proposal for your kind consideration.

Kind regards

Tom Weaver
Group Manager, Communities

Fortescue Metals Group Ltd
Level 2, 87 Adelaide Terrace East Perth WA 6004

P: +61 8 9230 1392 **M:** +61 417 684 712

Twitter: @FortescueNews | www.fmgl.com.au



“MW-154”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 5 pages is the annexure marked **“MW-154”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

From: [Michael Woodley](#)
To: [Phil Davies](#); [Lorraine Coppin](#)
Subject: FW: Native Title negotiations.
Date: Thursday, 2 September 2021 3:15:40 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Wanthiwa,

FYI – FMG too sensitive...

Rgds,
Michael.
Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)

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From: Tom Weaver <tweaver@fmgl.com.au>
Date: Thursday, September 2, 2021 at 3:08 PM
To: Michael Woodley <mwoodley@yindjibarndi.org.au>
Cc: Tim Langmead <tlangmead@fmgl.com.au>, Nerolie Nikolic <nnikolic@fmgl.com.au>
Subject: Re: Native Title negotiations.

Hello Michael,

I write to regretfully advise we will not be attending the negotiation meeting in Roebourne next Monday.

While you are obviously at liberty to engage with Paul Cleary, the detail provided to the epilogue to his book is contrary to our agreement to maintain confidentiality about our engagement. In the epilogue to his book, Cleary: references recent discussion with you; quotes me at our meeting; notes the scope of our negotiation included in email from me to

you; and, indicates he has been provided with minutes of our meetings.

I am personally very disappointed, as you and I had discussed and agreed the need to maintain confidentiality in every discussion we have had since engaging early this year.

Please call me if you would like to discuss.

Sincerely,
Tom Weaver

GM Communities

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From: Michael Woodley <mwoodley@yindjibarndi.org.au>
Sent: Thursday, September 2, 2021 1:30:34 PM
To: Tom Weaver <tweaver@fmgl.com.au>
Cc: Tim Langmead <tlangmead@fmgl.com.au>; Nerolie Nikolic <nnikolic@fmgl.com.au>
Subject: Re: Native Title negotiations.

Wanthiwa Tom,

Please find attached budget for the meeting on Monday. What we like to do is have a further conversation re the budget moving forward in regards to the timeframe.

Call me if you want to discuss.

Rgds,
Michael.
Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)

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From: Tom Weaver <tw Weaver@fmgl.com.au>
Date: Monday, August 30, 2021 at 4:21 PM
To: Michael Woodley <mwoodley@yindjibarndi.org.au>
Cc: Tim Langmead <tlangmead@fmgl.com.au>, Nerolie Nikolic <nnikolic@fmgl.com.au>
Subject: Fwd: Native Title negotiations.

Good afternoon Michael

Thank you, the Board members and others present for our productive discussion. It is pleasing that we have got the ball rolling. As we had discussed, 17 December is an incredibly ambitious target and after sketching out the negotiation timeframe, I am concerned at just how ambitious. Please see attached a proposed negotiation meeting schedule for discussion.

Also attached is the latest draft of the agreement framework. We have accepted almost all of your proposed changes. The colours in the negotiation meeting schedule refer to the corresponding sections of the framework. It is our general approach to seek to cover off the less difficult matters early in the negotiation process. This helps build mutual trust and understanding and in doing so better equips us for having what are likely to be the more difficult conversations.

Following our last meeting, we see that its possible that we could get bogged down in a discussion about Yindjibarndi's Framework Deed if there is a requirement for Fortescue to accept it as a document of mutual principle. We would rather that Yindjibarndi accepts that Fortescue acknowledges the existence of the Framework Deed and Fortescue acknowledge and respect that it contains matters of fundamental importance to Yindjibarndi. But avoid the need for Fortescue to 'sign-up' to the Framework Deed as there are matters of opinion contained in the document that are not shared by Fortescue.

We hope we can move forward on practical discussions, and look forward to meeting with you on 6 September.

Thanks and regards,
Tom Weaver

GM Communities

From: Michael Woodley <mwoodley@yindjibarndi.org.au>
Sent: Monday, 16 August 2021 6:55 PM
To: Tom Weaver <tw Weaver@fmgl.com.au>
Subject: FW: Native Title negotiations.

Wanthiwa Tom,

Regards,FYI – please find attached the dreaft Yindjibarndi / FMG negotiations document, which sent to Elizabeth and copied to you.

On behalf of Yindjibarndi, our thanks to you, Tim and Nerolie for a productive day. We look forward to receiving your email with the timeline and as agreed I will get back to you on a budget and the names of the Yindjibarndi negotiating team.

We also appreciate the challenge in having a rebust discussion on the 6th of Sept and setting our sights for the 17th of December as our target to have an agreement.

Rgds,

Michael

Michael Woodley
 Chief Executive Officer – CEO
 Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)
 Telephone (08) 9182 1141
 Mobile: 0419 097 130
 Email: mwoodley@juluwarlu.com.au
 Website: www.yindjibarndi.com.au



Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)

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From: Michael Woodley <mwoodley@yindjibarndi.org.au>

Date: Saturday, January 30, 2021 at 5:21 PM

To: Elizabeth Gaines <egaines@fmgl.com.au>

Cc: Laura Woodall <lwoodall@fmgl.com.au>, Tom Weaver <tweaver@fmgl.com.au>

Subject: Re: Native Title negotiations.

Wanthiwa Elizabeth,

FYI – please find attached the draft Framework Deed for your perusal and feedback. Please feel free to reach out if you want to discuss.

I have also attached other supporting documents that is important to the principles in how Yindjibarndi wishes to engage with Mining Companies that operates on our Ngurra.

I am looking forward to catching up with you on the 5th.

Rgds,
 Michael.

Regards,
 Michael Woodley
 Chief Executive Officer – CEO
 Yindjibarndi Aboriginal Corporation (YAC)
 Telephone (08) 9182 1141
 Mobile: 0419 097 130

Email: mwoodley@juluwarlu.com.au

Website: www.yindjibarndi.com.au



Yindjibarndi Aboriginal Corporation

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“MW-155”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 4 pages is the annexure marked “**MW-155**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

From: [Michael Woodley](#)
To: [John Sandy](#); [Rodney Adams](#); [Admin - Wirlu-Murra Yindjibarndi Aboriginal Corporation](#)
Cc: [Phil Davies](#)
Subject: Re: WMYAC Letter.
Date: Monday, 6 September 2021 10:37:55 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[Re Native Title negotiations. .msg](#)
[Fwd AFR.msg](#)

Wanthiwa uncle John and Rodney,

FYI – response below in-regard the WMYAC letter.

Wanthiwa John, Allery, Rodney, Paul, Ken and Vince,

The Directors of YAC & YNAC have meet today and discussed your letter dated 23rd of August 2021.

Firstly, we thank you for your letter and we very much appreciate the goodwill shown to work with YAC & YNAC to reunite the Yindjibarndi.

Secondly, we would like to bring to your attention that Tom Weaver from FMG have decided not to have the negotiations today (see attached Tom's email FYI), stating his reason that information used in the Paul Cleary book (Title Fight) given outside of an arrangement agreed to by Tom and myself verbally seem to be the reason for the mistrust. For the record we have an entirely different view of the verbal arrangement / information and how this information was portrayed and Tom's / FMG's justification to cease the negotiations.

Considering this new development, we are not sure now on your views on furthering these talks to unify the Yindjibarndi? We sincerely hope that our issue, the Yindjibarndi internal matters are not one that is constrained by FMG's decision to cancel the ILUA negotiations. Our commitment is to remain dedicated to the unification process and to work in the best interest of all Yindjibarndi, this is our primary focus to put an end to what is now a 12-year dispute and all Yindjibarndi missing out from mining on our Ngurra and the urgency of managing and protecting our sacred and important cultural heritage.

We however don't see any purpose of an independent mediator being required to bring us together. We are of the view that we, all of us Yindjibarndi family of one Nation can manage this process in settling our indifferences. if this is also your views, we can arrange for the YAC/ YNAC & WMYAC Directors to meet and to lay forward a plan to unite the Yindjibarndi. This matter is very important to us, and we will commit fully to resolving these concerns that brought us a part.

Out of the 11-points apart from (point-7 as it relates to the YAC/YNAC & FMG negotiations) stated in the letter there is agreement to move forward except for point (11), as this point requires the Yindjibarndi to move away from its self-determination principles, which we are not prepared to do as the original provision places responsibility in the hands of a non-Yindjibarndi person coming to our meetings and determining our destiny. This is considered improper and subsequently disempowering. We hope that you all will see the value in holding on to our independence.

The Directors have also asked me to bring to your attention the matter of FMG mining on our Ngurra and the money that is being generated by this exploitation. Only last week it was reported that FMG have posted a record-breaking profit after-tax of \$10.3 Billion dollars, which Andrew Forrest have personally pocketed \$2.4 Billion for him and his family taking his total to \$8 Billion from mining on Ngarda Ngurra in the Pilbara.

This issue is the very reason why YAC & YNAC stand in support of Yindjibarndi benefiting from mining projects that impacts on our Ngurra. Andrew Forrest has also commented in (AFR) **Forrest links mining royalties to Indigenous misery** (see attach), attributing the school attendance rate, youth suicide rate and the incarceration rate to handouts, welfare and royalty which he fails to provide statistics or proof. We know what the causes of our long battle are with being disadvantaged, what Andrew Forrest lack is the basic understandings of the historical events occurred which are the events that directly impacted our society beginning with the single most act of injustice, the execution of dispossession (the greatest theft of the Nation) the stealing of our Ngurra. What followed, led what is now a social catastrophe of all areas affecting First Australians, where all reports points to these facts..."historical events".

When mining did come to the town the Roebourne our community never had any opportunity to be involved, never had the opportunity to look after our family like non-Indigenous people did and we never had the chance to live a normal life. Welfare maintained our survival and we would simply be obsolete if not for the Government handouts. Impoverishment grew because of bigotry, community and cultural breakdowns separated us through ideology that a good blackfella is one that is obedient and subservient to white dominance.

If we are to dig ourselves out of the trenches, we need to start believing that we can; put behind us the hardship, look to the future, and dismantle this sense of disbelief that we no longer matter. We do matter and we deserve to be treated with equality and with respect.

We ask that WMYAC work with us to remind FMG that they have been mining on our Ngurra without an ILUA and without the free, prior and informed consent, of the Yindjibarndi – this alone makes FMG liable, and this alone makes Yindjibarndi entitled by Law.

On behalf of the Board of Directors we await your response.

Rgds,
Michael.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)

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From: John Sandy <josandy@wmyac.com>
Date: Thursday, September 2, 2021 at 10:00 AM
To: Michael Woodley <mwoodley@yindjibarndi.org.au>, Rodney Adams <radams@wmyac.com>, Admin - Wirilu-Murra Yindjibarndi Aboriginal Corporation <admin@wmyac.com>
Cc: Phil Davies <pdavies@yindjibarndi.org.au>
Subject: RE: WMYAC Letter.

Thanks man have a good day

Kind regards

John Sandy
Corporation Manager



6 Queen Street
Roebourne WA 6718
Ph: (08)9182 1157
Mobile: 0458 489 122
Email: josandy@wmyac.com
Web: www.wmyac.com

From: Michael Woodley <mwoodley@yindjibarndi.org.au>
Sent: Thursday, 2 September 2021 8:58 AM
To: John Sandy <josandy@wmyac.com>; Rodney Adams <radams@wmyac.com>; Admin - Wirilu-Murra Yindjibarndi Aboriginal Corporation <admin@wmyac.com>
Cc: Phil Davies <pdavies@yindjibarndi.org.au>
Subject: Re: WMYAC Letter.

Wanthiwa uncle John, Rodney and Cuz (PA),

Writing to confirm receipt of the letter sent to YNAC & YAC directors dated 23rd of August 2021.

The directors will have the opportunity to discuss the letter and the points raised when we meet on Monday the 6th of September 2021, for us to formally respond.

Please don't hesitate to call if you would like to discuss further.

Rgds,
Michael.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141

Mobile: 0419 097 130

Email: mwoodley@juluwarlu.com.au

Website: www.yindjibarndi.com.au



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“MW-156”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-156”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



Wiru-Murra Yindjibarndi Aboriginal Corporation

Yindjibarndi Aboriginal Corporation

Yindjibarndi Ngurra Aboriginal Corporation

Meeting

13 October 2021

At 10:00 am

IBIS Styles Karratha (Function Room)

35/45 Searipple Rd, Karratha WA 6714

AGENDA

No.	AGENDA ITEM - DESCRIPTION	SPEAKER
1.0	Welcome	WMYAC Chairperson (Allery Sandy)
2.0	1. WMYAC Letter to YAC and YNAC dated 23 August 2021 (11 points) . 2. YAC/YNAC response to WMYAC Letter	WMYAC Directors YAC & YNAC Directors
3.0	YNAC & FMG Negotiations Update	YNAC Directors
4.0	General business	
	Close Meeting	

- All Directors to be present at the meeting for the benefit and reunification of all Yindjibarndi people
- All directors should have the right to freely speak and respect each other at the meeting
- Meeting to be audio recorded and a full and unedited copy to be provided to YAC, YNAC and WMYAC for their perusal.

“MW-157”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 11 pages is the annexure marked “**MW-157**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

From: [Michael Woodley](#)
To: [John Sandy](#); [Rodney Adams](#); [Admin - Wirru-Murra Yindjibarndi Aboriginal Corporation](#); [paubrey01@gmail.com](#); [Vincent Adams](#); [Ken Sandy](#); [Allery Sandy](#)
Cc: [Phil Davies](#)
Subject: Re: WMYAC Letter.
Date: Tuesday, 19 October 2021 2:43:20 PM
Attachments: [Commercial Trust complete FY20.pdf](#)
[YAC Financial Report FY20 \(Lodged\).pdf](#)
[YAC Group - FINAL 2018 Consol Package.pdf](#)
[YPCT Complete FY20.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image009.png](#)
[image010.png](#)
[image011.png](#)

Wanthiwa uncle John, and all,

Summary from our meeting held at the IBIS Style Hotel in Karratha on the 13^t.

On behalf of the YAC and YNAC, we would like to express once again our thanks to the directors of WMYAC for a positive and productive meeting in discussing the unification process to bring Yindjibarndi together.

I want to begin with addressing the 11 points as per the letter dated 23rd of August 2021, and YAC / YNAC agreed position.

P1: RE Consolidated Financial Report [please find attached FYI 2018 consolidated account, 2019, 2020 and 2021 reports are still be finalised].

- Audited consolidated financials for 2018 (the accounts for 2019 and 2020 are currently being looked at by the auditors)
- Audited financials for YAC 2020
- Audited financials for YPCT (community trust)
- Audited financials for YCT (commercial trust)

P2: RE subject to P1.

P3: Agreed.

P4: As discussed in our meeting YAC and YNAC core objectives are to manage the Yindjibarndi Native Title matters, we don't do membership benefits. The YCCL as the Trust is mandated to carry out the functions on behalf of the members and membership benefits.

P5: Agree, this is also being done currently by way of the financial reports.

P6: Agree, it was put to the WMYAC that YAC / YNAC will be afforded the same equal representation to be on the WMYAC board and its related subsidiaries.

P7: Agree, as having WMYAC involved with the negotiations are very important to the Yindjibarndi Nation / people and for our future.

P8: As discussed, the YNAC are waiting first to lodge the compensation claim against FMG before accepting membership application.

P9: Agree, the information requested are open to all Yindjibarndi members to review and have copies.

P10: Agree, waiting on completion.

P11: As discussed, we believe that the changes to constitution would be in the best interest of Yindjibarndi (as we think proxies should be held by another Yindjibarndi members and not a non-member).

FYI, James Johnson accountant (KPMG) is in town till Friday and would be happy to meet with the WMYAC representatives to discuss any of the financial matters / concerns you may

want to raise with him. Let me I can make the arrangements.

Also, on behalf of the members we would also like a copy of the recording for our records, which not be used for any other purpose outside of our own benefit.

We look forward to catching up again to progress the uniting of the Yindjibarndi community.

Rgds,
Michael.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)

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From: Michael Woodley <mwoodley@yindjibarndi.org.au>

Date: Monday, October 11, 2021 at 8:52 PM

To: John Sandy <josandy@wmyac.com>

Cc: Phil Davies <pdavies@yindjibarndi.org.au>, Rodney Adams <radams@wmyac.com>, Admin - Wirlu-Murra Yindjibarndi Aboriginal Corporation <admin@wmyac.com>, paubrey01@gmail.com <paubrey01@gmail.com>, Vincent Adams <AdamsVJ@hotmail.com>, Ken Sandy <ksandy@fmgl.com.au>, Allery Sandy <alsandy@wmyac.com>

Subject: Re: WMYAC Letter.

Wanthiwa uncle John,

Sorry for the delayed response – the chairperson's have nothing further to add to the agenda but would express some of their matters under General Business.

Looking forward to catching up on Wednesday.

Rgds,
Michael.

Regards,
 Michael Woodley
 Chief Executive Officer – CEO
 Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation
 (YAC)
 Telephone (08) 9182 1141
 Mobile: 0419 097 130
 Email: mwoodley@juluwarlu.com.au
 Website: www.yindjibarndi.com.au



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 (YAC)

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From: Michael Woodley <mwoodley@yindjibarndi.org.au>

Date: Wednesday, October 6, 2021 at 12:09 PM

To: John Sandy <josandy@wmyac.com>

Cc: Phil Davies <pdavies@yindjibarndi.org.au>, Rodney Adams <radams@wmyac.com>, Admin - Wirlu-Murra Yindjibarndi Aboriginal Corporation <admin@wmyac.com>, paubrey01@gmail.com <paubrey01@gmail.com>, Vincent Adams <AdamsVJ@hotmail.com>, Ken Sandy <ksandy@fmgl.com.au>, Allery Sandy <alsandy@wmyac.com>

Subject: Re: WMYAC Letter.

Wanthiwa uncle John,

Thank you for the email / draft agenda.

I will get back to you with any further additions to the agenda once I've had the opportunity to discuss with uncle Stanley and aunty Lyn.

All the best,
 Michael.

Regards,
 Michael Woodley
 Chief Executive Officer – CEO
 Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation
 (YAC)
 Telephone (08) 9182 1141
 Mobile: 0419 097 130
 Email: mwoodley@juluwarlu.com.au

Website: www.yindjibarndi.com.au



Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)

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From: John Sandy <josandy@wmyac.com>

Date: Wednesday, October 6, 2021 at 11:50 AM

To: Michael Woodley <mwoodley@yindjibarndi.org.au>

Cc: Phil Davies <pdavies@yindjibarndi.org.au>, Rodney Adams <radams@wmyac.com>, Admin - Wirlu-Murra Yindjibarndi Aboriginal Corporation <admin@wmyac.com>, paubrey01@gmail.com <paubrey01@gmail.com>, Vincent Adams <AdamsVJ@hotmail.com>, Ken Sandy <ksandy@fmgl.com.au>, Allery Sandy <alsandy@wmyac.com>

Subject: RE: WMYAC Letter.

Wanthi Michael and all

Please find attached Draft Agenda for the upcoming Meeting between YAC & YNAC & WMYAC on the 13th of October 2021.

Thanks

Kind regards

John Sandy
Corporation Manager



6 Queen Street

Roebourne WA 6718

Ph: (08)9182 1157

Mobile: 0458 489 122

Email: josandy@wmyac.com

Web: www.wmyac.com

From: Michael Woodley <mwoodley@yindjibarndi.org.au>

Sent: Friday, 24 September 2021 8:57 AM

To: John Sandy <josandy@wmyac.com>

Cc: Phil Davies <pdavies@yindjibarndi.org.au>; Rodney Adams <radams@wmyac.com>; Admin -

Wirru-Murra Yindjibarndi Aboriginal Corporation <admin@wmyac.com>

Subject: Re: WMYAC Letter.

Wanthiwa uncle John / all,

We are ok with the venue and time – looking forward to catching up, we also look forward to receiving the first draft of the agenda.

All the best.

Rgds,
Michael.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)

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From: John Sandy <josandy@wmyac.com>

Date: Wednesday, September 22, 2021 at 11:23 AM

To: Michael Woodley <mwoodley@yindjibarndi.org.au>

Cc: Phil Davies <pdavies@yindjibarndi.org.au>, Rodney Adams <radams@wmyac.com>, Admin - Wirru-Murra Yindjibarndi Aboriginal Corporation <admin@wmyac.com>

Subject: RE: WMYAC Letter.

Hi Michael

The meeting on the 13th of oct 2021 will be held at IBIS STYLE KARRATHA pool side from 10am – 4pm we have arrange everything. Hope everythings go well

Kind regards

John Sandy
Corporation Manager



6 Queen Street
Roebourne WA 6718
Ph: (08)9182 1157
Mobile: 0458 489 122
Email: josandy@wmyac.com
Web: www.wmyac.com

From: Michael Woodley <mwoodley@yindjibarndi.org.au>
Sent: Monday, 20 September 2021 10:05 AM
To: John Sandy <josandy@wmyac.com>; Rodney Adams <radams@wmyac.com>; Admin - Wirlu-Murra Yindjibarndi Aboriginal Corporation <admin@wmyac.com>
Cc: Phil Davies <pdavies@yindjibarndi.org.au>
Subject: Re: WMYAC Letter.

Wanthiwa uncle John and Rodney,

Thank you for your email / response.

The YNAC & YAC are happy to meet on those conditions and in Karratha (Lottery House), but our earliest availability would be on the 13th of October 2021.

It would be good to have an agenda to keep us all on track and on the same page – we can work on a joint agenda; I am happy for you to draft the first scope for us to work on and complete before our meeting on the 13th.

We would also be happy for a member of your group to chair the meeting or have a joint chair of WMYAC, YAC & YNAC.

Happy to discuss – call me anytime.

Rgds,
Michael.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)

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From: John Sandy <josandy@wmyac.com>

Date: Thursday, September 16, 2021 at 9:36 AM

To: Michael Woodley <mwoodley@yindjibarndi.org.au>, Rodney Adams <radams@wmyac.com>, Admin - Wirilu-Murra Yindjibarndi Aboriginal Corporation <admin@wmyac.com>

Cc: Phil Davies <pdavies@yindjibarndi.org.au>

Subject: RE: WMYAC Letter.

Wanthiwa YAC, YNAC Directors and Michael,

First of all, WMYAC would like to thank you for responding to our letter dated 23rd of August 2021 and further to your email below dated 6th September 2021, the WMYAC Board is pleased that the YAC and YNAC Boards have accepted our invitation to meet with the WMYAC Board.

WMYAC agrees to meet with the YAC and YNAC Directors only and without an independent mediator and/or any other person that is not a Director of any of the three Boards.

WMYAC proposes that the meeting be held in Karratha (Lottery House) at 10 am either on the following three dates:

22nd September 2021 or
 29 September 2021 or
 13 October 2021

In addition, we request and encourages that all directors have the opportunity to freely speak and respect each other at the meeting.

For transparency and completeness, WMYAC would like for the meeting to be recorded by audio and a full and unedited copy to be provided to YAC, YNAC and WMYAC for their perusal. (WMYAC is happy to organise that)

Could you please let us know what date is suitable for the YAC and YNAC Directors and WMYAC will organise the venue and catering.

WMYAC looks forward to coming together and finding a way forward

Thanks

Kind regards

John Sandy
Corporation Manager



6 Queen Street
Roebourne WA 6718
Ph: (08)9182 1157
Mobile: 0458 489 122
Email: josandy@wmyac.com
Web: www.wmyac.com

From: Michael Woodley <mwoodley@yindjibarndi.org.au>
Sent: Monday, 6 September 2021 10:38 PM
To: John Sandy <josandy@wmyac.com>; Rodney Adams <radams@wmyac.com>; Admin - Wirli-Murra Yindjibarndi Aboriginal Corporation <admin@wmyac.com>
Cc: Phil Davies <pdavies@yindjibarndi.org.au>
Subject: Re: WMYAC Letter.

Wanthiwa uncle John and Rodney,

FYI – response below in-regard the WMYAC letter.

Wanthiwa John, Allery, Rodney, Paul, Ken and Vince,

The Directors of YAC & YNAC have meet today and discussed your letter dated 23rd of August 2021.

Firstly, we thank you for your letter and we very much appreciate the goodwill shown to work with YAC & YNAC to reunite the Yindjibarndi.

Secondly, we would like to bring to your attention that Tom Weaver from FMG have decided not to have the negotiations today (see attached Tom's email FYI), stating his reason that information used in the Paul Cleary book (Title Fight) given outside of an arrangement agreed to by Tom and myself verbally seem to be the reason for the mistrust. For the record we have an entirely different view of the verbal arrangement / information and how this information was portrayed and Tom's / FMG's justification to cease the negotiations.

Considering this new development, we are not sure now on your views on furthering these talks to unify the Yindjibarndi? We sincerely hope that our issue, the Yindjibarndi internal matters are not one that is constrained by FMG's decision to cancel the ILUA negotiations. Our commitment is to remain dedicated to the unification process and to work in the best interest of all Yindjibarndi, this is our primary focus to put an end to what is now a 12-year dispute and all Yindjibarndi missing out from mining on our Ngurra and the urgency of managing and protecting our sacred and important cultural heritage.

We however don't see any purpose of an independent mediator being required to bring us together. We are of the view that we, all of us Yindjibarndi family of one Nation can manage this process in settling our indifferences. if this is also your views, we can arrange for the

YAC/ YNAC & WMYAC Directors to meet and to lay forward a plan to unite the Yindjibarndi. This matter is very important to us, and we will commit fully to resolving these concerns that brought us a part.

Out of the 11-points apart from (point-7 as it relates to the YAC/YNAC & FMG negotiations) stated in the letter there is agreement to move forward except for point (11), as this point requires the Yindjibarndi to move away from its self-determination principles, which we are not prepared to do as the original provision places responsibility in the hands of a non-Yindjibarndi person coming to our meetings and determining our destiny. This is considered improper and subsequently disempowering. We hope that you all will see the value in holding on to our independence.

The Directors have also asked me to bring to your attention the matter of FMG mining on our Ngurra and the money that is being generated by this exploitation. Only last week it was reported that FMG have posted a record-breaking profit after-tax of \$10.3 Billion dollars, which Andrew Forrest have personally pocketed \$2.4 Billion for him and his family taking his total to \$8 Billion from mining on Ngarda Ngurra in the Pilbara.

This issue is the very reason why YAC & YNAC stand in support of Yindjibarndi benefiting from mining projects that impacts on our Ngurra. Andrew Forrest has also commented in (AFR) **Forrest links mining royalties to Indigenous misery** (see attach), attributing the school attendance rate, youth suicide rate and the incarceration rate to handouts, welfare and royalty which he fails to provide statistics or proof. We know what the causes of our long battle are with being disadvantaged, what Andrew Forrest lack is the basic understandings of the historical events occurred which are the events that directly impacted our society beginning with the single most act of injustice, the execution of dispossession (the greatest theft of the Nation) the stealing of our Ngurra. What followed, led what is now a social catastrophe of all areas affecting First Australians, where all reports points to these facts..."historical events".

When mining did come to the town the Roebourne our community never had any opportunity to be involved, never had the opportunity to look after our family like non-Indigenous people did and we never had the chance to live a normal life. Welfare maintained our survival and we would simply be obsolete if not for the Government handouts. Impoverishment grew because of bigotry, community and cultural breakdowns separated us through ideology that a good blackfella is one that is obedient and subservient to white dominance.

If we are to dig ourselves out of the trenches, we need to start believing that we can; put behind us the hardship, look to the future, and dismantle this sense of disbelief that we no longer matter. We do matter and we deserve to be treated with equality and with respect.

We ask that WMYAC work with us to remind FMG that they have been mining on our Ngurra without an ILUA and without the free, prior and informed consent, of the Yindjibarndi – this alone makes FMG liable, and this alone makes Yindjibarndi entitled by Law.

On behalf of the Board of Directors we await your response.

Rgds,
Michael.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130

Email: mwoodley@juluwarlu.com.au

Website: www.yindjibarndi.com.au



Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)

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From: John Sandy <josandy@wmyac.com>

Date: Thursday, September 2, 2021 at 10:00 AM

To: Michael Woodley <mwoodley@yindjibarndi.org.au>, Rodney Adams <radams@wmyac.com>, Admin - Wirilu-Murra Yindjibarndi Aboriginal Corporation <admin@wmyac.com>

Cc: Phil Davies <pdavies@yindjibarndi.org.au>

Subject: RE: WMYAC Letter.

Thanks man have a good day

Kind regards

John Sandy
Corporation Manager



6 Queen Street

Roebourne WA 6718

Ph: (08)9182 1157

Mobile: 0458 489 122

Email: josandy@wmyac.com

Web: www.wmyac.com

From: Michael Woodley <mwoodley@yindjibarndi.org.au>

Sent: Thursday, 2 September 2021 8:58 AM

To: John Sandy <josandy@wmyac.com>; Rodney Adams <radams@wmyac.com>; Admin - Wirilu-Murra Yindjibarndi Aboriginal Corporation <admin@wmyac.com>

Cc: Phil Davies <pdavies@yindjibarndi.org.au>

Subject: Re: WMYAC Letter.

Wanthiwa uncle John, Rodney and Cuz (PA),

Writing to confirm receipt of the letter sent to YNAC & YAC directors dated 23rd of August 2021.

The directors will have the opportunity to discuss the letter and the points raised when we meet on Monday the 6th of September 2021, for us to formally respond.

Please don't hesitate to call if you would like to discuss further.

Rgds,
Michael.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



Yindjibarndi Ngurra Aboriginal Corporation (YNAC) & Yindjibarndi Aboriginal Corporation (YAC)

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“MW-158”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked **“MW-158”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



Our Ref: 100-HE-1298

Mr Michael Woodley
Chief Executive Officer
Yindjibarndi Ngurra Aboriginal Corporation and
Yindjibarndi Aboriginal Corporation
21 Hampton Street
ROEBOURNE WA 6718

By email: mwoodley@yindjibarndi.org.au

22 February 2022

Dear Mr Woodley

Re-Engagement of ILUA negotiations between Fortescue and Yindjibarndi

I refer to:

- text messages (**SMS**) exchanged by mobile telephone between you and Tom Weaver between 9 and 11 November 2021;
- our letter to you of 15 November 2021 sent by email;
- our further email to you of 19 January 2022 reattaching the 15 November 2021 correspondence and requesting your reply; and,
- our letter to your Mr Philip Davies of 25 January 2022.

(the **correspondence**)

In the correspondence, Fortescue has clearly stated that Fortescue is ready and willing to re-engage with YNAC on discussions intended to lead to an Indigenous Land Use Agreement (**ILUA**) between Fortescue and Yindjibarndi.

Separately, in letters to Fortescue on 19 January and 25 January respectively, Mr Davies makes the following statement: *"To date, FMG has continued to ignore their responsibility to ethically and professionally engage with the YNAC to gain the Yindjibarndi common law holder's consent for their project."* It is difficult to reconcile this statement with YNAC's silence in response to Fortescue's repeated offers to engage. We note too that Mr Davies' statement ignores the professional and productive engagement that occurred between the highest level of our respective organisations in 2021 but that was ultimately postponed as a result of the unilateral disclosure of confidential information.



We take this opportunity to again reiterate that Fortescue is ready to engage with YNAC on discussions intended to lead to an ILUA and invite YNAC to reply with confirmation of YNAC's preparedness to meet so that we may formalise an engagement protocol and progress substantive discussions.

Yours sincerely

FORTESCUE METALS GROUP

TOM WEAVER

Group Manager, Aboriginal Engagement

Cc

Ms Elizabeth Gaines, Fortescue Metals Group

Mr Warren Fish, Fortescue Metals Group

Mr John Sandy, Wirlu- Murra Yindjibarndi Aboriginal Corporation

Mr Rodney Adams, Wirlu- Murra Yindjibarndi Aboriginal Corporation

“MW-159”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

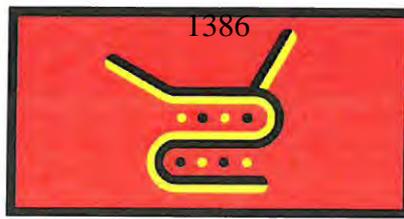
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-159”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION
PRESCRIBED BODY CORPORATE

MEETING NOTICE

***To discuss the possible mediation between the
Yindjibarndi Aboriginal Corporation (YAC) & WMYAC***

When: Tuesday the 26th of June 2018.

Where: Juluwarlu / Yindjibarndi office.

Starting time: 10am.

AGENDA:

- Mediation between YAC and WMYAC with The State Government of Western Australia facilitated by Tony McRae on behalf of the State.
- Initial talks to assess the aspiration of uniting the Yindjibarndi.

Please call Michael Woodley Chief Executive Officer (CEO) on 0419 097 130 or Phil Davies on 0419 110 451 YAC General Manager Culture and Religion if members want further information.

Regards,
On behalf of the *YAC Chairperson*

Refreshments and dinner will be provided.

“MW-160”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked **“MW-160”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

26/06/18

Mediation Meeting: Facilitated by Tony McRae (on behalf of the Minister for Aboriginal Affairs – the Honourable Ben Wyatt)

Present:

Lesley Walker, Pansy Sambo, Lyn Cheedy, Tootsie Daniel, Wendy Hubert, Joyce Hubert, Margaret Read, Alice Guinness, Kaye Warrie, Maisie Indji, Joylene Warrie, Stanley Warrie, Michael Woodley, Kevin Guinness, Angus Mack, Curtis Lockyer, Middleton Cheedy, Bigali Hanlon, Sonia Wilson, Marion Cheedy, Jane Cheedy

- Issues with Michael as CEO – refer to the 2014 documents re the 5 and 7-point plan and Michael Woodley resignation as CEO.
- YAC has asked what Wirilu-Murra wants – what is it?
- Is Wirilu-Murra prepared to join with YAC re the negotiation with FMG?
- Respect the PBC.
- There is an opportunity for YAC and Wirilu-Murra to come together to sign an agreement with FMG before the Appeal is heard – together.
- If Wirilu-Murra and YAC come together we can bring this fight to an end – so all of us can help our people who are battling.
- Why spend our limited amount of money on a legal fight rather than helping our community and our businesses?
- Does Wirilu-Murra support the determination of exclusive possession – as compared to the alternative of non-exclusive possession?
- YAC agrees to review the membership in-line with the Supreme Court judgment.
- Does Wirilu-Murra agree to suspend the court actions against YAC so we can move forward positively together?
- Is Wirilu-Murra going to support all Yindjibarndi people's (including YAC members) VTEC applications for employment with FMG?
- What is the role of the Wirilu-Murra Independent Directors – can the Independent Wirilu-Murra Directors veto decisions made by the Wirilu-Murra Yindjibarndi Directors?
- Is Wirilu-Murra prepared to be independent in their decision-making and distance their involvement with outside influences?

- Is Wirlu-Murra prepared to sort out our differences like the old people did in the old days?
- Is Wirlu-Murra prepared to talk to us face-to-face? How do we start to have open and normal conversations?
- Division is hurting the Yindjibarndi – can we agree to stop criticising each other?
- Want to see leadership, respect, dignity and pride.
- Work together.
- No more fights.
- Come back together.
- Respect for our CEO, members, PBC.
- Stop dictating to us.
- Be genuine about intentions.
- Do all of the Wirlu-Murra members/Elders know what Wirlu-Murra is doing, YAC is doing, FMG is doing, government is doing?
- Rely on our strength, Birdirra Law, to bring us together.
- Unity and true forgiveness amongst all of us.
- Why is Wirlu-Murra giving permission to FMG to do what they are doing?
- Shared action in protecting the values and heritage of Yindjibarndi.
- Stop attacking families.

“MW-161”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “**MW-161**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Yindjibarndi Aboriginal Corporation (YAC)

- issues for discussion

Respect and relationship issues

- Division is hurting the Yindjibarndi – can we agree to stop criticising each other?
- If Wirlu-Murra and YAC come together we can bring this fight to an end – so all of us can help our people who are battling.
- Is Wirlu-Murra prepared to sort out our differences like the old people did in the old days? Rely on our strength, Birdirra Law, to bring us together.
- We want to see leadership, respect, dignity and pride. No more fights.
- Work together - come back together - stop dictating to each other
- Unity and true forgiveness amongst all of us - stop attacking families.
- Respect for our members, be genuine about intentions
- Respect the PBC and our Directors and CEO.
- Is Wirlu-Murra prepared to talk to us face-to-face? How do we start to have open and normal conversations?
- Do all of the Wirlu-Murra members/Elders know what Wirlu-Murra is doing, YAC is doing, FMG is doing, government is doing?

Shared action on native title

- Why spend our limited amount of money on a legal fight rather than helping our community and our businesses?
- Does Wirlu-Murra support the determination of exclusive possession – as compared to the alternative of non-exclusive possession?
- Does Wirlu-Murra agree to suspend the court actions against YAC so we can move forward positively together?
- YAC agrees to review the membership in-line with the Supreme Court judgment.
- YAC agrees to revisit 5 and 7-point plans from 2014? There were important agreed matters there.
- what does Wirlu-Murra want from the native title process – what is it?
- Is Wirlu-Murra prepared to join with YAC re negotiation with FMG?
- There is an opportunity for YAC and Wirlu-Murra to come together to sign an agreement with FMG before the Appeal is heard – together.

