

Reliant Party	Federal Court of Australia
Instructed By	Simon Blackshield, Blackshield Lawyers
Purpose	Native Title Rights and Interests Compensation Claim
Owner	Yindjibarndi People
Valuation Date	8 November 2023
Inspection Date	8 November 2023
Client Ref	Federal Court Proceedings WAD 37/2022

Valuation Report

**Yindjibarndi Country, Hamersley Road, Mount
Sheila, WA 6751**



“Kings Valley”

Table of Contents

Executive Summary	2
Overview	2
Land Inspection	9
Assumptions, conditions and limitations	11
Valuation	11
Introduction	13
Specific questions posed in the brief	14
Information Provided by Others	19
Site Description	20
Land area and Yindjibarndi land	21
Location and Neighbourhood	22
Town Planning Summary	24
Water Licenses	25
Compensation Claim	26
Compensation Commentary	30
Property Taking Compensation Rights	30
Mining Compensation	30
Royalty Evidence	34
Valuation Considerations	38
Compensation Heads of Claim	39
Loss of Cultural and Heritage Use	40
Valuation Calculations	43
Solomon Hub Mining Volume and Value 2013 - 2023	44
Royalty Valuation Assessment 1	44
Royalty Valuation Assessment 2	45
Valuation	45
Conditions and Limitations	45
Verifiable Conditions and Qualifications	45
Definitions	47
Expert's Declaration	48
Annexures	49
Annexure 1 – Brief To Prepare An Expert Valuation Report	50
Annexure 2 – Yindjibarndi Legal Determination Summary	65
Annexure 3 – Native Title Register Extract	68
Annexure 4 – Certification	82
Annexure 5 – Curriculum Vitae	85
Annexure 6 – List of documents provided by the Applicant	85
Annexure 7 – Directions given to the expert other than those contained in the brief	87

Executive Summary

IMPORTANT: All data provided in this summary is wholly reliant on and must be read in conjunction with the information provided in the attached report. It is a synopsis only designed to provide a brief overview and must not be acted on in isolation. The Valuer has no Potential Conflict of Interest or Pecuniary Interest (real or perceived) relating to the subject property.

