



No. WAD 37 of 2022

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

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

Joint Report
Conference of Experts
Conference 11-12 October 2024

Professor Peter Veth

Dr Caroline Bird

Mr Douglas Willims

Introduction

1. Pursuant to orders dated 9 February 2024, as amended on 28 August 2024, Registrar McGregor convened a Conference of Experts on 11 and 12 October 2024 in the Perth Registry of the Federal Court of Australia.
2. The conference was attended by Professor Peter Veth and Dr Caroline Bird for the Applicant and by Mr Douglas Williams for the Fortescue Metals Group (FMG) Respondent.
3. Professor Veth and Dr Bird produced an Expert Archaeology Report dated 10 June 2024 on behalf of the Applicant.
4. Mr Williams produced an expert witness Response Report dated 30 August 2024 on behalf of the FMG Respondent.
5. Professor Veth and Dr Bird produced a further responsive report to the report prepared on behalf of the FMG Respondent dated 10 October 2024
6. Prior to the conference, the parties provided a series of topics for discussion to the Court. The Parties agreed ahead of the conference that Professor Veth and Dr Bird would address different topics to avoid two experts for the Applicant providing an opinion on a single topic.
7. Prior to the conference and the preparation of their reports, each expert was provided with a copy of the Expert Evidence Practice Note (GPN-EXPT). Each expert was reminded of their role as an expert witness, including their duty to the Court.
8. At the conference, each expert was reminded of the purpose of the conference, namely to produce a joint report which briefly identifies what matters are agreed and where there is disagreement and why. The experts were encouraged to reach agreement on a subject where it is possible to do so consistently with their knowledge and opinions on that subject.
9. The experts were reminded that sometimes apparent differences between experts are resolved by discussion and turn out to be an artefact of the process of drafting. Sometimes discussion enables disagreements to be clarified and the scope of the dispute to be narrowed or eliminated.
10. The experts were encouraged to approach the discussion with an open mind, with a view to assisting the Court. However, the experts were made aware they should not feel pressured to agree to any matter that is not consistent with their knowledge and opinions on that subject.

11. The experts were reminded they are required to comply with the following guidelines when preparing this joint expert report:

- (a) In the period from the commencement of the expert meeting to the signing of the joint report, the experts must not communicate with the parties, their lawyers or counsel regarding the case except with the consent of the other party or as set out in sub-paragraphs (b) and (c) below.
- (b) An expert may communicate with the lawyers for a party for the purpose of getting assistance with logistical arrangements such as travel or teleconferencing but may not, in the course of that communication, discuss or disclose any substantive issue the subject of the meeting (or any aspect of it) with those legal representatives.
- (c) All draft versions of the report and draft materials exchanged are to remain confidential to the experts and must not be given or shown to the parties' lawyers or counsel in any jurisdiction either during or after the conclusion of the expert meeting.
- (d) The experts should also re-read and comply with Federal Court Practice Note GPN-EXPT (Annexure A; Annexure B). A copy of the Expert Evidence Practice Note can also be accessed at: <https://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-expt>

12. The experts were expected to have read the reports and considered the views of the other experts ahead of the conference.

13. At the conclusion of the discussion, the experts were asked to confirm the substance of their discussion and the opinions expressed as set out in this report.

14. Each expert expressed the opinions set out in this report. The experts were asked to indicate this by signing the declaration at the end of the report.

**Topic 1 - The age of human occupation within the area of the mine and at Bangkangarra
Addressed by Mr Williams and Professor Veth**

The experts agree:

1. The age of human occupation within the area of the mine and at Bangkangarra is between 40-45 thousand years, based on current evidence.
2. There are no further substantial archaeological issues on which the experts disagree in relation to this matter.

**Topic 2 - The nature and extent of damage to archaeological places and sites as a result of FMG's mining activities
Addressed by Mr Williams and Dr Bird**

The experts agree:

3. Within the Solomon Hub Project, 249 sites have been subject to s18 consents under the *Aboriginal Heritage Act 1972* (WA) and recorded to site identification level in accordance with the requirements of the s18 process. The majority of these have been destroyed.
4. Many sites and archaeological places (>285) have been salvaged in whole or in part as mitigation. This represents a substantial effort to mitigate the loss of cultural material.
5. A number of these sites remain extant in Heritage Restriction Zones. It is not possible to comment on the current status of these sites or the processes in place for managing impacts from a range of mining activities (such as blasting, vibration, dust) without direct inspection.
6. There are no further substantial archaeological issues on which the experts disagree in relation to this matter.