Issues about governance, business, heritage & culture

- What is the role of the Wirlu-Murra Independent Directors – can the Independent Wirlu-Murra Directors veto decisions made by the Wirlu-Murra Yindjibarndi Directors?
- Is Wirlu-Murra prepared to be independent in their decision-making and distance

their involvement with outside influences?

- Is Wirlu-Murra going to support all Yindjibarndi people's (including YAC members) VTEC applications for employment with FMG?
- Why is Wirlu-Murra giving permission to FMG to do what they are doing?
- Can we agree shared action to protect the values and heritage of Yindjibarndi.

“MW-162”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked **“MW-162”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

From: [Michael Woodley](#)
To: [Phil Davies](#); [Angus Mack](#); [Lorraine Coppin](#)
Subject: FW: Confirming our meeting on Friday 6 July
Date: Thursday, 5 July 2018 11:00:04 AM
Attachments: [93095FA9-6F5E-4849-917A-5C3EFBAA34F5\[137\].png](#)

FYI.

Regards,
 Michael Woodley
 Chief Executive Officer – CEO
 Yindjibarndi Aboriginal Corporation (YAC)
 Telephone (08) 9182 1141
 Mobile: 0419 097 130
 Email: mwoodley@juluwarlu.com.au
 Website: www.yindjibarndi.com.au



Yindjibarndi Aboriginal Corporation

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From: "tmcrae@vtown.com.au" <tmcrae@vtown.com.au>
Date: Thursday, July 5, 2018 at 10:32 AM
To: Michael Woodley <mwoodley@yindjibarndi.org.au>, 'Michelle Adams' <michelleadams434@gmail.com>
Cc: "'Pedersen, Howard'" <Howard.Pedersen@dpc.wa.gov.au>
Subject: Confirming our meeting on Friday 6 July

Hello Michael and Michelle,

Thank you both for confirming your Directors are available to meet with me and Minister Ben Wyatt tomorrow.

The meeting tomorrow will be a very good opportunity for your group to hear the positive and strong wishes of the other group to find the path towards a shared future.

I've booked the main hall in the Cultural Centre for 2 hours - from 1:30 to 3:30pm, Friday 6 July.

The agenda for tomorrow has 3 main elements:

1. To listen to the wishes from both sides to find ways to re-build personal respect for the Yindjibarndi family members in both organisations;

2. To make an open commitment to work through the mediation process being facilitated by Minister Ben Wyatt and the State Government;
3. To hear reports from me and both parties on the key matters for discussion for YAC-WMAC agreement-making.

Michael and Michelle, you and your Directors have met a number of times over the past few weeks to discuss this mediation process.

My meetings with both parties last week confirmed that both your groups have ideas for creating trust and respect, as well as a list of discussion points for shared interests in native title and future business opportunities.

I will be meeting with each of you separately before tomorrow's meeting to confirm these discussion points and we can talk about how these will be presented in broad terms tomorrow (agenda item 3) and how they will become the working agenda for the mediation meetings to be held over the coming weeks and months.

I'll be in Karratha by 3 today, so feel welcome to call and discuss.

Regards, Tony

Tony McRae

e: tmcrae@vtown.com.au

m: (+61) 0437803330

“MW-163”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked **“MW-163”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

Our ref: TJE:DGS:112041
 Contact: Taleesha Elder
 Direct Line: (08) 6316 2254
 Email: telder@bennettandco.com.au
 Contact: David Sanders
 Direct Line: (08) 6316 2223
 Email: dsanders@bennettandco.com.au

20 July 2018

The Honourable Benjamin Sana Wyatt MLA
 Treasurer, Minister for Finance, Energy, Aboriginal Affairs
 11th Floor
 Dumas House
 2 Havelock Street
 WEST PERTH WA 6005
By Email: minister.wyatt@dpc.wa.gov.au

cc:

Mr Michael Woodley
 c/- Mr Keith Thomas
 HWL Ebsworth
 Level 11, Westralia Plaza
 167 St Georges Terrace
 PERTH WA 6000
By Email:
mwoodley@yindjibarndi.org.au
kthomas@hwle.com.au

Mr Tony McRae

Dear Minister

Wirru-Murra Yindjibarndi Aboriginal Corporation

Bennett + Co acts for Wirru-Murra Yindjibarndi Aboriginal Corporation (**WMYAC**) and for a number of members of the Yindjibarndi Aboriginal Corporation RNTBC (**YAC**) who are also members of WMYAC.

We are instructed to write to you in relation to the mediation between members of the Yindjibarndi community.

It is with regret that we inform you that a Yindjibarndi Elder recently passed away. Out of respect to both her and her family, the WMYAC Board wish to postpone any further mediation until after the funeral.



Ground Floor, BGC Centre
 28 The Esplanade
 Perth WA 6000

GPO Box 5745
 St Georges Terrace
 Perth WA 6831

T + 61 8 6316 2200
 F + 61 8 6316 2211

Lawfirst Pty Ltd, ABN 69147622197
 An incorporated legal practice
 trading as Bennett + Co.
www.bennettandco.com.au

During this difficult period, we would be grateful if you could refrain from contacting Ms Michelle Adams, the WMYAC spokesperson, so that Ms Adams can focus on her family and the funeral arrangements.

We are also instructed to advise that the WMYAC Board has passed the following three resolutions:

- 1 *That WMYAC requires a declaration of any real or perceived conflicts of interest between Mr Tony McRae and any of the following parties to be made:*
 - 1.1 WMYAC;
 - 1.2 YAC;
 - 1.3 the WA State Government; and
 - 1.4 Fortescue Metals Group (**FMG**).
- 2 *That before there can be any Native Title negotiations with FMG, there needs to be a commitment to healing between WMYAC Members; and YAC Members; and resolving of the issues relating to the Yindjibarndi Prescribed Body Corporate, YAC.*
- 3 *That the Directors of WMYAC do not support Michael Woodley being involved in any FMG negotiations.*

Thank you for your understanding during this difficult time for members of the Yindjibarndi community.

Please contact me or Ms Taleesha Elder on the above contact details if you would like to discuss.

Yours sincerely

David Sanders
Principal

“MW-164”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 6 pages is the annexure marked **“MW-164”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

24th of July 2018.

The Honourable Benjamin Sana Wyatt MLA
Treasurer, Minister for Finance, Energy, Aboriginal Affairs
11th Floor
Dumas House
2 Havelock Street
WEST PERTH WA 6005
By Email: minister.wyatt@dpc.wa.gov.au

cc:

David Sanders.

DSanders@bennettandco.com.au

Michelle Adams

michelleadams434@gmail.com

Wanthiwa Minister,

RE: Letter from Bennett + Co re mediation

I write in-response to the above-mentioned letter dated 20th July 2018 which was copied to the YAC CEO, Mr Michael Woodley.

I believe that it is only fair and proper that YAC gives some commentary to this probable position as history shows that this matter may have a way of derailing.

It disappoints me and my fellow YAC directors as we have undertaken in the past all mediation attempts to unify the Yindjibarndi Nation very seriously. However, we won't allow our integrity, character and goodwill to be labelled as disingenuous.

The Bennett + Co letter makes it unclear who are decision-makers for WMYAC. From our recollections we understood that the WMYAC directors agreed that a mediation between both groups was to occur, and the State Government committed by you and personally represented by you would be assisting along with nominated facilitator Mr. Tony McRae.

We stand witness to the communications and meetings Mr McRae had with YAC and WMYAC, and that no issues were brought to our attention that members were concerned or critical of Mr McRae's involvement in the process leading up to the mediations and him as facilitator.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

By proposing the “WMYAC three resolutions” the representatives seem to be missing the point entirely that the mediation is voluntary, and in no way was it ever made compulsory; not to us anyway. The exercise of this gathering to our understanding was to have the Yindjibarndi people determine what should take precedent and how a healing process could begin. At the same time it was to strip away all bargaining degrees of importance that YAC and WMYAC may believe it holds.

YAC and WMYAC agreed that our accomplishment was to our Yindjibarndi people, and that our responsibilities and obligations to the group is to make proponents operating in our Ngurra accountable.

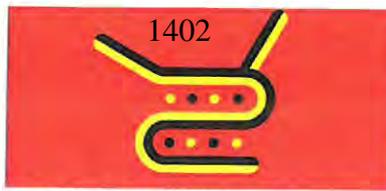
As you know YAC and WMYAC through discussion and robust debating prioritised that the single most important point affecting all Yindjibarndi is the non-agreement with FMG on mining on Yindjibarndi Ngurra. All members present on both sides agreed to support one action item. [That a *joint letter by YAC and WMYAC is sent to FMG requesting that the ILUA negotiations recommence*].

We also agreed that Mr. McRae would continue to stay in touch with YAC through Michael Woodley and WMYAC through Michelle Adams.

Point 2 of the “WMYAC three resolutions” takes on a legal process that is only entertaining to WMYAC’s representatives. If we are to proceed with healing and unifying the Yindjibarndi Nation then playing at the legal table removes the people from directing our destiny from our Yindjibarndi ‘dirt’ table – we are the people of our Ngurra, we perform best by conducting Yindjibarndi matters the Yindjibarndi way.

Point 3 of the “WMYAC three resolutions” is disappointing. Michelle Adams asked Mr. Woodley the question on the day of our mediation on his views; “if FMG said that it wouldn’t negotiate if he were involved with the joint negotiations”. To paraphrase Mr Woodley’s, “he thought that the matter was far too important for any one person, and that he was willing to stand aside and support the Yindjibarndi people nominated to deal with FMG on behalf of the Yindjibarndi Nation, to reach an ILUA based on industry standards”.

Mr Woodley has already made his position clear when asked on negotiating with FMG and if FMG don’t wish to have him involved.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

Point 1 of the “WMYAC three resolutions” can easily be flipped to have YAC also questioning WMYAC and their representative’s interest, but we have no desire to focus on a fishing exercise by asking that WMYAC declare their pecuniary and conflict of interests in-relation to their partnership with FMG.

We have no interest in the 6-year financial report of WMYAC where they show a remarkably solid operational performance posting a \$95-Million Dollar 6-year feat.

Financial income of WMYAC 6 year operations

Proof of income

Total Income 2011/2012: \$ 8,536,878

Total Income 2012/2013: \$ 6,444,845

Total Income 2013/2014: \$18,916,847

Total Income 2014/2015: \$22,625,596

Total Income 2015/2016: \$16,519,186

Total Income 2016/1017: \$ 22, 040,302

6 Year Total Income = \$ 95,083,654

This year (2017) made a profit of \$3,558,826

We also have no interest in raising any of the concerns we have with WMYAC being selected as the only Yindjibarndi group that FMG associates with in respect to Yindjibarndi heritage work and clearances affecting FMG mining operations.

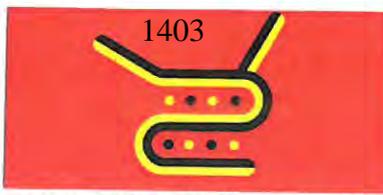
We also have no interest in raising the FMG opposition in appealing the Yindjibarndi full exclusive Native Title rights, won in the Federal Court.

We also have no interest whatsoever in raising Justice Pritchard’s references to the WMYAC relationship it holds with FMG.

PRITCHARD J states in her judgement **2018 WASC 124**:

“The belief of YAC’s directors that FMG was behind WMYAC and the attempts of its members to pursue entry into the FMG Agreement”.

(205) Secondly, it would have been obvious to all concerned that WMYAC was receiving financial support from some third party. As it was not a trustee of any native title rights, WMYAC did not have any authority to enter into an ILUA to receive compensation, yet it had engaged lawyers, and had the resources to pursue applications in the Federal Court and to organise the meetings of the Yindjibarndi #1 claim group discussed above. In the circumstances, the most likely source of that financial support was FMG.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

(206) Thirdly, as I have already noted, in his decision in respect of the s 66B application made by the Adams applicant, Rares J found that FMG 'had orchestrated the convening of the meeting and the voting procedure to a considerable degree '292 and that it had paid for a number of expenses associated with that meeting.293 There was evidence that at least one of YAC's directors - Mr Mack294 - was aware of that judgment. That judgment provided confirmation to YAC's directors that FMG was behind attempts by WMYAC's members to remove YAC as the agent for the Applicant in the Yindjibarndi #1 claim, and to enter into a land access agreement with FMG.

In moving forward on the mediation process the YAC is only interested in working positively with WMYAC towards unifying the Yindjibarndi Nation and to carry out together what is in the best interest of the Yindjibarndi Nation.

On behalf of the YAC we look forward to working with you Minister on unifying the Yindjibarndi people and thank you for your efforts and commitment to this process.

Yours Sincerely

Lyn Cheedy
Chairperson
Yindjibarndi Aboriginal Corporation (YAC)

Our ref: TJE:DGS:112041
 Contact: Taleesha Elder
 Direct Line: (08) 6316 2254
 Email: telder@bennettandco.com.au
 Contact: David Sanders
 Direct Line: (08) 6316 2223
 Email: dsanders@bennettandco.com.au

20 July 2018

The Honourable Benjamin Sana Wyatt MLA
 Treasurer, Minister for Finance, Energy, Aboriginal Affairs
 11th Floor
 Dumas House
 2 Havelock Street
 WEST PERTH WA 6005
By Email: minister.wyatt@dpc.wa.gov.au

cc:

Mr Michael Woodley
 c/- Mr Keith Thomas
 HWL Ebsworth
 Level 11, Westralia Plaza
 167 St Georges Terrace
 PERTH WA 6000
By Email:
mwoodley@yindjibarndi.org.au
kthomas@hwle.com.au

Mr Tony McRae

Dear Minister

Wirilu-Murra Yindjibarndi Aboriginal Corporation

Bennett + Co acts for Wirilu-Murra Yindjibarndi Aboriginal Corporation (**WMYAC**) and for a number of members of the Yindjibarndi Aboriginal Corporation RNTBC (**YAC**) who are also members of WMYAC.

We are instructed to write to you in relation to the mediation between members of the Yindjibarndi community.

It is with regret that we inform you that a Yindjibarndi Elder recently passed away. Out of respect to both her and her family, the WMYAC Board wish to postpone any further mediation until after the funeral.



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 Perth WA 6831

T + 61 8 6316 2200
 F + 61 8 6316 2211

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During this difficult period, we would be grateful if you could refrain from contacting Ms Michelle Adams, the WMYAC spokesperson, so that Ms Adams can focus on her family and the funeral arrangements.

We are also instructed to advise that the WMYAC Board has passed the following three resolutions:

- 1 *That WMYAC requires a declaration of any real or perceived conflicts of interest between Mr Tony McRae and any of the following parties to be made:*
 - 1.1 WMYAC;
 - 1.2 YAC;
 - 1.3 *the WA State Government; and*
 - 1.4 *Fortescue Metals Group (FMG).*
- 2 *That before there can be any Native Title negotiations with FMG, there needs to be a commitment to healing between WMYAC Members; and YAC Members; and resolving of the issues relating to the Yindjibarndi Prescribed Body Corporate, YAC.*
- 3 *That the Directors of WMYAC do not support Michael Woodley being involved in any FMG negotiations.*

Thank you for your understanding during this difficult time for members of the Yindjibarndi community.

Please contact me or Ms Taleesha Elder on the above contact details if you would like to discuss.

Yours sincerely

David Sanders
Principal

“MW-165”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked “**MW-165**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

From: [Michael Woodley](#)
To: [Phil Davies](#); [Lorraine Coppin](#); [George Irving](#); [Angus Mack](#); ["Lyn Cheedy"](#)
Date: Tuesday, 11 December 2018 2:03:13 PM
Attachments: [image001.png](#)
[93095FA9-6F5E-4849-917A-5C3EFBAA34F5\[103\].png](#)

Fyi.

Regards,
Michael Woodley
Chief Executive Officer – CEO
Yindjibarndi Aboriginal Corporation (YAC)
Telephone (08) 9182 1141
Mobile: 0419 097 130
Email: mwoodley@juluwarlu.com.au
Website: www.yindjibarndi.com.au



Yindjibarndi Aboriginal Corporation

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From: "tmcrae@vtown.com.au" <tmcrae@vtown.com.au>

Date: Tuesday, December 11, 2018 at 1:15 PM

To: 'Rodney Adams' <radams@wmyac.com>, 'John Sandy' <josandy@wmyac.com>, 'kensandy464' <kensandy464@gmail.com>, 'Gloria Lee' <glorialee2010@hotmail.com>, 'Jolleen AI Founder' <jolleen@aboriginalinsights.com.au>, "paubrey01@gmail.com" <paubrey01@gmail.com>

Subject: RE: meeting scheduled for Tuesday 9am

Hello Rodney,

Thank you for the note and best wishes in getting the Elders and Directors of WMYAC and YAC together to get started on the important, shared priorities for Yindjibarndi people.

You might remember that at the joint meeting in July this year at the Ngurrin Centre, both Boards met without any external people or the YAC CEO. Michael was invited into the meeting after some discussion and this seemed to me to be a good approach for people to get started. You might give some thought as to whether you could take a similar approach in the future.

Best wishes, Tony

From: Rodney Adams <radams@wmyac.com>
Sent: Tuesday, 11 December 2018 12:03 PM
To: tmcrae@vtown.com.au; John Sandy <josandy@wmyac.com>; 'kensandy464' <kensandy464@gmail.com>; 'Gloria Lee' <glorialee2010@hotmail.com>; 'Jolleen AI Founder' <jolleen@aboriginalinsights.com.au>; paubrey01@gmail.com
Subject: Re: meeting scheduled for Tuesday 9am

Hi just reading your email to john I as the chairperson of wirl-murra I would like to see the elders and both board directors meeting up again we can make arrangement next year after we spoke to our elders and advisory team it would be good not to have Michael woodley involved in these matters going forward

Thank you
WMYAC Liaison Officer



PO Box 249 Roebourne WA 6718
6 Queens Street WA 6718
Ph: (08)91821157
Mobile: 0418 872 822
Email: radams@wmyac.com
Web: www.wmyac.com

From: <tmcrae@vtown.com.au>
Date: Tue, 11 Dec 2018 11:04:42 +0800
To: 'John Sandy' <josandy@wmyac.com>, 'kensandy464' <kensandy464@gmail.com>, 'Gloria Lee' <glorialee2010@hotmail.com>, Michael Gallagher <radams@wmyac.com>, 'Jolleen AI Founder' <jolleen@aboriginalinsights.com.au>, <paubrey01@gmail.com>
Subject: RE: meeting scheduled for Tuesday 9am

Hello John and all,

Thanks for calling and letting me know you are meeting with Elders today to discuss the court issues and other matters, I hope those discussions go well and you are able to map a new path for Wirlumurra's relationship with YAC.

I also want to confirm to you the report I gave at the AGM yesterday: the Chair and Directors of YAC have given an undertaking that YAC will provide you and Paul with responses to each of the questions listed in your court application.

My suggestion as your mediator is that you and Paul request the court application be put on hold (through an application for adjournment or similar) so as to give YAC time to respond to your questions. I also suggest that if you agree to this process, that arrange a direct meeting of both sides so that you can discuss each of the points and be sure of a clear understanding. Using

lawyers and writing letters can be useful, but in this case, a meeting will also give both sides an opportunity to talk through the many areas of shared interest.

Over the past 6 months both sides of the Yindjibarndi argument have expressed a strong desire to heal the hurts and find a way to work together. I have remained confident and optimistic of a resolution to this conflict because of that – and also because there are so many issues on which both sides agree. I strongly urge both sides to talk to each other about these shared views and use that goodwill to then deal with the more complex issues.

My best wishes to you and all Yindjibarndi people. Please let me know if you think I can assist with this in the future.

Regards, Tony

Tony McRae

e: tmcrae@vtown.com.au

m: (+61) 0437803330

From: tmcrae@vtown.com.au <tmcrae@vtown.com.au>

Sent: Monday, 10 December 2018 3:05 PM

To: 'John Sandy' <josandy@wmyac.com>; 'kensandy464' <kensandy464@gmail.com>; 'Gloria Lee' <glorialee2010@hotmail.com>; 'Rodney Adams' <radams@wmyac.com>; 'Jolleen AI Founder' <jolleen@aboriginalinsights.com.au>; 'paubrey01@gmail.com' <paubrey01@gmail.com>

Subject: meeting scheduled for Tuesday 9am

Hello John and all,

We have a meeting scheduled for tomorrow morning at the WMYAC office - although John you said today at the YAC meeting that you would let me know by tonight if that is still to go ahead.

I look forward to hearing from you.

Regards, Tony

Tony McRae

e: tmcrae@vtown.com.au

m: (+61) 0437803330

“MW-166”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

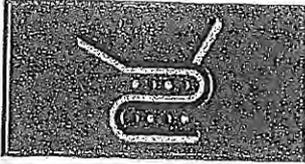
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-166”** referred to in the witness statement of Michael Woodley dated 5 June 2023.


YINDJIBARNDI ABORIGINAL CORPORATION

PO Box 111, Roebourne, WA
 Tel: 08 9182 1497 Mob: 0419 097130
 I.C.N. Number 4370 A, B.N. Number 97 456 543 455
<http://yindjibarndi.org.au/>

6th Of February 2014

Mr Paul Aubrey
 Chairperson
 Wirlumurra Aboriginal Corporation
 6/Queen Street Roebourne 6718 WA

Dear Paul,

RE: Solution to reunifying Yindjibarndi.

I am writing this letter to request a meeting with you and Vince Adams to work through some of the matters concerning the dispute amongst the Yindjibarndi people.

Several weeks back YAC has engaged Yindjibarndi Elder Michelle Broun to conduct consultation with some of Wirlumurra's key representatives, you and Vince were among those Michelle have been speaking with, and on behalf of the YAC we thank you for providing us with some of your feedback.

I have viewed the points raised and with your help, I would like to take the opportunity to discuss with you ways of improving the direction of Yindjibarndi Aboriginal Corporation (YAC).

As serious I am to reunifying Yindjibarndi, I am equally dedicated to tackling some of the issues you expressed in your discussions with Michelle. As members of our community I believe we owe it to our Yindjibarndi families the professional courtesy of acting to resolve this dispute, as guided by your corporations vision and mission stated in the Wirlumurra website.

Wirlu-murra Yindjibarndi Aboriginal Corporation is committed to establishing a sustainable self-sufficient future for all Yindjibarndi people. Our vision is for family and the community to walk together, united for a better future.

I am hoping that we could meet anytime at your convenience next week starting of 10th of February.

I look forward to your support and response, and I can be contacted on the above numbers if you want to give me a call.

Yours sincerely

Michael Woodley
 Chief Executive Officer
 Yindjibarndi Aboriginal Corporation

“MW-167”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “**MW-167**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



Wirlu-Murra Yindjibarndi Aboriginal Corporation
ICN: 7483
6 Queen Street
PO Box 73 Roebourne WA 6718
Ph (08) 9182 1157
Fax (08) 9116 4712

11 February 2014

The Chairman and Directors
Yindjibarndi Aboriginal Corporation
Hampton Street
ROEBOURNE WA 6718

Dear Chairman and Directors

Letter from your CEO

I refer to the attached letter from your CEO, Michael Woodley, which was delivered to me at our offices last week. I understand that a similar letter addressed to our member, Vince Adams, was delivered to him yesterday.

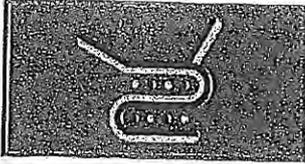
It is not clear from the letter whether Michael was inviting me and Vince to meet with him personally or whether it was intended to be an invitation from the YAC Chairman and Directors to meet with the WMYAC Board.

In any event, the Board considered the letter and confirm that Board members would be pleased to me with YAC Board members at any time after the YAC AGM.

Please let us know what date and time is convenient.

Yours sincerely

Paul Aubrey
Chairman


YINDJIBARNDI ABORIGINAL CORPORATION

PO Box 111, Roebourne, WA
 Tel: 08 9182 1497 Mob: 0419 097130
 I.C.N. Number 4370 A, B.N. Number 97 456 543 455
<http://yindjibarndi.org.au/>

6th Of February 2014

Mr Paul Aubrey
 Chairperson
 Wirlumurra Aboriginal Corporation
 6/Queen Street Roebourne 6718 WA

Dear Paul,

RE: Solution to reunifying Yindjibarndi.

I am writing this letter to request a meeting with you and Vince Adams to work through some of the matters concerning the dispute amongst the Yindjibarndi people.

Several weeks back YAC has engaged Yindjibarndi Elder Michelle Broun to conduct consultation with some of Wirlumurra's key representatives, you and Vince were among those Michelle have been speaking with, and on behalf of the YAC we thank you for providing us with some of your feedback.

I have viewed the points raised and with your help, I would like to take the opportunity to discuss with you ways of improving the direction of Yindjibarndi Aboriginal Corporation (YAC).

As serious I am to reunifying Yindjibarndi, I am equally dedicated to tackling some of the issues you expressed in your discussions with Michelle. As members of our community I believe we owe it to our Yindjibarndi families the professional courtesy of acting to resolve this dispute, as guided by your corporations vision and mission stated in the Wirlumurra website.

Wirlu-murra Yindjibarndi Aboriginal Corporation is committed to establishing a sustainable self-sufficient future for all Yindjibarndi people. Our vision is for family and the community to walk together, united for a better future.

I am hoping that we could meet anytime at your convenience next week starting of 10th of February.

I look forward to your support and response, and I can be contacted on the above numbers if you want to give me a call.

Yours sincerely

Michael Woodley
 Chief Executive Officer
 Yindjibarndi Aboriginal Corporation

“MW-168”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-168”** referred to in the witness statement of Michael Woodley dated 5 June 2023.


YINDJIBARNDI ABORIGINAL CORPORATION

PO Box 111, Roebourne, WA

Tel: 08 9182 1497 Mob: 0419 097130

I.C.N. Number 4370 A.B.N. Number 97 456 543 455

<http://yindjibarndi.org.au/>

 21st Of February 2014

Mr Paul Aubery
 Chairperson
 Wirlumurra Aboriginal Corporation
 6/Queen Street Roebourne 6718 WA

Dear Paul,

RE: Solution to reunifying Yindjibarndi/Meeting with you and Vince Adams.

 Thank you for your response dated 11th of February 2014.

 Your position to meet with the YAC board of directors in your letter of the 11th of February 2014 as described below.

In any event, the Board considered the letter and confirm that Board members would be pleased to me with YAC Board members at any time after the YAC AGM.

Paul, the purpose for the CEO's letter to you and Mr. Adams was to encourage talks to take place leading up before the YAC AGM. As YAC board members we believe it would be beneficial to us to meet with you and Mr. Adams to discuss ways to unite the Yindjibarndi people.

As there is much confusion in the community, we encourage you to please consider seriously our request to meet with us before the YAC AGM. We are available anytime next week starting on 24th of February 2014.

We look forward to you response.

Yours sincerely,
 Members of the Board

Stanley Warrie

Middleton Cheedy

Angus Mack

Curtis Lockyer

Russell Sandy



“MW-169”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 12 pages is the annexure marked **“MW-169”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



26 February 2014

The Chairman and Directors
Yindjibarndi Aboriginal Corporation
Hampton Street
ROEBOURNE WA

Dear Chairman and Directors

YINDJIBARNDI ABORIGINAL CORPORATION

I refer to your letter of 21 February 2014 addressed and delivered to me. (Copy attached)

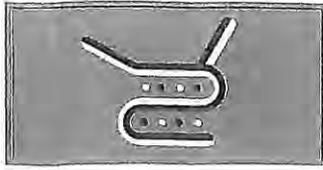
The opportunity for uniting the Yindjibarndi people is the next YAC AGM. For the people of Roebourne and for all Yindjibarndi people this is going to be a very important meeting and we want to make sure that members can participate and not be excluded and shouted down.

YAC has now received a number of requests from members with concerns about the next AGM. None of these have been responded to. Copies are attached. Various concerns have been raised including dealing with outstanding membership applications, chairing of the AGM, nomination of directors and involvement of the WA Electoral Commission in relation to voting for directors and independent monitors.

If the YAC Directors are interested to meet with me and the other WMAYC Directors to discuss the concerns about the AGM and the conduct of the AGM, then we will consider meeting with the YAC Directors. If not, then the Board's position remains as set out in our letter of 11 February 2014.

Yours sincerely,

Paul Aubrey - Chairman


YINDJIBARNDI ABORIGINAL CORPORATION

PO Box 111, Roebourne, WA
 Tel: 08 9182 1497 Mob: 0419 097130
 I.C.N. Number 4370 A.B.N. Number 97 456 543 455
<http://yindjibarndi.org.au/>

21st Of February 2014

Mr Paul Aubery
 Chairperson
 Wirlumurra Aboriginal Corporation
 6/Queen Street Roebourne 6718 WA

Dear Paul,

RE: Solution to reunifying Yindjibarndi/Meeting with you and Vince Adams.

Thank you for your response dated 11th of February 2014.

Your position to meet with the YAC board of directors in your letter of the 11th of February 2014 as described below.

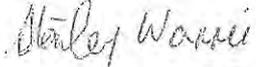
In any event, the Board considered the letter and confirm that Board members would be pleased to me with YAC Board members at any time after the YAC AGM.

Paul, the purpose for the CEO's letter to you and Mr. Adams was to encourage talks to take place leading up before the YAC AGM. As YAC board members we believe it would be beneficial to us to meet with you and Mr. Adams to discuss ways to unite the Yindjibarndi people.

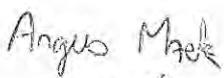
As there is much confusion in the community, we encourage you to please consider seriously our request to meet with us before the YAC AGM. We are available anytime next week starting on 24th of February 2014.

We look forward to you response.

Yours sincerely,
 Members of the Board

Stanley Warrie 

Middleton Cheedy 

Angus Mack 

Curtis Lockyer 

Russell Sandy 



30 January 2014

The Chairperson
Yindjibarndi Aboriginal Corporation
21 Hampton Street
ROEBOURNE WA 6718

Dear Mr Chairperson

Yindjibarndi Aboriginal Corporation

We write to you as members of Yindjibarndi Aboriginal Corporation (**YAC**), and as Yindjibarndi native title holders, to formally request responses and information from YAC in relation to a number of issues affecting us as members of YAC and affecting our native title rights and interests.

1. Investigation into Financial Affairs

When will YAC members be provided with the report about the financial affairs of YAC and its relationship with Juluwarlu Aboriginal Corporation (**JAC**)?

We want to know how YAC has been spending our money.

2. Allegations of secret commissions

In July 2013 we read with concern the allegations reported by the National Indigenous Times on 24 July 2013 to the effect that senior YAC executives demanded secret commissions to be paid to them in joint venture negotiations, and that YAC has engaged, lawyers, Jackson McDonald to make enquiries.

We have attempted to determine the status of the investigation from the usual sources such as the YAC website and the YAC Facebook page, but these sources were shut down at around the same time.

Six months later the members still have not been provided with any information. We formally request an immediate report on the status of the investigation and the outcome if it has been completed.

We request that the findings of the investigation be made known to all members of YAC and be tabled at the YAC AGM.

3. Payments to Selected Members

Many of our members are concerned that the Board has made payments of large amounts of money to selected members. Where has this money come from? Is YAC spending money that belongs to all of us? Why have only certain members been paid and why? YAC's practice of favouring certain members is of concern to us and causes upset within the community. The way these payments have been made shows disrespect for our Elders and their present descendants. We want information about these payments.

4. Questions on notice

We note that questions on notice were submitted to YAC for response at the last YAC AGM. These questions were not dealt with at the AGM or at all. We acknowledge that some of the issues raised may be dealt with by any independent audit of YAC affairs. We request answers to any matters outstanding and further questions be properly addressed at the next YAC AGM, in particular:

(a) Michael Woodley's appointment as CEO of YAC

- When and what resolutions were made at YAC meetings which proposed that Michael Woodley be appointed CEO?
- If YAC pays a salary to Michael Woodley, how much is it and where is it noted in the financials?
- What other payments are made directly or indirectly to Michael Woodley and members of his family?

(b) Phillip Davies

- What qualifications and prior experience does Phillip Davies have to carry out the role of Administrator of YAC?
- What positions did Mr Davies hold prior to his appointment to YAC in 2005?
- Is Mr Davies qualified according to ORIC and ASIC requirements to hold any positions in YAC or JAC or any other related company?

(c) Management, legal and contract fees

- What services does JAC provide to YAC for the \$270,000 annual management fee?
- Has the management agreement been terminated? If so, why and what has replaced it?
- To what contracts does the figure of \$250,000 in the 2011-2012 financial statement relate?

(d) Lodgement of financial reports to ORIC

- Where are the financial reports from July 2008-June 2011 which should have been lodged with ORIC?
- When will financials for YAC be filed?

(e) Trade debtors

- Which trade debtors make up the sum of \$2,200,000 referred to in the 2011-2012 financial statement

(f) Plan B West Angeles Trust

- Why is the West Angeles Trust not recorded as an asset in the 2011-2012 financial statement when it appears that distributions are still being made (\$8213.94)?
- Why has the distribution amount diminished so markedly from the previous financial year (\$204,711)?

(g) Compensation

- Income of \$2,580,000 was recorded in the 2011-2012 financial statement as compensation – to what compensation does this refer?

(h) Accountants and auditors

- Which accountants prepared the 2011-2012 and current financial statements for YAC?
- Are they the same accountants who act for JAC?

(i) Assets

- Does YAC own any properties by itself or with any other party?
- Does YAC have any interest in commercial or residential property?
- Has YAC contributed to the purchase price of any property in which it does not have a registered interest?
- Does YAC have a registered interest in 48 Scholl Street Roebourne?
- Did YAC apply to the Indigenous Regional Development Fund for \$500,000 to refurbish the property at 48 Scholl Street Roebourne
- Has YAC provided monies for improvements to properties in which it does not have a registered interest, including:

28 Scholl Street Roebourne
 48 Scholl Street Roebourne
 288 Nairn Street Bulgarra
 250 Lewington Way Bulgarra
 4 Locke Place Baynton
 21 Hampton Street Roebourne
 32 Roe Street Roebourne
 26 Lockyer Way Roebourne
 5 Gundaring Turn Canning Vale

(j) Native title negotiations

- What was done with the money received from Rio Tinto in 2012?
- Is YAC presently negotiating with any mining company or any other entity in relation to Yindjibarndi native title matters? If so, please provide details.

There will be further questions to follow about the 2013 financials and other matters.

5. Mike Hollett and Chris Harrison

We understand that Mr Mike Hollett is a director of Yurra Pty Ltd, and that YAC holds a 50% interest in Yurra Pty Ltd. Please inform us of the business of Yurra Pty Ltd and explain the benefits that flow from it to members of YAC.

We were concerned to read that Mr Hollett has been the subject of questions on notice in State Parliament. Could you please confirm whether Mr Hollett is involved in the investigation being conducted by Jackson McDonald as referred to above, and if so, in what capacity.

Why has he recently resigned from a number of positions?

Mr Chris Harrison, is described as Chief Financial Officer of YAC. Who appointed Mr Harrison and when was he appointed and on what terms? What qualifications and previous experience does Mr Harrison have for this position?

6. Rio Tinto Agreements

6.1 Authorisation Meeting

We refer to the authorisation meeting for the Rio Tinto indigenous land use agreement (**RTIO ILUA**) held on 18 June 2013. Rio Tinto, through their lawyers Ashurst, have provided us with copies of the record of attendees which we understand was prepared by YAC. There appear to be significant discrepancies between our recollection and the records of YAC as to the attendees at the authorisation meeting.

We formally request from YAC details of the process by which the record of attendees was prepared. We note that forms were required to be completed as well as names being checked against a register. We request reasons for YAC as to the basis for the submission of forms.

We note that YAC and RTIO are of the view that the RTIO ILUA was authorised at the authorisation meeting. We formally request the following details in relation to the purported authorisation of the RTIO ILUA:

- What motion or motions, if any, were put to the attendees of the authorisation meeting in relation to the decision making process for authorising the RTIO ILUA? How many attendees voted in favour of each such motion, how many voted against, and how many abstained?
- If the authorisation of the RTIO ILUA is said to have been through some other decision making process (i.e. which did not involve the passing of a motion detailing what that process would be), what was the decision making process used, and on what basis is it said to have been agreed to and adopted by those present at the meeting?
- What motion or motions, if any, were put to the attendees of the meeting in relation to the authorisation of the RTIO ILUA? How many attendees voted in favour of each such motion, how many voted against, and how many abstained?
- If it is said that the RTIO ILUA was authorised through some other decision making process (i.e. which did not involve the passing of a motion), how is the RTIO ILUA said to have been authorised in accordance with that process?

6.2 RTIO Agreements

We formally request copies of the following (**RTIO Agreements**):

- all agreements between YAC and RTIO; and
- any other agreements in the possession, custody or control of YAC, or of which YAC is aware, involving RTIO and anyone else purportedly for, or on behalf of, Yindjibarndi native title holders or YAC members.

Numerous requests to access these documents from various sources have been refused. If copies of any RTIO Agreements cannot be provided to us, we request reasons why these agreements cannot be provided and we also request the following details:

- How many RTIO Agreements is YAC aware of?
- Are any of these agreements subject to conditions precedent? If so, what are these conditions?
- What are the benefits (both financial and non-financial) for the Yindjibarndi native title holders under the RTIO Agreements?
- Have any of these benefits already been received by YAC or other persons?
- How have benefits been applied and how will benefits be applied in the future?
- What is the full legal description of the entities that have received, or are entitled to receive, such benefits under each of the RTIO Agreements?
- What processes, if any, have been agreed to under the RTIO Agreements in relation to Aboriginal heritage issues within Yindjibarndi lands?
- Who will represent Yindjibarndi people in relation to these processes?
- What is the current status of the RTIO ILUA? Has it been submitted to the Native Title Registrar for registration? If so, when was it submitted? If not, when will it be submitted?