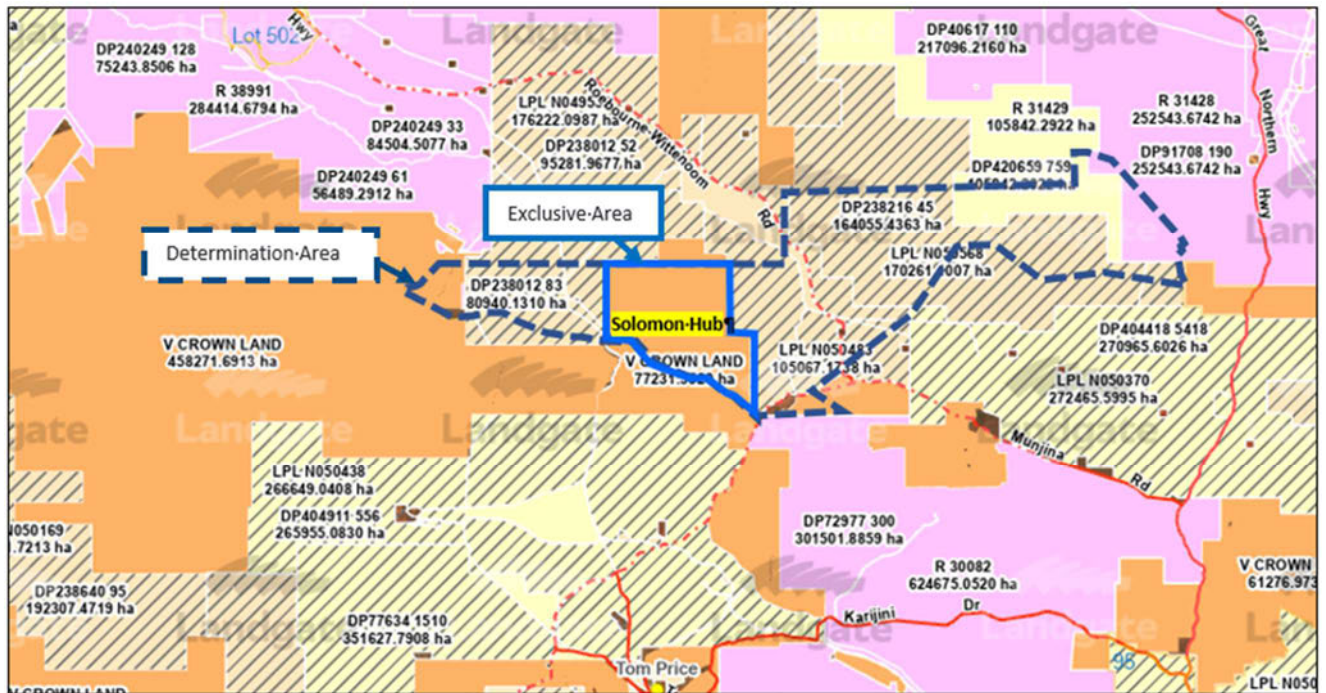
Overview

1. Property: Yindjibarndi Country, Hamersley Road, Mount Sheila, WA 6751
2. Reliant Party: Federal Court of Australia
3. Instructed By: Simon Blackshield of Blackshield Lawyers acting for Yindjibarndi Ngurra Aboriginal Corporation RNTBC (“YNAC”)
4. Purpose: Compensation for the effect of the grant of mining tenements to Fortescue Metals Group (FMG) on determined Yindjibarndi native title rights and interests.
5. Owner and Applicant: YNAC holds the determined native title rights and interests on trust for the common law holders (**Yindjibarndi People**). The subject property is a portion of a large area of “Unclaimed Crown Land” (**UCL**) and the Native Title rights and interests of the Yindjibarndi People were not acknowledged legally until the Federal Court of Australia’s judgment of 20 July 2017. Full rights of ownership are conferred by the Native Title Act 1993 where such rights are capable of being recognised.

In the “Determination Area (Exclusive Area)” the native title rights and interests of the Yindjibarndi People confer on them the right to possession, occupation, use and enjoyment of that area to the exclusion of all others.

The balance of the Determination Area comprises the “Non-Exclusive Area” with rights and interests acknowledged and observed under the traditional laws and customs of the Yindjibarndi People since before sovereignty, including land access, rituals and ceremony, camping including shelters, fishing, collecting and foraging for bush medicine, hunting and taking of fauna, foraging and taking of flora, taking and using resources, taking water for drinking and domestic use, cooking on the land, lighting a fire, protecting and caring for sites and objects of significance on the land and passing on traditional knowledge to succeeding generations and conducting all activities encompassing those rights.

6. Land Description: The Exclusive Native Title area I have estimated to be approximately 57,200 66,000 hectares in 2 separate sections (58,100ha and 7,900 ha approximately).

