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Registrar

Important Information

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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

Joint Report

Conference of Experts

Conference 5 – 22 March 2024

Mr Campbell Jaski and Mr Murray Meaton

Introduction

1. Pursuant to the orders of Justice Burley dated 9 February 2024, Registrar McGregor convened an experts' conference commencing on 22 March 2024 in the Perth Registry of the Federal Court of Australia.

2. The conference was attended by: Mr Murray Meaton, expert for the Applicant and Mr Campbell Jaski, expert for the Respondents.

3. Prior to the conference, the parties provided a series of propositions to the Court. These propositions are set out in this report. These propositions were provided to the experts prior to the conference.

4. Prior to the conference, each expert was provided with Expert Evidence Practice Note (GPN-EXPT) and at the conference, each expert was reminded of their role as an expert witness, including their duty to the Court.

5. 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.

6. 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.

7. 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.

8. 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) If any expert requires guidance in relation to a matter of procedure during this period, then the expert should send their enquiry by email to Registrar McGregor at Laurelea.McGregor@fedcourt.gov.au copying her assistant, Shannon.hayes@fedcourt.gov.au, and the other expert or experts.

(c) 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.

(d) The experts are asked to discuss and decide between themselves how a final report is to be prepared. By way of example only, following discussion of a particular topic or topics, each expert might initially prepare their own draft response and exchange them before further discussion, or the experts may divide

up responsibility for preparing a first draft response on each topic that reflects the outcome of the discussion on that topic, with the report then to be collated, reviewed, amended as required and approved by each expert before it is finalised.

(e) 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.

(f) 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:

http://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/gpn-expt

9. The Experts were expected to have read the reports of, and considered the views of, the other expert ahead of the conference. Mr Jaski was able to adequately prepare and consider the views of the other expert ahead of the Conference. Mr Meaton was provided Mr Jaski report for the first time on Friday 15 March 2024.

10. 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.

11. 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.

CONFERENCE 4

Mr Jaski and Mr Miles

Topic 1: Express areas of disagreement

1. In the report of Mr Jaski of 5 March 2024 he advances criticisms of the report of Mr Miles at paragraphs [77] – [92] and [390] – [442]. You are asked to identify, discuss and set out in your joint expert report:
   (a) what you consider to be the key points of disagreement between you, cross referencing the paragraphs;
   (b) summarise your points of disagreement;
   (c) set out any points of agreement reached following your discussion; and
   (d) explain, in short form, why you consider your view to be preferable and correct.

	Mr Jaski	Mr Meaton	
J1	There are a number of areas of disagreement between Mr Meaton and Mr Jaski. However, the Experts have identified a key threshold issue of disagreement that causes many of the further areas of disagreement to flow. This issue relates to the value of the land and whether it is impacted by virtue of the underlying mineral potential.		M1
J2	In Mr Jaski's view, the value of the land is not impacted by virtue of the underlying mineral potential because Mr Jaski considers that the land and the underlying mineral potential are separate, standalone assets. As such, the owner of the land is not entitled to extract or share in the profit from any mineral extraction. Further, ownership of the land is not required in order for the mining lease holder to extract the underlying minerals.	Mr Meaton considers that the freehold value of the land will take into account the mineral potential and that YP are entitled to a share of any future revenue given their exclusive possession rights. The use of pastoral or residential land value is not appropriate for an area with identified mineral resources. 38 years of agreement making in Western Australia has recognised that a small share of revenue is the fairest method of compensating native title holders for the impact of mining on country.	M2 M3
J3	In Mr Jaski's opinion, a willing buyer of the land, assuming a transaction as at the date of the grant of a mineral tenement, would not be prepared to pay an additional amount (above its market value prior to the grant of a mineral tenement) by virtue of the mineral potential underlying the land on the hope that he might one day be able to sell that land, at an additional premium to the purchase price, to the holder of the mineral tenement. In Mr Jaski's opinion, the prospect of this	Mr Meaton considers the land and the mining tenement to be inseparable. It is not possible to realise any value without access to the land and tenement approvals. Approval to mine is not granted until there is a proven mineral resource and hence, while a tenement can be	M4