6.3 Trust details

We understand that prior to the authorisation meeting for the RTIO ILUA, trusts were established to receive benefits under the RTIO ILUA and/or participation agreement and that prior to or after the authorisation meeting, a number of persons were appointed as directors of the trustees.

The details regarding the trusts were not clearly presented at the authorisation meeting. However, we were given the impression that the trusts were for the benefit of all Yindjibarndi native title holders. Accordingly, as beneficiaries of the trusts, we request the following:

- Copies of the deeds for each trust. If these cannot be provided to us, then please provide us with reasons why.
- If the trust deeds are not provided, please provide formal confirmation as to the description of the beneficiaries of each trust (or in the case of a charitable trust, the objects of the trust).
- The name of the trustee company for each of the trusts, the names of the directors of the company, details as to the manner in which they were appointed, and the terms of their appointment (eg duration, any remuneration or other payment arrangements).

7. Yindjibarndi Native Title holders and claim group members

We request formal clarification as to the way in which YAC is purporting to describe the Yindjibarndi native title holders and claim group members. What definition/description does YAC purport to apply in identifying and determining members? In particular, we request the following:

- In relation to the Yindjibarndi No 1 Claim, please provide a list or other detailed document identifying who in YAC's views are the current members of the native title claim group.
- In relation to the Yindjibarndi Determination Area, please provide a list or other detailed document identifying who in YAC's views are the current members of the Yindjibarndi native title holding group.

An example of a "detailed document" referred to above would be a genealogy showing the descendants of the apical ancestors that YAC relies on to identify contemporary Yindjibarndi People.

We have a lot of other questions which will send through in another letter.

Yours faithfully

Members of Yindjibarndi Aboriginal Corporation

John Sandy ~~_____~~
 CELIA SANDY
 DINAH INGIE
 Alley Sandy
 Aileen Sandy
 May Adams
 SILVIA ALCAN
 Glen Toby
 A - Chairman Adams

Kantesh Thorne
 Florence Toby
~~_____~~
 Jennifer Toby
 Caitlin Sandy
 Edmund Sandy
 Gary Ranger

~~_____~~
 LINDA RYDER

Joanne Williams
 Marlene Harold

Shawn Derschow
 KEN SANDY
~~_____~~
~~_____~~ NICKAYLA TOBY
 Karen Toby
 Stephen Schubert

CLIFTON MACK
 BRUCE MONADRE

ELIZABETH DOUGLAS
 BERRY MALCOLM
 Anne Jacobs

JIMMY HORACE
 Roschea Klitch

Mavine James
 Maudie Jensen

11 February 2014

The Chairman and Directors
Yindjibarndi Aboriginal Corporation
Hampton Street
ROEBOURNE WA

Dear Chairman and Directors

YINDJIBARNDI ABORIGINAL CORPORATION - AGM

As members of YAC we write to you with our concerns about the next AGM. For the people of Roebourne and for all Yindjibarndi People this is going to be a very important meeting and we want to make sure that we can participate and not be excluded and shouted down when we try to talk.

We know that our members Sylvia Allan and Aileen Sandy have been fighting a Supreme Court action to make sure that they (and all Yindjibarndi people) get a say in their PBC and YAC meetings and Community Meetings. We know that as a result of this court action we can expect to get a report into YAC's financial affairs and

We this in mind, we the undersigned members would like the Chairman and Directors to give us the information we ask for below.

Date of the AGM

Can you confirm when the AGM will be held and where? When will the Notice of AGM issue?

Membership Applications

We know of many people who have applied for membership of YAC but have received no response to their applications. These people want to know whether they have been accepted as members so that they can participate in the AGM and all Yindjibarndi business.

When will applications be processed? How can we be sure that the membership list at the AGM is correct? We don't want to go through all the trouble in the past lining up to and being told we can't come in. Can we have an agreed list of members before the meeting?

Also, on the latest membership list on ORIC website, many of us Elders can see that the names of "new" members have been allowed who are not Yindjibarndi and do not satisfy the requirements for membership. Attached is a list of these people. Why have these people been allowed as members? They should not be members.

Minutes of AGM for 2012 held in March 2013

As soon as possible, we would like you to provide to our members Sylvia Allan and Aileen Sandy a copy of the minutes of the last AGM so that there can be plenty of time to read and check these before the AGM.

Chairing the AGM

We do not want Michael Woodley, Phil Davies or George Irving or any of those to Chair the meeting. We would like to hear from our Chairperson or Deputy Chairperson but we know that they have not been in good health and/or not up to the job. We would like an independent person to Chair the meeting.

We have a list of suggestions which we will send through to you. We ask the Directors to elect one of these to chair the meeting. If not, then the Chairing of the meeting will need to be put to the members to elect someone.

We hope that as Directors you will hear and take our suggestion and elect an independent Chair the meeting as we have requested.

Nominations for position of Directors

We want to be able to elect a new group of directors and want all the Board to stand down so that there can be new nominations. If the old members want to re-nominate that's fine but every current director needs to stand down/resign. This is as required by YAC Rule 5.5. Can you please confirm that the directors will all finish their terms at the AGM?

We are talking amongst ourselves to put together a good team of members who will be able to provide leadership to YAC. We will send through a list of members who wish to nominate for the position of directors and confirmation from each person that they wish to nominate.

Voting

The YAC rules provide for matters to be decided by consensus. In the past this has never worked and we have either spent hours waiting to put buttons in boxes or we are ignored and our votes not counted or people leave because it takes so long.

With prior discussion it may well be possible for matters to be dealt with by consensus and that is why we are writing to you now so that our concerns can be addressed before the meeting.

We know that the Electoral Commission has provided election services to other indigenous organisations and we would like to do this.

Whether and whatever process for the poll is agreed there need to be independent persons nominated as monitors to attend the AGM and collect and count votes. We suggest that an accounting firm (with no links to any members) should be asked to provide people to do this.

Please provide your answers to member, Penny Little on 0487 895 938 and email p.little@live.com.

Yours sincerely

Members


 J Sandy
 Julie Tucker
 M d Adams
 Florence Toby
 Karen Toby
 Cheryl Toby (CHERYL TOBY)
 Alley Sandy
 Joanne Wilkin
 Jennifer Lee
 Caitlin Sandy
 Dawn Sandy
 DINAH INGIE
 Bobby Willis
 CHRISTIAN MOODY
 Virginia Dale
 Christine Toby
 Megan Hicks
 Rikki Hicks
 WILSON SANDY
 Sarah Sandy
 BERTEL MUNDA
 Anthony Munder
 Cara Watson
 Nadia Sandy
~~Maria~~ - Melissa Sandy

Jewell (Justina WILLIS)
 DONNY WALKER
 ELIZABETH DOUGLAS
 Robert Toby
 FELICITY DOUGLAS
 Aileen Sandy
 JIMMY HORACE
 Dillon Lockyer
 CELIA SANDY
 ELVIS DALE
 Frank Phillips
 Gary Hill
 Kevin Phillip
 Phillip
 JAMIE INGIE
 Kimesh Thorne
 Mirella Monaghan
 Sandra Toby
 B MONADIE

As at 31/01/14

NEW YAC MEMBERS -OBJECTIONS

As per YAC Members' List published on ORIC 24 January 2014

	SURNAME, FIRST NAME	COMMENTS
1.	Coppin, Betty (Ngarluma)	Set T: Mother: May Coppin (Ngarluma); Father: Johnny Kennedy (?)
2.	Fredericks, Janine (Ngarluma)	Set T: M: Betty Coppin (Ngarluma); F: Jimmy Frederick (Ngarluma)
3.	Fredericks, Joel (Ngarluma)	Set T: M: Betty Coppin (Ngarluma); F: Jimmy Frederick (Ngarluma)
4.	Hall, Jaydee	not known
5.	Hunter, Carol (Ngarluma)	Set T: M: Lizzie Hunter (Ngarluma); F: Terry Hunter (Broome group)
6.	Hunter, Maureen (Ngarluma)	Set T: M: Lizzie Hunter (Ngarluma); F: Terry Hunter (Broome group)
7.	Hunter, Rikoisha (Ngarluma)	Set T: M: Lizzie Hunter (Ngarluma); F: Terry Hunter (Broome group)
8.	Lockyer, Mark – which one	Set T: M: Sandra Lockyer (Kuruma); F: ?. He was married to Renae Walker (Ngarluma);
9.	Lockyer, Michael	uncertain
10.	Norman, Harold	Not known
11.	Pat, Jaclyn	Set W: M: Jocelyn Jones (Kariyarra); F: Barry Pat (Yindjibarndi)
12.	True, Tina	M: Mavis True (Yindjibarndi); she was Ngarluma after her F
13.	Walker, Johnathon	Set T: M: Judith Coppin (Ngarluma); F: Ross Walker (Ngarluma)
14.	Walker, Lorna	Set T: M: Judith Coppin (Ngarluma); F: Ross Walker (Ngarluma)
15.	Walker, Milton	Set T: M: Judith Coppin (Ngarluma); F: Ross Walker (Ngarluma)
16.	Walker, Nicholas	Set T: M: Judith Coppin (Ngarluma); F: Ross Walker (Ngarluma)

“MW-170”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-170”** referred to in the witness statement of Michael Woodley dated 5 June 2023.


YINDJIBARNDI ABORIGINAL CORPORATION

PO Box 111, Roebourne, WA
 Tel: 08 9182 1497 Mob: 0419 097130
 I.C.N. Number 4370 A.B.N. Number 97 456 543 455
<http://yindjibarndi.org.au/>

10th of March 2014

Mr Paul Aubrey
 Chairperson
 Wirlumurra Aboriginal Corporation
 6/Queen Street Roebourne 6718 WA

Dear Paul,

RE: Solution to reunifying Yindjibarndi/Meeting between the YAC & WMYAC Board of Directors.

Thank you for your letter dated 26th of February 2014.

Paul we are happy to meet with you and your board of directors as suggested by you 26/2/14 letter, which states as follows,

If the YAC Directors are interested to meet with me and the other WMYAC Directors to discuss the concerns about the AGM and the conduct of the AGM, then we will consider meeting with the YAC Directors. If not, then the Board's position remains as set out in our letter of 11 February 2014.

To confirm, we are interested in meeting with you and other WMYAC directors to discuss the concerns re AGM/conduct.

Other points the YAC board of directors would also like to add to our discussion as these points will be tabled and recommended for action in our next YAC board meeting, which is to be held this Thursday the 13/3/14.

- Equal representation on the YAC Board.
- Equal representation on the Yindjibarndi Trust YCCL.
- Equal representation on heritage surveys.
- Equal representation on negotiating of Native Title deals.
- Joint approval and appointment of a new YAC Chief Executive Officer (CEO)

If the question is, what is in the best interest of all Yindjibarndi moving forward we think the above 5 points symbolises that YAC are very serious in playing our part in uniting the Yindjibarndi people and by doing not saying what is in the best interest of our future generation by putting Yindjibarndi first.

We hope that the collective leadership of the YAC and WMYAC will put the next generation first by stepping up to the challenge, and by our actions to deliver Yindjibarndi to salvation (*Salvation; an act of saving from harm – the saving of somebody or something from harm, destruction, difficulty or failure*), the future of Yindjibarndi is now in our hands.

It is time for Yindjibarndi to come together, to heal and to rise as one Nation such that our future is assured as was given to us by our forefathers. Let our actions today be judged in generations to come as best for all Yindjibarndi.

We are happy to meet with you and members of your board on Thursday the 13th March after our board meeting to discuss and agree to the process and terms as those listed above for uniting Yindjibarndi people.

Thomas Jacobs

Thomas JACOBS

Chairperson
 Yindjibarndi Aboriginal Corporation



“MW-171”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-171”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



13 March 2014

The Chairman and Directors
Yindjibarndi Aboriginal Corporation
Hampton Street
ROEBOURNE WA

Dear Chairman and Directors

YINDJIBARNDI ABORIGINAL CORPORATION

I refer to your letter of 10 March 2014 addressed and delivered to me. (Copy attached)

The WMYAC Board agrees in principle to the points identified in your letter and are prepared to commence discussion in relation to those 5 points and others with the YAC Board with the objective of ensuring agreed outcomes at the next AGM.

Our agreement in principle and further discussions is conditional upon Michael Woodley, resigning immediately from his position as CEO of YAC.

Once Michael Woodley's resignation is confirmed, WMYAC Board members would be pleased to attend a preliminary gathering (perhaps a morning tea) with YAC Board members as a sign of goodwill. Tuesday, 17 March 2014 at say 11.00am at the Roebourne Hospital would be convenient day and time.

Further detailed discussion as to the process in moving forward can be scheduled thereafter to ensure an agreed outcome in a timely fashion.

Our view has always been that the opportunity for uniting the Yindjibarndi people is the next YAC AGM. For the people of Roebourne and for all Yindjibarndi people this is going to be a very important meeting and the opportunity to implement the outcome of our discussions.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Paul Aubrey', written over a blue scribble.

Paul Aubrey - Chairman

“MW-172”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked **“MW-172”** referred to in the witness statement of Michael Woodley dated 5 June 2023.


YINDJIBARNDI ABORIGINAL CORPORATION

PO Box 111, Roebourne, WA
 Tel: 08 9182 1497 Mob: 0419 097130
 I.C.N. Number 4370 A.B.N. Number 97 456 543 455
<http://yindjibarndi.org.au/>

14th Of March 2014

Mr Paul Aubrey
 Chairperson
 Wirlumurra Aboriginal Corporation
 6/Queen Street Roebourne 6718 WA

Dear Paul,

RE: Solution to reunifying Yindjibarndi/ Confirming the YAC position to move forward in strength and unity.

Thank you for your letter dated 13th of March 2014.

On behalf of the Yindjibarndi Aboriginal Corporation (YAC) we would like to thank you and your board for your leadership in agreeing in principle to the YAC position as move forward to unify the Yindjibarndi people.

We believe that the 5-points will serve as the foundation to remodelling the YAC, and we look forward to working with you and your board in its establishment (power to the people).

We are happy to meet with you and your board next week on the propose time and day Tuesday, which is by the way the 18th of March 2014 and not the 17th of March.

In regards to the matter re Michael Woodley's resignation please find attach his letter confirming his resignation and below the resolution passed at the YAC directors meeting yesterday the 13th of March 2014.

Letter from YAC Chairman to the Wirlu-Murra Chairman and Directors

On behalf of the YAC Directors, and in conjunction with Michael Woodley (YAC CEO), Tom Jacobs (YAC Chairman), has written a significant letter to the Wirlu-Murra Chairperson and Directors offering to end the dispute within the Yindjibarndi community. The letter is attached – it is dated 10/03/14.

Resolution 2: YAC Director's Meeting held on the 13th of March 2014

The YAC Director's fully support, endorse and authorise the letter written by Thomas Jacobs to Wirlu-Murra which is dated 10/03/14 and the Directors also note that point 5 of the letter is effective immediately – therefore as of today, the current YAC CEO, Michael Woodley, has resigned as the YAC CEO.

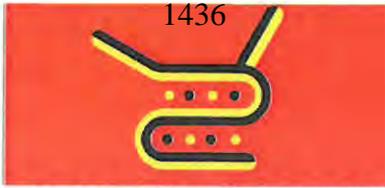
Moved: Stanley Warrie
 Seconded: Tootsie Daniels
 Result: Carried Unanimously

I look forward to working with you and your board.

Yours sincerely,
 Thomas Jacobs

Chairperson *THOMAS JACOBS*
 Yindjibarndi Aboriginal Corporation



**YINDJIBARNDI ABORIGINAL CORPORATION**

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

14/03/14.

To the Board of Directors of the Yindjibarndi Aboriginal Corporation.

**RE: Michael Woodley: My resignation as Yindjibarndi Aboriginal Corporation Chief
Executive Officer (CEO)**

To the Yindjibarndi Aboriginal Corporation (YAC) Directors,

As we discussed at the YAC Directors meeting held yesterday, Thursday 13/03/14, at the 45 Roe Yindjibarndi building, because of the situation in the community and in the interests of bringing the Yindjibarndi people together again, I resign from my position as YAC CEO unreservedly as of today.

I would like to thank the YAC Chairperson, Directors and members for the opportunity you have given me; it has been a privilege to serve the Yindjibarndi people.

Yours sincerely

A handwritten signature in black ink, appearing to be 'M. Woodley', enclosed within a large, loopy oval shape.

Michael Woodley

“MW-173”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-173”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

In light of the points below, we the joint board of directors of Yindjibarndi Aboriginal Corporation (YAC) and Wirlumurra Yindjibarndi Aboriginal Corporation (WMYAC) agree that the next step to progress with unifying the Yindjibarndi people is to have the 5-points below endorsed at a Yindjibarndi community meeting to be held Friday the 28th of March 2014.

- Equal representation on the YAC Board.
- Equal representation on the Yindjibarndi Trust YCCL.
- Equal representation on heritage surveys.
- Equal representation on negotiating of Native Title deals.
- Joint approval and appointment of a new YAC Chief Executive Officer (CEO)

6. Membership
7. Private Companies (YAC)

6, MEMBERSHIP

7- Private Companies

YAC Directors.

Thomas Jacobs

T JACOBS

Stanley Warrie

Stanley Warrie

Middleton Cheedy

M Cheedy

Angus Mack

Angus Mack

Curtis Lockyer

Curtis Lockyer

Russell Sandy

Russell Sandy

Pansy Sambo

Pansy Sambo

Tootsie Daniels

Jean Norman

Jean Norman

Rosemary Woodley

Rosemary Woodley

Gabrielle Cheedy

Gabrielle Cheedy

Jolene Warrie

Jolene Warrie

WMYAC Directors.

Paul Aubrey

Paul Aubrey

Charmaine Adams

Charmaine Adams

Jimmy Horace

JIM HORACE

Maudie Jerrold

Maudie Jerrold

Gloria Lee

Gloria Lee

Penny Little

Penny Little

Jayne Ranger

Aileen Sandy

Aileen Sandy

Allery Sandy

Allery Sandy

John Sandy

John Sandy

Ken Sandy

Ken Sandy

Jill Tucker

Jill Tucker

Handwritten mark

“MW-174”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-174”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



20 March 2014

URGENT ATTENTION

The Chairman and Directors
Yindjibarndi Aboriginal Corporation
21 Hampton Street
ROEBOURNE WA 6718

Dear Chairman and Directors

JOINT MEETING OF YAC AND WMYAC BOARD

We refer to yesterday's meeting.

Unfortunately, the proposed date for a community meeting on 28 March 2014 is not suitable as most of our directors, Elders, members of our heritage sub-committee and a number of members will not be in Roebourne.

We have a commitment which has been longstanding which cannot be re-scheduled.

In the confusion and urgency of yesterday's meeting this was an oversight on our part.

We expect that as a sign of good faith that no community meeting should proceed on that day without us.

Yours sincerely

WMYAC Directors for and on behalf of WMYAC Board

Lennoch Klith
Alley Sandy
Aileen Sandey
Grace Lee
Jill Tucker
Ken Sandy

“MW-175”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-175”** referred to in the witness statement of Michael Woodley dated 5 June 2023.


YINDJIBARNDI ABORIGINAL CORPORATION

PO Box 111, Roebourne, WA
 Tel: 08 9182 1497 Mob: 0419 097130
 I.C.N. Number 4370 A.B.N. Number 97 456 543 455
<http://yindjibarndi.org.au/>

21st Of March 2014

Mr Paul Aubrey
 Chairperson
 Wirlumurra Aboriginal Corporation
 6/Queen Street Roebourne 6718 WA

Dear Paul,

RE: *Solution to reunifying Yindjibarndi/YAC/WMYAC Yindjibarndi community meeting.*

In regards to the letter received yesterday the 20/3/14, which was signed by WMYAC directors Pennosla Little, Allery Sandy, Aileen Sandy, Gloria Lee, Jill Tucker and Ken Sandy.

YAC understand WMYAC position with other committed schedules and therefore as you and agree that this Yindjibarndi community meeting be postponed from the 28th of March 2014 to Wednesday the 9th of April 2014.

I look forward to working with you, the board, Elders and WMYAC members in uniting the Yindjibarndi by putting to action the 7-points agreed and that was committed to by YAC and WMYAC directors at our joint meeting held Tuesday the 18th of March 2014, see document attach.

Yours sincerely,
 Thomas Jacobs

Chairperson
 Yindjibarndi Aboriginal Corporation

“MW-176”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked “**MW-176**” referred to in the witness statement of Michael Woodley dated 5 June 2023.


YINDJIBARNDI ABORIGINAL CORPORATION

PO Box 111, Roebourne, WA
 Tel: 08 9182 1497 Mob: 0419 097130
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<http://yindjibarndi.org.au/>

2nd of April 2014

Mr Paul Aubrey
 Chairperson
 Wirlumurra Aboriginal Corporation
 6/Queen Street Roebourne 6718 WA

Dear Paul,

RE: *Solution to reunifying Yindjibarndi/YAC-WMYAC Yindjibarndi community meeting/Yindjibarndi working together.*

In regards to the letter received on the 26/3/14, signed by WMYAC directors Pennoschea Little (Penny Little) and Gloria Lee.

With respect to Penny and Gloria's letter, we believe that most of the matters raised can be accommodated with the fixed 7-point terms as previously agreed at the meeting held between both boards on Tuesday 18th of March, 2014 (signed document attached). By following these points with one outcome in mind, we can end the distress between the groups that has long hurt our families and divided our community.

It breaks my heart that directors of WMYAC are continuing to stall progress with little or no reason to do so, especially at this time in our journey when YAC is offering uniformity across the operations of the YAC - but it saddens me more to see that an opportunity to unify the Yindjibarndi is being delayed by circumstances that are not in the best interest of the Yindjibarndi nation.

We want to work together with WMYAC to establish the 7-point terms and hold it up as the catalyst by addressing the issues and jointly managing the process to arrive at a long-term solution for the community. Once the Yindjibarndi community meeting is agreed, the committal by both groups is to give our members the opportunity to raise the matters in the WMYAC action plan (listed in the letter to YAC dated 26/03/14 and attached) as well as those in the fixed 7-point terms as it would give a fair and transparent balance for all voices to be heard and respected.

The YAC will continue to honour and seek equal representation to have WMYAC involved with all decision making process and discussions of YAC's core business.

The signing of the joint action plan on the 18th of March 2014 by YAC and WMYAC for a Yindjibarndi community meeting to endorse and then action the 7-points was truly inspiring and it has since deeply moved me and my follow board members to stand true to our word and follow through with our promise to holding a Yindjibarndi community meeting.

Therefore as agreed by mutual understanding to hold the Yindjibarndi community meeting on **Friday the 11th of April 2014.**

To clear up any misrepresentation in regards to the DDG land access agreement, the YAC has not yet executed this agreement, but would like to finalise with Yindjibarndi WMYAC members at the community meeting as stated above (11/4/14).



In moving forward, we most not shift away from our committed obligations what you have achieved so far with positive face-to-face dialogue with members of YAC is also both productive and heartening, which has giving hope to our YAC elders. We see courage in your leadership and strength in your wisdom by wanting to reunite the Yindjibarndi and we will continue to work closely with you and your board to bring to glow this once Yindjibarndi community light that is the beacon we call Ngurra (home is where the heart belongs).

The outcomes of the Yindjibarndi Community meeting, which was held at the Yandina Youth Centre in Roebourne on Wednesday 26 March 2014, to discuss the establishment of a negotiation team to negotiate a Land Access Agreement with Rutila Resources for the development of a railway line across Yindjibarndi Country; and the outcomes of the YAC Board meeting held on 28 March 2014.

To bring you up to date with what has occurred in the Yindjibarndi community meeting held on the 26th of March 2014 with Rutila Resources. In acknowledging you absence we were sorry that you could not attend due other matters, however your apology was acknowledged and received with thoughtfulness as to the situation you were dealing with on this day, and hoped that the outcome was favourable towards the young man you were helping receiving his drivers licences.

YAC members were looking forward to catching-up with you and members of your board, but unfortunately no member of your board came or gave their apologies to say that they weren't coming.

We hope that the outcome resolutions below will give you and members of your board encouragement to be involved as we progress further with our negotiations with Rutila Resources.

Following the meeting with Rutila and to demonstrate that the YAC board continues to want to give WYMAC equal representation in everything we do, at the meeting we held on Friday 28th of March 2014, we made the following resolution:

Resolution 9: YAC Director's Meeting held on the 28th of March 2014

In line with the recommendations made at the Yindjibarndi community meeting held on 26/03/14 the YAC Directors agree for:

1. YAC to write to WMYAC to advise that a negotiating team comprised of eight Yindjibarndi members is to be established to advance the negotiations with Rutila Resources in respect of a land access agreement for the development of a railway across Yindjibarndi country and inviting WMYAC to nominate:
 - four members of the negotiating team; and,
 - members who are willing to participate in heritage surveys, commencing in April 2014.
2. YAC to write to WMYAC inviting WMYAC to nominate six YAC members to be considered as YAC Directors. This issue was agreed at the meeting held between the board members of Wirlu-Murra and YAC on Tuesday 18/03/14 and is scheduled to be further discussed at an Yindjibarndi community meeting to be held on Friday 11/04/14.

Moved: Middleton Cheedy
 Seconded: Stanley Warrie
 Result: Carried Unanimously

This letter is to confirm the above resolution has been agreed to by YAC, and we sincerely hope that WMYAC and members of your board take-up this opportunity to be apart of the restructuring of the YAC and furthermore capitalise on the 7-point terms in collaboration with the YAC board and members to give equality and strength to our people and pride and power to our Ngurra.

At the meeting held between the YAC and WYMAC boards on Tuesday 18th of March, we agreed to put into place the 7 point plan for the community, which will also include equal representation on the YCCL, other Trusts associated with YAC and Yurra.

As opposing chairs of YAC and WMYAC let us give every opportunity for all of our members to fully endorse, support and attend the Yindjibarndi community meeting we have scheduled to hold on Friday 11th of April 2014.

Yours sincerely,

THOMAS JACOBS

Thomas Jacobs
Chairperson
Yindjibarndi Aboriginal Corporation

“MW-177”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 4 pages is the annexure marked “**MW-177**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



Wirlu-Murra Yindjibarndi Aboriginal Corporation
ICN: 7483
6 Queen Street
PO Box 73 Roebourne WA 6718
Ph (08)9182 1157
Fax (08) 9116 4712

8 April 2014

The Chairperson and Directors
Yindjibarndi Aboriginal Corporation
21 Hampton Street
ROEBOURNE WA 6718

Dear Chairman and Directors

JOINT DISCUSSIONS YAC BOARD AND WMYAC BOARD

Paul Aubrey has given us your letter of 2 April 2014. We also have a copy of a "notice" given to one of our directors for a community meeting of members on 11 April 2014.

As you well know, the WMYAC Board has NOT APPROVED the issue of the document or agreed to a meeting on 11 April 2014.

The YAC Board and whoever is advising you (including Michael Woodley) have again ignored every concern that we have tried to discuss with the YAC Board. Words about re-unification are not enough. Your actions tell us that YAC continues to bully and ignore its members to achieve the objectives of individuals.

WMYAC will not be involved in any meeting where the "notice" is misleading our community about the business to be discussed. How can there be an invitation to members to attend a meeting when there are still 323 people waiting for their membership applications to be approved?

Our letter of 26 March 2014, approved by all the directors at our meeting on 25 March 2014, provided an Action Plan which represents the considered view of our Board as to how to best progress the joint discussions of our two boards. Our Chairman, Paul Aubrey and all the directors endorsed the Action Plan and authorised the signing of the letter by Penny Little and Gloria Lee.

The Action Plan covers the points discussed at the 18 March 2014 Meeting and sets out in detail how those objectives can be achieved. Not only have our Board considered the points discussed but we have prepared a step by step for the way forward.

You were invited to meet with us to discuss these and progress our discussions. Instead you accuse us of "continuing to stall progress" and delaying "an opportunity to unify the Yindjibarndi People" and issue a misleading "notice" purporting to be endorsed by us.

Our letter outlined a number of important matters that need to be clarified before further constructive discussions can proceed. Until the pre-conditions are addressed there will be no further discussions or endorsement of any community meeting.

To clarify our position:

1. Pre-conditions: There are four pre-conditions - good faith, Michael Woodley's resignation, no further communication between Michael Woodley and any Board members, membership applications dealt with as a matter of urgency.
2. Priority Issue: Preparation for the YAC AGM is a priority issue.
3. Other Issues: These are outlined in the Action Plan.

Your letter fails to acknowledge or addresses any of the above.

Pre-Condition – Good Faith

Good faith is a prerequisite to any discussions. You have not addressed the concerns in our letter of 26 March 2014 and a misleading "notice" has been circulated when you well knew our views.

In addition, we note that further affidavits have been filed in the Federal Court which are disrespectful of our representatives on the Elders Sub-Committee and of our advisers and our concerns in relation to the Pipeline ILUA have not been addressed.

Our concerns with the Pipeline ILUA have been provided direct to DDG FR including concerns about the authorisation process and the fact that Michael Woodley interests are given preferential treatment under the proposed ILUA. We have been told that DDG FR won't review the terms of the proposed ILUA because YAC won't agree.

If the proposed ILUA is to provide benefits to Yindjibarndi for many years to come, then it needs to be fair, certain and enforceable. As the document has been drafted by Mr Irving, it is unfair, uncertain, unenforceable and not authorised.

Pre-Condition – Resignation of Michael Woodley and Lines of Communication

Even though he says he has resigned, Michael Woodley, continues to communicate with our Chairman directly. Further, Michael Woodley has made public that it was he who would prepare the response to our letter of 26 March 2014.

This is not acceptable. If YAC Board wish to engage in further discussions with us then Michael Woodley needs to be out of the picture in relation to any further discussions. To achieve this we require no further communication from Michael Woodley with any of our Board members or interference with the ongoing discussions. Any communication between our two Boards is to be in writing between the Boards followed by joint meetings of our directors.

Pre-condition – Membership Applications

YAC Membership applications have still not been dealt with.

Since 28 February 2014, Mr Irving, the solicitor for YAC has had written confirmation from the ladies as to their views in relation to the membership applications. Further, by letter dated 31 March 2014 Mr Irving was provided with a response to all applications including the applications that went to your Board without being referred to the Elders Sub-Committee. Further, a timeline was provided which will allow these membership applications to be dealt with in time for a ORIC deadline for the YAC AGM. There has been no response. Dealing with membership is a pre-condition, a crucial issue and a priority item.

We require your undertaking that the membership applications will be dealt with and approved as requested at a YAC Board meeting no later than 24 April 2014.

Priority Issue – Preparation for YAC AGM

The YAC AGM is the most important community meeting for our people. This is what we need to be concentrating on.

Preparation for the YAC AGM is also key requirement of the Supreme Court Mediations Deed. As you know YAC has some serious obligations to comply with under that Mediation Deed. If these are not dealt with then YAC risks the continuation of the existing proceedings and further complaints to ORIC and proceedings for bad governance and oppressive conduct particularly by not dealing with membership applications and holding the AGM as required.

Next Steps

We encourage you to take this opportunity to review this letter, our letter of 26 March 2014 and the action list in good faith and respond to us directly to make arrangements for our Boards to meet and action.

Yours sincerely

WMYAC Directors for and on behalf of WMYAC Board

Allery Sandy - Allery Sandy

Ch - Charmaine Adams

JIMMY HORACE

JILL TUCKER - Julie Tucker

Maudie Jernold

Jayne Ringer

Jayne Ringer

Ranoch Klitt

Pennoschea Little

JOHN SANDY



Anleen Sandy

Yvonne Lee

“MW-178”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-178”** referred to in the witness statement of Michael Woodley dated 5 June 2023.


YINDJIBARNDI ABORIGINAL CORPORATION

PO Box 111, Roebourne, WA
 Tel: 08 9182 1497 Mob: 0419 097130
 I.C.N. Number 4370 A.B.N. Number 97 456 543 455
<http://yindjibarndi.org.au/>

10th Of April 2014

Paul Aubery
 Wirlumurra Aboriginal Corporation
 6/Queen Street Roebourne 6718 WA

Dear Paul,

RE: Solution to reunifying Yindjibarndi/ YAC-WMYAC Yindjibarndi community meeting/ Yindjibarndi working together/ YAC's genuine commitments to WMYAC.

In receiving the letter today dated 10/4/14, signed by WMYAC directors Allery Sandy, Charmaine Adams, Jimmy Horace, Jill Tucker, Maudie Jerrold, Jayne Ranger, Pennoschea Little, John Sandy, Aileen Sandy and Gloria Lee.

With respect to the above Directors, again we believe that all points raised in their letter can be dealt with by having equal representation on the YAC board made up of YAC and WMYAC members.

In regards to tomorrow's Yindjibarndi community meeting, which is supported by both you and I that all members of YAC and WMYAC are welcome to attend and partake.

As requested at the meeting held today, matters regarding the DDG and Rutila Resources won't be tabled as discussion points at tomorrow's meeting unless requested by WMYAC.

We hope that the WMYAC directors take this opportunity to help heal the dispute between our families and community and move us forward.

We look forward to seeing you all at this very important gathering of the Yindjibarndi nation.

Yours sincerely,

THOMAS JACOBS

Thomas Jacobs
 Chairperson
 Yindjibarndi Aboriginal Corporation



“MW-179”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 15 pages is the annexure marked “**MW-179**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

**Minutes for the
Yindjibarndi Community Meeting
At the Roebourne Community (50cent) Hall
Friday the 11th of April 2014
The meeting commenced at 10.45am**

Present

Yindjibarndi Community Members (63)

Mary Watson, Alice Guinness, Joyce Hubert, Wendy Hubert, Lyn Cheedy, Lorraine Coppin, Middleton Cheedy, Esther Pat, Harry Mills, Allery Sandy, Clifton Mack, Maisie Pat, Angus Mack, Kaye Warrie, Wendy Warrie, John Sandy, Stanley Warrie, Bruce Woodley, Barry Pat, Aileen Sandy, Jean Norman, Rosemary Woodley, Mavis Pat, Patricia Pat, Lynda Ryder, Judy Alberts, Gloria Lee, Tootsie Daniels, Matthew Ingie, Marshall Smith, Margaret Read, Joan Maddison, Kevin Guinness, Ashton Cheedy, Judith Coppin, Paul Aubrey, Curtis Lockyer, Allan Mack, Pansy Sambo, Gabrielle Cheedy, Emmalyn Smith, Amy Jerrold, Jane Cheedy, Lesley Walker, Samara Walker, Joylene Warrie, Kaye Warrie, Susan Edwins, Maisie Ingie, Tony Harold, Terrance Warrie, Billy King, Delphine Kerr, Joyce Hubert, Denise Kelly, Dudley Coppin, Tanya Jacobs daughter, Dolly Mack, Nadine Sandy, Kasey Cheedy's daughter, Jill Tucker, Alec Tucker, Marion Cheedy

Support Team

Philip Davies – Minutes

Community Meeting

Paul Aubrey (PA) commenced the meeting – he welcomed everyone who had come today – we don't have a specific agenda – we would like to address some of the communities concerns – Paul mentioned apologies

Apologies

Tom Jacobs (not well) but he hopes everything will go well

Paul also mentioned that some Wirilu-Murra Directors also send their apologies

Paul asked that the Directors of YAC and Wirilu-Murra come and sit up the front of the meeting – which they did

Paul asked for a prayer to commence – Marshall Smith gave a prayer to begin the meeting – he asked God to guide us in today's meeting and that everyone treats each other with respect

Paul gave an African proverb – he said that if you want to go fast you go it alone, but if you want to go far, you go together

PA – the two boards have agreed to 7 points at their meeting held on 08/03/14

PA – said that he would write the 7 points up on the whiteboard – that we would go through each of the 7 points one by one and agree on actions and outcomes regarding the 7 points – (the 7

points were signed and agreed at the joint YAC and Wirru-Murra board meeting held on 08/03/14) – the signed document with the 7 points is attached to these minutes.

Marshall Smith (MS) – said that if you can work together in unity you will be able to achieve what is best for the community – I hope that we can address some of the concerns raised – but there will be nothing that we can't fix – some people may get frustrated and may not agree with everything that is said – but don't worry about that – that might be an area we can work on

Barry Pat (BP) – I love my family and I want us to be together

Allery Sandy (AS) – paper doesn't mean anything to us – the only way we can fix our relationship is by talking to each other – and actions speak louder than paper

Wendy Hubert (WH) – Yindjibarndi alliance, thank you

Pansy Sambo (PS) – we have made a move to work together and I think this is the start

Tootsie Daniels (TD) – we should be proud of who we are – they put me out of a job – where does that put me – I had to ring somebody up to tell them I had to retire

Russell Sandy (RS) – we have to stick together

TD – I have nothing against you my brother, I am a kind hearted person

PA – if you have some feelings to let out then please do

Margaret Read (MR) – my family has copped it from this community – I'm sick of copping it

Lorraine Coppin – well I'm sorry if I have done anything wrong – I forgive you fellas

Rosemary Woodley (RW) – Well seeing everyone is forgiving. Well what about people forgive Michael too, you seem to pick on him – why don't you get up and do it now, when I do anything wrong you forgive me, why don't you forgive Michael?