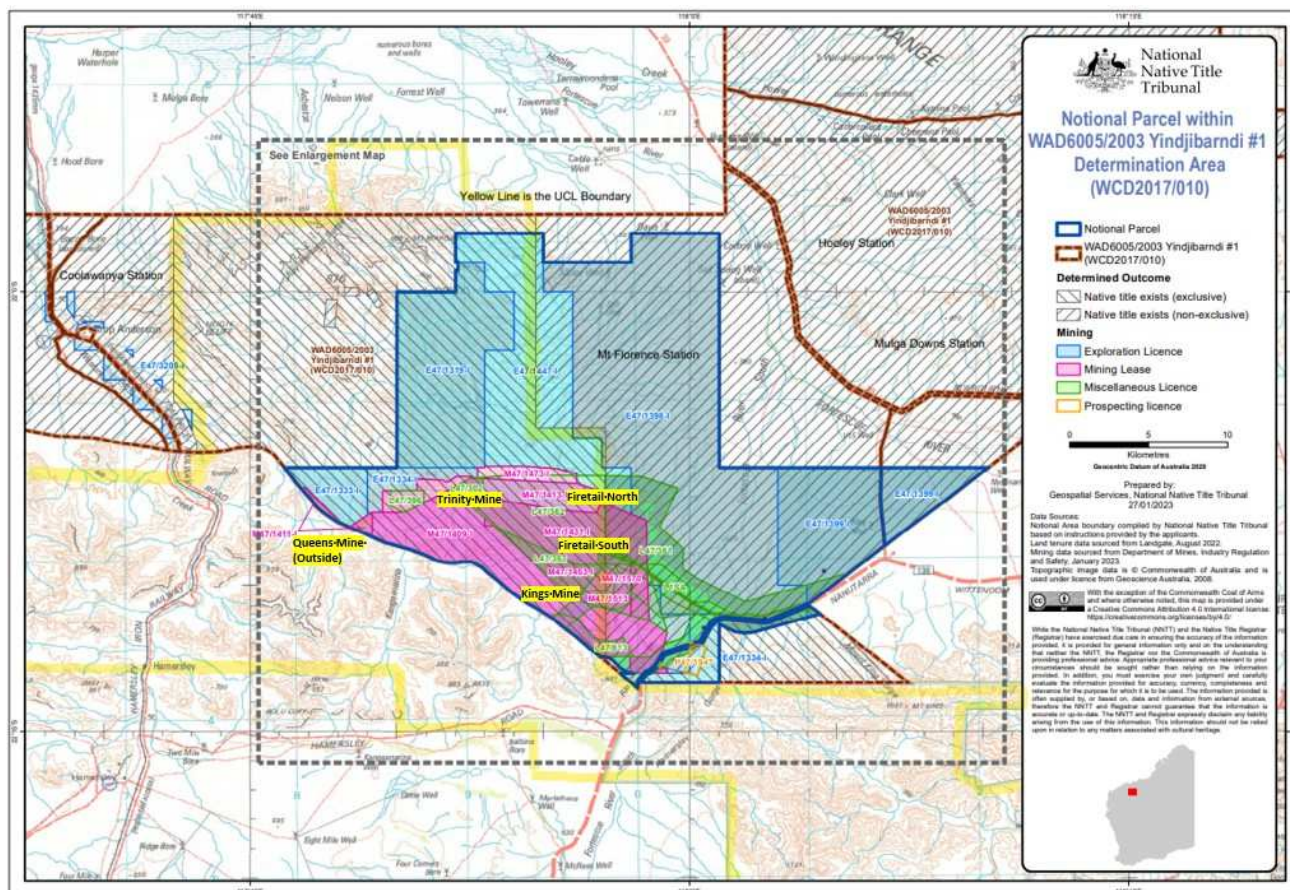


Map Source: Landgate Map Viewer

7. Encumbrances: Multiple mining tenements, exploration leases and special purpose miscellaneous licenses.
8. Valuation Date: 16/01/2024
9. Inspection Date: 8/11/2023
10. Submission Date: 16/01/2024
11. Client Ref: Federal Court Proceedings WAD 37/2022
12. Interest Valued: Native Title
13. Basis for Assessment: Market Value – As Is
14. Existing Use: Mining Purposes
15. Special Instructions:
- i. A “Brief to Expert” has been provided together with all of the attachments referred to in the brief;
 - ii. Consideration to be given to rights and interests in land possessed by the Yindjibarndi People as determined in the Federal Court of Australia in July 2017 that native title exists, and that land has been occupied and mined by Fortescue Metal Group (FMG Pilbara Pty Ltd) since initial exploration occurred in 2006/2007.

-
- iii. Attention be given to the NNTT “Determination Area” (WCD2017/010) showing where the Exclusive Native Title exists, and the Non-Exclusive Native Title exists. A detailed map showing the Yindjibarndi Determination Area and mining tenements and exploration leases follows.
 - iv. Assess the compensation for loss or diminution of the exercise and enjoyment of Native Title rights and interests caused by a variety of mining tenements granted by the State of Western Australia to FMG within the Yindjibarndi Determination Area allowing the full development of the “Solomon Hub Iron Ore Mine”.
 - v. Consideration be given to the loss of normal use and access, quiet enjoyment of the lands and the destroying of heritage and cultural sites across the land.
 - vi. Compensation to be assessed considering the period from first access by FMG to establish a full-scale mining operation across the Yindjibarndi lands until present time and considering future acts.
 - vii. A copy of “Expert Evidence Practice Note (GPN-EXPT) - Expert Witnesses in Proceedings in the Federal Court of Australia is appended at the rear of this report.
 - viii. A Curriculum Vitae containing particulars of the training, study and experience from which I have acquired specialist knowledge with respect to property valuations is attached to the rear of this report.
 - ix. I acknowledge that my opinions are based wholly or substantially on my specialised knowledge as a valuer.