	eventuating is too remote and therefore would not be paid for up front by a willing purchaser.	sold with mining lease approvals it will have no value without an access agreement.
J4	**Impairment Factor for mining (205)** Mr Jaski maintains his view that an appropriate impairment factor for Mining Leases is 90-100%, which is based on his analysis and reason at paragraphs 206-213 of his report.	**Impairment Factor for mining** Jaski (205) – Meaton argues the impairment factor for mining leases should be 100% - no discount. These are such long-term and land damaging impacts that there is no case for any discount. The land will be returned in a degraded state with multiple open pits (backfilling is only required to water-table level) and waste dumps will permanently change the land profile.
J5 J6 J7	**Legacy impact of mining (299)** Mr Jaski maintains the views he sets out at paragraphs 297-312 of his report. Mr Jaski does acknowledge that there may be ongoing impairment of native title rights and interest as a result of the legacy impact of mining. Mr Jaski has not specifically quantified this impact (on the economic value of the land) because, in Mr Jaski's opinion, it is likely to be small considering the already very low economic value of the land. Further, Mr Jaski's framework does take into account (through the use of his Deprival Factor) the length of time that the native title rights and interests have been impaired such that where mining has taken place over a long period of time and results in greater legacy effects, the Deprival Factor works to attribute additional value for the impairment.	**Legacy impact of mining** After 30 to 50 years of mining, the landform will be substantially modified and the area degraded with many pits and waste dumps. Restoration of native title rights over such a heavily modified environment substantially reduces the land value This is far from a *temporary impairment of rights* (303).

M5

M6

	Implicit assumption in royalty methodology	**Implicit assumption in royalty methodology**	
J8	Mr Jaski repeats his comments at section 2(b) below.	Jaski (404) (a) – The revenue share used distinguished between large and smaller iron ore mines, and between exclusive and non-exclusive rights. Iron ore mining has a very similar impact on the ground across the Pilbara and most traditional owners argue similar cultural and heritage impact.	M7
	1.(c)Agreement:		
J9	Jaski (363) - Meaton disagrees that he did not considers the Native Title Act as the foundation of assessment. This Act is fundamental to the royalty methodology proposed as will be set out in Topic 2. The project royalties used in the sample were all negotiated under the Native Title Act since 2004. Mr Jaski now understands how Mr Meaton has considered the NTA and used relevant parts in his methodology.		M8
J10	Jaski (387) – Meaton only applied the 1% royalty to the estimated value of the iron ore mined from Yindjibarndi country on the assumption that the mine pits are in the area of exclusive rights. Mr Jaski now understands why Mr Meaton only applied the 1% royalty.		M9
J11	The YP determination states that exclusive rights confer "*the right to possession, occupation, use and enjoyment of that area to the exclusion of all others*" The determination excludes rights to minerals but confers a right to negotiate over the conditions under which the future act might be carried out.		M10
J12	The industry standard in negotiation of Mining Agreements has been to base compensation on a small share of the revenue produced by the extraction of minerals from the area.		M11
J13	The negotiated compensation agreements cover both economic and non-economic loss and other contractual rights and obligations.		M12

To the extent that your answers to Topic 1 do not address Topics 2, 3 or 4, you are asked to proceed to discuss and then provide, in summary form, your views in respect of each.

Topic 2: Compensation Methodology

2. What is the appropriate method to determine the amount of the entitlement of the Yindjibarndi People (**YP**) to compensation for economic loss arising from the loss, diminution, impairment or other effect (together **Impairment**) on YP's native title rights and interests caused by the grant(s) of the FMG tenements, including whether the method used may rely on or refer to:

a) agreements made between mining companies and other native title holders/registered claimants or other mining companies as to other mining projects;
b) the value of any mineral in or under the surface of the land the subject of YP's native title rights and interests;
c) the value of any minerals produced or any rent, royalty or other amount assessed in respect of the mining of any such mineral;
d) the amount that would be payable if the grant(s) of the FMG tenements were instead a compulsory acquisition of a freehold estate in the land the subject of YP's native title rights and interests;
e) the principles for the assessment of economic loss as determined by the High Court in *Northern Territory of Australia v Griffiths* [2019] HCA 7; (2019) 269 CLR 1; and/or
f) any other relevant factor.