There was silence

Joan Maddison (JM) – I love people in this town – TD did not talk to me or speak to me

TD – I got no job – I am referring to YAC – it is not to do with my Nirrdi – it is to do with Lorraine – they won't talk to me on the phone

TD – Excuse me – I want to talk about my job

JM – that is a personal matter

LC – we want to talk with you

PS – MW has stepped down from being the CEO because he is giving us all the room to work together – he is an Yindjibarndi person – don't attack him personally

MW – we want to identify what the issue is – this whole issue is a difference of opinion – we need to have the opportunity to work on this difference of opinion – we want to come back to working on how we can help this difference of opinion – and I would like to work on that – I have stepped down – if you value my input then I will be here , and if you don't then I will move in another direction – My Aunty Allery talked about action – I have resigned which is my action – we need to go forward – if we have the best interests of Yindjibarndi moving forward then today is the day to do it

Stanley Warrie (SW) – speaking in Yindjibarndi – we need to try and get together and work for the best interests of the Yindjibarndi -

MS – it is a good thing where people ask for forgiveness – you also need to state things clearly – if you have got worries then talk about it – it is like a billycan

Lyn Cheedy (LChdy) – I was there in the office that day – I just want to say that in this community we have been put in a lot of shit – I am in the middle of it – no one ever comes and apologises to my family – I am sick of this – Juluwarlu has been set up by LC and MW for the community – they did it on their own – they don't even own YAC – just because he is a CEO there it doesn't mean he owns it – you fellas have got to realise they don't own Juluwarlu or YAC – I am sorry if I hurt anyone – but I am hurt too – I am sick and tired of people that attack my family – we are trying to move forward

BP – Ngurra – we need to think of the Ngurra

AS – well like I say – action is more important than words – we can talk all day but it is actions that are important – the glass has been broken and shattered – how do we bring it back together

LChedy – you are the key

AS – no I am not the key – I am only a member – I have no power over Wirlu-Murra – you need to look at yourselves – I am not the boss for Wirlu-Murra – I am not the one who walked away – what is the action

LChdy – went up and hugged Allery Sandy

Pansy, Allery, Aileen, Lyn, Stanley Gloria Lee, John Sandy all hugged each other
 Allery Sandy hugged Michael Woodley, Kevin Guniess, Judy Alberts, Lorraine Coppin, Lynda
 Ryder

Lorraine Coppin hugged Tootsie Daniels, Maisie Ingie, Kaye Warrie

Judith Coppin hugged Kaye Warrie

Aileen Sandy hugged Michael Woodley

Margaret Read hugged Kaye Warrie

There was a long break while many people spoke to and hugged each other, and then just chatted amongst each other in a normal friendly way – they each talked to each other about their differences

11.41 am – the meeting re-commenced

MS – I just want to talk about what just happened – when you move like you just did and said sorry – God will give you more strength to pass on to our families – from here I want to hand it over Paul Aubrey – the good thing is that you are doing it the Ngarda way – that was one of the most powerful things I have seen – that reflects back on our old people because that is what they used to do out bush

Kevin Guinness (KG) – the Yindjibarndi people reared me up

Alec Tucker (AT) – I want to talk to you in a Ngarda way – I am praying you keep together

Paul Aubrey (PA) – the first item on the white board was

1. Equal representatives on the YAC board

PA – we would prefer that the election is done on the day at the YAC AGM

SW – we want to put up 6 now because we want YAC to work in the best interests of Yindjibarndi – we want to unite the people by bringing everyone together – this is not about white fellas over there or here

Gloria Lee (GL) – what do you people want – do you want equal representation on the board or not – the members need to have a say – everyone needs to have a say

Billy King (BK) – need equal representation

RW – this needs to be a commitment from everyone – we need to work together

MR – what I would like to do is to have equal representation for the first initial period while we come back together and have that for 6 to 12 months – and we then have a database of community people – maybe have 3 people from Wirilu-Murra and 3 people from YAC waiting in the wings

Rhys George (RG) – wrote up on the whiteboard – I will write up on the board what I here

PA – this is what I am hearing from the floor – that people want 6 YAC members to remain as Directors and 6 Wirilu-Murra members to be YAC Directors

GL – well what I don't like is referring to all of us

Written on the Whiteboard: Point One

Equal reps on YAC board

6 members from YAC to be Directors

6 Wirilu-Murra members to be YAC Directors

Point One (of the 7 points) - Do the members want this – equal 6 YAC members to remain as Directors and 6 Wirilu-Murra members to be YAC Directors?

Point One (from the agreed 7 points made on 08/03/14

Paul Aubrey, Michael Woodley and Rhys George - The question was put to the floor – do the people here endorse that 6 YAC members to remain as Directors and 6 Wirilu-Murra members be nominated as YAC Directors – to be elected at the YAC AGM? Is the community happy for this to happen? – Paul Aubrey asked for a show of hands

Rhys George (RG) and Paul Aubrey (PA) agreed that the majority of people put their hands up

RG asked if anyone who doesn't agree then would they like to make a statement

No-one spoke

Those present asked for RG to ask for the show of hands again

Rhys George (RG) - The question was put by Rhys to those present

Everyone who is happy for what is on the whiteboard – that from the YAC AGM, the YAC board to be comprised of 6 current YAC Directors and 6 Wirilu-Murra representatives – please put up your hand

Everyone present put their hand up except for Russell Sandy

RG – asked those present if anyone who was against the motion please put their hand up
The only person to put their hand up was Russell Sandy

RG – announced that the decision decided by today's vote is that the community agrees to point one on the 08/03/14 signed document (the document is attached to these minutes)

Point One Action and Outcome: That YAC supporters will nominate 6 people to YAC Directors, and Wirilu-Murra supporters will be YAC Directors

Gloria Lee (GL) – made the point that when each side pick the 6 people they will be nominating, that they choose wisely

A suggestion came from the floor that an Elders committee be also elected at the YAC AGM

Bruce Woodley (BW) – suggested that members of the Elders Committee should be original owners of the country

Following discussion, Rhys George stated to those present that the Wirilu-Murra board will nominate the 6 people they would like as YAC Directors, and the YAC Directors will nominate the 6 people they would like as YAC Directors.

2. Equal representatives on the Yindjibarndi Trust (YCCL)

Rhys put on the whiteboard

Written on the Whiteboard: Point Two
Equal representation on the Trust

Rhys explained to those present that there are two Independent Trust Directors on the YCCL trust – Tom Stephens and John Hender – and there are 4 YAC Directors on this trust – the joint statement said that there would be equal Yindjibarndi representation on the YCCL – therefore 2 of the Yindjibarndi people who support YAC will be YCCL Directors and 2 will be Wirilu-Murra supporters

WH – seeing we are talking about money – we want to have a vehicle given to traditional owners every three years and \$50,000 to traditional owners every three years

RG put the question to those present – are people happy for there to be equal representation of 2 people who have been Wirilu-Murra supporters (and who are elected YAC Directors at the YAC AGM) and 2 people who have been YAC supporters (and who are elected YAC Directors at the YAC AGM) – if you are happy with this proposal please put up your hand

All present put up their hand

RG – is anyone against?

No-one put up their hand to oppose the question

Therefore

Point Two Action and Outcome: That following the YAC AGM, whereby the outcome will be the make-up of the board will be 6 Yindjibarndi people who have been supporting Wirilu-Murra and 6 people who have been supporting YAC, then 2 of the Wirilu-Murra supporting Directors and 2 of the YAC supporting Directors will be elected as the 4 YAC board members to sit on the YCCL Trust.

3. Equal representation on Yindjibarndi Heritage Surveys

Written on the Whiteboard: Point Three

Equal representation on Yindjibarndi Heritage Surveys

TD – I think this is very important – only men should be speaking for country

PS – yes – men are to go first and speak for the country and women can only go on country when men have given the all clear

TD – that should be our protocol

Rhys George put the question to those present – “are people happy with equal representation and the details will be discussed at a later time by the Yindjibarndi Elders” All people raised their hands as being in favour

Point Three Action and Outcome: The Yindjibarndi people agree to equal representation on all Yindjibarndi heritage surveys – and that the details will be discussed, possibly by a sub-committee that is formed at a later date

4. Equal representation on negotiating Native Title deals

PA – so how many people would normally be on a native title negotiating committee? – 6 or 8

MS – up home we used to the young people on the negotiating team and then the Elders would be with us and back us up

MW – we can start with a number –

PA – probably make up a negotiating committee of about 8

MS – the team is the number and then they are backed up by the Elders (the Elders are not part of the actual negotiating team)

PA – maybe cut it back to 6 then

MW – 6 or 8 is fine

RG – so the discussion so far is that 6 or 8 people of equal representation of Wirru-Murra and YAC to be on the negotiating committee and they will be backed up by the Yindjibarndi Elders

PA – At our Wirru-Murra board meeting next week we will pick 3 or 4 people to be on the negotiating committee and I will let you know who they are – By Tuesday I want to have 6 people to be on a subcommittee that will work between the two groups – they can keep communications between the groups – rather than us mob going through lawyers – to make it fair we will make it 3 from YAC and 3 from Wirru-Murra – I will make that recommendation at the end of the day – I would like to think of those people as a working group – if you want you could put them on a casual based contract – in those contracts we need to ensure that these people need to work for the interests of the Yindjibarndi people

TD – when we are negotiating we need to be doing it in the best interests for Yindjibarndi

MW – if both groups agree then we could have the 8 Yindjibarndi people who are on the negotiating committee and we could use all the lawyers that we have on our books, and we may want to appoint a gun negotiator, but what about we use all the support we already have to try and get the best outcomes for Yindjibarndi people

PA – yes – that is a good suggestion but we just want to have think about that

MR – we want to bring Wirru-Murra in to get the best outcomes for Yindjibarndi

Written on the Whiteboard: Point Four

Equal representation on native title deals

The action: 8 people on negotiation team and Elders

Rhys George put the question to those present – “are people happy with equal representation on native title deals which will be 8 people in total supported by the Yindjibarndi Elders”

All people raised their hands as being in favour

Point Four Action and Outcome: The Yindjibarndi people agree to appoint 8 people to a negotiating committee who

PS – it is good having 8 people on the negotiating committee and they will need to negotiate with all companies including FMG

PA – you will still have 8 people but I would like to see that any negotiating committee will need to come back to community meetings where everyone will have a say

5. Joint approval and appointment of a new YAC Chief Executive Officer (CEO)

PA – I would like to recommend that this appointment is made by the new YAC board

RG put the question to those present – “are you happy for the appointment of a new YAC CEO to be made by the new YAC board” (after the YAC AGM)

All people put up their hands in favour

Point Five Action and Outcome: The Yindjibarndi people agree for the appointment of a new YAC CEO to be made by the new YAC board

6. Membership

RG gave some background to the membership issue

PA – I think that one thing we need to do is to make sure YAC members are only members of YAC and not members of other Prescribed Body Corporates (PBC)

MW – I think we could go through the membership applications together

PA – I think that we work on the membership applications together

GL – we have to deal with the YAC membership issue before the YAC AGM – why don't the 4 Elders just meet again to go through the membership applications and say yes, yes, no, no whatever ... - you know what I am saying Mraada?

MW – yes

MW – there is a process we are going through and it seems to be going pear shaped – what we want to do is avoid the courts

GL – but if those 4 Elders know the people then they should be able to make those decisions

MW – I think it is better for the joint board to look at the membership applications because then it will avoid the court

MW – it is total unity we are after first – we can sort the membership issues out later

TD – it is up to the people to decide who they are

GL – if they choose to be with us they need to tell us that – they can't be members of any other claim – they have to decide which way they follow

MW – would the party taking us to court be prepared to drop the court case

GL – we can't tell you that now

MW – we have moved a long way

PA – and we want to have total unity

MW – so at the moment the members applying are being checked by the Anthropologist – the YAC board has the final say on who are accepted as members – so what I am saying is that we could jointly accept those members

TD – so don't those Jarda Ngarli know them?

AS – maybe they don't know them because they may have a different surname – and I have been helping through them

PA – well we can say to ORIC that we are dealing with the membership issues – so what we are saying is that there are two actions – one is for the membership committee to decide on

membership applications and then the YAC board has the final say – I think the subcommittee can deal with the membership committee and the YAC board

PS – we (the membership committee) worked on the list yesterday and we have sent our list to the Anthropologist Robyn Stevens

MW – what Paul is saying is that both boards will agree on many of the membership applications – and the ones that still can't be decided then that can go to the new YAC board (after the next YAC AGM)

RG – but we just have to make sure that whatever we do is in line with the Supreme Court deed of settlement

PA – so before the AGM both boards can agree on the members – the others who we can't agree on then they may need to reapply after the YAC AGM

MW – anyone who is Yindjibarndi can actually be members of YAC – but if we can't prove their connection then they can't be members of YAC

MW – I am saying that if we are looking for unity then we can accept everyone

PA – I think there are people that don't want everyone accepted

MW – if we have total unity, then we can short cut a lot of the process, by agreeing that if people can trace their heritage back to Yindjibarndi then they should be accepted

Lyn Cheedy – we can only accept people who are Yindjibarndi – we can't just accept anybody – if they don't fit in the tree then they can't join

RG – the key things – refer it to the subcommittee and we need to keep going on the process

PA – if the two boards agree then unfortunately we will have to reject their membership application and let them know they can reapply after the YAC AGM

Written on the Whiteboard: Point Six

Membership

Action: refer to the subcommittee

RG put the question to those present – “are you happy for the membership issues to be put to the subcommittee, however we are committed to the Supreme Court process until we can

come up with a better model which is acceptable to both Wirru-Murra and YAC – the subcommittee will refer who they agree on to the YAC board and referring the people who can't be decided upon to the Anthropologist"

All people put up their hands in favour

KG – my understanding of an Yindjibarndi person is someone who has been through Birdarra law

PA – the thing is that there might be people from the stolen generation who through no fault of their own have been excluded from the Yindjibarndi – those people should be allowed to be YAC members

MW – I think what Kevin is saying that only people who have been through Yindjibarndi law should speak for country

PA – yes, I agree with that – but we can't do much about people who can prove they have an Yindjibarndi connection

MR – why do some people come out of the woodwork now – someone who has had nothing to do with Yindjibarndi all of a sudden become and want to be a part of Yindjibarndi

GL – yes they are just chasing the money

MS – now in Gumala – we started with about 300 people but now we have over a 1000 – we have some people in America – but if they can prove their connection then there is not anything we can do about it

PA – this new subcommittee can help the membership subcommittee on making their decisions regarding the YAC membership applications

RG – what we need to do is to follow the Supreme Court process which we can't stop

MW – but we can stop the process – we can write to the Supreme Court and say that the Yindjibarndi has found unity and both sides agree to not follow the Supreme Court process anymore

PA – I'm hearing you but not all our Directors are here and we can't make that decision today

RW – but why can't we do that

MW – I was hoping we could stop this process today

PA – well, we've made a good start

7. Private Companies

PA – this is something I have penciled in for the subcommittee to work on - some of our board are not here – and also it is something that can be decided on by the new YAC board

PA – is everybody happy with that?

Everyone agreed for the new YAC board to deal with the private companies issue

PA – then said he wanted to talk to the group about setting up a 6 person committee (3 from YAC and 3 from Wirilu-Murra) that will work between the Wirilu-Murra and YAC boards – and the committee will have guidelines including transparency, respect – and they can work on things like membership, YAC Board Directors, Heritage and negotiating committee representation etc

PA – so I would like for the community to endorse this idea of a committee made up from both boards to work between the two boards – good idea, bad idea?

MW – great idea – we can give this committee the terms of reference which has been set today – and also we can give the committee support staff – for instance Rhys can do that

MW – would you like Rhys to assist the committee? And do you have anyone else who could provide support?

PA – yes we would use Rhys and we will see who else can support the committee

PA – so we will decide on the 3 Wirilu-Murra representatives who will be on the committee that will liaise between the two boards on Tuesday at the Wirilu-Murra board meeting

PA – thanks Marshall for today – a lot of us were a bit reluctant today – so we cleared some stuff with Rhys yesterday – some of us were a bit skeptical – we didn't want to make any agreements – we wanted to build trust – and the community agreements will come with that trust ...

Meeting closed 3.23pm

In light of the points below, we the joint board of directors of Yindjibarndi Aboriginal Corporation (YAC) and Wirlumurra Yindjibarndi Aboriginal Corporation (WMYAC) agree that the next step to progress with unifying the Yindjibarndi people is to have the 5-points below endorsed at a Yindjibarndi community meeting to be held Friday the 28th of March 2014.

- Equal representation on the YAC Board.
- Equal representation on the Yindjibarndi Trust YCCL.
- Equal representation on heritage surveys.
- Equal representation on negotiating of Native Title deals.
- Joint approval and appointment of a new YAC Chief Executive Officer (CEO)

6. Membership
7. Private Companies (YAC)

6, MEMBERSHIP

7- Private Companies

YAC Directors.

Thomas Jacobs

T JACOBS

Stanley Warrie

Stanley Warrie

Middleton Cheedy

M Cheedy

Angus Mack

Angus Mack

Curtis Lockyer

Curtis Lockyer

Russell Sandy

Russell Sandy

Pansy Sambo

Pansy Sambo

Tootsie Daniels

Jean Norman

Jean Norman

Rosemary Woodley

Rosemary Woodley

Gabrielle Cheedy

Gabrielle Cheedy

Jolene Warrie

Jolene Warrie

WMYAC Directors.

Paul Aubrey

Paul Aubrey

Charmaine Adams

Charmaine Adams

Jimmy Horace

JIM HORACE

Maudie Jerrold

Maudie Jerrold

Gloria Lee

Gloria Lee

Penny Little

Penny Little

Jayne Ranger

Aileen Sandy

Aileen Sandy

Allery Sandy

Allery Sandy

John Sandy

John Sandy

Ken Sandy

Ken Sandy

Jill Tucker

Jill Tucker

Handwritten mark



Yindjibarndi Aboriginal Corporation

MEDIA RELEASE

Third April 2014

Michael Woodley, long term CEO of the Yindjibarndi Aboriginal Corporation (YAC) has resigned from his position.

Yindjibarndi Aboriginal Corporation chairperson, Thomas Jacobs thanked Mr. Woodley for his hard work and achievements. "We have made significant changes and successfully achieved some key objectives with Michael's help and we are sad that he has resigned."

Rhys George will be acting CEO until further notice.

Statement by Michael Woodley

I am putting the future of the Yindjibarndi people first, and hope that my resignation will reduce tensions between Yindjibarndi Aboriginal Corporation (YAC) and the Wirru-murra Yindjibarndi Aboriginal Corporation (WMYAC).

Unity will improve our ability to create a culturally strong, financially secure future for all Yindjibarndi people.

I have put my heart and soul into assisting the setting up of Yindjibarndi Aboriginal Corporation, this establishment is what our past Elders fought hard for and placed in our hands to protect and develop. I have no regrets in fighting for our land rights, pursuing the best outcomes for our Native Title claims and constantly pushing for better outcomes for our people from Native Title negotiations. It's been an honour and a privilege to represent my people and I will always remain grateful to my community for giving me that opportunity.

In my pursuit for a strong Yindjibarndi future there were times where I may have offended some of my Elders from WMYAC, I would like to take this opportunity to say that I am sorry and I apologise from the bottom of my heart if I caused any grief or harm, as it was never my intention.

My one objective has always been to achieve the best for our people.

I want my resignation to be seen as a step towards healing, I want to see our elders united and strong and Yindjibarndi people put aside the fights that have weakened us and work together for a future where we stand united, one strong family, with Birrida Law, Heritage and culture, opportunity and security.

For interviews contact Michael Woodley 0419 097 130

Acting CEO Rhys George 0427 389 899 (on behalf of the chairperson).

“MW-180”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 16 pages is the annexure marked “**MW-180**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



Wirlu-Murra Yindjibarndi Aboriginal Corporation

ICN: 7483

6 Queen Street

PO Box 73 Roebourne WA 6718

Ph (08)9182 1157

Fax (08) 9116 4712

15 April 2014

The Chairperson and Directors
Yindjibarndi Aboriginal Corporation
21 Hampton Street
ROEBOURNE WA 6718

Dear Chairman and Directors

JOINT DISCUSSIONS YAC BOARD AND WMYAC BOARD

Thank you for your letter of 15 April 2014. Our Board met yesterday and discussed your letter.

As you know from our letter of 8 April 2014, the WMYAC Board confirmed that they would not be involved in any meeting where the "notice" is misleading our community about the business to be discussed and membership applications remained outstanding. It was for that reason that all our Board did not attend but rather three of our members came and took notes of the discussion.

The Board is concerned that your letter does not appear to be either a complete or entirely correct record of the discussions that took place on the day. We are sorry that you were not able to be at the meeting on 11 April 2014 so that you could have heard firsthand the discussion.

The Board is also concerned that again Michael Woodley was still there doing the talking.

Our Board does not agree to creating any sub-committee. Our discussions need to continue Board to Board so that as Board members we all know what's going on.

The most important community meeting to achieve unity is the YAC AGM.

Unless preparation for the YAC AGM starts now YAC will be in breach of the Deed of Settlement that YAC agreed to last August and in breach of ORIC obligations.

Dealing with membership applications is urgent because the Notice of the YAC AGM cannot issue until the membership applications are dealt with. If the Notice of the AGM does not get to members by the latest on 9 May 2014, YAC cannot comply with the ORIC deadline.

Attached is the list of membership applications signed by Sylvia Allan and Diana Smith and an Action List that will allow YAC to deal with membership applications in time for the YAC AGM. We understand the George Irving has had a copy of this since the beginning of April.

Attached also is an Action List for preparation for the YAC AGM.

We encourage you to take this opportunity to review this letter and the action lists in good faith and respond to us directly to make arrangements for our Boards to action.

Yours sincerely

Alley Sandy

WMYAC Directors for and on behalf of WMYAC Board

Ch

Charmaine Adams - 16/4/14

MEMBERSHIP APPLICATIONS ACTION LIST		
Completion Date	Action	Outcome
31.03.14	Sylvia Allan and Dianna Smith review and confirm position on 312 Applications	Copy of completed list sent to Irving
07.04.14	Joyce Hubert and Pansy Sambo to review and confirm Y or N	Copy of completed list sent to Integra
14.04.14	Referral to/Review /Decision by Mark Chambers for any disputed applications	List of any disputed applications sent to Mr Chambers (Irving/Integra)
17.04.14	Elders Subcommittee to approve and make recommendations to YAC Board of final list of memberships for approval and rejection	Prepare final list (Irving/Integra)
24.04.14	YAC Board meeting to approve applications for membership as recommended by Elders Sub-Committee	YAC Board meeting
30.04.14	Provide an updated register compiled from all records to provide to YAC as part of the membership application process to include all members and comprise an "agreed" membership list.	Prepare agreed list of members that can be used for YAC AGM
Prior to issue of Notice of AGM	Ensure YAC register of members is updated and forwarded to ORIC.	Notify ORIC

COMBINED LIST OF YAC MEMBERSHIP APPLICATIONS

Applications sent through Integra Legal and direct to YAC

No.	SURNAME	FIRST NAME	GENEALOGY	SOURCE OF APPLICATION	FINAL POSITION	
					P Sambo/J Hubert	D Smith / S Allan 31.09.14
1	Abdullah	Clinton	Set AC: s of Angus Abdullah and Nina Jenkins (possibly not Lena Hicks); gs of Bessie Abdullah and Tommy Abdullah - named	INTEGRA		OS SD
2	Adams	Cindy		INTEGRA		Y
3	Adams	Rodney		INTEGRA		Y
4	Allan	Kurtis		INTEGRA		Y
5	Allan	Lorraine		INTEGRA		N
6	Aubrey	Conrad	Set AC: s of Paul Aubrey and Sonya Mowarin; gs of Phyllis Aubrey - named - YES-YES	INTEGRA		Y
7	Aubray	Duncan	Set AD: s of Paul Aubrey and Sonya Mowarin; gs of Phyllis Aubrey - named - YES-YES	INTEGRA		Y
8	Baites	Brenda	Set L: d of Rosie Todd; gd of Lila Hicks	INTEGRA		Y
9	Baron	James	Set F: s of Tricia Barron; gs of Phyllis Bunga and Max Hubert - named	INTEGRA		Y
10	Baron	Nathan	Set F: s of Tricia Barron and Max Hubert; gs of Phyllis Bunga and Max Hubert - named - YES-YES	INTEGRA		Y
11	Bell	Cody		INTEGRA		N
12	Bell	Duane Douglas		INTEGRA		N
13	Bennell	Jacinta	Set L: d of Michele Reed; gd of Rosie Todd and Ken Reed	INTEGRA		Y
14	Bobby	Conroy		INTEGRA		Y
15	Churnside	Deryn	Set AC: s of Sonya Churnside and Deryn Lockyer; gs of Jimmy Horace and Linda Churnside - named - YES-YES	INTEGRA		Y
16	Clarke	Dylan	Set T: s of Lynette Phillips (named); gs of Doris and Horace Phillips - YES-YES	INTEGRA		Y
17	Crowe	Anastasia	Set AH: d of Corrine Moody and Ross Crowe; gd of Susan Sarnson and Sid Moody - named - YES-YES	INTEGRA		Y
18	Dale	Elvis	Set U: s of Celia Sandy and David Dale; gs of Lila Sandy and Sandy Andrews - named - YES-YES	INTEGRA		Y
19	Dale	Ivan		INTEGRA		Y
20	Dale	Virginia	Set U: d of Celia Sandy and David Dale; gd of Lila Sandy and Sandy Andrews - named - YES-YES	INTEGRA		Y S/A
21	Dann	Amelia		INTEGRA		OS

Sylvia Allan

Diana Smith

No.	SURNAME	FIRST NAME	GENEALOGY	SOURCE OF APPLICATION	FINAL POSITION	
					P. Sambo/ J. Hubert	D. Smith / S. Allan-31.03.14
22	Dann	Bianca	LISTED AS MEMBER ON CURRENT ORIC LIST	INTEGRA		SAD
23	Dann	Richard	Set L: s of Phyllis Todd; gs of Lila Hicks	INTEGRA		Y
24	Davis	Rowan		INTEGRA		Y
25	Dershow	Shaun		INTEGRA		Y
26	Dhu	Brian	Set L: s of Brenda Baites; gs of Rosie Todd	INTEGRA		Y
27	Dhu	Christopher	Set L: s of Brenda Baites; gs of Rosie Todd	INTEGRA		Y
28	Dhu	Tenille	Set L: d of Brenda Baites; gd of Rosie Todd	INTEGRA		Y
29	Diamond	Kenny		INTEGRA		Y
30	Dingo	Trason		INTEGRA		Y
31	Dodd	Bruce		INTEGRA		N
32	Dodd	Ian		INTEGRA		Y
33	Douglas	Elizabeth	Set AC: d of Rita Ericson and Tim Douglas; gd of Eric Miller and Elsie Wedge - named - YES-YES	INTEGRA		Y
34	Douglas	Felicity		INTEGRA		Y
35	Drummond	Annette		INTEGRA		Y
36	Drummond	Lahara	Set W: d of Annette Drummond; gd of Colleen Sheckler (d of Percy Sheckler - named) - YES-YES	INTEGRA		Y
37	Felding	Shane	Set L: s of Michelle Reed; gs of Rosie Todd	INTEGRA		Y
38	Foote	Joan		INTEGRA		N
39	Foote	Peter		INTEGRA		N
40	Franklin	Kim		INTEGRA		Y
41	Franklin	Stephen		INTEGRA		Y
42	Gilbey	Daphne		INTEGRA		Y
43	Gilby	Jeffrey		INTEGRA		Y
44	Ginger	Lindsay		INTEGRA		N
45	Grant	Melanie	Set Y: d of Daphne Withnell; gd of Nancy Toby	INTEGRA		Y
46	Grant	Robert Dylan	Set Y: s of Daphne Withnell; gs of Nancy Toby 487	INTEGRA		Y
47	Greenwood	Brenda		INTEGRA		Y
48	Guinness	Cameron	Set AG: s of Clifford Guinness and Helen Jenkins; gs of Guinness Gilbey and Maudie Guinness - named	INTEGRA		Y
49	Guinness	Ramona		INTEGRA		Y
50	Halden	Cassandra		INTEGRA		N
51	Halden	Deanna		INTEGRA		N
52	Halden	Jenna		INTEGRA		N
53	Harold	Robert		INTEGRA		Y
54	Harris	Phyllis	Set L: d of Lila Hicks; gd of Charlotte Hicks & John Hicks	INTEGRA		Y
55	Harris	Robert	Set L: s of Phyllis Harris; gs of Lila Hicks & Herbert Todd	INTEGRA		SAD DS

SYLVIA ALLAN

DIANE SMITH

No.	SURNAME	FIRST NAME	GENEALOGY	SOURCE OF APPLICATION	FINAL POSITION	
					P Sambo / J Hubert	D Smith / S Allan 31.03.14
56	Hicks	Aaron James	Set L: s of Laurie Hicks and Josie Murphy; gs of Fred Hicks and Molly Thomas	INTEGRA		DS SD
57	Hicks	Ashwyn	Set L: s of Aaron Hicks and Amanda Hughes; gs of Laurie Hicks and Josie Murphy	INTEGRA		Y
58	Hicks	Joe		INTEGRA		N
59	Hicks	Rikki	Set Y: d of Christine Toby and Nathan Hicks; gd of Betty Diamond and Bronco Toby - named - YES-YES	INTEGRA		Y
60	Hubert	Dawn		INTEGRA		Y
61	Hubert	Judy		INTEGRA		Y
62	Hughes	Aiden		INTEGRA		Y
63	Hughes	Lynlee		INTEGRA		N
64	Ingie	Jamie	Set O: s of Diana Inji and Dudley Coppin; gs of Windmillman and Janet Hubert - named - YES-YES	INTEGRA		Y
65	Jacobs	Anne		INTEGRA		Y
66	Jacobs	Carmel		INTEGRA		Y
67	Jacobs	Roseanne		INTEGRA		Y
68	Jacobs	Sarah		INTEGRA		Y
69	James	Andrew	Set Z: s of Evelyn Jerrold and Austin James; gs of Maudie and Kenny Jerrold - named - YES-YES	INTEGRA		Y
70	James	Reahini	Set Z: d of Evelyn Jerrold and Austin James; gd of Maudie and Kenny Jerrold - named - YES-YES	INTEGRA		Y
71	Jeffries	Adam		INTEGRA		Y
72	Jeffries	Grace		INTEGRA		Y
73	Jerrold	David		INTEGRA		Y
74	Jerrold	Kelvin		INTEGRA		Y
75	Jerrold	Maudie	LISTED AS MEMBER ON CURRENT ORIC LIST	INTEGRA		Y
76	Jerrold	Milton	Set Z: s of Frankie Jerrold and Vanessa ?; gs of Maudie and Kenny Jerrold - named - YES-YES	INTEGRA		Y
77	Jones	Beverly Anne		INTEGRA		N
78	Kelly	Calum	Set L: CK is the S of Mureen Kelly and Bob Kelly, he is the GS of George Lockyer and Shirley Mason; AA - William Joseph Lockyer (S of Nibbin and B of Charlotte Lockyer)	INTEGRA		Y
79	Kelly	Kenlee	Set L: KK is the D of Mureen Kelly and Bob Kelly, she is the GD of George Lockyer and Shirley Mason; AA - William Joseph Lockyer (S of Nibbin and B of Charlotte Lockyer)	INTEGRA		Y SA DS

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 Diana Smith

No.	SURNAME	FIRST NAME	GENEALOGY	SOURCE OF APPLICATION	FINAL POSITION	
					P Sambo/J Hubert	D Smith /S Allan 31.03.14
80	Kelly (nee Lockyer)	Maureen	Set L: MK is the D of George Lockyer and Shirley Mason, she is the GD of William Joseph Lockyer and Annie Wright; AA - William Joseph Lockyer (S of Nibbin and B of Charlotte Lockyer)	INTEGRA		DS SA Y
81	Larry	Clifford	Set T - of Kim Whalebone; gs of Whalebone and Edie Whalebone	INTEGRA		Y
82	Larry	Katrina	Set T - d of Kim Whalebone; gd of Whalebone and Edie Whalebone	INTEGRA		Y
83	Lewis	Kevin	Set AM: s of Barney and Edith Lewis; gs of Donny and Doreen Lewis - named	INTEGRA		Y
84	Little	Pennoschea Kyruss		INTEGRA		Y
85	Lockyer	Albert		INTEGRA		N
86	Lockyer	Dillion	Set Z: s of Sonya Churnside and Darren Lockyer; he is gs of Jimmy Horace and Linda Churnside - named - YES-YES	INTEGRA		Y
87	Lockyer	Donna		INTEGRA		N
88	Lockyer	Lindsay Snr	Set L: s of George Lockyer and Shirley Mason; he is the gs of William Joseph Lockyer and Annie Wright; he is the b of Maureen Kelly.	INTEGRA		Y
89	Lockyer	Teoni Linda Sue	Set Z: d of Sonya Churnside and Darren Lockyer; gd of Jimmy Horace and Linda Churnside - named - YES-YES	INTEGRA		Y
90	Long	Kieron		INTEGRA		Y
91	Long	Stephanie	Set Y: d of Jennifer Long and Dennis Long; she is the gd of Bronco Toby and Betty Diamond - named - YES-YES	INTEGRA		Y
92	Long	Troy James	Set Y: s of Jennifer Long (0439593894) and Dennis Long; he is the gs of Bronco Toby and Betty Diamond - named	INTEGRA		Y
93	Long	William	Set Y: s of Jennifer Long and Dennis Long; he is the gs of Bronco Toby and Betty Diamond - named - YES-YES	INTEGRA		Y
94	Mather	Corey	Set Y: s of Marissa Mather; gs is Daphne Withnell (d of Nancy Toby)	INTEGRA		Y
95	Mather	Jannalee		INTEGRA		Y
96	Mather	Kenneth		INTEGRA		Y
97	Mather	Marissa	Set Y: d of Daphne Withnell; gd is Nancy Toby.	INTEGRA		SA
98	Mather	Robert		INTEGRA		DS

Sylvia Allan
Diana Smith

No.	SURNAME	FIRST NAME	GENEALOGY	SOURCE OF APPLICATION	FINAL POSITION	
					P Sambo/ J Hubert	D Smith / S Allan 31.03.14
99	McDonald	Charley		INTEGRA		5 A P S
100	McDonald	Kristine		INTEGRA		Y
101	McDonald	Lyndsey		INTEGRA		Y
102	Meek	Sarah Jane		INTEGRA		Y
103	Mills	Brenton		INTEGRA		Y
104	Mingo	Esther		INTEGRA		Y
105	Mingo	Jacob		INTEGRA		Y
106	Mingo	Max		INTEGRA		Y
107	Mingo	Maxine		INTEGRA		Y
108	Mingo	Pamela		INTEGRA		Y
109	Moody	Christian	Set AC: s of Nathaniel Moody and Dawn Dale; gs of Syd Moody and Susan Samson - named - YES-YES	INTEGRA		Y
110	Moody	Frances Annette		INTEGRA		Y
111	Moody	Maitland		INTEGRA		Y
112	Moody	Nathaniel	LISTED AS MEMBER ON CURRENT ORIG LIST	INTEGRA		Y
113	Moody	Sana	Set AC: d of Nathaniel Moody and Dawn Dale; GD of Syd Moody and Susan Samson - named - YES-YES	INTEGRA		Y
114	Mourambine	Tenika		INTEGRA		Y
115	Mowarin	Mary	Set L: d of Reggie Hicks and Mary Cooyou; gd of Fred Hicks and Molly Thomas	INTEGRA		Y
116	Mowarin (Cooyou)	Rachel	Set L: d of Rachael Cooyou (Hicks) and Bewan Drage; gd of Reggie Hicks & Mary Cooyou	INTEGRA		Y
117	Munda	Anthony	Set u: s of Aileen Sandy and Len Munda; gs of Lila Sandy and Sandy Andrews - named	INTEGRA		Y
118	Munda	Berchel	Set u: s of Aileen Sandy and Len Munda; gs of Lila Sandy and Sandy Andrews - named	INTEGRA		Y
119	Munda	Jason	Set u: s of Aileen Sandy and Len Munda; gs of Lila Sandy and Sandy Andrews - named	INTEGRA		Y
120	Murphy	Janet	Set L (WJ Lockyer)	INTEGRA		Y
121	Murphy	Leslie	Set L (WJ Lockyer)	INTEGRA		N
122	Norman	Samantha	Set AG: d of Linda Norman and ? Taylor; gd of Jean Norman and Peter Coppin - named	INTEGRA		Y
123	Park	Darren	Set L: s of Marlene Todd and Terry Park; gs of Lila Hicks and Herbert Todd	INTEGRA		Y
124	Park	Fiona	Set L: d of Marlene Todd and Terry Park; gd of Lila Hicks and Herbert Todd	INTEGRA		Y
125	Park	Kaelum	Set L: s of Marlene Todd and Terry Park; gs of Lila Hicks and Herbert Todd	INTEGRA		5 A P S