16. **Yindjibarndi Determination Area Map “Notional Parcel within WAD6005/2003” (provided with the Brief and annotated by me)**



Mining Tenements and Infrastructure

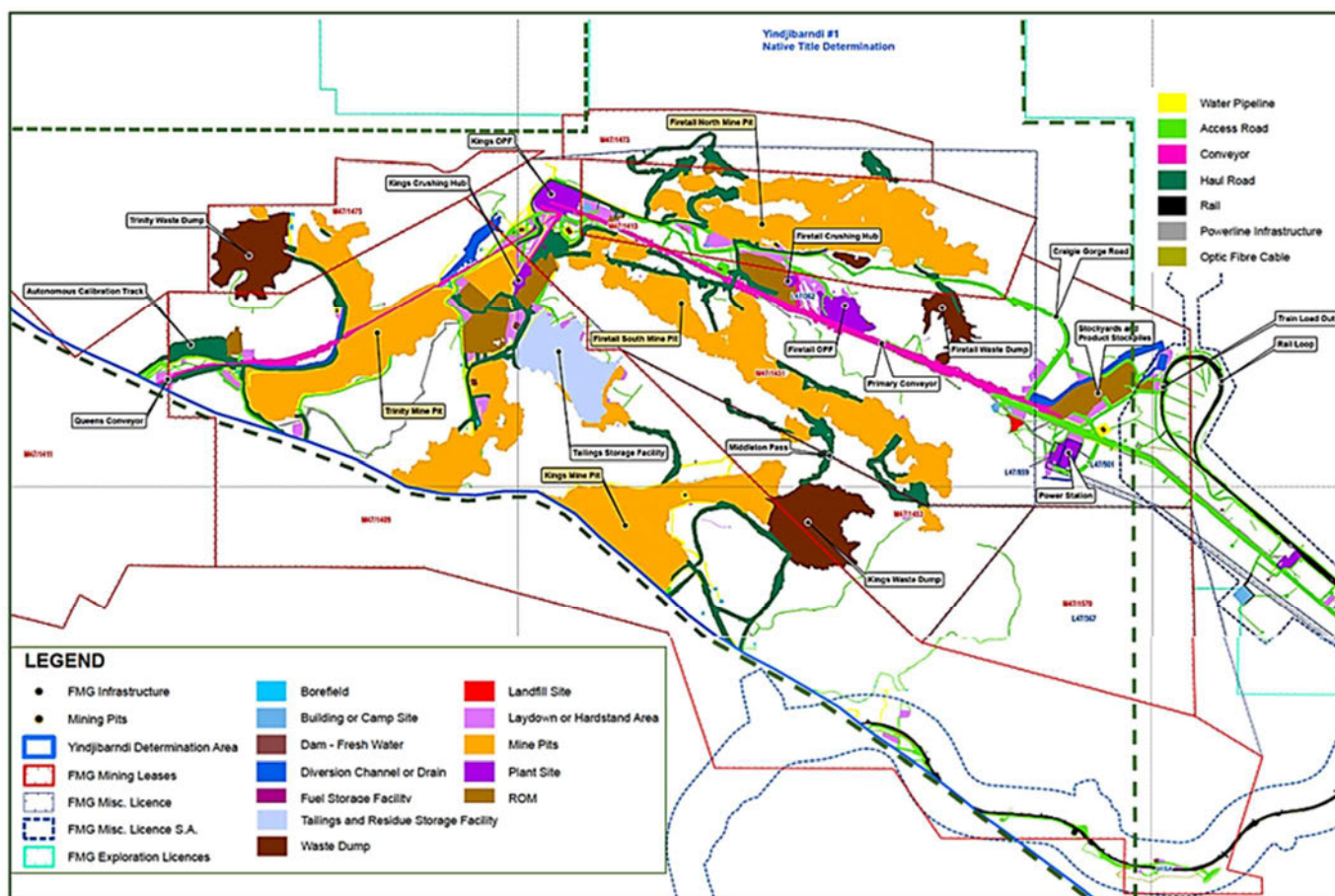
17. I have not physically inspected any infrastructure which has been developed by FMG Pilbara Pty Ltd and The Pilbara Infrastructure Pty Ltd across various mining tenements (e.g. M47/1409 etc) and miscellaneous licenses (e.g. LS1A). The mine development is situated largely within the Exclusive Area of the Determination Area. The infrastructure description has been provided but I have observed it only from an aerial survey of the subject mine site area on 8th November 2023. A minor ground inspection also took place for general familiarity with the land, existing mining activity and general terrain on 8th November 2023.