Mr Jaski	**Mr Meaton**
J14 The valuation or assessment of native title rights and interests is an emerging discipline and there is limited regulatory or judicial guidance available. Mr Jaski has therefore developed a framework to assess compensation based on his own experience as a valuer and consideration of - the relevant legislative frameworks concerning the determination of native title compensation, which are set out in the NTA and the Mining Act - the Timber Creek Decision, which provides judicial guidance on how native title compensation is to be assessed - the Brown Decision which provides judicial guidance on the temporal relationship that exists between the rights and interests conferred to the holders of mining tenements and the native title rights and interests of the native title holders.	M13 A small levy on revenue is the correct approach and has become the standard for mining companies including FMG. I believe this is the correct approach because the NT holders have the right to negotiate an agreement and they will negotiate a mutual beneficial agreement. I disagree that the compensation payable should be the amount lost. I say it should be a fair payment for rights impaired as well as the value of the benefits obtained by the future act conducted on their country. M14 Agreement will not be reached without consideration of the benefits to the acquiring party. M15 Compensation based on revenue created by the future act is seen by the companies and the Traditional Owners as the only fair way to acknowledge native title rights and the impact of destructive mining practices on land cared for by the traditional owners. It includes economic and non-economic values.

J15	In essence, the High Court found that the correct approach to awarding native title compensation was a bifurcated one that involved: - firstly, determining the economic value of the native title rights and interests that had been extinguished - secondly, estimating the additional, non-economic or cultural loss occasioned by the consequent diminution in the Timber Creek Claim Group's connection to country.	A royalty is the fairest method of revenue sharing as there will be no payments if mining does not proceed and it allows for the sharing of gains and pain.	M16
J16	The approach Mr Jaski has taken in determining the value of the Exclusive Rights and Non-Exclusive Rights is based on an application of the reasoning in the Timber Creek Decision. If the native title holders' rights and interests are Exclusive Rights, he attributed a starting value equal to 100% of the freehold value of the land. If the native title holders' rights and interests are Non-Exclusive Rights, he started at 50% of that value, being what the High Court suggested was the upper limit of their value. He then determined how the FMG Tenements have impacted or will impact those values over the relevant duration.	FMG has supported the standard industry approach with at least four other Mining Agreements. They also reached an agreement with a separate group for this project – Wirlu-Murra group. I believe this had a similar structure to other industry agreements and was not based on land values.	M17
		It's mutually beneficial to the parties to have an agreement to ensure continued productive engagement between the parties.	M18
J17	By taking this approach, Mr Jaski has been able to determine what would be the maximum value for the Exclusive Rights and Non-Exclusive Rights.	The Mining Act restriction on compensation capped at freehold land value only applies to a Warden Court process in the absence of an agreement. Companies and Traditional Owners are aware of the limitations under this default process and hence I am not aware of a single case in Western Australia that has been submitted to the Warden for assessment of compensation. Both parties understand the default process would not produce an outcome conducive to a harmonious agreement and that it would be expensive in other ways through constant disruption to culture and heritage and environmental processes.	M19
J18	Mr Jaski was able to determine these maximum values without having to determine the values of the individual native title rights and interests, the subject of the Determination. This is because, his starting point is an assumption that Exclusive Rights equal 100% of the freehold value of the land, as held in the Timber Creek Decision and an assumption that Non-Exclusive rights can be no more than 50% of that freehold value.	Jaski (299) - Meaton disagrees with the statement that "even if rehabilitation does not return the land to its pristine condition prior to the granting of the FMG Tenements, any legacy effects of mining on the land are unlikely to materially impact its economic value. Mr Meaton contends that a damages factor must be added to compensation to reflect the degraded asset (the land) returned to YP.	M20