Sylvia Allan

Alicia Smith

No.	SURNAME	FIRST NAME	GENEALOGY	SOURCE OF APPLICATION	FINAL POSITION	
					P Sambo/J Hubert	D Smith / S Allan 31.03.14
126	Park	Shaun	Set L: s of Marlene Todd and Terry Park; gs of Lila Hicks and Herbert Todd	INTEGRA		Y SFA
127	Park	Shona	Set L: d of Marlene Todd and Terry Park; gd of Lila Hicks and Herbert Todd	INTEGRA		Y
128	Park	Terrence	Set L: s of Marlene Todd and Terry Park; gs of Lila Hicks and Herbert Todd	INTEGRA		Y
129	Paton	Aaron	Set AD: s of John King and Sue Paton; he is the GS of John King (Kupallu) and Lucy Dodd - named	INTEGRA		Y
130	Phillips	Barry		INTEGRA		Y
131	Phillips	Brian		INTEGRA		Y
132	Phillips	Francis		INTEGRA		Y
133	Phillips	Katrina		INTEGRA		Y
134	Phillips	Kevin		INTEGRA		Y
135	Phillips	Lynette		INTEGRA		Y
136	Phillips	Rikki		INTEGRA		Y
137	Ramirez	Gary	Set L: ? Related to Reggle Hicks?	INTEGRA		Y
138	Ranger	Adrian	Set W: s of Sandra Ranger; gs of Alec Sheckler	INTEGRA		Y
139	Ranger	Alex	Set W: s of Anthony Ranger; gs of Alec Sheckler - named	INTEGRA		Y
140	Ranger	Alfred	Set AE: s of Stuart Ranger; gs of Ester Thompson (Mingo) - named - YES-YES	INTEGRA		Y
141	Ranger	Angela	Set AE: d of Stuart Ranger; gd of Ester Thompson (Mingo) - named - YES-YES	INTEGRA		Y
142	Ranger	Anthony Snr		INTEGRA		Y
143	Ranger	Aquamis		INTEGRA		Y
144	Ranger	Bronwyn		INTEGRA		Y
145	Ranger	Davina		INTEGRA		Y
146	Ranger	Donald Jnr		INTEGRA		Y
147	Ranger	Donald Snr		INTEGRA		Y
148	Ranger	Donelle		INTEGRA		Y
149	Ranger	Ethel		INTEGRA		Y
150	Ranger	Garth		INTEGRA		Y
151	Ranger	George	Deceased	INTEGRA		Deceased
152	Ranger	Jackson		INTEGRA		Y
153	Ranger	Jaydeen		INTEGRA		Y
154	Ranger	Jayne (Rhiannon)		INTEGRA		Y
155	Ranger	Justin		INTEGRA		Y
156	Ranger	Margaret Anne	Set AE: d of Ester Thompson (Mingo) and Alfred Ranger; gd of Chloe - named - YES-YES	INTEGRA		Y
157	Ranger	Michael Angelo		INTEGRA		Y
158	Ranger	Ricky James		INTEGRA		Y
159	Ranger	Robin	Set AE: s of Ethel Ranger; gs of Ester Thompson (Mingo) - named - YES-YES	INTEGRA		Y SFA

Sylvia OCCAN

Diana Smith

No.	SURNAME	FIRST NAME	GENEALOGY	SOURCE OF APPLICATION	FINAL POSITION	
					P Sambo / J Hubert	D Smith / S Allan 31.03.14
160	Ranger	Roslyn	Set W: d of Roslyn Ranger and Lucy Star; gd of Alec Sheckler - named	INTEGRA		DS SA
161	Ranger	Ross		INTEGRA		Y
162	Ranger	Sarah	Set AE: d of Stuart Ranger, gd of Ester Thompson (Mingo) - named - YES-YES	INTEGRA		Y
163	Ranger	Sasha		INTEGRA		Y
164	Ranger	Tara		INTEGRA		Y
165	Ranger	Yasmine		INTEGRA		Y
166	Ranger (Mingo)	Donelle		INTEGRA		Y
167	Reed	Bradley	Set L: BR is the S of Rosie Todd and Ken Reed; he is the GS of Lila Hicks and Herbert Todd.	INTEGRA		Y
168	Reed	Michelle	Set L: MR is the D of Rosie Todd and Ken Reed; she is the GD of Lila Hicks and Herbert Todd.	INTEGRA		Y
169	Roebourne	Thomas	Set AC: S of Florie (Thayrn); GS of Dick (Jipangu) - named - YES-YES	INTEGRA		Y
170	Ryan	Malcolm		INTEGRA		Y
171	Ryan	Owen	may be G. Ranger's stepson	INTEGRA		N
172	Ryan	Rebecca		INTEGRA		Y
173	Ryder	Dianne Estelle		INTEGRA		Y
174	Ryder	Hommott	Set W: HR is the S of Ross Ranger and Mavis Ryder; GS of Alex Sheckler and Margaret	INTEGRA		Y
175	Samson	Gregory		INTEGRA		Y
176	Samson	Rachel		INTEGRA		Y
177	Sandy	Caitlin		INTEGRA		Y
178	Sandy	Edmund	Set U: S of Ken, Sandy and Geraldine Jenkins, GS of Sandy Andrews and Lila Sandy - named - YES-YES	INTEGRA		Y
179	Sandy	Emily		INTEGRA		Y
180	Sandy	Ethan		INTEGRA		Y
181	Sandy	Janice		INTEGRA		Y
182	Sandy	Jeremy		INTEGRA		Y
183	Sandy	Joe		INTEGRA		Y
184	Sandy	Luke	Set U: S of Dawn Dale and Nathaniel Moody, GS of Cella Sandy and David Dale - named - YES-YES	INTEGRA		Y
185	Sandy	Madeline	Set U: S of Ricky Sandy and Wendy Darby; GS of Sandy Andrews and Lila Sandy - named - YES-YES	INTEGRA		Y
186	Sandy	Melissa		INTEGRA		Y
187	Sandy	Nadlee		INTEGRA		Y
188	Sandy	Payden	Set U: S of Ken Sandy and Geraldine Jenkins; GS of Sandy Andrews and Lila Sandy - named - YES-YES	INTEGRA		SA DS Y

Doreen Smith. 4/11/14. 10

No.	SURNAME	FIRST NAME	GENEALOGY	SOURCE OF APPLICATION	FINAL POSITION	
					P. Sambo/J Hubert	D. Smith/S Allan 31.03.14
189	Sandy	Winston		INTEGRA		SAD S
190	Sheckler	Tennelle		INTEGRA		Y
191	Standard	Pamela		INTEGRA		Y
192	Stevens	Shanna	Set L	INTEGRA		Y
193	Taylor	Geleena	Set AG: GT is the D of Linda Norman and ? Taylor, she is the GD of Norman King and Doris Douglas - named	INTEGRA		Y
194	Taylor	Tessa	Set W: TT is the D of George Ranger and Ann Taylor, she is the GD of Alec Sheckler and Margaret Ranger - named	INTEGRA		Y
195	Taylor (Ranger)	Jessica	Set W: JT is the D of George Ranger and Ann Taylor, she is the GD of Alec Sheckler and Margaret Ranger - named	INTEGRA		Y
196	Thompson	Douglas		INTEGRA		Y
197	Thompson	Leslie		INTEGRA		Y
198	Thorne (Toby)	Kiniesh	LISTED AS MEMBER ON CURRENT ORIC LIST	INTEGRA		Y
199	Toby	Cheryl		INTEGRA		Y
200	Toby	Dwayne		INTEGRA		Y
201	Toby	Lawrence		INTEGRA		Y
202	Toby	Moretta		INTEGRA		Y
203	Toby	Nickayla		INTEGRA		Y
204	Toby	Robert		INTEGRA		Y
205	Toby	Sandra		INTEGRA		Y
206	Todd	Caroline	Set L	INTEGRA		Y
207	Todd	Jamie	Set L	INTEGRA		Y
208	Todd	Jay	Set L	INTEGRA		Y
209	Todd	Joshua	Set L	INTEGRA		Y
210	Todd	Lindsay	Set L	INTEGRA		Y
211	Todd	Margie	Set L	INTEGRA		Y
212	Todd	Myline	Set L	INTEGRA		Y
213	Todd	Natasha	Set L	INTEGRA		Y
214	Todd	Rosie	Set L	INTEGRA		Y
215	Todd	Serena	Set L	INTEGRA		Y
216	Todd	Shavam	Set L	INTEGRA		Y
217	Todd	Terrence	Set L	INTEGRA		Y
218	Tolentino	Adam		INTEGRA		N
219	Walker	Donny		INTEGRA		Y
220	Walker	Shirley		INTEGRA		Y
221	Wally	Douglas		INTEGRA		Y
222	Wally	Renee		INTEGRA		Y
223	Walson	Cora		INTEGRA		Y
224	Watson	Robbie		INTEGRA		Y
225	Websdale	Allan	Set Y: AW is the S of Nancy Toby and Leo Websdale, he is the GS of Dudley Clifton and Old Toby (Mayanpangu)	INTEGRA		Y
226	Wheelock	Anthony Murray	Set W: S of Anthony Ranger and Sissy Wheelock; GS of Alec Sheckler and Margaret Ranger - named - YES-YES	INTEGRA		SAD S

Sylvia Allan
 Diener Smith

No.	SURNAME	FIRST NAME	GENEALOGY	SOURCE OF APPLICATION	FINAL POSITION	
					P Sambo / J Hubert	D Smith / S Allan 31.03.14
227	Wheelock	Terrence	Anthony R Set W: S of Anthony Ranger and Sissy Wheelock; GS of Alec Sheckler and Margaret Ranger - named - YES-YES	INTEGRA		SMS
228	Whitby	Leanne	Set L	INTEGRA		Y
229	Whitby	Paul	Set L	INTEGRA		Y
230	Whitby	Phillip	Set L	INTEGRA		Y
231	Williams	Christopher		INTEGRA		Y
232	Willis	Bobby		INTEGRA		Y
233	Willis	Donna		INTEGRA		Y
234	Willis	Justina		INTEGRA		Y
235	Willis	Rebecca		INTEGRA		Y
236	Willis	Ronald		INTEGRA		Y
237	Withnell	Daphne		INTEGRA		Y
238	Wonadon	Cyril	Set W: s of Alice Diamond and Charlie Wonadon; gs of Ruby Snip and Snip Ned	INTEGRA		Y
239	Wonadon	Michael	Set W: s of Alice Diamond and Charlie Wonadon; gs of Ruby Snip and Snip Ned	INTEGRA		Y
240	Woodley	Clarence		INTEGRA		Y
241	Abedee	Thomas	Deceased	DIRECT		Deceased
242	Cheedy	Kenrick	Yindjbarndi	DIRECT		Y
243	Cheedy	Nisha	Yindjbarndi	DIRECT		Y
244	Cheedy	Shandelle	Yindjbarndi	DIRECT		Y
245	Coffin	Joe	Yindjbarndi	DIRECT		Y
246	Coppin	Betty	Set T: M: May Coppin (Ngarluma); F: Johnny Kennedy	DIRECT		N
247	Coppin	Maeleen June	Not in Yindjbarndi genealogy (Ngarluma)	DIRECT		N
248	Dale	David	Deceased	DIRECT		D
249	Dale	Garren	Not in Yindjbarndi genealogy (Kuruma)	DIRECT		N
250	Dale	Tim	Set T: S of Dennis Dale and Joan Stock (Niyaparli)	DIRECT		N
251	Daniels	Cleo	Set f: M: Tootsie Daniel; F: David Daniel (Ngarluma)	DIRECT		N
252	Daniels	Kaylene	Set f: M: Tootsie Daniel; F: David Daniel (Ngarluma)	DIRECT		N
253	Daniels	Regina	Set f: M: Tootsie Daniel; F: David Daniel (Ngarluma)	DIRECT		N
254	Daulbin	Andrew	Yindjbarndi	DIRECT		Y
255	Daulbin	Emerson	Yindjbarndi	DIRECT		Y
256	Daulbin	Selina	Yindjbarndi	DIRECT		Y
257	Dodd	Ian	Duplication	DIRECT		Y
258	Douglas	Mickey	Set f: M: Alice Douglas; F: Douglas Toby (Ngarluma)	DIRECT		N
259	Downton	Wennus	Thalanyil	DIRECT		N
260	Egan	Sandra	Yindjbarndi	DIRECT		Y
261	Fredericks	Janine	Set T: M: Betty Coppin (Ngarluma); F: Jimmy Frederick (Ngarluma)	DIRECT		N 54

Diana Smith Sylvia Allan

No.	SURNAME	FIRST NAME	GENEALOGY	SOURCE OF APPLICATION	FINAL POSITION	
					P. Sambo/J. Hubert	D. Smith / S. Allan 31.03.14
262	Fredericks	Joel	Set T: M: Betty Coppin (Ngarluma); F: Jimmy Frederick	DIRECT		SAS N
263	George	Kevin	Kariyara	DIRECT		N
264	Hall	Jaydee	Unknown	DIRECT		N
265	Hammond	Christina	Not in Yindjibarndi genealogy, possibly Ngarluma	DIRECT		N
266	Hayes	Tarryn	Thalanyj	DIRECT		N
267	Hicks	Danielle	Ngarluma	DIRECT		N
268	Hicks	Shaun	Ngarluma	DIRECT		N
269	Hubert	Aaron	Yindjibarndi	DIRECT		Y
270	Hubert	Beverley	Yindjibarndi	DIRECT		Y
271	Hubert	Christina	Ngarluma?	DIRECT		N? Not sure
272	Hubert	Jenny	Yindjibarndi	DIRECT		Y
273	Hubert	Lefiesha	Yindjibarndi	DIRECT		Y
274	Hubert	Simon	Yindjibarndi	DIRECT		Y
275	Hunter	Carol	Set T: M: Elizabeth Coppin (Ngarluma); F: Terry Hunter	DIRECT		N
276	Hunter	Maureen	Set T: M: Elizabeth Coppin (Ngarluma); F: Terry Hunter	DIRECT		N
277	Hunter	Riksha	Set T: M: Elizabeth Coppin (Ngarluma); F: Dennis Hicks	DIRECT		N
278	Hyland	Lionel	Yindjibarndi	DIRECT		Y
279	Hyland	Steven	Yindjibarndi	DIRECT		Y
280	James	Bruce	Banyjima	DIRECT		N
281	James	Linda	Yindjibarndi	DIRECT		Y
282	Kelly	Annette	Not sure	DIRECT		N? Not sure
283	Kennedy	Chaz	Not in Yindjibarndi genealogy (Ngarluma)	DIRECT		N
284	Kerr	Ernest	Under 18? Tootsie Daniel's GS (Banyjima/Ngarluma)	DIRECT		N
285	Kerr	Zac	Under 18? Tootsie Daniel's GS (Banyjima/Ngarluma)	DIRECT		N
286	King	Bronwyn	Yindjibarndi: 16 years old	DIRECT		N
287	Lockyer	Amorette	Set AG: M: Lyn Chaeedy; F: Arnold Lockyer	DIRECT		N? Not sure
288	Lockyer	Hayson	Yindjibarndi	DIRECT		Y
289	Lockyer	Mark	There are two - neither are thought to be Yindjibarndi	DIRECT		N
290	Lockyer	Michael	Not in Yindjibarndi genealogy	DIRECT		N
291	Lockyer	Peter	Ngarluma	DIRECT		N
292	Mack	Colin	Set AP: M: Caroline Fazeldine; F: Alan Mack	DIRECT		N? Not sure
293	Mack	Kimberlee	Yindjibarndi	DIRECT		Y
294	Mack	Leroy	Set AP: M: Caroline Fazeldine; F: Alan Mack	DIRECT		N? Not sure
295	Mack	Princie	Ngarluma	DIRECT		N
296	Mason	Rachel	Possibly Yindjibarndi, but not sure	DIRECT		N? Not sure
297	McDonald	Victoria	Not in Yindjibarndi genealogy	DIRECT		N
298	Miller	Billy Jo	Yindjibarndi	DIRECT		Y
299	Miller	Cecilia	Yindjibarndi	DIRECT		Y
300	Miller	Erin	Yindjibarndi	DIRECT		Y
301	Mitchell	Donella	Njamat	DIRECT		SAS N

Diana Smith Sylvia Allan

No.	SURNAME	FIRST NAME	GENEALOGY	SOURCE OF APPLICATION	FINAL POSITION	
					P Sambo / J Hubert	D Smith / S Allan 31.03.14
302	Mourambine	Devina	Set F: M: Delores Daniel; F: Darryl Mourambine (Ngarluma)	DIRECT		SAS
303	Pat	Jaclyn	Yindjibarndi	DIRECT		Y
304	Percy	Stephanie	Yindjibarndi	DIRECT		Y
305	Sambo	Rowan	Set AG: M: Pansy Sambo; F: Reg Sambo (Ngarluma)	DIRECT		N
306	Sambo	Warwick	Set AG: M: Pansy Sambo; F: Reg Sambo (Ngarluma)	DIRECT		N
307	Sheckler	Adrian	Yindjibarndi	DIRECT		Y
308	Sheckler	Vicki	Yindjibarndi	DIRECT		Y
309	Smith	Emmalyn	Yindjibarndi	DIRECT		Y
310	True	Karen	Ngarluma	DIRECT		N
311	True	Tina	M: Mavis True (Yindjibarndi); she is Ngarluma after her F	DIRECT		N
312	Tucker	Anne-Marie	Not in Yindjibarndi genealogy, Nylaparli or Yindjibarndi?	DIRECT		N? Not sure
313	Tumbler	Kayla	Set W8? - is it Kayla or Kaylon? Kuruma	DIRECT		N
314	Walker	Jonathon	Set T: M: Judith Coppin (Ngarluma); F: Ross Walker (Ngarluma)	DIRECT		N
315	Walker	Loma	Set T: M: Judith Coppin (Ngarluma); F: Ross Walker (Ngarluma)	DIRECT		N
316	Walker	Millon	Set T: M: Judith Coppin (Ngarluma); F: Ross Walker (Ngarluma)	DIRECT		N
317	Walker	Nickolas	Set T: M: Judith Coppin (Ngarluma); F: Ross Walker (Ngarluma)	DIRECT		N
318	Wally	Anne	Mardhudunera	DIRECT		N
319	Wally	Ian	Mardhudunera	DIRECT		N
320	Wally	Nina-rae	Mardhudunera	DIRECT		N
321	Wally	Shirley	Mardhudunera	DIRECT		N
322	Watson	Jonathon	Yindjibarndi	DIRECT		Y
323	Watson	Mary	Yindjibarndi	DIRECT		Y
324	Watson	Natalie	Yindjibarndi	DIRECT		Y
325	Woodley	Lawrence	Yindjibarndi	DIRECT		SAS

Dianne Smith Sylvia Allan

Private and Confidential – for YAC and WMYAC Directors only

WIRLU-MURRA YINDJIBARNDI ABORIGINAL CORPORATION

ACTION LIST

YAC AGM

Private and Confidential – for YAC and WMYAC Directors only

1486

	Action Required	WMYAC Comment	YAC Response/Comments
	Agree date for AGM	30 May 2014 suggested	
	Appointment independent chairperson for YAC AGM	Refer to previous request. Approach independent chairperson. Ron Mierkle suggested	
	Appoint WA Electoral Commission to arrange and conduct election process for directors	WAEC ready to assist	
2 May 2014	Cross check compiled register against published ORIC register	Prepare agreed list by 2 May 2014	
	Invite persons to nominate for position of director of YAC.	Nomination Forms for directors	
	Nomination of directors to be completed in accordance with WAEC requirements	Nomination Forms for directors from WAEC	
	Agree terms of notice including order of business for YAC AGM	Draft agenda - WMYAC and YAC Board meets to discuss and agree.	
	Check that Korda Mentha reps organised to come to YAC AGM		
9 May 2014	Members receive Notice of AGM to members with copy of Korda Mentha report		

“MW-180A”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-180A”** referred to in the witness statement of Michael Woodley dated 5 June 2023.


YINDJIBARNDI ABORIGINAL CORPORATION

PO Box 111, Roebourne, WA
 Tel: 08 9182 1497 Mob: 0419 097130
 I.C.N. Number 4370 A.B.N. Number 97 456 543 455
<http://yindjibarndi.org.au/>

28th of April 2014

Mr Paul Aubrey
 Chairperson
 Wirlumurra Aboriginal Corporation
 6/Queen Street Roebourne 6718 WA

Dear Paul,

RE: *Joint Discussion YAC Board and WMYAC Board.*

Thank you for the letter dated 15 April 2014. The people who have spoken to me regarding the community meeting have said that it was a very positive meeting and a good foundation to build. I can only hope that the progress made so far continues. My previous letter included comments recorded from the meeting to convey the sentiments of the meeting, it was not my intention to fully cover the meeting.

In relation to the Michael Woodley's comments, they were as a Yindjibarndi person as were other comments from the floor.

Concerning membership applications, we have now provided you with a copy of the form which has now been completed by all four ladies. Mark Chambers has declined an offer to assist resolve the membership applications where the four elders did not agree on eligibility. On that basis, Robin Stevens will be assisting with this process ^{this} next week.

In his previous efforts to resolve the membership issue, Robin expressed concern that he made several efforts to meet with Silvia Allan and Diana Smith in Roebourne and their unwillingness to engage with Robin on the membership issues frustrated his attempts to resolve the membership issues. With the current time pressure we will need cooperation to resolve the membership issues prior to calling the AGM. Assistance in this area would be appreciated.

In relation to the AGM we will be working towards meeting our ORIC obligations. It was YACs understanding that the subcommittee was to assist with communications between the two boards in the lead up to the AGM. We respect WMYAC's decision not to have a subcommittee and will try and communicate as best we can under the current arrangements. YAC has a Directors meeting on the 2nd of May 2014.

Yours sincerely,
 Thomas Jacob

THOMAS JACOB

Chairperson
 Yindjibarndi Aboriginal Corporation



“MW-181”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-181”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



Yindjibarndi Aboriginal Corporation

MEDIA RELEASE

Eighth of May 2014

Michael Woodley, reinstated as CEO of the Yindjibarndi Aboriginal Corporation (YAC).

YAC Board remains committed to the agreed 7 point plan of bringing the Yindjibarndi people together as one united nation.

YAC Board accepted the resignation of Michael Woodley on the 13th March 2014 in good faith as a key and significant demonstration of the YAC Board's commitment to the unification process.

Unfortunately despite a number of Community meetings and with the support of the WMYAC Chairman, the WMYAC Board and Elders have not demonstrated their commitment to the unification process.

The YAC Board today reinstated Michael Woodley as the CEO of YAC effective from 5th May and committed that Michael's appointment will remain in place until the WMYAC Board puts forward 6 Elders for the new YAC Board and 2 Elders for the new YAC Trust as agreed in the 7 point unification plan.

When these nominees are received and the new YAC Board and Trust is established to share the leadership of the Yindjibarndi people then and only then will it be appropriate for Michael Woodley to resign as YAC CEO such that the new Board can then appoint a new CEO.

Thomas Jacob
YAC - Chairperson

“MW-182”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked **“MW-182”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

Yindjibarndi Community And Commercial Ltd
c/- Suite 4, 19 Bishop Street,
Jolimont WA 6014

26 May 2014

The Chairman
Fortescue Metals Group Ltd (FMG)
Level 2, 87 Adelaide Terrace
East Perth WA 6004.

Dear Andrew

Yindjibarndi Aboriginal People

You would no doubt have been heartened to learn, as was I, that after many years of disagreements and unrest in March this year Elders from both the Yindjibarndi Aboriginal Corporation (YAC) and the Wirilu-Murra Yindjibarndi Aboriginal Corporation (WMYAC) came together for a special meeting of Elders and agreed on a way forward to unite the Yindjibarndi people.

There were 7 key points crucial to the unification of both WMYAC and YAC as agreed and signed off by the respective Elders. A copy of this agreement is attached for your information.

In a sign of goodwill and leadership the Board of YAC on the 14 March 2014 accepted the resignation of the YAC CEO, Michael Woodley. There have been subsequent Community meetings attempting to progress the 7 key points post the resignation of the YAC CEO; however, unfortunately a sub committee has not been successful in putting forward the names of Elders from WMYAC to be represented on both the Yindjibarndi Trust and the Board of the YAC.

After several months, the lack of progress on this crucial sharing of governance arrangement has seen the unification process stall. I understand that the forthcoming AGM is the best opportunity for a long while to achieve an equal sharing of Board members from both groups, rather than either dominating at the expense of the other, thereby risking continuing hostilities.

As Chair of the Trust I am writing to you seeking a meeting to see if we can find a way to assist the Yindjibarndi people to unify and implement their chosen plan as a foundational milestone.

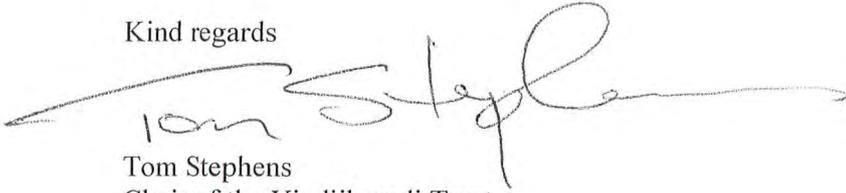
Whilst I understand that there may be concerns that a united Yindjibarndi will seek what the current YAC has been unable to do, a Native Title Agreement in the form of an Indigenous Land Use Agreement (ILUA) for the Solomon Hub, I can assure you that from my understanding of both the YAC and the Trust that a workable agreement is achievable.

A formally registered ILUA for Solomon Hub will legally certify the social and cultural license for FMG's long term aspirations for the Solomon Hub mining precinct.

As FMG has a longstanding and successful relationship with the WMYAC, I am hoping that you and I can work together so that we can collectively bring both the WMYAC and YAC Elders together, as they journey towards greater self determination.

I look forward to meeting with you in the coming weeks to facilitate a very important outcome for both the Yindjibarndi People and FMG ahead of the AGM so that a smooth transition of leadership with equal governance from both WMYAC and YAC can be established.

Kind regards

A handwritten signature in black ink, appearing to read 'Tom Stephens', written in a cursive style with a long horizontal flourish extending to the right.

Tom Stephens
Chair of the Yindjibarndi Trust

In light of the points below, we the joint board of directors of Yindjibarndi Aboriginal Corporation (YAC) and Wirlumurra Yindjibarndi Aboriginal Corporation (WMYAC) agree that the next step to progress with unifying the Yindjibarndi people is to have the 5-points below endorsed at a Yindjibarndi community meeting to be held Friday the 28th of March 2014.

- Equal representation on the YAC Board.
- Equal representation on the Yindjibarndi Trust YCCL.
- Equal representation on heritage surveys.
- Equal representation on negotiating of Native Title deals.
- Joint approval and appointment of a new YAC Chief Executive Officer (CEO)

6. Membership
7. Private Companies (YAC)

6. MEMBERSHIP

7. Private Companies

YAC Directors.

Thomas Jacobs

T JACOBS

Stanley Warrie

Stanley Warrie

Middleton Cheedy

Middleton Cheedy

Angus Mack

Angus Mack

Curtis Lockyer

Curtis Lockyer

Russell Sandy

Russell Sandy

Pansy Sambo

Pansy Sambo

Tootsie Daniels

Jean Norman

Jean Norman

Rosemary Woodley

Rosemary Woodley

Gabrielle Cheedy

Gabrielle Cheedy

Jolene Warrie

Jolene Warrie

WMYAC Directors.

Paul Aubrey

Paul Aubrey

Charmaine Adams

Charmaine Adams

Jimmy Horace

JIM HORACE

Maudie Jerrold

Maudie Jerrold

Gloria Lee

Gloria Lee

Penny Little

Penny Little

Jayne Ranger

Aileen Sandy

Aileen Sandy

Allery Sandy

Allery Sandy

John Sandy

John Sandy

Ken Sandy

Ken Sandy

Jill Tucker

Jill Tucker

Handwritten mark

“MW-183”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked **“MW-183”** referred to in the witness statement of Michael Woodley dated 5 June 2023.

Our Ref: YTS0614TL



Mr Tom Stephens
 Chair
 The Yindjibarndi Trust
 Yindjibarndi Community and Commercial Ltd
 c/- Suite 4, 19 Bishop Street
JOLIMONT WA 6014

9 June 2014

Dear Mr Stephens

YINDJIBARNDI ABORIGINAL PEOPLE

I refer to your letter of 26 May 2014, to Fortescue's Chairman. Your willingness to champion a reconciliation of Yindjibarndi people is welcomed and reciprocated.

As you have noted, Fortescue has a close working relationship with the Wirlu-Murra Yindjibarndi Aboriginal Corporation. Through the development of the Solomon Project, together we have delivered significant benefits to Yindjibarndi People and to Aboriginal People in and around Roebourne. For example:

- We have trained over 120 people, including nearly 50 Yindjibarndi through the Roebourne Vocational Training and Employment Centre (VTEC). Many of these people were long-term unemployed who would otherwise almost certainly remained on welfare.
- Fortescue has directly employed nearly 60 Yindjibarndi People, and our contractors have employed over 100 more.
- We have provided housing to 82 employees from Roebourne, which we understand provides housing for over 400 family members.
- We have delivered contracts valued at in excess of \$400m to businesses associated with Yindjibarndi People; and
- Fortescue has provided a range of other support services including:
 - facilitating the attainment of extraordinary drivers licenses to Yindjibarndi employees and their family members;
 - assisting Yindjibarndi employees in managing a wide range of physical and mental illness through our Aboriginal Health Program; and
 - providing literacy and numeracy training to Yindjibarndi people who would otherwise be functionally illiterate and therefore practically unemployable.

The New Force in Iron Ore
www.fmgl.com.au

Fortescue Metals Group Limited ABN 57 002 594 872 ACN 002 594 872
 ADDRESS Level 2, 87 Adelaide Terrace, East Perth, Western Australia 6004
 POSTAL ADDRESS PO Box 6915, East Perth, Western Australia 6892
 TEL +61 8 6218 8888 FAX +61 8 6218 8880 EMAIL fmgl@fmgl.com.au

Like you, at Fortescue we have been extremely concerned and disappointed at the conflict and division which has riven the Yindjibarndi People for many years now. And, we have been shocked and surprised at the personal, vitriolic attacks on Directors, members and consultants of WMYAC, Fortescue employees and our Chairman, by members and agents of YAC.

Notwithstanding the above, we believe Fortescue has consistently demonstrated that we are prepared to support WMYAC in achieving reconciliation within their own community. For example, in 2012-2013, Fortescue re-engaged in negotiations with YAC but these were abandoned after YAC breached trust in the negotiations and made derogatory media statements about Fortescue and the Solomon project.

We are advised that the biggest single blockage to reconciliation is YAC's refusal to process in excess of 300 applications for membership of YAC which have been lodged by Yindjibarndi People, and to proceed with the YAC AGM that is now eight months overdue. If YAC is genuine about bringing about a true reconciliation for Yindjibarndi People, then the leadership will facilitate access to the PBC by the very people that YAC is supposed to represent. In our view, this will demonstrate good faith and commitment to reconciliation, and would be warmly welcomed by the WMYAC and the broader Yindjibarndi community.

Fortescue is committed to supporting the WMYAC in their aspiration to deliver long-term, sustainable benefits to all Yindjibarndi People, and I would welcome the opportunity to meet with you and discuss ways in which we can ensure this occurs. In the immediate term, a first step to reconciliation would be to ensure any and all monies to be paid to the Trust are held in escrow and not released to the Trust for disbursement until after the outstanding memberships are processed. Such an initiative would visibly demonstrate good faith with the whole community. I look forward to discussing further with you.

Yours sincerely

FORTESCUE METALS GROUP



TIM LANGMEAD

Director, External Relations

“MW-184”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “**MW-184**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

Our Ref: YTS0614



Mr Tom Stephens
 Chair
 The Yindjibarndi Trust
 Yindjibarndi Community and Commercial Ltd
 c/- Suite 4, 19 Bishop Street
JOLIMONT WA 6014

12 June 2014

Dear Tom

YINDJIBARNDI ABORIGINAL PEOPLE

Thank you for your letter of 26 May. It was good to hear from you and I sincerely hope your involvement with The Yindjibarndi Trust brings benefit to all Yindjibarndi People.

I have complete faith in Nev Power and my executive team managing the issues you have raised and I am confident that they continue to act in a way that is consistent with the long term interests of the Yindjibarndi people, as can be evidenced in the jobs and economic opportunity now transforming lives in Roebourne.

It is appropriate that I respond to a couple of the points you raise. In particular, I reject any suggestion that Fortescue's Solomon Project in any way lacks legitimacy or a social license to operate. Since the majority of Yindjibarndi People voted to partner with Fortescue in March 2011, we have worked side-by-side with the Elders and members of the Wirlu-murra Yindjibarndi Aboriginal Corporation (WMYAC) and with the Eastern Guruma people, to build one of the most significant mining projects in Western Australia's recent history.

Through this process, we have created hundreds of jobs for traditional owners and delivered hundreds of millions of dollars in contracting opportunities to Aboriginal businesses and joint ventures. Through the establishment of a Fortescue Vocational Training and Employment Centre (VTEC) at Roebourne, we have delivered training which has led to employment which lifts individuals and families out of the cycle of welfare dependency. We have provided housing, health, education, legal and social support to hundreds of people from Roebourne and surrounds and these programs continue to grow and develop in partnership with traditional owners.

I point out Tom, that all of the above has been achieved in the face of a cynical and at times brutal campaign by the financially stronger YAC against WMYAC, in an attempt to destabilise and ultimately destroy the exercise in self-determination by Yindjibarndi people who want to choose a brighter economic future for themselves and their families and reject the corrosive sit-down money model of some mining companies. And, it's because of a negative and destructive campaign which has delivered nothing for Yindjibarndi People, that the current YAC executive have lost legitimacy and community support.

Tom, I respect your long and selfless service to the public as a member of parliament. I know that you are someone who upholds the ideals of democracy, self-determination and rule of law and I would therefore urge you to use all of your influence and power to ensure that all Yindjibarndi people are given an equal voice in their prescribed body corporate.

A first critical step in this process is for YAC to process the hundreds of outstanding Yindjibarndi membership applications and to hold the YAC AGM. The protracted delay in these processes is fuelling antagonism, suspicion and division within the community, and sends all the wrong messages if the YAC leadership is truly committed to a sustainable reconciliation.

Yours sincerely

FORTESCUE METALS GROUP



ANDREW FORREST

Chairman

Cc

Nev Power, CEO, Fortescue Metals Group Limited

Paul Aubrey, Chair, Wirlu-Murra Yindjibarndi Aboriginal Corporation

“MW-185”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 4 pages is the annexure marked **“MW-185”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

PO Box 111, Roebourne, WA

Tel: 08 9182 1497 Mob: 0419 097130

I.C.N. Number 4370 A.B.N. Number 97 456 543 455

<http://yindjibarndi.org.au/>

16 July 2014

To all members of the Yindjibarndi People

Dear Member,

Bringing Peace to our Community

I write to you as the acting YAC Chairman and personally, as one member of the Yindjibarndi Nation to another, to ask for your help in putting an end to the awful dispute that has divided our community since late 2010. I believe the only reason this dispute keeps going today is because a small group of members and some of the directors in the Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC), along with their advisors, are determined to keep it going. I do not believe the vast majority of the Yindjibarndi People choose to remain divided; I believe it is just a small group, of 30 or so members which I call the "Wirlu-Murra group"

You will recall that the dispute in our community started after the Wirlu-Murra group agreed with FMG, in December 2010, that a Land Access Agreement they had negotiated with FMG should be signed by YAC and the Applicant for the Yindjibarndi #1 Claim. That agreement would have allowed FMG to do anything it wanted in Yindjibarndi country but it provided no compensation for its effect on the native title rights in the Yindjibarndi Native Title Area and very little compensation for its effect on the native title rights in the claim area. YAC and the Applicant refused to sign it, so FMG funded WMYAC to start legal actions to change the Applicant on the Yindjibarndi #1 Claim and to have an administrator appointed to YAC. High level lawyers and consultants, engaged by WMYAC, have since advised WMYAC that the agreement they negotiated is rubbish, but still the Wirlu-Murra group and their advisors continue to fight against YAC.

The Wirlu-Murra group's current complaint against YAC is that they are not informed or involved in every Yindjibarndi community meeting that YAC holds about negotiations with developers and government. But this complaint is without foundation. The Yindjibarndi Aboriginal Corporation has tried to involve the Wirlu-Murra Board and members in everything we have done, but some the Wirlu-Murra group and their advisors choose to ignore the fact that YAC wants to bring the community back together, to end the dispute and to plan together for our collective future.

With this letter we have attached the correspondence that we have sent this year to WMYAC which demonstrates our commitment to bringing all Yindjibarndi people into the one camp – so that we can negotiate the best outcomes for current and future generations of Yindjibarndi people. We want to speak with one voice.

But the Wirlu-Murra group is directly opposed to all of us standing together as one and fighting for our rights together.

The Wirlu-Murra group is blocking our efforts to bring the community together because of their own personal reasons. It seems to me the real complaint is that the Wirlu-Murra group and their advisors believe they should have the right to inform WMYAC's Yindjibarndi members about what YAC is doing; and that YAC should therefore report what's going on to the WMYAC Board so the Wirlu-

Murra group and its advisors can give their opinion about whether YAC is doing a good job or not. In other words, Wirlu-Murra group believe they should be like a policeman and inspect what YAC is doing so they can tell WMYAC members what to believe about YAC.