18.	<p>Surface excavations include access roads in the excavation. The Mine Pits are shown in an FMG Court filing:¹</p> <ul style="list-style-type: none"> a) M47/1409, M47/1453 - “Kings Mine Pit”. b) M47/1409, M47/1475 - “Trinity Mine Pit”. c) M47/1413, M47/1473 - “Firetail North Mine Pit”. d) M47/1413, M47/1431, M47/1453 - “Firetail South Mine Pit”.
19.	<p>Transport or service infrastructure is described as:²</p> <ul style="list-style-type: none"> a) M47/1431, M47/1411- an above ground conveyor belt that carries iron ore from Kings, Queens and Firetail ore finery plants. b) M47/1409 and M47/1411 -a conveyor belt used to transport ore from the Queens to the Kings ore finery plant. c) M47/1431 and M47/1453 - a haul road linking the Kings and Firetail mining areas known as “Middleton’s Pass”. d) M47/1413 and M47/1431 - a road connecting parts of the Solomon operation known as “Craigie Gorge Road”.
20.	<p>Waste Dumps (waste rock and overburden) as follows:³</p> <ul style="list-style-type: none"> a) M47/1409 and M47/1453 - waste dump for Kings mining area. b) M47/1409 and M47/1475 - waste dump for Trinity mining area.

¹ Notice of Filing, Federal Court of Australia (FCA) 13/02/2023- WAD37/2022 - FMG Respondents’ mining tenements and infrastructure.

² Ibid.

³ Ibid.



Source: Notice of Filing, Federal Court of Australia (FCA) 13/02/2023- WAD37/2022 - FMG Respondents' mining tenements and infrastructure (Amended by me).

21. Tailings storage facility to store and consolidate tailings with an embankment that is considered to be in excess of 5 metres height relating to M47/1409, M47/1431, and M47/1453.⁴
22. A mine stockpile adjoining the tailings storage facility on M47/1409 and M47/1431.⁵
23. Underground gas pipeline which is owned, maintained and operated by FMG through which gas is supplied to the main power station relating to E47/1398, M47/1431, L47/361, L47/919, L1SA, L47/814 and L47/697.⁶
24. M47/1409 has the following infrastructure:⁷
 - a) Borefield comprising bores and associated infrastructure.
 - b) Dams for storage of water.

⁴ Notice of Filing, Federal Court of Australia (FCA) 13/02/2023- WAD37/2022 - FMG Respondents' mining tenements and infrastructure.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