J19	Mr Jaski has only determined the economic component of the compensation. Determining the cultural or non-economic component is not within Mr Jaski's expertise.		
J20	Mr Jaski's framework for calculating the economic component of compensation or loss requires the determination of five key inputs: - Grant date of the FMG Tenements. - Freehold value of the land. - Rights and Interests Factor. - Impairment Factor. - Deprival Factor.		
J21	Mr Jaski repeats the comments he made at section 1(b) above in respect of the legacy impacts of mining and how they are compensated for using his deprival factor.		
	2(a)	2(a)	
J22	Mr Jaski does not consider that agreements made between mining companies and other native title holders/registered claimants or other mining companies as to other mining projects are appropriate to utilise to determine compensation for the following reasons: - The task at hand is to determine the amount of the entitlement of the YP to compensation for economic loss arising from the Impairment of the YP's native title rights and interests caused by the grant(s) of the FMG tenements. This task requires consideration of the YP's native title rights and interests and it also requires consideration of how those rights and interests have been impaired by the grant(s) of the FMG tenements. Adopting royalty rates from other native title agreements or adopting royalty rates from agreements between two mining companies, which both have an interest in the mineral rights –	The pre-amble to the Native Title Act stresses that future Acts should only be validated if every reasonable effort has been made to secure the agreement of the native title holders through a special right to negotiate. The emphasis in the legislation is on "agreement making". *Just terms* lies at the heart of the processes in the Native Title Act (section 51 (1)). Both parties to an agreement want a "fair and reasonable outcome" or the agreement will not be lasting or harmonious. Since 1997, all companies in Western Australia have negotiated agreements based on the value or quantity of production. All parties agree that this provides the only fair expression of the value of the project to both parties. Mining industry agreements become the benchmark against with Traditional Owners and mining companies determine if the benefits being agreed amount to "just terms".	M21 M22

	but do not necessarily have any interest in the land, does not provide for any consideration of the YP's native title rights and interests or how those rights and interests have been impaired by the grant(s) of the FMG tenements. - Native title royalty agreements contain a bundle of contractual rights and obligations agreed between the parties. As such, they do not seek to specifically value native title rights and interests. - The monetary value of the royalty payments, depending on the specific agreement, are likely to incorporate value that can be attributed to: • Economic loss • Non-economic loss • Risk of project delay • Specific positive and negative contractual obligations which are not related to the compensable act (for example an obligation on the native title holders not to object to the application of other tenements in the future).		
J23	In Mr Jaski's opinion, it would be very difficult to determine what portion of a native title royalty relates to the economic loss component and what portion relates to each and any or every other component.		
J24	Further, the portion of a native title royalty that relates to the economic loss component is likely to be different under each agreement where, for example, the value attributed to the risk of project delays will be specific to the economics and development status of that particular project. Accordingly, Mr Jaski considers that it is erroneous to assume the full royalty rate negotiated between various claim groups and mining companies in respect of a bundle of contractual rights and obligations is reasonably representative of the economic loss to the YP in this matter.	The WA Mining Act s123 (2)(a) requires that compensation be established by **agreement** in the first instance. The limitations on compensation set out in the Jaski report relate to processes in the Warden's Court in the absence of agreement. Yindjibarndi hold **exclusive** rights. A Mining Lease, if granted, would still require that Yindjibarndi consent to access to the land. They would be in a strong negotiating position that would ensure they would only agree to access with compensation at least equivalent to industry standards. Mansfield noted in the Timber Creek case that Native title holders who hold exclusive native title rights and interests over land could license a third party to occupy that land for a limited duration (ie something like a lease) (Mansfield 195). Exclusive rights can be equated with the rights of private freehold land owners. In the WA Mining Act, there are numerous restrictions on mining over private land. The Wardens Court is required to issue an access approval and this is limited to 30 days (s 30(3)(a)) and the private owner can stop any clearing of trees (s 29(7)(c)). The restrictions available to a private land owner effectively mean there is very little mining on private land in Western Australia. If exclusive rights were equivalent to those of a private land owner, there would be substantial restrictions on mining activity. A mining tenement is similar to a lease in that it does not extinguish native title and it allows future acts that generate larges revenue. Such revenue would be considered in the lease terms. In the Federal court appeal (NT v Griffiths FCAFC 106), the Court argued (s 51(2) that the Spencer test seems inappropriate on the grounds when government can be the only purchaser, and the interests cannot be sold to a third party. Meaton argues further than the seller is being forced to **surrender** rights and is not a willing seller. Nonetheless, this orthodox measure of value is the only basis on	M23 M24 M25 M26 M27 M28 M29