You will recall the letter that was copied to you by YAC's Principal Legal Officer, on 19 June 2014, which asked the WMYAC Board to stop making false and misleading representations in letters to Resource companies, letters which suggested that WMYAC has a right to represent the Yindjibarndi People in matters affecting native title rights. The reply to that letter came from a law firm called Integra Legal, which is paid by WMYAC. Janette Tavelli is the Principal Legal Officer of Integra Legal, and her letter, which is attached, states:

The letters sent by the WMYAC Board on 30 May 2014 and 17 June 2014 do not in any way hold out WMYAC as the prescribed body corporate entitled to engage in negotiations under the *Native Title Act 1993* (NTA). The letters were written on behalf of WMYAC members, of whom over 400 are members of the Yindjibarndi Community and Native Title Claim Group.

Ms Tavelli claims these letters were written on your behalf as an Yindjibarndi person but I very much doubt that you were asked either by the WMYAC Board or Ms Tavelli, whether you agreed with what was said in those letters. Ms Tavelli goes on to say:

The letters are intended to hold YAC to account for its continued disregard for its obligations to inform and consult with the whole of the Yindjibarndi community when negotiating agreements affecting their personal and collective rights.

Ms Tavelli is just plain wrong about this. YAC is not obliged to consult with the whole of the Yindjibarndi community when negotiating agreements; YAC is obliged to negotiate agreements on behalf of the Yindjibarndi People in its capacity as the Prescribed Body Corporate and as the Agent of the Applicant for the Yindjibarndi #1 Claim; however, before signing any agreement that might affect your native title rights in Yindjibarndi country, YAC is obliged by law to consult with and obtain the consent of the Yindjibarndi People as a community of native title holders; and, if the Yindjibarndi People refuse to give their consent then YAC cannot sign the agreement. This is what YAC has done in the past and it is what YAC will continue to do in the future because that is what the law requires.

As for WMYAC not holding itself out as a prescribed body corporate, have a look at Rule 2 in WMYAC's Rule Book, which is available on the ORIC website. This Rule makes it clear that one of the aims of WMYAC, when it was established by FMG, was to:

“be and to perform the functions of a prescribed body corporate; and,
be and to perform the functions of a registered native title body corporate”.

YAC is the prescribed body corporate and the registered native title body corporate for the Yindjibarndi People but FMG didn't like it when YAC refused to sign the land access agreement it negotiated with WMYAC and so FMG set out to destroy YAC, and make WMYAC the PBC for the Yindjibarndi People. From this starting point in late 2010 the Wirlu-Murra group have been negotiating with FMG for nearly four years and those negotiations have directly affected the native title rights of the Yindjibarndi People; in particular, the registered native title right to protect sites of significance in the Yindjibarndi #1 claim area. But not once in all that time has WMYAC consulted with and informed the whole of the Yindjibarndi community about its negotiations or what it is doing.

WMYAC's Financial Reports on the website of the Office of the Registrar of Aboriginal Corporations (ORIC) show that **WMYAC received \$15 million dollars** over the two financial years, 2012 and 2013; and WMYAC's Annual General Reports, which are also published on the ORIC website, describe WMYAC as a “**Health and Community Services**” organisation, so the question that should be asked

is: **“What has WMYAC done with the \$15 million.** I think you’ll agree that very little has been spent on “health and community services”. So what has it been spent on?

The Wirlu-Murra group believe they police YAC and tell their Yindjibarndi members what YAC is up to, but they don’t believe they should tell their members what they have been up to.

YAC has evidence to show that most if not all of WMYAC’s money comes from FMG and that WMYAC uses that money for the following purposes:

- to pay large consultancy fees to lawyers and consultants to interfere in the affairs of YAC by starting unnecessary legal actions and by writing to corporations to tell them that they should be negotiating with WMYAC because WMYAC has 400 Yindjibarndi members;
- to pay “Christmas Money” to a close-knit group of loyal FMG supporters; and,
- to pay a small number of its members and directors large ‘Heritage Fees’, in return for them telling FMG’s heritage consultants that our beloved country in the Yindjibarndi #1 Claim Area has not been visited by our people for generations and therefore it is of no value to the Yindjibarndi People.

What the people who are doing these heritage surveys for FMG don’t realise is that the words they are reported to have said on the surveys will be used by FMG against the Yindjibarndi People to try and defeat the Yindjibarndi #1 Claim when it goes to trial next year, even if they didn’t actually say what was reported. For example, one Heritage Survey Report, which was written by Michael Gallagher, a long-term employee of FMG who now works as a ‘consultant’ for WMYAC, says of eleven “initiated Yindjibarndi men” who went with him on a heritage survey in the ‘Firetail’ area:

The survey team was confident that no Yindjibarndi people had used the area for generations - 'before grand father's father's generation'; and, agreed that the Firetail area no longer had cultural significance for Yindjibarndi people with respect to contemporary ceremonial and ritual observance.

Anyone who has gone through the Birdarra law ceremonies knows this is untrue because we sing the songs for that area every year so we can feel that country and it can feel us. I find it very difficult to believe that initiated senior Yindjibarndi lawmen like Clifton Mack, Bruce Woodley, Jimmy Horrace, Ricky, Ken and John Sandy and Vince Adams, or even initiated young Yindjibarndi men like Shaun Derschow, Birchell Munda, Charly Sandy and Robbie Toby, would ever say that the area is no longer culturally significant; but that’s what Michael Gallagher says they said.

As I said earlier, over the past six months YAC has tried very hard to resolve the ongoing dispute between the Wirlu-Murra group and YAC in order to restore peace and balance to our community. As the attached letters from YAC to the Chairman and Directors of WMYAC show, this has included:

- respectful requests for the WMYAC Directors to meet with the YAC Directors to try to resolve our differences;
- offering equal representation for WMYAC members on
 - the YAC Board;
 - the Yindjibarndi Community and Commercial Trust;
 - heritage surveys arranged by YAC;
 - negotiation teams to negotiate native title agreements; and,
- joint approval and appointment of a new CEO for YAC, with Michael Woodley resigning from that position as a demonstration of good faith.

These offers have been made in good faith not because YAC believes the Wirlu-Murra group has any legitimacy in representing the Yindjibarndi People in native title matters, but because the Directors

and members of WMYAC who continue to fight YAC are, after all, our kin. However, every time we believed we had reached agreement on a way to reunite the community it was later rejected; and the question is, "Why"; "Who is pulling the strings? It seems to me that WMYAC's whitefella consultants and advisors are determined to keep our community divided; and they get paid a lot of money out of funds that come from FMG for doing it. For example in the two financial years of 2012 and 2013 WMYAC spent nearly \$2 million on legal fees and more than a million dollars on consultancy fees to keep up the fight against YAC. That's \$3 million that could have been used to improve the health of our people.

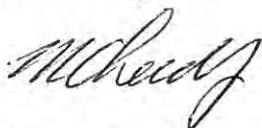
We, the Yindjibarndi People, have suffered enough as a nation through the actions of whitfellas; and we should not allow them to keep us divided. We are all kin; and so I ask you to help YAC put an end to this nonsense.

The Yindjibarndi #1 Native Title Claim will be heard in the Federal Court, in May next year. Instead of fighting with each other we need to be choosing who will get into the witness box for Yindjibarndi and give evidence to win our country back. Our country needs us to be united and strong so that our grandchildren get their rightful cultural inheritance. If we don't stand together now how will we live with the shame of not putting our country ahead of our squabbles? I pray to Minkala to give us all the strength to forgive each other and so bring peace back to our community.

I ask all Yindjibarndi people who are members of WMYAC to please go along to the WMYAC AGM, on 25 July 2014, and vote for a new and different Board of Directors - one that will stop using the money it gets to fight against YAC and instead use it to make a real difference to the health of our people; a Board that will work with YAC to reunite our community and win our native title claim.

The WMYAC AGM is being held at the 50 Cent Hall in Roebourne, starting at 10:00 am, on Friday 25 July 2014 and I pray you will hear the call of your country and come along.

Yours sincerely,



Middleton Cheedy,
Acting Chairman,
Yindjibarndi Aboriginal Corporation

“MW-186”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

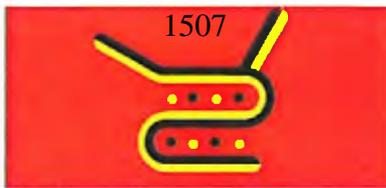
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked **“MW-186”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

08 February 2012
Messrs Corser & Corser
Level 4, 16 Irwin Street
PERTH WA 6000

Dear Sirs,

RE: YINDJIBARNDI RECONCILIATION

I refer to the meeting on Friday 13 January 2012 at the Woodbrook law grounds between senior Yindjibarndi men from Yindjibarndi Aboriginal Corporation (YAC) and Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC); respectively: Stanley Warrie, Michael Woodley, Thomas Jacob, Angus Mack; and, Bruce Woodley, Clifton Mack, Jimmy Horace and Paul Albery ("First Meeting").

This meeting was arranged by your Kerry Savas with the help of Michael Woodley and others and was successful in laying a foundation for the resolution of the current disputes in the Roebourne Yindjibarndi community.

The men who attended the First Meeting at Woodbrook decided to meet again the following Tuesday, 17 January 2012, at the public basketball courts in Roebourne and to invite all Roebourne Yindjibarndi people to attend to discuss reconciliation ("Second Meeting"). The Second Meeting was also a success, with most attendees deciding to engage in further meetings and discussions with a view to resolving the current disputes by way of mediation and negotiation, rather than through litigation.

In light of the fact that both these meetings were attended by senior Yindjibarndi people, who hold senior positions in YAC and WMYAC, and the fact that both meetings resolved to continue the process of reconciliation outside the Court process, the YAC Directors invite the WMYAC directors and members:

- 1) to join with all Yindjibarndi people in attending the meetings, which are scheduled to commence at 3:00 PM on both the 13th and the 14th of February at the "Fifty-cent Hall" in Roebourne, to discuss a proposed Indigenous Land Use Agreement (ILUA) between RTI0 and YAC on behalf of the Yindjibarndi People; and
- 2) to engage in a process of mediation to resolve the issues that underpin the matters currently before the Supreme Court and the Federal Court.

An electronic copy of the Notice and Agenda for the meetings is attached along with a letter of invitation, which gives a brief overview of the background to RTI0's proposed ILUA.



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

Also attached is an electronic copy of a letter from the Office of the Registrar of Indigenous Corporations, dated 25 January 2012, which advises of “*a new collaborative approach to dispute management within registered native title bodies corporate*”, which is being led by ORIC but involves interagency case management protocols developed by ORIC, the National Native Title Tribunal, the Department of Indigenous affairs and the Commonwealth Attorney-General’s Department.

The YAC Directors believe that a “win” by either side, in the matters currently before the courts may well, in the long term, serve only to deepen divisions in the Yindjibarndi community; and, that the continuation of the current litigation will seriously impair the potential for successful outcomes in both the determination of the Yindjibarndi #1 Native Title Claim and in other future act negotiations. For these reasons, the YAC Directors believe every possible effort should be made, by all concerned, to resolve the current actions through a process of mediation directed towards addressing the reasonable concerns of the parties that underpin those actions.

The YAC Board suggests that a mediated outcome might best be achieved if, in addition to seeking assistance from ORIC, under the interagency case management protocols referred to above, assistance is also sought, via the office of the Social Justice Commissioner, from someone who is well versed in the phenomenon of “lateral violence” in indigenous communities - as described in the 2011 *Social Justice Report*, on the Australian Human Rights Commission website:

http://www.hreoc.gov.au/social_justice/sj_report/sjreport11/index.html

The YAC Directors also believe that the mediation process should include an independent review of FMG’s proposed ILUA, carried out by a person nominated by a body such as the Gilbert and Tobin Centre of Public Law, who has expertise in native title agreements; and, that this review should be followed by a transparent workshop arrangement, facilitated by a competent independent body to explain the terms of FMG’s proposed ILUA, in plain language and to ensure all members of the Yindjibarndi People fully comprehend those terms.

In the context of the mediation proposed above, the YAC Board undertakes to satisfy all reasonable concerns that relate to, or underpin, the actions commenced by WYAC members in the Supreme Court and the Federal Court; including by way of disclosing all relevant financial and other business records; and, by convening a properly notified meeting of all members of the Yindjibarndi #1 claim group and a properly notified General Meeting of YAC, which is inclusive of the persons whose memberships were cancelled, in December 2010, after YAC learned they had negotiated FMG’s proposed ILUA without YAC’s knowledge or consent.

The Chairman and Board of YAC urge you to do everything in your power to promote a mediated resolution of the issues in dispute between the members of WYAC and YAC, so that the Yindjibarndi People may regain the strength of unity



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
A.B.N. Number 97 456 543 455

which, prior to 2010, kept Yindjibarndi law and culture strong, even in the darkest of times.

YAC acknowledges receipt of a number of letters from your office over the period since late November 2011. As you may know, YAC no longer has a solicitor assisting us in the Supreme Court and Federal Court matters; and your requests, along with many others, arrived at the time of year when many Yindjibarndi people are fully engaged in Yindjibarndi law ceremonies.

In light of the above, the YAC Directors respectfully ask you to seek instructions for consent orders to the following effect:

1. that the date for the filing of responsive affidavits in the Supreme Court Action, 2072 of 2011, be extended to a date to be fixed;
2. that the proceedings in Supreme Court Action, 2072 of 2011, be adjourned to a date to be fixed, pending the outcome of the proposed mediation;
3. that the interlocutory proceeding, under s 66B of the Native Title Act 1993, in Federal Court Action WAD 6005 of 2003, be adjourned to a date to be fixed, pending the outcome of the proposed mediation;
4. that the requests made by Corser & Corser relating to the inspection of the financial and other business records of YAC and Juluwarlu be withdrawn and all concerns in respect of those records be addressed in the proposed mediation; and,
5. that the request made by Corser & Corser on 30 January 2012, which seeks YAC's consent to a proposed amendment of the original Notice of Motion filed in the Supreme Court Action, 2072 of 2011, be withdrawn, pending the outcome of the proposed mediation.

Yours Sincerely

Stanley Warrie
Chairman, Yindjibarndi Aboriginal Corporation

cc: Registrar of the Supreme Court
Registrar of the Federal Court
ORIC
Australian Human Rights Commission
Gilbert and Tobin Centre of Public Law

“MW-187”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “**MW-187**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



10 February 2012

Mr Stanley Warrie
Yindjibarndi Aboriginal Corporation
PO Box 111
ROEBOURNE WA

By Email: pdavies@juluwarlu.com.au

Dear Sir

WIRLU -MURRA YINDJIBARNDI CORPORATION (WYAC)

I refer to your letter of 8 February addressed to Corser and Corser a copy of which was forwarded to me by Corser and Corser and also emailed to me by Mr Philip Davies on 9 February 2012.

As you are aware this firm is in the process of handover of WYAC matters from Corser and Corser. Integra Legal's role will be to take over the conduct of Supreme Court Action 2071 of 2011 as well as to oversee other actions and negotiations currently on foot and provide ongoing advice.

As you can appreciate, on the basis of my limited instructions at the moment I am not in a position to properly advise WYAC and/or provide any substantial response to your letter.

However, I would like to make some preliminary points.

January 2012 Meetings

My instructions currently are that the basis for arrangement of that meeting and the outcome as noted in the opening paragraphs of your letter are not complete or accurate.

Whilst objectives of reconciliation through mediation are objectives that any parties involved in a dispute need to consider, the process needs to be inclusive, open and structured to identify and address the issues at hand.

I will take instructions as to whether the WYAC directors, at first instance, are prepared to meet with the YAC directors and what matters might properly be subject of discussion, whether matters can be mediated and if so, what form of mediation may best suit the circumstances. I am well aware of the number of alternative forms of mediation and the many excellent organisations providing mediation services. This is a matter which can be considered if and when necessary.

Proposed Meeting 13-14 February 2012

It is of concern to WYAC that YAC seeks to organise such a meeting on short notice and without a proper opportunity for all interested parties to be at least partially informed of the nature and extent of the issues.

Further, it is surprising that an organisation such as Rio Tinto, if fully informed of the background, would be involved in what is clearly a premature meeting having regard to the fact that the key issue ie. the proper contracting party in relation to the proposed ILUA is unresolved.

Allion Legal was separately briefed prior to our engagement to open communications with Rio Tinto in relation to the proposed ILUA. My role is to liaise with Allion Legal and overview the conduct of these negotiations. Allion Legal will be writing separately to Rio Tinto today to ensure that Rio Tinto is made aware, if not already on notice, of matters that go to the core of the key issue ie. the proper contracting party in relation to the proposed ILUA.

Having regard to the issues in the Supreme Court proceedings, the Federal Court proceedings and the recent decision in the National Native Title Tribunal, it is of concern that YAC considers it to be in the best interest of Yindjibarndi people to attempt to push consideration of the proposed ILUA, in circumstances where the whole process could well be invalidated.

In this regard, WYAC formally requests that the proposed meetings of 13-14 February be postponed to a date to be determined, to allow such issues to be at least clarified if not determined. I would be grateful if you could notify me by return in relation to this matter. Should the meetings proceed, I request that this letter and the letter from Allion Legal to Rio Tinto be formally tabled at the meeting and all attendees fully informed of its contents.

Supreme Court Proceedings

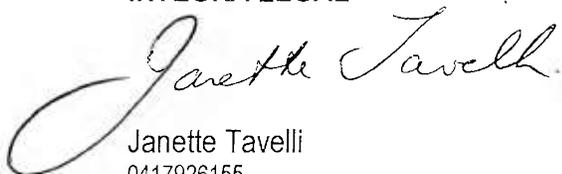
I expect to have a complete handover of this matter from Corser and Corser shortly. On the basis of my instructions from WYAC and briefing from Corser and Corser, I see no benefit to either party in delaying the proper progress of this matter. I will be seeking appropriate directions from the Court to ensure that reasonable timeframes are put in place that can accommodate both parties in addressing matters such as filing of affidavits, production of documents, listing for hearing and the matter generally.

Federal Court Proceedings

Eastwood Sweeney are on the record for WYAC in this matter and will continue to do so. My role will be to liaise and overview the conduct of these proceedings. On the basis of my instructions from WYAC and briefing from Eastwood Sweeney, I see no benefit to either party in delaying the proper progress of this matter towards a hearing on 2 April 2012.

Please do not hesitate to call me if you wish to discuss this letter further.

Yours sincerely,
INTEGRA LEGAL



Janette Tavelli
0417926155
jtavelli@integralelegal.com.au

“MW-188”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 3 pages is the annexure marked **“MW-188”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION
 PRESCRIBED BODY CORPORATE

NOTICE
Yindjibarndi Aboriginal Corporation (YAC)
Two-day meeting:

To all members of Yindjibarndi Aboriginal Corporation (YAC) and to all members of the Yindjibarndi #1 Native Title Claim Group

YAC invites you to a two-day meeting to discuss a proposed Indigenous Land Use Agreement

between

YAC, on behalf of the Yindjibarndi People, & Rio Tinto Iron Ore (RTIO)

WHEN: Monday the 13th of February 2012
Tuesday the 14th of February 2012

WHERE: Roebourne 50c hall.

STARTING TIMES: 3:00pm for both meetings.

AGENDA

MONDAY 13 — Yindjibarndi only meeting to discuss:

- The Statement of Intent (SOI) executed by YAC & RTIO in December 2011.
- Outline of RTIO development plans and compensation package currently offered by RTIO
- Scope of negotiations for an Indigenous Land Use Agreement (ILUA) – compensation, training, employment and business opportunities; heritage protection protocol; review mechanism
- Framework for negotiations (negotiating teams and scope of authority)

It is very important for all members of YAC and the Yindjibarndi #1 native title group to attend this session, as YAC will be asking members for feedback and advice on these matters.

TUESDAY 14th —YAC and the Yindjibarndi native title group meeting with RTIO representatives to discuss:

- RTIO's development proposals and proposed compensation package – breakdown explanation
- Scope of negotiations over next six months: Heritage protocol; training, employment and business opportunities; cultural awareness training; review mechanism
- Framework for negotiations
- Legal requirements for registration of an ILUA

Please call Michael Woodley, YAC Chief Executive Officer (CEO), for further information.

Regards,
 Stanley Warrie
 YAC – Chairperson

Refreshments and dinner will be provided


YINDJIBARNDI ABORIGINAL CORPORATION

PO Box 111, Roebourne, WA
 Tel: 08 9182 1497 Mob: 0419 097130
 I.C.N. Number 4370 A.B.N. Number 97 456 543 455
<http://yindjibarndi.org.au/>

7 February 2012

A NEW BEGINNING — TRAVELLING TOGETHER

**To all Directors, Elders and members of Yindjibarndi Aboriginal Corporation (YAC)
 And to ALL members of the Yindjibarndi #1 native title claim group:**

Dear Countrymen and Women,

1. YAC invites you to attend a two-day meeting to discuss a proposal for an Indigenous Land Use Agreement (ILUA) with Rio Tinto Iron Ore (RTIO). Please see the enclosed Notice of Meeting for details.
2. As you may know, RTIO holds a number of existing interests in Yindjibarndi country such as the Pannawonica Railway Line, which runs throughout Yindjibarndi country; a Licence to take water from the Millstream aquifer; and, two exploration licences in the vicinity of Mt Margaret. Licenses for these operations were granted to RTIO by previous governments without the free prior and informed consent of the Yindjibarndi People.
3. More recently, RTIO has moved to build a second railway line right next to its existing railway line; however, this time, RTIO wants to obtain the free prior and informed consent of the Yindjibarndi People before building the new railway.
4. RTIO's proposed new railway will travel across the Yindjibarndi Native Title Determination Area; and, it will thus affect the enjoyment of rights held by Yindjibarndi people under traditional law that area.
5. In 2005 the the Federal Court gave legal recognition of native title rights to the Yindjibarndi People in the Yindjibarndi Determination Area, and the Yindjibarndi People nominated YAC to be the Prescribed Body Corporate (PBC) and Trustee for the Yindjibarndi People. The Federal Court then made a determination that YAC holds the native title rights and interests in the Yindjibarndi Determination Area, on trust, for the benefit of the Yindjibarndi People.
6. Because it is the YAC that holds those rights in the Yindjibarndi Determination Area, anyone who wishes to do anything that will affect those rights must first get the consent of YAC — and YAC's Constitution contains special rules about what must be done by YAC to obtain the consent of the Yindjibarndi People.
7. RTIO's proposed new railway will also travel across the Yindjibarndi #1 Native Title Claim Area and affect the enjoyment of rights held by Yindjibarndi people in that area. These rights have not yet been given legal recognition by the Federal Court, through a determination of native title — and until such time as a determination is made, the Yindjibarndi People have only a “right to negotiate” with anyone who wants to do anything that will affect those rights.
8. Normally, it is the members of the Applicant on a native title claim, who jointly exercise the “right to negotiate” about things that may affect traditional rights in a native title claim area *on behalf of all members of the Yindjibarndi native title group*. Currently the seven members are Ned Cheedy, Sylvie Allan, Mavis Pat, Thomas Jacob, Alum Cheedy, Aileen Sandy, and Michael Woodley.
9. However, in 2008, the Yindjibarndi People unanimously decided to end their relationship with PNTS, and asked the members of the Applicant for the Yindjibarndi #1 Native Title Claim to appoint YAC as their Agent. A Federal Court FORM signed by all members of the Applicant was then lodged in the Federal Court on 23 February 2008 — this means that YAC now exercises the right to negotiate



Yindjibarndi #1 Native Title Claim matters on behalf of the Yindjibarndi People in accordance with the YAC Constitution.

10. YAC's authority to act as the Agent for the Applicant had to be given by the unanimous decision of all members of the Applicant for the Yindjibarndi #1 Native Title Claim — and this authority can only be removed by way of a unanimous decision made by the seven remaining members of the Applicant for the Yindjibarndi #1 Native Title Claim.
11. Since no such decision has ever been made to remove YAC's authority, YAC remains the authorised Agent for the Applicant and exercises the "right to negotiate" on behalf of the Yindjibarndi People.
12. RTIO was a party to the Yindjibarndi Native Title Determination, in 2005, and knows that, in accordance with that Determination of the Court, YAC holds the native title rights and interests in the Yindjibarndi Determination Area.
13. RTIO is also a party to the Yindjibarndi #1 Native Title Claim, and knows that, in accordance with the authorisation signed unanimously by members of the Applicant in 2008, YAC is the authorised Agent for the Applicant on the Yindjibarndi #1 Native Title Claim.
14. For these reasons, RTIO asked YAC to negotiate an Indigenous Land Use Agreement (ILUA) to obtain the consent of the Yindjibarndi People for RTIO mining and rail operations in both the Yindjibarndi Native Title Determination and the Yindjibarndi #1 Native Title Claim areas.
15. In December last year YAC agreed to do so, and a Statement of Intent was signed by YAC and RTIO, which sets out a basic framework for what needs to be done over the next 6 months in the negotiations.
16. There are some very positive developments in the Statement of Intent and YAC invites you to attend this two-day meeting so that we can explain what is proposed.
17. This meeting is the start of the negotiation process and will give you an opportunity both to understand the offer being made by RTIO and to provide your opinions and advice to YAC.
18. YAC also requests your help to expand YAC's contacts data base for all Yindjibarndi people, so YAC can keep every Yindjibarndi person informed about important native title business in the future. To assist us to do this can you kindly —
 - a. fill in the enclosed FORM; and then,
 - b. either mail the form back to YAC or bring it along to the meeting next week and give it to our Administration Officer, Phil Davies. [All information provided will be kept confidential and used only for native title business.]
19. We would also like your help to add more Yindjibarndi contacts to our list. Can you please forward us the names and/or contact details of any Yindjibarndi who you think should be on the contact list.
20. Finally, as the trustee for the Yindjibarndi People, YAC must at all times, by law, act in the best interests of the Yindjibarndi People. We take this responsibility very seriously and we very much look forward to seeing you at the meetings on the 13th and 14th and working together for the best possible outcomes for the long-term future of our people.

Thankyou and yours sincerely,

Stanley Warrie
YAC Chairperson
On behalf of Yindjibarndi Aboriginal Corporation

Please call Michael Woodley, YAC Chief Executive Officer (CEO), for further information.
91821497 — Mobile 0419 097130 — Fax 91821035
mwoodley@juluwarlu.com.au
www.yindjibarndi.org.au



“MW-189”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

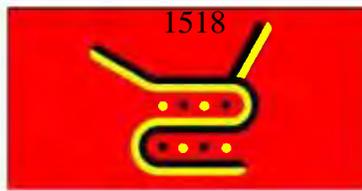
**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 21 pages is the annexure marked **“MW-189”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

YINDJIBARNDI ABORIGINAL CORPORATION
ANNUAL GENERAL MEETING
HELD WEDNESDAY THE 21ST OF MARCH 2012
AT THE ROEBOURNE COMMUNITY (50CENT) HALL
SHOLL ST. ROEBOURNE, WESTERN AUSTRALIA, 6718
AT 6.30 PM

NOTE:

1. YAC AGM Notices were mailed to the YAC member list from the Roebourne Post Office on Friday 24/02/12 - A copy of the YAC AGM notice for this meeting is attached to these minutes (Page 19).
2. The YAC AGM notice was also advertised for 4 editions of the local weekly newspaper, the Pilbara News (distributed every Wednesday), for the publication dates of 29/02/12, 07/03/12, 14/03/12 and 21/03/12 (Pages 20 to 22).
3. A copy of the emails confirming the placement of the advertisements and a copy of the invoiced cost of the placement of the meeting notices in the classified section of the Pilbara News is attached to these minutes (Page 23).
4. A copy of the mailing list used for this YAC AGM is attached to these minutes (Pages 24 to 30)

OPENING OF THE MEETING:

Michael Woodley (MW), Chief Executive Officer (CEO) of the Yindjibarndi Aboriginal Corporation (YAC) opened the meeting.

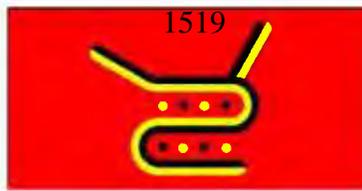
MW told group that the police on standby to stop any disruptions that may occur. He said that we are hoping to have a respectful meeting that addresses the business of the day.

Stanley Warrie (YAC Chairperson) addressed the meeting - very important to have this meeting - we want to move along and work out the issues amongst ourselves - we want to move ahead as a group - one Yindjibarndi group

MW - made the statement - one more point is that only members can vote - the board may consider any applications - as an Yindjibarndi you are welcome to be here - but only members can vote

George Irving (GI), In-House Counsel for the YAC addressed the group - he said that the 27 people whose memberships were cancelled at the last YAC AGM held on 15/12/10:

1. have been invited to attend this YAC as full members of the YAC
2. were notified of the YAC AGM in accordance with the rules of the corporation



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

3. had their YAC membership reinstated

AGENDA ITEM ONE:

Attendance:

Members in attendance (117 members present of a total membership of 216):

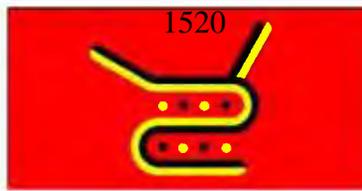
May Adams, Stephen Adams, Jessie Alberts, Jimmy Alberts, John Alberts, Judith Alberts, Jessica Allan, Lisa Allan, Sylvia Allan, Gillian Aubrey, Glen Aubrey, Noel Aubrey, Paul Aubrey, Alum Cheedy, Gabrielle Cheedy, Jane Cheedy, Kasey Cheedy, Lyn Cheedy, Marion Cheedy, Middleton Cheedy, Pansy Cheedy/Sambo, Rebecca Cheedy, Rosie Cheedy, Dorothy Coffin, Gelissa Coppin, Judith Coppin, Lorraine Coppin, Theresa Coppin, Tootsie Daniels, Susan Edwins, Caroline Fazeldean, Alice Guinness, Esther Guinness, Janice Guinness, Kevin Guinness, Bigali Hanlon, Marlene Harold, Jimmy Horace, Mark Horace, Belinda Hubert, Dennis Hubert, Erica Hubert, Jenny Hubert, Joyce Hubert, Stephen Hubert (Trouble), Stephen Hubert (Geoffrey), Travis Hubert, Wendy Hubert, Elizabeth Hunter, Maisie Ingie, Matthew Ingie, Roderick Jacobs, Thomas Jacobs, Maureen James, Amy Jerrold, Maudie Jerrold, Wayne Kelly, Billy King, Junior Larry, Melissa Larry, Glen Lee, Gloria Lee, Curtis Lockyer, Jeremiah Lockyer, Simon Lockyer, Allan Mack, Angus Mack, Nicholas Mack, Jasmine Mack, Berry Malcolm, Harry Mills, Carol Norman, Jean Norman, Len Norman, Esther Pat, Mavis Pat, Margaret Read, Aileen Sandy, Allery Sandy, Celia Sandy, John Sandy, Ken Sandy, Ricky Sandy, Russell Sandy, Diana Smith, Brenda Smirke, Christine Toby, Florence Toby, Glen Toby, Jennifer Toby, Karen Toby, Jill Tucker, Lesley Walker, Doreen Warrie, Joylene Warrie, Kaye Warrie, Sharon Warrie, Stanley Warrie, Terrance Warrie, Wendy Warrie, Kim Whalebone, Jennifer Williams, Joanne Willis, Aaron Wilson, Joyce Wilson, Lynette Wilson, Maria Wilson, Sonia Wilson, Alison Woodley, Bruce Woodley, David Woodley, Finola Woodley, Kingsley Woodley, Michael Woodley, Preston Woodley, Rosemary Woodley, Shirley Woodley

Other Community members in attendance (who are not members of the Yindjibarndi Aboriginal Corporation

Cora Watson, Jeffrey Gilbey, Clifford Larry, Mary Watson, Alec Tucker, Steven Jerrold, Maureen James, Mikayla Toby, Warren Davies, Donna Willis, Kylie Mowarin, Christina Boonga, Maureen Hunter, Dwayne Toby, Dallas Mack

Proxies Held

34 Proxies were held by Yindjibarndi Aboriginal Corporation (YAC) Members. During the meeting it was declared that 33 proxies were held, however upon examining and counting the proxies, it was found by Philip

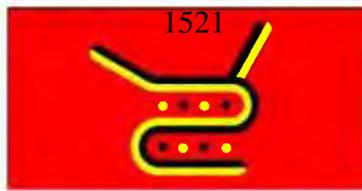


YINDJIBARNDI ABORIGINAL CORPORATION
 I.C.N. Number 4370
 A.B.N. Number 97 456 543 455

Davies, who compiled the minutes, that 34 valid proxies were held. Proxies held were as follows:

Number	YAC Member Proxy	Proxy Held By YAC Member:
1	Jessie Alberts	John Alberts
2	Judy Alberts	Roderick Jacobs
3	Bevan Broun	Bigali Hanlon
4	Joanne (Jody) Broun	Marion Cheedy
5	Michelle Broun	Michael Woodley
6	Fabian Cheedy	Jane Cheedy
7	Robert Cheedy	Middleton Cheedy
8	Ned Cheedy	Pansy Cheedy/Sambo
9	Shantelle Cheedy	Gabrielle Cheedy
10	Deborah Coppin	Theresa Coppin
11	Sebastian Coffin	Jean Norman
12	Bianca Dann	David Woodley
13	Colin Derrell	Esther Pat
14	Max Hubert	Joyce Hubert
15	Terry Hunter	Elizabeth Hunter
16	Marine (Maureen) James	Lesley Walker
17	Ashley James	Simon Lockyer
18	Austin James	Terrance Warrie
19	Tony Harrold	Lorraine Coppin
20	Talila Milroy	Lyn Cheedy
21	Kelvin Roberts	Thomas Jacobs
22	Andrew Ryder	Angus Mack
23	Dianne (Estelle) Ryder	Gelissa Coppin
24	Janelle Ryder	Kaye Warrie
25	Lynda Ryder	Rhonda Norman
26	Randal Sambo	Dorothy Coffin
27	Terrance Sandy	Curtis Lockyer
28	Doreen Warrie	Joylene Warrie
29	Janice Warrie	Stanley Warrie
30	Kerry Warrie	Wendy Warrie
31	Kathy Warrie	Maisie Ingie
32	Chet Woodley	Rosemary Woodley
33	Hayden Woodley	Finola Woodley
34	Simon Zuvich	Rosie Cheedy

A scanned list of the proxy forms are attached to these minutes (Pages 31 to 64)



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Others present:

Philip Davies – attended in his capacity as ORIC Contact Officer for the Yindjibarndi Aboriginal Corporation (YAC). It was agreed by those present that he conduct the meeting and take the minutes of the meeting.

Greg McIntyre: Senior Counsel and legal representative for the Wirlu-Murra Yindjibarndi Aboriginal Corporation (WYAC)

George Irving: In-house counsel for the Yindjibarndi Aboriginal Corporation (YAC)

Kate Wilson and Garry Ansell - Filming: Both Kate and Garry are employees of Juluwarlu Group Aboriginal Corporation (JGAC) and they filmed the meeting.

This meeting was filmed in accordance with the wishes of those present - the film is held by Juluwarlu Group Aboriginal Corporation

Philip Davies stated that even though the attendance list had not yet been presented to him it was clear that many YAC members are in attendance and that there are many more members present than the 10 members required to make up a quorum so that a General Meeting can commence (as specified by the YAC constitution - clause 4.7). Therefore the AGM could begin.

AGENDA ITEM TWO:

Apologies:

There were no apologies

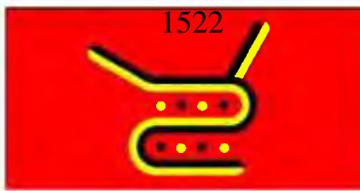
AGENDA ITEM THREE:

Check the register of members

The list of Yindjibarndi Aboriginal Corporation (YAC) members registered with ORIC was available for this meeting and available to be inspected by all those people present.

AGENDA ITEM FOUR:

Confirm previous minutes of the previous YAC Annual General Meeting held on the 15th of December, 2010.



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The minutes of the previous Yindjibarndi Aboriginal Corporation Annual General Meeting, which was held on the 15th of December 2010, were read. The motion was put that:

Resolution One: YAC AGM 21/03/12

Except for such parts of the minutes as may remain in contention in the Supreme Court proceedings CIV 2072 of 2011, this meeting confirms the minutes of the YAC AGM held on 15 December 2010.

Moved: Bigali Hanlon
Seconded: Thomas Jacobs
Passed: Unanimously

AGENDA ITEM FIVE:

Any business arising from the minutes:

As mentioned and detailed in the notice for the meeting the Chairman (Stanley Warrie) proposes to move the following resolution, which has been approved by the Directors:

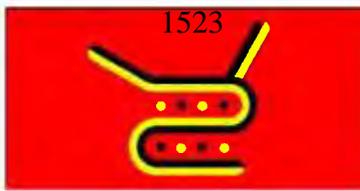
'That the 27 Yindjibarndi members, whose memberships in YAC were cancelled (following the negotiation of an ILUA affecting YAC's interests without YAC's knowledge or consent) be permitted to attend this AGM and be permitted to vote as members'.

However this motion was not put to the meeting. The legal advisers present, Mr George Irving and Mr Greg McIntyre recommended that instead the minutes of the meeting simply note that the members, whose memberships were cancelled at the previous AGM, and which is the subject of a legal challenge by those members, have been invited to attend this AGM and participate as members of the YAC.