	<ul style="list-style-type: none"> c) Diversion channels, drains or bunds for diversion, capture and/or transport of overland water flows. d) Miscellaneous infrastructure includes camp sites, office buildings, storage buildings, workshops and laboratories.
25.	Laydown or hardstand area for the storage of mining equipment on M47/901, M47/1409, M47/1411, M47/1413, M47/1431, L47/362, L47/859, L47/901, L1SA ⁸
26.	Plant site area is land used for the operation of machinery and equipment associated with the processing of minerals on Kings, Trinity and Queens on M47/1409, M47/1413, M47/1431, L47/362, L47/859, L 47/901 ⁹
27.	Calibration testing track to calibrate the FMG's autonomous vehicle fleet on M47/1409 ¹⁰
28.	<p>L1SA has the following infrastructure as follows:¹¹</p> <ul style="list-style-type: none"> a) Buildings or camp sites. b) Dams providing fresh water. c) Diversion channel or drain. d) Laydown or hardstand area. e) Plant site. f) Stockpile area including the area of stockyards and product stockpiles. g) Transport or service infrastructure. h) Access and haul roads i) Optic fibre cable j) Water pipelines k) Power lines
29.	<p>L47/362 has the following:¹²</p> <ul style="list-style-type: none"> a) Laydown or hardstand area. b) Transport, powerline and water infrastructure
30.	Powerline infrastructure on L47/859, L47/919 ¹³
31.	Access road on L47/367 ¹⁴
32.	Large capacity gas and diesel power station supplying the entire Solomon Hub (Pilbara Energy (Generation) Pty Ltd on L47/901. ¹⁵

⁸ Notice of Filing, Federal Court of Australia (FCA) 13/02/2023- WAD37/2022 - FMG Respondents' mining tenements and infrastructure.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid

¹⁵ Ibid.



Main South access road to Kings Mine.