		which to assess value. Meaton does not argue against this test but that the market value is not residential land but mining land and the mining benefit will be considered by both buyer and seller in any negotiation. In a case of land resumption for residential purposes, the argument that exclusive rights are not less than freehold values is logical. It is not logical where the land includes vast mineral wealth. Any land holder or party with exclusive rights of access would factor into a sale value, the potential value to the purchaser. Section 51(8) states that "Just as it is not appropriate to treat exclusive native title rights as **less** than freehold, ...or to reduce the value because they are inalienable ...Meaton considers that this statement does not put the value of land as a ceiling on the value of rights nor does it consider inalienable rights to be less valuable. Meaton accepts that non-exclusive rights are less valuable than exclusive.	M30 M31
J25	2(b) Mr Jaski does not consider that the value of any mineral in or under the surface of the land the subject of YP's native title rights and interests should be utilised to determine compensation because, in Mr Jaski's view, the rights to the underlying minerals in the Determination Area have not been conferred upon the YP (according to the paragraph 5(c)(i) of the Determination) and therefore compensation should not be determined by reference to the value of any minerals under the land.	2(b) Strictly no - not based on value in the ground but on a share of revenue for minerals extracted from the ground and sold. There is no revenue or royalty payments if mining does not proceed.	M32

J26	Further, this approach would not be consistent with Mr Jaski's reading of either: - section 51A of the NTA, which states that: *The total compensation payable under this Division for an act that extinguishes all native title in relation to particular land or waters must not exceed the amount that would be payable if the act were instead a compulsory acquisition of a freehold estate in the land or waters.* - section 123 of the Mining Act, which states that: *(1) On and after the coming into operation of the Mining Amendment Act 1985, in so far as the mineral is by virtue of section 9 the property of the Crown or the mining is authorised under this Act no compensation shall be payable in any case, and no claim lies for compensation, whether under this Act or otherwise —* *(a) in consideration of permitting entry on to any land for mining purposes; or* *(b) in respect of the value of any mineral which is or may be in, on or under the surface of any land; or* *(c) by reference to any rent, royalty or other amount assessed in respect of the mining of the mineral; or* *(d) in relation to any loss or damage for which compensation can not be assessed according to common law principles in monetary terms.*	
J27	In Mr Jaski's view, the revenue that flows from the extraction of minerals is directly linked to the value of the minerals in the ground such that the value of the minerals in the ground reflects the risk weighted future cashflows that are expected from the extraction of those minerals.	

	2(c)	2(c)	
J28	Mr Jaski does not consider that the value of any minerals produced or any rent, royalty or other amount assessed in respect of the mining of any such mineral should be utilised to determine compensation for the same reasons in 2(b) above.	Yes, because the value of the asset can only be realised with the support of the Traditional Owners. The TO's do not assert that they hold rights to minerals. They assert they have a right to a very small share in any revenue generated by the future Act. A share of revenue is not a right to the minerals.	M33
	2(d)	2(d)	
J29	Mr Jaski considers that the amount that would be payable if the grant(s) of the FMG tenements were instead a compulsory acquisition of a freehold estate in the land the subject of YP's native title rights and interests is relevant given that s 51A deals with compensation limited by reference to freehold estate and provides that:	This restriction fails on three points – it is not freehold land, there is no compulsory acquisition, and compulsory acquisition only applies when governments resume land for public purposes.	M34
J30	*The total compensation payable under this Division for an act that extinguishes all native title in relation to particular land or waters must not exceed the amount that would be payable if the act were instead a compulsory acquisition of a freehold estate in the land or waters.*		
J31	Mr Jaski considers this hypothetical analysis to be valid as a valuer because valuers must make many assumptions in valuing assets. For example, that a hypothetical seller is willing, even if the actual seller is not. Or, that a hypothetical transaction will occur on a certain date, even if it is likely that for market or other reasons a transaction would be unlikely to take place on that certain date.		

	2€	2(e)	
J32	Mr Jaski considers that the principles for the assessment of economic loss as determined by the High Court in *Northern Territory of Australia v Griffiths* [2019] HCA 7; (2019) 269 CLR 1 should be utilised to determine compensation as it provides relevant judicial guidance in an emerging field of valuation.	The *Griffiths* case (Timber Creek) provided useful guidelines on ways to consider compensation, the relationship between exclusive and non-exclusive and the method of accounting for historic payments (simple interest). However, basing compensation on the value of freehold land is not relevant to a mining project. Had Mansfield been asked to value the extinguishment of native title rights over a parcel of land with known mineralisation in a premium mining province, Meaton does not believe that residential freehold land values would have been a limiting consideration.	M35
		Griffiths provides a relationship for exclusive and non- exclusive values. The 50% reduction for non-exclusive was considered in the Appeal and in the High Court and became the accepted discount. It therefore follows that compensation for exclusive rights with controls over land access should be regarded as worth double the value of non-exclusive rights.	M36
	2(f)	2(f)	
J33	Nothing further to add	Nothing further to add	M37

Topic 3: Highest and Best Use of the Land

3. What in your opinion is the highest and best use of the land the subject of YP's native title rights and interests (as at the respective date of the grant(s) of the FMG tenements), including by reference to whether this highest and best use is for: (1) pastoral purposes; or (2) as land used by native title holders; (3) or mining purposes. Comment on the relevance of the highest and best use of the land the subject of YP's native title rights and interests to YP's entitlement to compensation for the Impairment on YP's native title rights and interests caused by the grant(s) of the FMG tenements.