It is noted that the 27 members in question are:

Sylvia Allan, Aileen Sandy, Stephen Adams, Clifton Mack, Marlene Harold, May Adams, Amy Jerrold, Berry Malcolm, Allery Sandy, Wendy Hubert, Bruce Woodley, Ricky Sandy, Gloria Lee, Mavis Pat, Ken Sandy, Celia Sandy, Jimmy Horace, Mark Horace, Jill Tucker, Diana Smith, Charmaine Adams, Joanne Willis, Esther Pat, John Sandy, Linda Norman, Harry Mills and Maudie Jerrold.

Of those 27 members named above only Linda Norman, Clifton Mack and Charmaine Adams were not present.



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AGENDA ITEM SIX:

Resolution proposed to alter YAC Director's terms:

Rule 5.5 of the current YAC Rulebook states that 'Directors are appointed at the AGM for a term of one year. They are eligible to be re-elected',

The proposal was put to the meeting that the constitution be altered so that YAC Directors be elected for two year terms, rather than being elected for one year. The YAC AGM notice for this meeting notified the proposed motion in the following way:

At Rule 5.5, delete the current wording 'Directors are appointed at the AGM for a term of one year. They are eligible to be re-elected', with the following:

'Directors are appointed at the AGM on rotation for a term of two years, so that half the directors' appointments expire each year. They are eligible to be re-elected'

Counsel for the Wirru-Murru Yindjibarndi Aboriginal Corporation (WYMAC), Mr Greg McIntyre, and YAC In-House Counsel, Mr George Irving, had a long discussion of the wording of this particular motion, so that the wording truly reflects the proposed change to the Constitution. Both George and Greg wanted the motion to reflect that for this year 6 people will be elected as YAC Directors for a term of two years, and 6 people will be elected for one year. Then at the next YAC AGM, the positions of the 6 YAC Directors who had been elected for one year will be declared vacant, and the 6 YAC Directors who are elected in their place will be elected for a two year term. Therefore this change to the Constitution will facilitate the election of 6 YAC Directors at each YAC AGM for a term of two years.

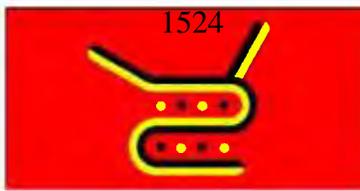
Alum Cheedy (AC) spoke to those present to explain the proposed alteration to the Constitution; what George is going on about here - some of the Directors will bunny for two years and some of the Directors will bunny for one year.

After agreeing on the wording of the proposed motion, the following resolution was put to the floor:

Resolution Two: YAC AGM 21/03/12

The Directors are to be appointed at the AGM for a two-year rotational term. For the purposes of the rotation of the first set of Directors, elected pursuant to this rule, half will be appointed for a one-year term and half for a two-year term. They are eligible to be re-elected.

Moved: Angus Mack
Seconded: Lyn Cheedy
Passed: Unanimously



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On a show of hands the motion was passed unanimously.

AGENDA ITEM SEVEN:

**Yindjibarndi Determination Area - Presentation made by YAC in-house
Counsel Mr George Irving**

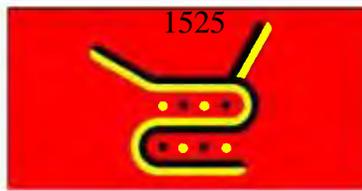
- a. Information session/Open discussion on the RTIO ILUA offer**
- b. Information session/Open discussion on the FMG ILUA offer**

The group had an open discussion on the main issues facing the Yindjibarndi people. Michael Woodley presented a powerpoint to those present. The powerpoint presentation is attached to these minutes (Pages 65 to 78). The MW presentation contained comparisons between what is being offered in an Indigenous Land Use Agreement (ILUA) to the Yindjibarndi people by Rio Tinto Pty Ltd (RTIO) and Fortescue Metals Group (FMG). MW urged the people to accept the RTIO offer but continue to reject the FMG offer, because, he argued, that the RTIO offer is a far better deal than FMG; that the FMG is unacceptable because it is too low and it doesn't allow the Yindjibarndi people to speak for, or have any control over their country, where FMG has tenements in Yindjibarndi country.

Mr George Irving also discussed the issues contained within the powerpoint that surround the ILUA negotiations and the breakaway Yindjibarndi group who are supporting the FMG ILUA offer, the WYMAC. GI discussed the fact that, according to Kerry Savas (KS) it is FMG who are financing the WYMAC, in both its operations and the various court cases that WYMAC is bringing against the YAC. George said that it appears FMG is trying to break the YAC's resolve to hold out for a better YAC/FMG ILUA agreement; and it is trying to prevent YAC from claiming compensation for the impact of its Project of the native title rights and interests held by YAC in the Yindjibarndi Native Title Area.

GI also pointed out that the agreement FMG was trying to force upon the YAC, and the people it represents, is unenforceable. In other words if FMG doesn't deliver on the compensation promised to WYMAC in the Agreement; WYMAC will not be able to sue FMG. GI said this is because FMG's proposed ILUA must be executed by YAC, and the Yindjibarndi #1 Applicant, since they hold rights that are affected by the Agreement; however, the compensation promised by FMG in return for giving up such rights goes to WYMAC which is a stranger to the agreement, because WYMAC has nothing it can lawfully promise to FMG in return for those compensation payments.

GI said that although FMG's proposed ILUA offers to pay compensation for giving up 'procedural rights' in the Claim Area, it offers no compensation for the effect of FMG's project on the native title rights already owned by YAC in the Yindjibarndi Native Title Determination Area, which are held on trust for the Yindjibarndi People. And it prohibits any future claim for compensation for the loss of any enjoyment of those rights by the Yindjibarndi People.



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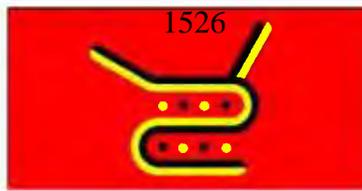
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GI noted that it appeared, from WMYAC's Constitution, that WMYAC had been set up to replace YAC as the PBC for the Yindjibarndi People; but, unlike YAC there was nothing in the WMYAC Constitution requiring money received from native title agreements to be used for the benefit of all members of the Yindjibarndi People; and, there was nothing in FMG's proposed ILUA that requires WMYAC to use the money that is promised to it by FMG for the benefit of all members of the Yindjibarndi People.

So, GI advised those present, that the YAC should not sign the proposed ILUA because if it did so, it would not as the legal owner of the native title rights in the Yindjibarndi Determination Area be acting in the best interests of the Yindjibarndi People, the beneficial owners of those rights and interests .

Both MW and GI noted that there are quite contradictory documents originating from the WYMAC in relation to Yindjibarndi business. MW said that it seems that the WYMAC lawyers write letters stating they will continue with all legal action and yet on the other hand WYMAC members seem to be advocating for reconciliation and mediation. Both GI and MW said it appeared that the WYMAC legal team and non-Indigenous executive is being directed by an FMG policy/strategy, which they follow so that the Yindjibarndi people are in fact kept apart and divided because this will give the proposed FMG ILUA offer a greater chance of success. They said that FMG is attempting to force the proposed FMG ILUA upon the Yindjibarndi people, while at the same time FMG is funding all WYMAC activities and legal actions and simultaneously trying to destroy YAC (because of YAC's opposition to the proposed FMG ILUA). Some of the evidence for this argument is contained in statements made by the WYMAC legal team and their members in correspondence and discussions in open forums between WYMAC and YAC which includes:

1. a letter (attached at Pages 79 to 86) to the WYMAC members via their legal representatives from Stanley Warrie (Chairperson) headed *Yindjibarndi Reconciliation* for YAC dated 08/02/12 setting out the reasons for entering into discussions with RTIO. This letter also includes, as attachments;
 - a. the notice for the YAC/RTIO ILUA Yindjibarndi information two day meeting to be held in the Roebourne Community Hall on 13 and 14 February 2012.
 - b. an open letter for all Yindjibarndi people explaining the YAC strategy
 - c. an offer from ORIC to assist with mediation/dispute resolution between Aboriginal corporations.
2. a letter from Integra Legal dated 10/02/12 asking that the YAC/RTIO ILUA Yindjibarndi information two day meeting, for which all Yindjibarndi people had been notified, to be held in the Roebourne Community Hall on 13 and 14 February 2012, be indefinitely postponed. The letter also states that the WYMAC legal team will not delay the Supreme Court proceedings being brought against YAC (letter is attached to these minutes at Pages 87 to 88).
3. statements made by WYMAC members at the Yindjibarndi two day community information session regarding the RTIO ILUA offer which was held in the Roebourne Community Hall on 13 and 14 February 2012, and



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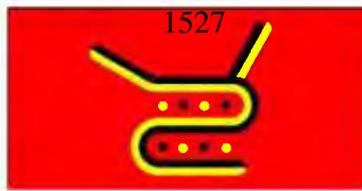
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which urged the Yindjibarndi people associated with the YAC to hold a YAC AGM and an Yindjibarndi 1 native title claim group authorisation meeting and to come together as Yindjibarndi people to negotiate with FMG and RTIO.

4. the information sheet distributed by WYMAC at the meeting between YAC members and WYMAC members held at the WYMAC office in Roebourne on Thursday 15/02/12 - which at point 7 urges YAC to comply with the Supreme Court orders to hold a YAC AGM; and, at point 4 urges YAC to continue to negotiate with RTIO (statement attached to these minutes at Page 89) requesting that WYMAC members hold half of the negotiating team positions; a suggestion that was agreed to by the YAC Directors as per letter from YAC's CEO to WYMAC dated 16/02/12 (mentioned at Point 5 below and attached to these minutes).
5. a letter from Michael Woodley (CEO) of YAC dated 16/02/12 stating that the YAC was happy to hear from WYMAC members that they support the RTIO ILUA offer; agree with the prospect of mediation between the groups; that YAC agrees to WYMAC members joining the RTIO Yindjibarndi negotiating Committee as long as YAC members can join the FMG ILUA negotiating committee; and that YAC agrees to hold a YAC AGM, as urged by WYMAC members (this letter is attached to the minutes at Pages 90 and 91).
6. the letter from Integra Legal dated 15/03/12 to Philip Davies regarding the Yindjibarndi 1 authorisation meeting to be held on 24/03/12 - the letter sets out how to 'properly' conduct such an authorisation meeting, but also stating that because mediation in the Federal Court is continuing the scheduled authorisation meeting is 'inappropriate' (attached at Pages 92 to 95).
7. the letter from Bruce Woodley (as Chairperson of WYMAC) which was sent to all YAC members dated 16/03/12, stating it is critical for all members to attend and vote on matters (contained in the notice) at the YAC AGM to be held on 21/03/12 (letter attached at Pages 96 and 97 to these minutes).
8. the email to Mr George Irving and Mr Michael Woodley sent on 16/03/12 from Ms Janette Tavelli for the WYMAC asking that the YAC AGM, scheduled to be held on 21/03/12, be postponed indefinitely (copy of the email attached to these minutes at Pages 98 to 101).
9. notes by MW dated 14/03/12 made on discussions held between Esther Mingo and a YAC information team that was scheduled to meet with Yindjibarndi people in Carnarvon, illustrating undue influence on Wirilu-Murra members by the Wirilu-Murra non-Indigenous executive, particularly in this case, Michael Gallagher (the notes compiled are attached to these minutes at Pages 102 and 103).

MW then invited Mr Graham Dewar (GD), RTIO Superintendant, Agreements Negotiations, to address the group. Below is some of what he said:

Mr Graham Dewar, spoke regarding the RTIO ILUA offer - enduring benefit - sustainable outcomes - think through quite clearly what you need for the future - any ILUA needs to benefit future generations - this kind of heavy industry has had an



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effect on your community - on country and social impacts - what is different about this conversation is that this agreement is about all of the Yindjibarndi country and for a long period of time - this agreement is for all of Yindjibarndi country - we want to recognise the impact on your country - that there are some benefits for the Yindjibarndi community - there are large benefits - what I want you to think about is that the other challenge for us is to make a fair relationship that is front and centre of the company's thinking - the principle in these agreements is in participation and involvement for the Yindjibarndi people and to return enduring benefits - some groups have got operating mines - in other groups such as Yindjibarndi there is a railway corridor and not a working mine - the formula is to look at what is happening now and then taking into account what may happen into the future - the real message is that I want to celebrate is what I see before me - what we are looking for is an agreement with all Yindjibarndi people - we would like everyone involved - we would like to all Yindjibarndi to be informed - I will be here all night so if anyone has any questions they are welcome to ask me now or later on

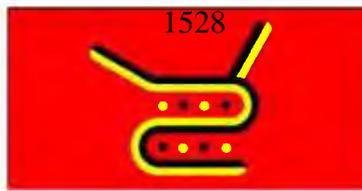
MW - introduced Greg McIntyre (GM) - GM is acting for the Wirlu-Murra group - the Wirlu-Murra are bringing actions against the YAC - one of the points he said to us - even though if we lose the section 66b agreement he wouldn't recommend the FMG agreement to the Wirlu-Murra people

Greg McIntyre SC:

Thanks Michael – as Michael said I am coming to help the Wirlu-Murra Yindjibarndi and to make sure that we get a fair agreement and to work towards unity by many Yindjibarndi people –

There are some issues with that agreement and so I had a meeting with the lawyer for FMG last week before I came up here to see what they thought was going on with that agreement and whether they thought there was any movement in what was in the agreement. Centrally they say well ‘that’s not a final agreement; there are those three people signed it but the whole applicant group haven’t signed it so it's not a final agreement and there’s room for some further discussions’.

The one, the main thing I was worried about is one thing that George [Irving] pointed out; and that is that this agreement covers the whole of the determination area as well as the claim area and he says “they only got the compensation that they started off with, when they started talking about the claim area”. Now when I talked to their lawyer he seemed surprised about that, and he said well “no we wanted the agreement for the whole of the claim area and the determined area cause we only want one agreement with the Wirlu-Murra with, with the Yindjibarndi, but you can, you’re alright for that area because you got the royalty”. And I said “No, no when I am reading the agreement there is no royalty in that agreement”; and he said that he was “surprised that there was no royalty in the agreement”; and he went back to one of the earlier versions of the agreement and he said that “there was a royalty in one of the



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earlier drafts". So that's probably the main area where I think we can go back to him and to FMG and talk about that.

Now I don't think I can get them talking about the same sort of royalty as RTIO but at least we can, we can restart the discussions and talk about the issues.

Now George raised a few other issues; there was the one about the fact that the money which is in there is, there's no actual, there is no trust proposed in the agreement again I would recommend that there must, for the benefits of the Yindjibarndi people, there must be a trust which manages that money and, whether or not it's in the agreement with FMG does matter, in my view it's a matter for Yindjibarndi people if they going to manage their money properly then they have to manage it in accordance with the trust and I wouldn't be recommending to anybody that they have anything other than that.

The, there are two other issues...

Tootsie Daniels (TD).

Who are you referring to? the Yindjibarndi group other families from there the Wirlu-Murra or just who are you referring back to Yindjibarndi people.

Greg McIntyre SC:

The Yindjibarndi people I'm talking about are all of the descendants of the Yindjibarndi ancestors that are in your native title claim all right.

In your claim you got a list of all of your distant ancestors there's about twenty of them and that's makes up your claim group and that's, that's all, all of you people that are descendants of those ancestors and that who I'm talking about when I'm talking about Yindjibarndi.

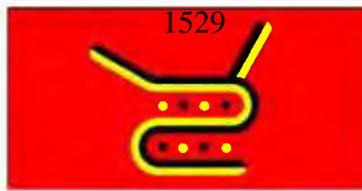
Ah, now I think, I know that some of you have split up into two different groups with some siding with YAC and some siding with Wirlu-Murra we want to come back together again and talk together when we are talking with RTIO or with Fortescue Metals Group we want um we want to be talking together. Now if we have to work with two lots together, with one combined team, that's what we have to do because RTIO wants to reach one agreement with one Yindjibarndi people; and FMG wants to reach one agreement with one Yindjibarndi people. So we need to put aside those differences and come together for this interest for the Yindjibarndi people.

Tootsie Daniels.

Are you a lawyer are you.

Greg McIntyre SC.

Yes like Michael mentioned I am what they call now a 'Senior Council' or in the old days we used to call a 'QC'; so I practice as a Barrister and I work with other lawyers as part of legal team. Now, just one thing in relation to RTIO; I think it probably very helpful if I had access to the purpose of the agreement and could reassure those who I represent that it is a good agreement. I heard what George has said and what I hear from George sounds good but we lawyers, we have to read the fine print make sure it is all as it appears.



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Stanley Warrie (SW) asked a question

Greg McIntyre SC.

The question is, if there is the Registered Native Title Body Corporate, how can there be other groups, not represented by YAC. The legal answer is that YAC is the Registered Native Title Body Corporate for the existing determined Native Title area; We think there isn't yet a Registered Native Title Body Corporate for the claim area. It is the applicants who represents the Yindjibarndi people for the new claim area Yindjibarndi #1.

Wirilu-Murra Yindjibarndi Aboriginal Corporation is just another aboriginal corporation. There are lots of aboriginal corporations dealing with different things Wirilu-Murra has been set up, I think, because they are upset about particular things. We need to fix that., That corporation exists; it represents its members; and you've got other aboriginal corporations which Yindjibarndi people are members of. This is just another one of them; so it was setup to look after the interest of those people who concerned about the FMG agreement; well we going to fix that; and they will play their role representing their members. But ultimately what we need to be working towards is sorting out, the Yindjibarndi #1 application. We need to get the agreement about the applicants. We will be discussing that again on Saturday; and we need to get agreement about how that application is going to go ahead; and we need to get agreements about how the Yindjibarndi People, as one people, are going to deal with mining companies who are negotiating with them in their claim area.

Casey Cheedy:

Who do you work for?

Greg McIntyre SC.

Who do I work for.

Well the, I'm, I'm a barrister; so barrister's are by themselves; so I work for myself and I get a contract to do jobs for different people from time to time. So today my contract is with the, with the lawyer the solicitors who are representing the Wirilu-Murra Yindjibarndi; okay, so they have asked me to come along to talk to you.

Casey Cheedy:

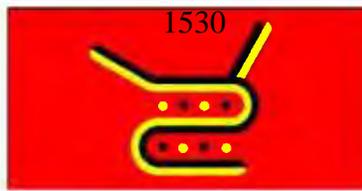
So you getting paid by FMG.

Greg McIntyre SC.

Not directly I, I, but I accept that the money is probably ultimately coming from

Another YAC member asked a question from the floor.

Greg McIntyre SC.



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I'm sure that's right, sure that's right. My, my arrangement is as you said. I practice as a barrister; my role is to provide independent advice. I have a contract with group of solicitors who have a contract with Wirilu-murra, who have some arrangements which I don't know the details of with FMG. My understanding is, ultimately, the purse-strings are being held by FMG; but what I am attempting to do is to provide independent legal advice to the best of my knowledge as to what the law is; and that's why I come to you saying this: certain things have been done by FMG; I looked at it and I made my independent assessment of it. My view is that you need to go back to the table with FMG and to renegotiate a number of the provisions that they're offering to you; – and, I had a preliminary meeting with one of their lawyers to find out whether that's open, and the door seems to be open; and I think we ought to have that opportunity .

YAC member from the floor.

Isn't it's a conflict of interest you being paid by FMG representing Wirilu-Murra.

McIntyre.

Um, no.

George Irving

The difficulty is.

YAC member from the floor.

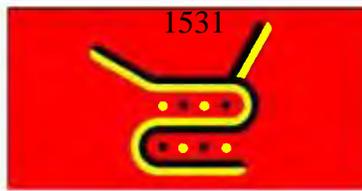
George, George let him speak

George Irving

Ok

Greg McIntyre SC

I don't regard it as a conflict of interest. I mean I have been negotiating, acting for aboriginal people for 30/40 years particularly since that native title act. Most of the time when I act for aboriginal people, where I'm negotiating with mining companies, my fees are often paid by the mining companies I am negotiating against. So, my first big experience doing that was with BHP. I negotiated an agreement for the Banyjima people the Marduigja Banyjima people in the year 2000 – the deal was I would be the head negotiator for the Marduigja Banyjima people and part of the negotiations protocol was that BHP, would pay my reasonable fees; because, you know, aboriginal people negotiating with companies like BHP, RTIO or FMG don't have the funds to pay their lawyers. So that's the common practice in the field; that mining companies negotiating come up with the money. I'm presently doing as the same FMG are coming up with the money but that's doesn't make me responsible for FMG.



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AGENDA ITEM EIGHT:

Chairperson's Report:

Michael Woodley (MW) told those present that Stanley Warrie (SW) was not feeling particularly well this evening because there is this path of division in the community - SW felt he wouldn't add anything at this stage to the discussions that had already been said in the meeting - he just felt that he wanted the Yindjibarndi to stop fighting and to come together, and that he is upset by what is happening in his community and with his people

AGENDA ITEM NINE:

Present the YAC Management Accounts:

Philip Davies (PD) tabled 15 copies of the YAC audited and signed YAC management accounts. PD noted that the Wirlu-Murra Counsel, Mr Greg McIntyre, picked up a copy of the audited financials. PD proposed that he would not go through them at the meeting, but that the accounts demonstrated that the YAC is being managed honestly and with full transparency. PD mentioned that ORIC had undertaken an audit of YAC and had found that there was no fraud or misuse of funds within the organisation.

A copy of the signed YAC Management Accounts is attached to these minutes at Pages 104 to 126.

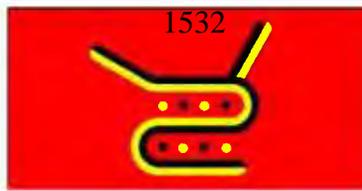
Also attached to these minutes at Pages 127 and 128 is a letter from ORIC dated 25/11/11 stating that ORIC had undertaken an examination of YAC in 2010, had made various recommendations subsequent to that examination, and that YAC had successfully complied with all recommendations that had originated from that examination. Therefore the compliance period was over, having been successfully complied with and completed by YAC.

AGENDA ITEM TEN:

Elect Directors:

The current YAC Directors positions were declared vacant.

The following resolution regarding the election of new YAC Directors was read out and put to the floor by Lyn Cheedy:



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

That the following people be elected Directors of the Yindjibarndi Aboriginal Corporation (YAC) at today's Annual General Meeting:

That the following people are elected for two year YAC Director's terms

1. Stanley Warrie
2. Middleton Cheedy
3. Thomas Jacobs
4. Pansy Cheedy/Sambo
5. Tootsie Daniels
6. Jean Norman

That the following people are elected for one year YAC Director's terms:

7. Angus Mack
8. Gabrielle Cheedy
9. Curtis Lockyer
10. Russell Sandy
11. Joylene Warrie
12. Rosemary Woodley

Paul Aubrey (PA) - spoke against the motion - that list is a pre-determined list - it is a list of people who have been pre-determined - we have come down so some of us can come onto the YAC board - democratically - I want to be nominated to be on that board

MW spoke for the motion

PA spoke against the motion saying that the process was not democratic

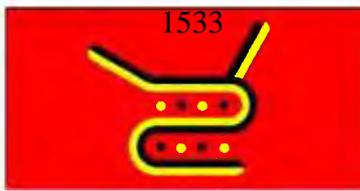
MW spoke for the motion arguing that all members present are allowed to vote for or against the motion and if the motion is defeated then other motions can be put to the meeting for a vote - therefore the vote for the YAC Directors is democratic because it is the same method that is used for every motion.

The following motion was put to the floor for a vote:

Resolution Three: YAC AGM 21/03/12

That the following people are elected for two year YAC Director's terms

1. Stanley Warrie
2. Middleton Cheedy
3. Thomas Jacobs
4. Pansy Cheedy/Sambo
5. Tootsie Daniels
6. Jean Norman



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

That the following people are elected for one year YAC Director's terms:

- 7. Angus Mack**
 - 8. Gabrielle Cheedy**
 - 9. Curtis Lockyer**
 - 10. Russell Sandy**
 - 11. Joylene Warrie**
 - 12. Rosemary Woodley**
- Moved: Lyn Cheedy**
Seconded: Lorraine Coppin

Passed: By Majority - 108 for, and 15, against the motion

The vote was put to those present. A show of hands was proposed as counting the vote. There being no opposition to that proposal, Philip Davies counted the votes according to those who put up their hands for the motion which amounted to 75 members. Philip Davies counted the votes according to those who put up their hands against the motion which amounted to 15 members.

The 33 proxies were also put in favour of the motion

Therefore the outcome of the vote for the motion was:

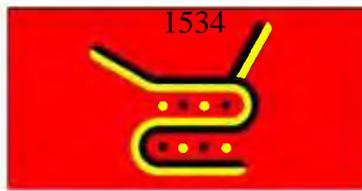
For the Motion: 75 votes by hand
33 votes by Proxy
108 votes in favour

Against the Motion: 15 votes by hand

No votes were brought by Proxy against the motion

Therefore the 12 Directors elected at this YAC AGM are:

- 1. Stanley Warrie (2 Years)**
- 2. Middleton Cheedy (2 Years)**
- 3. Thomas Jacobs (2 Years)**
- 4. Pansy Cheedy/Sambo (2 Years)**
- 5. Tootsie Daniels (2 Years)**
- 6. Jean Norman (2 Years)**
- 7. Angus Mack (1 Year)**
- 8. Gabrielle Cheedy (1 Year)**
- 9. Curtis Lockyer (1 Year)**
- 10. Russell Sandy (1 Year)**
- 11. Joylene Warrie (1 Year)**
- 12. Rosemary Woodley (1 Year)**



YINDJIBARNDI ABORIGINAL CORPORATION
I.C.N. Number 4370
A.B.N. Number 97 456 543 455

AGENDA ITEM ELEVEN:

Appoint Yindjibarndi Aboriginal Corporation Examiner for the 2011/2012 financial year

Those present made the following motion:

Resolution Four: YAC AGM 21/03/12

That YAC appoint David Swords as the YAC examiner for the 2011/2012 financial year.

Moved: Thomas Jacobs
Seconded: Lorraine Coppin
Passed: Unanimously

AGENDA ITEM TWELVE:

Appoint Yindjibarndi Aboriginal Corporation ORIC Contact person

The members put the following motion:

Resolution Five: YAC AGM 21/03/12

That Mr George Irving be appointed as the Yindjibarndi Aboriginal Corporation ORIC Contact Person until the next Annual General Meeting.

Moved: Tootsie Daniels
Seconded: Jean Norman
Passed: Unanimously

AGENDA ITEM THIRTEEN:

General Business

1. Bigali Hanlon (BH) - made the following point - that Greg McIntyre (GM) said he wants to know the finer details of the RTIO agreement - we have our own solicitor - why would we allow their counsel go through it? - we have voted on it, we have negotiated on it - why does this GM want to go through it? - I don't support GM going through the agreement

George Irving (GI) replied - GI - well the point is that there is no fine print - the advantage is that at least with Greg he will try and talk sense to the Wirlu-Murra

**YINDJIBARNDI ABORIGINAL CORPORATION**

I.C.N. Number 4370

A.B.N. Number 97 456 543 455

2. Lyn Cheedy - I want to acknowledge and thank George Irving, Phil Davies and Kerry Savas for their work with us.

Meeting closed 8.45pm

CHAIRPERSON'S STATEMENT REGARDING THE ACCURACY OF THESE MINUTES:

I, Stanley Warrie, as Chairperson of the Yindjibarndi Aboriginal Corporation, state that these minutes as they are described on the pages above are an accurate reflection of the actual meeting held which I attended:

Signed: *Stanley Warrie*

Date: *21/05/20¹²21*

Stanley Warrie
Chairperson of the Yindjibarndi Aboriginal Corporation

120321 YAC AGM Membe present at meeting	Wirilu Murra registered with ORIC	Wirilu Murra Unregisterec with ORIC
May Adams	May Adams	
Stephen Adams	Stephen Adams	
Jessie Alberts	Jessie Alberts	
Jimmy Alberts	Jimmy Alberts	
John Alberts		
Judith Alberts	Judith Alberts	
Jessica Allan	Jessica Allan	
Lisa Allan	Lisa Allan	
Sylvia Allan	Sylvia Allan	
Gillian Aubrey	Gillian Aubrey	
Glen Aubrey	Glen Aubrey	
Noel Aubrey	Noel Aubrey	
Paul Aubrey	Paul Aubrey	
Alum Cheedy		
Gabrielle Cheedy		
Jane Cheedy		
Kasey Cheedy		
Lyn Cheedy		
Marion Cheedy		
Middleton Cheedy		
Pansy Cheedy/Sambo		
Rebecca Cheedy		
Rosie Cheedy		
Dorothy Coffin		
Gelissa Cippin		
Judith Coppin		
Lorraine Coppin		
Theresa Coppin		
Tootsie Daniel		
Susan Edwins		
Caroline Fazeldean		
Alice Guinness	Alice Guinness	
Esther Guinness	Esther Guinness	
Janice Guinness	Janice Guinness	
Kevin Guinness		
Bigali Hanlon		
Marlene Harold	Marlene Harold	
Jimmy Horace	Jimmy Horace	
Mark Horace	Mark Horace	
Belinda Hubert		
Dennis Hubert	Dennis Hubert	
Erica Hubert		
Jenny Hubert		
Joyce Hubert		
Stephen Hubert (Trouble)	Stephen Hubert (Trouble)	
Stephen Hubert (Geoffrey)	Stephen Hubert (Geoffrey)	
Travis Hubert		
Wendy Hubert	Wendy Hubert	

Elizabeth Hunter Maisie Ingie		
120321 YAC AGM Membe present at meeting	Wirilu Murra registered with ORIC	Wirilu Murra Unregisterec with ORIC
Matthew Ingie Roderick Jacobs Thomas Jacobs Maureen James Amy Jerrold Maudie Jerrold Wayne Kelly Billy King Junior Larry Melissa Larry Glen Lee Gloria Lee Curtis Lockyer Jerimiah Lockyer Simon Lockyer Allan Mack Angus Mack Nicholas Mack Jasmine Mack Berry Malcolm Harry Mills Carol Norman Jean Norman Len Norman Esther Pat Mavis Pat Margaret Read Aileen Sandy Allery Sandy Celia Sandy John Sandy Ken Sandy Ricky Sandy Russell Sandy Diana Smith Brenda Smirke Christine Toby Florence Toby Glen Toby Jennifer Toby Karen Toby Jill Tucker Lesley Walker Doreen Warrie Joylene Warrie Kaye Warrie	Amy Jerrold Maudie Jerrold Billy King Gloria Lee Berry Malcolm Harry Mills Carol Norman Esther Pat Mavis Pat Aileen Sandy Allery Sandy Celia Sandy John Sandy Ken Sandy Ricky Sandy Russell Sandy Diana Smith Christine Toby Florence Toby Glen Toby Jennifer Toby Karen Toby Jill Tucker	Junior Larry

Sharon Warrie Stanley Warrie Terrance Warrie Wendy Warrie		
120321 YAC AGM Members present at meeting	Wirilu Murra registered with ORIC	Wirilu Murra Unregistered with ORIC
Kim Whalebone Jennifer Williams Joanne Willis Aaron Wilson Joyce Wilson Lynette Wilson Maria Wilson Sonia Wilson Alison Woodley Bruce Woodley David Woodley Finola Woodley Kingsley Woodley Michael Woodley Preston Woodley Rosemary Woodley Shirley Woodley	Jennifer Williams Joanne Willis Lynette Wilson Sonia Wilson Alison Woodley Bruce Woodley David Woodley Kingsley Woodley	Kim Whalebone
Total 117 (of 216)	Total 53	Total 2

“MW-190”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 16 pages is the annexure marked “**MW-190**” referred to in the witness statement of Michael Woodley dated 5 June 2023.

YINDJIBARNDI #1 NATIVE TITLE CLAIM GROUP
AUTHORISATION MEETING

HELD AT THE ROEBOURNE COMMUNITY (50 CENT) HALL
 ON
 SATURDAY 24TH OF MARCH 2012
 NOTIFIED TO BEGIN AT 9AM

ABBREVIATIONS AND DEFINITIONS

APICAL ANCESTORS:	A common ancestor from whom a lineage or clan may trace its descent. The ancestor who is at the apex of the genealogy
CDNTS:	Central Desert Native Title Service
JGAC:	Juluwarlu Group Aboriginal Corporation
NBAC:	Ngarliyarndu Bindirri Aboriginal Corporation
PBC:	Prescribed Body Corporate
WYM:AC	Wiru-Murra Yindjibarndi Aboriginal Corporation
YAC:	Yindjibarndi Aboriginal Corporation

ATTACHMENTS TO THESE MINUTES

ATTACHMENT ONE:	Meeting Notice
ATTACHMENT TWO:	Mailing List
ATTACHMENT THREE:	Draft newspaper proof for the published Meeting Notice
ATTACHMENT FOUR:	Meeting Notice invoices from the Pilbara News, The North West Telegraph and the Northern Guardian
ATTACHMENT FIVE:	Notice of the Yindjibarndi meeting placed on the Roebourne Post Office Noticeboard on Thursday 22/03/12
ATTACHMENT SIX:	Letter dated 15/03/12 from Integra Legal on behalf of the Wiru-Murra Group advising best practice procedure for administering successful Native Title Authorisation Meetings.
ATTACHMENT SEVEN:	Copy of the highlighted A3 Yindjibarndi 1 Ancestry Spreadsheet completed on Family Tree Maker by Juluwarlu Group Aboriginal Corporation utilised as the meeting attendance register and signed by Robin Stevens.
ATTACHMENT EIGHT:	Blank "Contacts and Family Connection Form"
ATTACHMENT NINE:	YAC Application for membership Form
ATTACHMENT TEN:	YAC Flyer
ATTACHMENT ELEVEN:	YAC Printed Information Booklet
ATTACHMENT TWELVE:	Signed Voting Register
ATTACHMENT THIRTEEN:	The 180 completed "Contacts and Family Connection Forms" that form the voting register
ATTACHMENT FOURTEEN:	Powerpoint - George Irving Introductory Notes Yindjibarndi Section 66b 24/03/12
ATTACHMENT FIFTEEN:	Powerpoint - Michael Woodley - YAC CEO presentation of pages 8-11 to the Yindjibarndi 1 Authorisation Meeting held on 24/03/12
ATTACHMENT SIXTEEN:	Statement made by Mr Robin Stevens regarding role at the meeting

ATTACHMENT SEVENTEEN: Statement made by Ms Bernadette Kennedy regarding her role at the meeting.

MEETING NOTICE

The Meeting Notice (attached to the minutes) was mailed to each person on the mailing list (attached to the minutes) on Wednesday 29th of February 2012. The Meeting Notice was advertised in the classified sections of the weekly newspaper publications of the Pilbara News, the Northwest Telegraph and the Northern Guardian on Wednesday 07th, 14th and 21st of March, 2012. The published notice and the invoices for these advertisements are attached to these minutes.

NOTES:

The meeting was scheduled to begin at 9am. Philip Davies (Anthropologist - JGAC) attended at 7.30am to begin setting up. Lorraine Coppin (Archive and Language Manager - JGAC), Michael Woodley (CEO of the YAC and JGAC), Ric West (Chief Financial Officer - CDNTS), Robin Stevens (Anthropologist/Archaeologist - Stevens Heritage Services), Bernadette Kennedy, George Irving (In House Counsel - YAC), Lyn Cheedy (Yindjibarndi), Janine Fredericks (Yindjibarndi - Food), Lesley Walker (Yindjibarndi - Food), Zaleah Haji-Noor (Food), Finola Woodley (Yindjibarndi - Food), Pansy Sambo (Yindjibarndi), Karisha Farrell (Food), Maureen Hunter (Yindjibarndi - Food), Kate Wilson (JGAC - Filming) and Garry Ansell (Filming - JGAC) all attended prior to 9am to assist with the organisation, assistance, filming and preparation of food for the meeting.

MEETING ATTENDANCE REGISTER

The attendance register was set up at tables just inside the entrance to the hall. Robin Stevens, Lorraine Coppin, Lyn Cheedy and Pansy Sambo checked off the people who entered the hall. The list used by Robin Stevens to register attendance was an A3 copy of the Yindjibarndi 1 Ancestry Spreadsheet completed on Family Tree Maker by Juluwarlu Group Aboriginal Corporation for all people on the meeting mailing list. For the attendees who were named on the mailing list, their name was marked with highlighter by Robin Stevens. Robin signed the original of this attendance register and dated it 24/03/12; a copy of the signed document is attached to these minutes. If an attendee's name was not on the mailing list, then that person was asked to fill in a "Contacts and Family Connection Form" (copy is attached to these minutes). Robin, Lorraine, Lyn and Pansy assisted these people to fill in their forms. Once completed, these forms were included with the other "Contacts and Family Connection Form", which became the foundation for the voting register.

"CONTACTS AND FAMILY CONNECTION FORM" - VOTING ELIGIBILITY

All people who could trace their personal ancestry to one of the Yindjibarndi people listed on the notice, and who were over 18 years of age, could vote at the meeting. Each of these people filled out, or had already filled out, a "Contacts and Family Connection Form", which traced them to the Yindjibarndi 1 Native Title Claim Apical Ancestors. Therefore, all people who were eligible to vote, had a personal "Contacts and Family Connection Form" which became the basis for the voting register.