**Topic 3 - The significance of the archaeological sites located within the area of the mine, including the significance of sites as a corpus / archaeological landscape
Addressed by Mr Williams and Professor Veth**

The experts agree:

7. The body of sites, collectively, is regionally significant and is able to contribute to nationally important issues in the field of First Nations archaeology and specifically the occupation of the arid zone of Australia.

8. A site, or group of sites, can contribute to nationally important issues without being necessarily of National Significance under the *Environmental Protection and Biodiversity Act 1999* (Cth).
9. Today, none of the sites in the Solomon Hub Project, individually, would reach a threshold of National Significance under the *Environmental Protection and Biodiversity Act 1999* (Cth).
10. There are no further substantial archaeological issues on which the experts disagree in relation to this matter.

**Topic 4 - Whether inferences can be drawn that the area of the mine contains archaeological sites or places equally as archaeologically rich as YG-02 at Bangkangarra
Addressed by Mr Williams and Professor Veth**

The experts agree:

11. The Bangkangarra Rockshelter (YG02) is a deep and old site with first occupation likely overlapping with the reliable dates from sites in the Solomon Hub Project an approximate range of 45 – 35,000 years old). The range of raw materials used to make the artefacts in Bangkangarra, and their density, overlaps with the richer sites in the Solomon Hub Project.
12. It is unlikely that sites of similar qualities to Bankangarra went unrecorded in the assessment process of the Solomon Hub Project and are now destroyed without mitigation.
13. There are no further substantial archaeological issues on which the experts disagree in relation to this matter.

**Topic 5 - The processes adopted by FMG and its consultants for identifying, investigating and mitigating archaeological sites
Addressed by Mr Williams and Dr Bird**

The experts agree:

14. The methods for identifying, investigating and mitigating archaeological sites in the Solomon Hub Project are broadly comparable to those widely employed in the Pilbara. Heritage consultants working in the Solomon Hub Project appear to have complied with regulatory requirements.
15. Standards of mitigation have varied through time, for a number of reasons, primary of which is the lack of consistent guidance from the regulatory authority (currently the Department of Planning, Lands and Heritage).

16. In addition to regulatory issues, numerous survey and excavation programs conducted on different parcels of land within the Solomon Hub Project at different times, or the same parcel of land at different times, make it difficult to contextualise results and consistently assess significance.
17. The experts agree that more detailed investigation could have been done to mitigate the loss of some sites.
18. There are no further substantial archaeological issues on which the experts disagree in relation to this matter.

Topic 6 - Whether there is a requirement for results of the archaeological investigations undertaken at the mine to be published

Addressed by Mr Williams and Dr Bird

The experts agree:

19. There is no legal or regulatory requirement for results of the archaeological investigations undertaken at the mine to be published. Such dissemination is not legally required nor a standard condition of approvals.
20. This is a deficiency in the regulatory system which affects the industry widely.
21. Certain results should be publicly visible because of their importance in facilitating informed heritage management decisions and to contribute to the wider archaeological discourse. This is one of the professional ethical obligations of archaeologists.
22. Lack of publication is an endemic and widespread problem in commercial archaeology due to:
 - a. Lack of relevant conditions in approvals or permits; and
 - b. Consequent lack of resources to prepare publication level documents/analyses.
23. There are no further substantial archaeological issues on which the experts disagree in relation to this matter.

Declarations of Experts

I, Peter Veth, in expressing the opinions attributed to me in this report have had regard to the expert reports filed in these proceedings and the statements made at the conference of experts. I have made all the inquiries which I believe are desirable and appropriate and that no matters of significance which I regard as relevant have, to my knowledge, been withheld.

Signed:



Dated: 12 October 2024

I, Caroline Bird, in expressing the opinions attributed to me in this report have had regard to the expert reports filed in these proceedings and the statements made at the conference of experts. I have made all the inquiries which I believe are desirable and appropriate and that no matters of significance which I regard as relevant have, to my knowledge, been withheld.

Signed:



Dated: 12 October 2014

I, Douglas Williams, in expressing the opinions attributed to me in this report have had regard to the expert reports filed in these proceedings and the statements made at the conference of experts. I have made all the inquiries which I believe are desirable and appropriate and that no matters of significance which I regard as relevant have, to my knowledge, been withheld.

Signed:



Dated: 12 October 2024

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Details of Filing

Document Lodged: Non-Prescribed Report
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 12/10/2024 3:33:00 PM AWST
Date Accepted for Filing: 12/10/2024 3:38:05 PM AWST
File Number: WAD37/2022
File Title: YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC ICN
8721 AND STATE OF WESTERN AUSTRALIA & ORS
Registry: WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

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