	Mr Jaski		Mr Meaton	
	3.		3.	
J34	Mr Jaski considers that the highest and best use of the land is for pastoral purposes based on his knowledge and understanding of land usage in the Pilbara and generally, in and around the Determination Area.	M38	Meaton argues that Highest and best use of the land is based on what the land can be used for in the generation of economic value. A tenement has no value without access to the land. YP have exclusive rights to control access and the tenure could not be sold without access agreement. The mineral rights are an intrinsic part of the value of the land. This is not pastoral land and all relationship to that is arbitrary.	
J35	Mr Jaski does not consider that the highest and best use of the land is for mining purposes. This is because, on Mr Jaski's view, the land and the underlying minerals are separate assets whereby the owner of the land is not entitled to the underlying minerals and there is no requirement for the holder of a mining lease to own the land in order to extract the minerals. Therefore, there is no specific economic value associated with the land for mining purposes.	M39	Jaski (368) - Allen and Ovary asked Jaski to focus on the economic value by reference to the maximum possible freehold value of the land. Meaton agrees with this limitation but argues that the freehold value of the land will be determined in a negotiation that takes into account the highest and best use of the land. This is not pastoral value when the land in question is located within one of the world's premium mining fields.	
J36	The relevance of the highest and best use of the land to the YP's entitlement to compensation for the impairment of native title rights and interests caused by the grant(s) of the FMG Tenements is due to the connection between the freehold value of the land and the economic value of native title rights and interests. This connection was determined by the High Court in the Timber Creek Decision such that Exclusive Rights were equated to 100% of the freehold value of the land. The freehold value of any land is impacted by what it can be	M40	Jaski (402) – The International Valuations Standards define highest and best use as 'the use of an asset that maximises its potential and that is possible, legally permissible and financially feasible'. The 'potential'	

used for such that if its current usage, is as agricultural land, then this would yield a lower value than if its highest and best use was for, say, residential development land, if that were physically possible, legally permissible and financially feasible.	here is an economic construct and in considering the use of the land that maximises its economic potential. Meaton considers valuation as pastoral land is misleading. The exclusive rights areas have never been pastoral land and the location of this land in one of the worlds most important mineral provinces makes valuation based on scrub grazing irrelevant. Any map of the geology of the Pilbara will identify this area as potential iron ore mineralization and will be approach from this perspective. A party holding any rights to the area will see mining potential and factor that into land values. M41

Topic 4: Quantum

4. Having regard to topics 2 and 3, in your opinion what is the quantum of the compensation payable for economic loss for the Impairment of YP's native title rights and interests caused by the grant(s) of the FMG tenements.

Mr Jaski	Mr Meaton
J37 Mr Jaski has estimated the amount of compensation that would be payable if the land underlying the FMG Tenements was categorised as Exclusive Area or Non-Exclusive Area as set out in the Determination, which is provided at Table 2 on page 12 of his report. J38 In addition, Mr Jaski has estimated the amount of compensation that would be payable if the land underlying the FMG Tenements was categorised as all Non-Exclusive Area (based on his instructions), which is provided at Table 3 on page 12 of his report.	1% of the value of iron ore produced from mining lease tenements with exclusive native title rights and 0.5% of the value for production from non-exclusive tenements. To be calculated using FMG records of actual production and sale. M42 Mr Meaton notes that these amounts would be compensation for both economic and non-economic losses. M43

Declarations of Experts

I, Campbell Jaski, in expressing the opinions attributed to me in this report have had regard to the basis material and the statements made at the conference of experts and 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 22 March 2024

I, Murray Meaton, in expressing the opinions attributed to me in this report have had regard to the basis material and the statements made at the conference of experts and 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 22 March 2024