PAMPHLETS AND INFORMATION SHEETS AVAILABLE FOR MEETING ATTENDEES

As well as the "Contacts and Family Connection Form", other pamphlets and information booklets that were available for people to pick up at the tables just inside the entrance to the hall included:

1. The meeting notice
2. The A3 Yindjibarndi 1 Ancestry Spreadsheet completed on Family Tree Maker by Juluwarlu Group Aboriginal Corporation for all people on the meeting mailing list
3. YAC Application for Membership Forms
4. YAC Flyer (1 page)
5. YAC Printed Information Booklet (56 pages)
6. Yindjibarndi 1 Anthropological (Connection) Report

VOTING REGISTER

From approximately 8.30am, people started entering the hall to attend the meeting. Each person who was eligible to vote had completed "Contacts and Family Connection Form". Their attendance at the meeting was entered onto the voting register. At about 10.15am Robin Stevens handed Philip Davies the "Contacts and Family Connection Form" for each person who was attending the meeting and who were eligible to vote. Philip Davies then checked this list of forms against the mailing list. If a person's name was not on the mailing list, but that person was eligible to vote, then Philip entered that person's name into the voting register and, once finalised, printed this register off as a hard copy. Therefore the voting register is a modified version of the mailing list - the signed voting register is attached to these minutes. Copies of the 180 completed "Contacts and Family Connection Forms" that formed the voting register are attached to these minutes.

VOTING PROCEDURE

Philip Davies, Bernadette Kennedy, Gabrielle Cheedy and Davina Boyd, an employee from WYMAC, who acted as a scrutineer, oversaw the voting. Each person who was entered on the voting register was eligible to vote at the meeting. Voters lined up at the voting table which was positioned in one corner of the hall. Each voter approached the table individually; their eligibility to vote was checked; if eligible, they were marked off on the voting register, and each of them signed the voting register. Each voter was then given one plastic token by Philip Davies, and the voter then went and placed their single plastic token in one of two small plastic rubbish bins; one bin was marked 'yes - I agree with this resolution' or the other was marked 'no - I don't agree with this resolution'. Both Bernadette Kennedy and Davina Boyd agreed upon, wrote and signed the following statement on the hard copy of the voting register which contained the signatures of all Yindjibarndi people who voted "I hereby declare that this is a true and fair list of the persons voting on Resolution 3 Amendment @ the Yindjibarndi 1# Authorisation Meeting 24 March 2012" - the signed copy of this voting register is attached to these minutes.

ATTENDANCE

The following Indigenous community members attended the meeting:

Charmaine Adams, May Adams, Judy Alberts, Jessie Alberts, Jimmy Alberts, Jessica Allan, Lisa Allan, Sylvia Allan, Gillian Aubrey, Glen Aubrey, Jason Aubrey, Noel Aubrey, Paul Aubrey, Thomas Averdee, Sasha Bram/Ranger, Michelle Broun, Alum Cheedy, Gabrielle Cheedy, Jane Cheedy, Kasey Cheedy, Kenrick Cheedy, Lyn Cheedy, Marion Cheedy, Middleton Cheedy, Rebecca Cheedy, Rosie Cheedy, Shandelle Cheedy, Pansy

Cheedy/Sambo, Dylan Clarke, Dorothy Coffin, Sebastian Coffin, David Coppin, Deborah Coppin, Gelissa Coppin, Judith Coppin, Lorraine Coppin, Theresa Coppin, Anastasia Crowe, Tootsie Daniels, Darren Dodd, Leith Dodd, Susan Edwins, Caroline Fazeldine, Dallas Fazeldine, Yerticle Fazeldine, Janine Fredericks, Jeffrey Gibley, Brenda Greenwood, Alice Guinness, Esther Guinness, Bigali Hanlon, Marlene Harold, Danielle Hicks, Irene Hayes, Sarah Hicks, Jimmy Horace, Mark Horace, Belinda Hubert, Dawn Hubert, Dennis Hubert, Erica Hubert, Jenny Hubert, Joyce Hubert, Max Hubert, Rachelle Hubert, Stephen Hubert (Trouble), Stephen Hubert Junior (Wheeler), Steven Hubert (Geoffrey), Travis Hubert, Wendy Hubert, Elizabeth Hunter, Maureen Hunter, Terrence Hunter, Maisie Ingie, Matthew Ingie, Annie Jacobs, Roderick Jacobs, Thomas Jacobs, Austin James, Amy Jerrold, Maudie Jerrold, Denise Kelly, Riannon Kelly, Wayne Kelly, Kim Kennedy, Billy King, Glen Lee, Gloria Lee, Curtis Lockyer, Hayson Lockyer, Jeremiah Lockyer, Simon Lockyer, Tenellia Lockyer, Kristine McDonald/Ranger, Rikeisha McDonald/Ranger, Angus Mack, Clifton Mack, Jasmine Mack, Kimberley Mack, Nicholas Mack, Berry Malcolm, Camilia Miller, Harry Mills, Morton Miller, Priscilla Miller, Esther Mingo, Danielle Mingo/Kennedy, Jacob Mingo, Max Mingo, Maxine Mingo/Taylor, Bruce Monadee, Berchel Munda, Jason Munda, Jean Norman, Rhonda Norman, Esther Pat, Mavis Pat, Patricia Pat, Terrance Pat, Eileen Percy, Stephanie Percy, Francis Phillips, Kevin Phillips, Lynette Phillips, Rikki Phillips, Alex Ranger, Alfred Ranger, Anthony Ranger Senior, Aquarnis Ranger, Donald Ranger Junior, Donald Ranger Senior, Donelle Ranger, Ethel Ranger, Jaydeen Ranger, Malcolm Ranger, Rebecca Ranger/Ryan, Rhiannon Ranger, Robyn Ranger, Rosaling Ranger, Sarah Ranger, Tara Ranger, Margaret Read, Lynda Ryder, Warrick Sambo, Aileen Sandy, Allery Sandy, Celia Sandy, Joe Sandy, John Sandy, Ken Sandy, Nadlee Sandy, Ricky Sandy, Russell Sandy, Vicki Shakler, Christine Toby, Dwayne Toby, Florence Toby, Glen Toby, Jennifer Toby, Leanne Toby, Matthew Todd, Vivian Trigwell, Daniel (Jnr) Tru, Jill Tucker, Kayne Walker, Lesley Walker, Lorna Walker, Sharona Walker, Doreen Warrie, Janice Warrie, Joylene Warrie, Kathy Warrie, Kaye Warrie, Sharon Warrie, Stanley Warrie, Terrance Warrie, Wendy Warrie, Mary Watson, Anthony Wheelock, Terrence Wheelock, Kelli Anne Marie Williams, Kim Williams, Paddy Williams, Rebecca Williams, Donna Willis, Joanne Willis, Aaron Wilson, Sonia Wilson, Joyce Wilson, Lynette Wilson, Maria Wilson, Vicki Wilson, Alison Woodley, Bruce Woodley, Chet Woodley, David Woodley, Finola Woodley, Hayden Woodley, Michael Woodley, Rosemary Woodley, Shirley Woodley, Simon Zuvich

OTHER MEETING ATTENDEES

Ric West Chief Financial Officer at CDNTS - was elected Chairperson for the Meeting - Ric volunteered for the day - his travel, hire car and accommodation was paid for by JGAC)

Robin Stevens Anthropologist/Archaeologist - works independently for himself via Stevens Heritage Services - Robin was paid for his independent advice and services upon invoice by JGAC; his travel, hire car and accommodation was paid for by JGAC

George Irving Attended in his capacity as YAC In-House counsel

Philip Davies Attended in his capacity as JGAC Administration/Anthropologist

Kerry Savas Attended in his capacity as person interested in positively assisting the Yindjibarndi people following his experience working with Corser & Corser assisting the Wirlu-Murra group. He volunteered his professional services. His accommodation and hire car were paid for by JGAC.

Kate Wilson Attended in her capacity as the JGAC Media Centre Manager - filmed the meeting with Garry Ansell

Garry Ansell	Attended in his capacity as JGAC Media Centre Assistant - filmed the meeting with Kate Wilson
Bernadette Kennedy	Attended in her capacity as a person interested in positively assisting the Yindjibarndi people following her experience as a previous long-time resident of Roebourne. Bernadette independently funded herself for her attendance at the meeting.
Greg McIntyre	Attended in his capacity as the Wirlu-Murra Barrister
Janette Tavelli	Attended in her capacity as the Wirlu-Murra Lawyer
Davina Boyd	Attended in her capacity as a Wirlu-Murra employee
Bruce Thomas	Attended in his capacity as the Wirlu-Murra Business Development Manager
Mrs Bruce Thomas	Attended in her capacity as an invitee of the WYMAC and filmed the meeting on their behalf

Susan Shirliff (CEO of the NBAC) was also present

JGAC holds an unedited filmed recording of the meeting which is available to interested persons upon request to JGAC and will be released subject to the agreement of the Yindjibarndi community

Registration began from approximately 8.30am

The meeting formally began at approximately 11am

Michael Woodley (MW) opened the meeting and introduced Ric West to those present

Ric West (RW) introduced himself to those present at the meeting - said that he hoped everyone was happy for him to be Chairperson for the day - he invited opening comments from the floor

RW introduced George Irving (GI) to those present to provide a context for the meeting

GI introduced himself to those present - he declared that he had invited RW to chair the meeting.

GI went through some of the reasons for holding the meeting. They include:

- Currently we have 7 living members of the Yindjibarndi #1 Applicant who were elected by the Yindjibarndi people in 2003 that represent them - those seven people are Mavis Pat, Aileen Sandy, Sylvia Allan, Thomas Jacob, Michael Woodley, Alum Cheedy and Ned Cheedy. The purpose of the meeting is to re-authorise the continuation of the Yindjibarndi #1 claim so that we have a direction from the Yindjibarndi people on the way to proceed
- there have been disputes in the Yindjibarndi community in particular over some offers of ILUA agreements, and they are important because, if signed, these agreements bind the Yindjibarndi community for all time including all future generations
- these disputes have been going on for 18 months - principally between the YAC and WYMAC

- The issue arises of who has the authority to make decisions with regard to the Yindjibarndi #1 claim area
- Therefore, this meeting is to bring the Yindjibarndi people together to make a decision with regard to giving direction from the people on the way forward
- Last year a meeting was held on 16 March 2011, which has become the subject of several you tube videos - the film of this meeting is important because there were problems with the way the meeting was run and I believe, and members of the YAC believe, that it was not a meeting that meets the requirements of the Native Title Act via Section 66b of the Act.
- However, on behalf of three of the members of the Applicant, Sylvia Allan, Mavis Pat and Aileen Sandy, the WYMAC has brought a case to the Federal Court to try and have this 16 March 2011 authorised as a section 66b meeting. According to argument brought by WYMAC to the court, on behalf of the three ladies, they would like to have the four men, whose names are mentioned above, removed as members of the Applicant, which will simply leave the three ladies to represent the Yindjibarndi people for the Yindjibarndi #1 Claim area
- One of the issues for the men who are members of the Applicant is that they believe the meeting held on 16 March 2011 doesn't accurately reflect the majority of the Yindjibarndi people's views with regard to the Yindjibarndi #1 Claim Area

Therefore GI said it is very important to hold a properly constituted Yindjibarndi #1 Section 66b meeting to confirm the views and direction of the Yindjibarndi people.

GI said that JGAC and the YAC had facilitated today's section 66 b meeting

GI spoke to his powerpoint presentation that was put up on the board - he stated that this meeting is for claim groups members as advertised

GI - YAC is established to represent the Yindjibarndi native title rights and interests - that is in the determination area and it also has a broader function which is to protect all Yindjibarndi native title rights and interests wherever they are

GI - this is in contrast to the WYMAC which is not necessarily formed to protect those interests

GI - one of the issues is that last year's meeting (March 16 2011) was designed to get rid of the 4 male Yindjibarndi members of the Applicant so that an agreement with FMG could be signed by the three ladies - and in fact those three ladies have already signed that agreement on behalf of the Yindjibarndi people with FMG - even though that agreement is a very bad agreement - and that is why the 4 males members of the applicant and indeed one of the three women, plus the members of the YAC, do not agree with the proposed FMG agreement - that is why the 4 men have not signed

GI - I can also confirm that the WYMAC barrister, Mr Greg McIntyre, also agrees that the proposed YAC/FMG agreement that the three ladies have already signed, is a very bad agreement and that it should be re-negotiated on behalf of the Yindjibarndi people.

GI - one of the issues is that the YAC has very limited resources, but the WYMAC continues to take YAC to court in various actions, that I think are designed to run the YAC dry of funds

GI - the outcome of WYMAC actions is that it continues to undermine the YAC, which has to by law, protect the Yindjibarndi native title rights and interests - so it is now the situation that WYMAC is acting for Yindjibarndi cultural sites in relation to FMG's Solomon project and it is not consulting or adhering to YAC's views on heritage, culture and Yindjibarndi native title rights and interests

GI - the purpose of this meeting is to sort out once and for all who does have the authority speak for Yindjibarndi country in the Yindjibarndi #1 Claim area

Greg McIntyre (GM) - spoke and introduced himself to those present - he said that the WYMAC is only interested in making the YAC accountable - he wasn't sure that WYMAC wanted to replace the YAC as a PBC

GM - he said that does have an issue with the proposed Yindjibarndi/FMG agreement and he has had a brief meeting with an FMG lawyer about that agreement to see if it can be altered or changed - he is yet to hear back from FMG on this issue

GM - the main issue I have with the proposed agreement is that it covers both the claim area and the determination area - it is my view that FMG is open to further negotiation and that the Yindjibarndi people should come together to carry out those negotiations

GM - those are the main issues in my opinion - we are taking last year's meeting to the Federal Court to try and have that meeting authorised as a section 66b meeting

GM - I wanted to emphasise that WYMAC is most concerned about how YAC is being run and managed

RW allowed MW to speak

MW - made a statement saying that it is important that we stick to the facts - that YAC is being properly run and managed - that YAC held their AGM on Wednesday 21st of March 2012 - the vote was to continue YAC in its current form - 108 to 15 - we are running YAC for the long term interests of the Yindjibarndi people - we started this journey with FMG and YAC 4 years ago - we have been able to get a fair deal from RTIO - but the FMG offer is not fair

MW - spoke to his powerpoint presentation. The powerpoint presentation was one that MW had presented at a two day community meeting held on the 13th and 14th of February 2012 - MW presented 4 pages of the slides to the meeting - the slides presented by MW are attached to these minutes.

MW - via the slides MW made the comparison between the RTIO ILUA offer and the FMG ILUA offer which are both being made to the Yindjibarndi people. MW argued that the RTIO was far better than the FMG offer and that the Yindjibarndi accept the RTIO offer and reject the FMG offer - that the FMG offer is not up to standard.

RW allowed Maudie Jerrold (MJ) to speak

MJ made a statement about Yindjibarndi land - who's country is that? You tell me

RW allowed Paul Aubrey (PA) to speak

PA said that this meeting was not about the RTIO or FMG deal - we can sort out our differences together - As I see it the payment from RTIO is an advance payment - so can we just continue and just get authorised and I'm hoping that all Yindjibarndi people can get together

RW - MW and PA have made some points about the agreements - this meeting is about authorising the applicant - I will give each of the gentlemen to talk about what each of the other person said

MW - restated about the RTIO payment schedule - MW - said that RTIO will not deal with anyone else but YAC

RW - Mr Aubrey

PA - I did not come here to debate this with you - this is for all Yindjibarndi people and we need to move forward together - don't worry about the legalities - this is our last opportunity to become a unified nation

RW - Mr Alum Cheedy - who is one of the applicants

Alum Cheedy (AC) made a statement - show one another the respect - hopefully I have highlighted the game about why you are here - think about your kids and grandkids and the ones behind them

RW - OK - what we need to do today is decide upon how we make decisions today

RW - put up on the overhead about the proposed decision making process - went through the process for registering voters as is described above in the opening notes of these minutes

The decision making and voting process is described below and set out as Resolution One::

Resolution #1

Under the traditional laws and customs of the Yindjibarndi People decisions concerning rights and interests in Yindjibarndi Country are made by consensus at community meetings after hearing from the *Nyambali - Tharnjungarli*; however, there is no traditional decision-making process for dealing with an application for a determination of native title. In light of the recent discord in the community surrounding the Yindjibarndi #1 Application, **it is proposed:**

That each resolution considered today be decided by ballot in the following manner:

- *The people who are eligible to vote are the people who are 18 years of age or older and are descended from the Yindjibarndi Ancestors who are*

listed on the meeting Notice. Each person who is eligible to vote will be included on a voting register - which will be an excel spread sheet on a computer and printed out so people can see who is eligible to vote.

- *Resolutions will be put from the floor by way of a mover and a seconder - these will be written up projected on a screen. The resolutions may then be discussed; and, anyone who wishes to speak for or against will be given the opportunity - and then be put to a vote.*

- *The people who are registered to vote will then be asked to line up single file and come to a voting table set up in the hall - if they are an eligible voter they will be given one button/disk which they can then place in one of two boxes - the boxes will be marked 'YES - I support this resolution' or 'NO - I do not agree with this resolution' If they do not place their button/disk in one of the boxes then they will be deemed to have abstained from voting each person will be ticked off as they reach the table - the voter will also sign the voting register to indicate they have made their vote.*

- *The registered voter list will be checked to see if anyone who is eligible hasn't voted - those people will be given the opportunity to vote - if they don't vote then they will be deemed to have abstained from voting.*

- *Each of the buttons/disks will be counted; and the votes will be decided in the affirmative or negative - and the outcome will be recorded on the spreadsheet and in the minutes.*

- *If people come in late to the meeting, and they are deemed eligible to vote, they will be allowed to vote on any resolutions that have not yet been voted upon, but not on resolutions that have already been passed or rejected.*

Moved: Gabrielle Cheedy

Seconded: Kasey Cheedy

Passed on a show of hands (following the discussion listed below)

RW put this voting method to those present. It was decided that this would not be a controversial motion. RW called for the mover and seconder which were given as above. There was discussion on how we would vote on this resolution so a show of hands was called for on this resolution on the voting method.

Resolution 1 was passed on a show of hands.

The next resolution that the meeting was asked to consider was as follows:

Resolution #2

Replacing the Current Applicant

Since the Yindjibarndi #1 Native Title Determination Application WAD 6005 of 2003 (the "Yindjibarndi #1 Application"), was lodged in July 2003, some of the members of the Applicant have passed away; and, more recently there has been a division between the remaining members; accordingly, **it is proposed:**

That the current Applicant, jointly comprising Ned Cheedy, Michael Woodley, Thomas Jacob, Allum Cheedy, Mavis Pat, Sylvia Allan and

Aileen Sandy, be no longer authorised to make the Yindjibarndi #1 Application or to deal with matters relating to it.

Moved: Margaret Read

Seconded: Paul Aubrey

Passed on a show of hands (following the discussion listed below)

RW allowed each of the members of the Applicant to speak on this motion. So the following people spoke about this motion;

1. Mr Ned Cheedy wasn't available
2. Mr Michael Woodley - said he was proud to be a member of the applicant
3. Mr Tom Jacobs - Said he was proud to be standing up for Yindjibarndi
4. Mr Alum Cheedy - said he put all the applicants together and that he had done some serious hard yards on this native title
5. Ms Mavis Pat - said that she didn't want the country mined
6. Ms Sylvia Allan - said we should look after our country - I am from Millstream
7. Ms Aileen Sandy - I want us to keep going - they are the ones who put me here - when we had PNTS going

RW asked if there was anyone who wanted to speak for and against the motions
Margaret Read (MR) thanked the members of the applicant for their hard work

Lynette Phillips made a statement that she didn't feel valued for her contribution - and that she continually has to be asked who she is - she asked why do we have to do this system - in a company - because once we are registered we are a company - I'm just asking a personal question - I don't want to be split apart - I will still the same person I am - I am positive - but I am not going to rip myself apart

RW - asked for people to stick to the resolution - whether people are for or against

Russell Sandy (RS) said that he loves his family

Esther Mingo (EM) got up and spoke - she said that she is related to one of the members of the applicant who is deceased - she said that there are lot of kids here and she has every right to be here

Wendy Hubert (WH) made a statement - I want to say this has been going a long time and I have had enough - if you want to put family against family you go for it - I am here to vote - it is fair and unjust to see one family there - there are other Ngurra - I am here to speak about my rights - if you want to be oppressed you go ahead and stay oppressed

PA made a statement - Give them all a round of applause - people gave the members of the applicant a round of applause

It was asked of the Chairperson to make this resolution a show of hands because it would not be controversial

No-one objected to the show of hands

Resolution two was passed by a show of hands

The third resolution was put to the meeting:

Resolution #3

That the members of the claim group named below be authorised to make an application to the Court for orders under s 66B of the Native Title Act 1993 to replace previous Applicant; and, that they be authorised - subject to such of the conditions set out below (in proposed resolution 4) as are approved at this meeting and by the Court - to make the Yindjibarndi #1 Application and to deal with matters relating to it; namely:

- i. Ned Cheedy;*
- ii. Thomas Jacob;*
- iii. Stanley Warrie*
- iv. Allum Cheedy;*
- v. Kevin Guinness;*
- vi. Angus Mack;*
- vii. Michael Woodley;*
- viii. Joyce Hubert;*
- ix. Pansy Sambo;*
- x. Jean Norman;*
- xi. Esther Pat;*
- xii. Judith Coppin; and,*
- xiii. Maisie Ingie*

Moved: Bigali Hanlon

Seconded: Jane Cheedy

RW asked for people to speak for the motion and against the motion

No-one spoke for the motion

Paul Aubrey (PA) spoke against the motion

RW asked if everyone was happy to be on the list - Jean Norman raised the point that she thinks perhaps Rhonda Norman may be better to be on the list. Also Jane Cheedy wondered if her father should be on the list.

So RW took a suggestion from Paul Aubrey (PA) that this motion should be amended

So a proposal was put that the motion should be amended - RW fielded discussion on this

So an amendment was put from the floor

The amendment proposed for Resolution 3

That the members of the claim group named below be authorised to make an application to the Court for orders under s 66B of the Native Title Act 1993 to replace previous Applicant; and, that they be authorised individually, that is as individuals, one by one.

Moved: Paul Aubrey
Seconded: Allery Sandy

RW then asked for people to speak for and against on the proposed amendment

No-one initially spoke for the proposed resolution

MW spoke against the amendment

Gloria Lee (GL) spoke for the amendment

No-one further spoke against the motion

Wendy Hubert spoke for the motion - there are families that will better - be fair to other families - a fair go is a fair go

RW - if there is no-one else against the amended motion then we will go to the vote on the amended motion - I will give another chance to the person on why they are putting the amendment to the motion

PA spoke for the amendment - here is the opportunity for someone to nominate yourself - this is a better democratic process - this is what the arguing has been about - we can virtually get rid of them all - we can have a unified group

RW - you need to be absolutely clear on what you are voting for

RW - You need now to vote on the amendment - if you say yes then you want to vote one by one - if you say no then we go back and vote on the original resolution 3 - so be very careful - if you want to vote on that first list you need to say no - if you want to vote one by one you need to vote yes

RW - repeated this again to make it absolutely clear

Bigali Hanlon (BH) - I want to know about how many people we want on our applicant list

RW - well that will be a further question following this resolution - we will get to vote on that later

MW - made a further statement to clarify exactly what people are voting for - now there is a change on how we want to vote - if you want to vote individually then you must vote yes - if you are happy with the original list you vote no

GM - then further clarified the vote

RW - further clarified the proposed amendment to resolution 3 - that is what we are about to vote on

RW - explained the voting procedure again - the voting system will take awhile because that we have to do our voting one by one on the system we have agreed upon

RW - so RW called out the resolution again

So the resolution put to the vote was the amendment proposed for resolution 3:

The amendment proposed for Resolution 3

That the members of the claim group named below be authorised to make an application to the Court for orders under s 66B of the Native Title Act 1993 to replace previous Applicant; and, that they be authorised individually, that is as individuals, one by one.

Moved: Paul Aubrey

Seconded: Allery Sandy

Voting began

There was some discussion on the placement of the voting bins (yes and no) - but the location of the bins was agreed

Each voter lined up and waited their turn to vote at the voting table - each voter signed off on their vote and when they had done this they collected a button and placed that button in either the 'yes' ballot box or the 'no' ballot box

The vote was counted by the Chairperson and the results were as below:

To amend resolution 3

Vote outcome

1 Abstain

No 110

Yes 69

Therefore the vote to amend the motion was defeated

Philip Davies confirmed that 180 people voted by counting the voting role

RW - then told the meeting that we will vote on resolution 3

Resolution #3

That the members of the claim group named below be authorised to make an application to the Court for orders under s 66B of the Native Title Act 1993 to replace previous Applicant; and, that they be authorised - subject to such of the conditions set out below (in proposed resolution 4) as are approved at this meeting and by the Court - to make the Yindjibarndi #1 Application and to deal with matters relating to it; namely:

- xiv. Ned Cheedy;*
- xv. Thomas Jacob;*
- xvi. Stanley Warrie*
- xvii. Allum Cheedy;*
- xviii. Kevin Guinness;*
- xix. Angus Mack;*
- xx. Michael Woodley;*
- xxi. Joyce Hubert;*
- xxii. Pansy Sambo;*
- xxiii. Jean Norman;*

- xxiv. *Esther Pat;*
 xxv. *Judith Coppin; and,*
 xxvi. *Maisie Ingie*
Moved: Bigali Hanlon
Seconded: Jane Cheedy

On a show of hands the motion (Resolution 3) was carried

Next resolution

Resolution 4 was put to the meeting

This meeting authorise the following additionally named people to be members of the applicant authorised to make and deal with the application Extra people to be applicants: Paul Aubrey, Jimmy Horace, Bruce Woodley, Diana Smith and Sylvia Allan

Moved: John Sandy

Seconded: Maudie Jerrold

Speak for Paul Aubrey - I am hoping we can add a couple of names to the list - it is about moving together

Speak against the motion - Michael Woodley

Speak for: Len Aubrey

Against - Stanley Warrie - it is the same old people who will cause us a lot of trouble again

Speak for: Allery Sandy - the applicants on the other side are very young and immature - to tell you the truth power does not mean anything

RW - the vote: we will go to the hands first then if it looks very close - The motion is defeated

Therefore Resolution 4 was defeated

Adjourned the meeting for 5 minutes at 3.22pm

The fifth resolution was put to the meeting

Resolution 5

Although YAC acts as the PBC and Trustee for the Yindjibarndi People, only in respect of the Yindjibarndi Determination Area, YAC's mandate to act for and on behalf of the Yindjibarndi People as a representative institution is broader than just carrying out responsibilities imposed under the Native Title Act. YAC's objectives require YAC to protect the traditions, laws, customs and language of the Yindjibarndi People and to do so in accordance with the traditional laws, customs and religious beliefs of the Yindjibarndi People. In order to ensure the Applicant acts consistently with YAC, it is proposed that:

- a. the Applicant shall appoint YAC to act as Agent for the Applicant and shall receive legal advice and legal representation from the Principal Legal Officer and In-House Counsel for YAC, who shall be the solicitor on the record; and,*

for the avoidance of doubt, no member of the Applicant shall seek separate legal representation for or on behalf of the Yindjibarndi #1 native title claim group in respect of the Yindjibarndi #1 Application or any matters relating to it without YAC's written consent.

- b. the members of the Applicant authorised today shall not, either separately or jointly, make any decisions about any area of land or waters or do, or agree to do, any act that will affect any area of land or waters without first obtaining informed written consent from the Yindjibarndi Aboriginal Corporation.*
- c. the members of the Applicant authorised today shall not, separately or jointly, make any decision to hold any further authorisation meeting, for the purposes of s 66B of the Native Title Act 1993, without first obtaining informed written consent from the Yindjibarndi Aboriginal Corporation.*

Moved: Michelle Broun

Second: Lyn Cheedy

The resolution put to the floor

GI spoke - the reason we put this particular resolution in - in 2007 YAC decided to leave PNTS - and then the Yindjibarndi people appointed YAC as the agent - this resolution is to ensure that the applicant and the Yindjibarndi Aboriginal Corporation are on the same page - in terms of the other ones - the aim is to ensure that there is a consistent single voice

Speak against Paul Aubrey: - it is an attempt by YAC to control the Yindjibarndi 1 claim

Speak for: Michael Woodley - we have to get facts first - it is wrong to say that YAC is controlled by me and George Irving

Those present voted for the motion

The Chairperson declared the motion (Resolution 5) was carried

Resolution 6

In order to ensure that the Applicant retains authority to make the Yindjibarndi #1 Application and to deal with all matters relating to it, in the event that individual members of the Applicant pass away, or are no longer able or willing to remain members of the Applicant; or in the event that individual members of the Applicant breach the conditions set out above (in Proposed Resolution 4), it is proposed that:

In the event that a member of the Applicant passes away or is unable or unwilling to remain a member of the Applicant; or in the event that any member of the Applicant breaches the conditions set out above (in Proposed Resolution 4), then that member is no longer authorised to make the Yindjibarndi #1 Application and to deal with matters relating to it and the remaining members of the Applicant remain authorised to make the Yindjibarndi #1 Application and to deal with matters relating to it.

Moved: Pansy Sambo

Seconded: Bigali Hanlon

The motion was put to the floor and it was carried on a show of hands

RW closed the meeting - that concludes the Yindjibarndi 1 authorisation

The meeting closed at approximately 4.15pm

“MW-191”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked “**MW-191**” referred to in the witness statement of Michael Woodley dated 5 June 2023.



1557
YINDJIBARNDI ABORIGINAL CORPORATION
PO Box 111, Roebourne, WA 6718
Tel: 08 9182 1497 : 08 9182 1141 : Fax: 08 9182 1035
I.C.N. Number 4370 A.B.N. Number 97 456 543 455
<http://yindjibarndi.org.au/>

Wirru-murra Yindjibarndi Aboriginal Corporation
(WMYAC) - 6 Queen Street Roebourne 6718.

26th of March 2012

Dear WMYAC member,

RE: Working together for all Yindjibarndi.

I am writing this letter to you from the heart, not just putting pen to paper.

I am writing with the hope that all us Yindjibarndi families can come together again on common ground — the place where we all stood together in past times, where our Yindjibarndi old people once stood united, strong and proud.

That place still exists because it exist in our hearts, and because we carry with us so much that is good and great about Yindjibarndi.

“If we are what we believe we are — then what we really believe will happen; and it is the belief (the faith) in a thing makes it happen.”

I passionately believe in this thing is called Yindjibarndi — it is who we are, the glue that kept us all together through some of the most challenging times in our history.

What we are going through now is not helping Yindjibarndi — it is a challenge to us — but it is a challenge that can be and must be fixed.

If we disagree all the time then we will never move to fix Yindjibarndi. If this difficulty we are having is all about differences of opinion, then we should work together to narrow the issues down — leaving out the confrontation points.

We have mixed up too many other matters that have kept us fighting with each other, and which have kept us on opposite sides of the Yindjibarndi heart beat — the heartbeat of our home and our family lives. Our families should fight no more.

If we all agree that this difference of opinion started about 18 months ago when the Yindjibarndi Aboriginal Corporation (YAC) rejected the Fortescue Metals Group (FMG) ILUA compensation offer — then I suggest that we agree to address this matter together, by negotiating as one Yindjibarndi people with FMG to finalise an ILUA. In this way we might bring the opposite sides together and make the Yindjibarndi heart beat strong once more.

I also think — if you agree — we should talk and mediate first ***Ngaarda to Ngaarda***, to try with all our power to fix up some of the issues and to bring us all one-step closer to healing these differences of opinion.

Please don't be worried if you want to talk face to face with me, I welcome you.

Yours truly,

Stanley Warrie
Chairperson
Yindjibarndi Aboriginal Corporation (YAC).

“MW-192”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following 2 pages is the annexure marked “**MW-192**” referred to in the witness statement of Michael Woodley dated 5 June 2023.


YINDJIBARNDI ABORIGINAL CORPORATION RNTBC

21 Hampton Street (PO Box 111),

Roebourne, WA 6718

Tel: 08 9182 1497

Fax: 08 9182 1035

Ref: 12_gmi

5 July 2012

 The Chairman
 Wirilu-Murra Yindjibarndi Aboriginal Corporation

By Hand

Dear Chairman,

Offer to Settle Dispute

As you know Rio Tinto Iron Ore (RTIO) has been negotiating with Yindjibarndi Aboriginal Corporation (YAC) for some years now, with a view to reaching a comprehensive land access agreement under which the Yindjibarndi People will consent to the access and use of Yindjibarndi country by RTIO for its mining operations. You will recall the meeting that was held in Roebourne, on 13 and 14 February 2012, to which all Yindjibarndi were invited to hear a joint presentation by RTIO and YAC on the progress that had been made in the negotiations by way of a Statement of Intent, which was executed on 23 December 2011.

As advised in the February presentation, in the Statement of Intent, RTIO promised to provide a compensation package by way of:

- an uncapped Rail Tariff of 1.5 cents per tonne, which will commence upon the signing of the proposed ILUA;
- an uncapped mining royalty, of 0.5% FOB, which will replace the Rail Tarrif, when RTIO commences mining on Yindjibarndi country; and,
- an advance payment of \$15million, to be paid at significant milestones in the negotiations.

Although the WMYAC Directors did not take up the offer, made by YAC on 16 February 2012 (in the attached letter), to form a joint negotiating committee to advance the negotiations with RTIO, I am pleased to advise that RTIO and YAC have now finalised a Heads of Agreement, which sets out the framework for a proposed Indigenous Land Use Agreement (ILUA). The negotiations to finalise the terms of the ILUA will take place over the next six months. The Heads of Agreement is a significant milestone in the ongoing negotiations; and, in accordance with the terms of the Statement of Intent, RTIO intends to release \$2million of the promised advance payments, upon the execution of the Heads of Agreement.

Mindful of the harm that is being caused to the Yindjibarndi People as a result of ongoing legal disputes against Yindjibarndi Aboriginal Corporation (YAC) and certain of its members, directed by the Wirilu-Murra Aboriginal Corporation (WMYAC) and funded by the Fortescue Metals Group (FMG); and noting that, as a result of finalising a Heads of Agreement with Rio Tinto Iron Ore ("RTIO"), YAC will soon receive an advance payment of \$2million from RTIO; and noting further

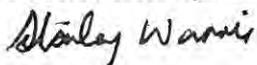


that, according to WMYAC's published Annual General Report for the year ending 30 June 2011, WMYAC is a health and community services organisation with no income or assets, the YAC Board of Directors, after consultation with the Yindjibarndi Council of Elders, has authorised me to offer WMYAC half of the \$2million advance payment as a contribution to support the objectives of WMYAC, in return for WMYAC, on behalf of all its members, and on behalf of Aileen Sandy and Sylvia Allan, agreeing that WMYAC will:

- endorse and fully support YAC as the one and only representative institution entitled to negotiate all native title and heritage matters on behalf of the Yindjibarndi People;
- instruct Integra Legal and Eastwood Sweeney Law to immediately withdraw the application made on behalf of Mavis Pat, Aileen Sandy and Sylvia Allan in the Federal Court, under s 66B of the *Native Title Act 1993*;
- instruct Integra Legal to immediately withdraw the application made on behalf of Mavis Pat, Aileen Sandy and Sylvia Allan in the Supreme Court of Western Australia, under the Corporations (Aboriginal and Torres Strait Islander) Act 2006;
- withdraw all support for FMG's Solomon project, pending the negotiation of a Land Access Agreement with YAC, by immediately ceasing to participate in heritage surveys for FMG, immediately withdrawing any approval given in support of any application made by FMG for consent of the Minister, under s 18 of the *Aboriginal Heritage Act 1972*; and, immediately withdrawing any approval or support for the grant of any further mining tenements to FMG.

This offer is not open for negotiation and, if not accepted before the close of business on the 14 July 2012, it will be deemed by YAC to have been rejected by WMYAC and withdrawn. The offer may be accepted by affixing the corporate seal of WMYAC to the bottom of this letter along with the signatures of all current directors. If WMYAC accepts the offer, YAC will make the \$1million contribution to WMYAC within 14 days after the withdrawal of the proceedings in both the Federal Court and the Supreme Court.

Yours Sincerely,



Stanley Warrie
Chairman

“MW-193”

No: WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

**YINDJIBARNDI NGURRA ABORIGINAL
CORPORATION RNTBC (ICN 8721)**

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This and the following page is the annexure marked **“MW-193”** referred to in the witness statement of Michael Woodley dated 5 June 2023.



Yindjibarndi Aboriginal Corporation

ROEBOURNE, WA, Australia, WESTERN AUSTRALIA

(08) 9182 1497

media@juluwarlu.com.au

yindjibarndi.com

Rating · 5.0 (8 Reviews)

Photos

See all photos



Yindjibarndi Aboriginal Corporation shared a memory.

May 29, 2021

One year ago today!



3 Years Ago
See your memories >



Ngaarda Media

May 29, 2020

'WE ARE RAPPT THAT ITS OVER': YINDJIBARNDI PREPARE TO MOVE FORWARD

There were tears of joy for Yindjibarndi today as they waited to hear the High Courts decision regarding FMG's appeal against exclusive native title rights.

CEO Michael Woodley says that they can now get on with the next phase which will look at compensation from FMG who mine on their ngurra.

"From a Yindjibarndi point-of-view, we are just rapt that this is all over now. This is it, it's done and dusted, Mr Woodley said.

"We now move to prepare and submit a compensation claim in the Federal court."

Yindjibarndi elder, [Margaret Read](#) says its not about the money.

"I always said, money was never an issue. We had a richness in our culture, our customs, our law and our kinship."

"But this will rebuild the Yindjibarndi nation to the once-powerful tribe they used to be and we can now focus on getting our young people up and educated to be our future."