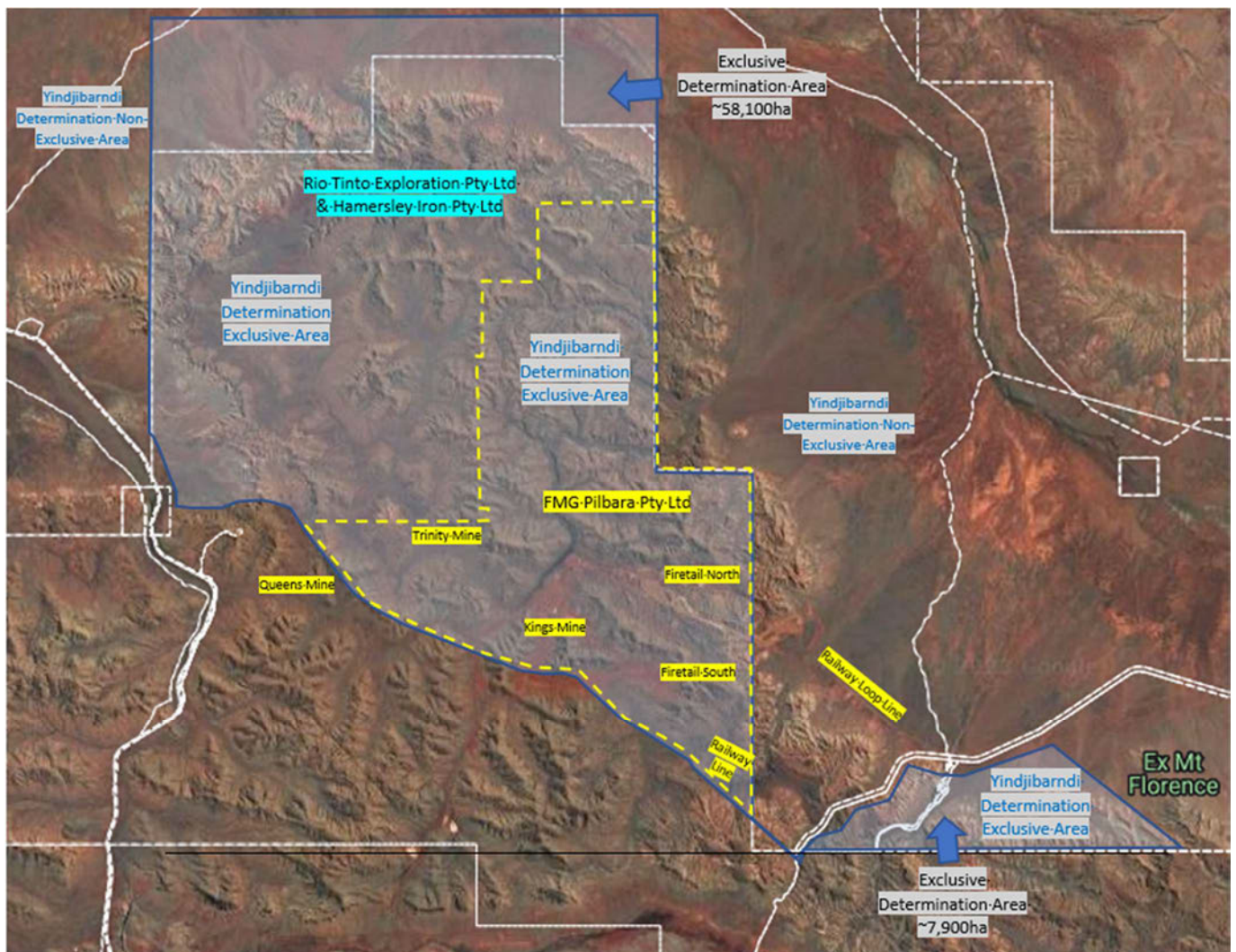


Overhead conveyor near Queens mine .



Exploration tenement – potential mining.

Land Inspection



33. Solomon Hub Aerial & Land Inspection Photos of Exclusive Lands



Main Southern entry road to Kings Mine



Kings Mine and surrounds



Main water storage near Kings Mine



Mobile phone/communications aerial



Communications aerials



Main power station



View West near Craigie Gorge Road



View West from Craigie Gorge Road



King's Hub buildings



View South to Kings crushing hub



View East to Trinity mine



Queens mine conveyor



Assumptions, conditions and limitations

34.	–All investigations have been conducted independently and without influence from a third party in any way.
35.	–I have provided my report on the basis that the land is Unclaimed Crown Land (UCL) identified as Yindjibarndi land dating pre-sovereignty.
36.	–Any objective information, data or calculations set out in the Valuation will be accurate so far as is reasonably expected from a qualified and experienced valuer, reflecting due skill, care and diligence (except where the information, data or calculation originates from a third-party source).
37.	–In undertaking my valuation, I have relied upon various information provided by the instructing party. Where possible, within the scope of my retainer and limited to my expertise as a valuer, I have reviewed this information including by analysis against industry standards. Based upon that review, I have no reason to believe that the information is not fair and reasonable or that material facts have been withheld. However, my enquiries are necessarily limited by the nature of my role and I do not warrant that I have identified or verified all of the matters which a full audit, extensive examination or “due diligence” investigation might disclose. This valuation is conditional upon the information supplied being correct.

Valuation

38.	Market Value – As Is	Subject to the conditions, limitations and qualifications contained within the body of this report, I have assessed the Market Value of the subject property, exclusive of GST for Compensation for the effect of the grant of Fortescue Metals Group (FMG Pilbara Pty Ltd) mining tenements on Determined Yindjibarndi native title rights and interests, as at 8 November 2023, to be:
-----	-----------------------------	--

1. Compensation	Lost Royalty Cash Flow: 2013 - 2022	\$350,000,000	(Three Hundred & Fifty Million Dollars)
2. Compensation	Royalty 2023*	\$33,000,000	Thirty-Three Million Dollars
Total Compensation to 31 December 2023		\$383,000,000	Three Hundred & Eighty-Three Million Dollars

- *Year 1 Determination Exclusive Area Compensation based on the recorded DMIRS Solomon Hub (Firefly North & South, Kings Valley and Trinity Mines) iron ore volume and value that is subject to annual variation and applying a 0.55% royalty going forward annually. Year 2 (2024) will be assessed similarly applying a 0.55% royalty and subsequent years going forward until completion of the mine operation.



39. **Valuer**

AAPV CPV 64945
WA Licence No. 221

This Executive Summary is a précis of the contents of the following valuation report. The valuation is based on certain conditions and contains a number of qualifications. Do not rely upon this executive summary alone. The Executive Summary must be read in conjunction with and subject to my complete Valuation Report.

It is essential that the report is read in its entirety, including any Annexures.

No responsibility is accepted by me in the event that any party relies, uses, distributes, publishes and/or otherwise represents anything contained in the Report for any other purpose apart from that expressly noted previously.

Introduction

- | | |
|----------------------------|--|
| 40. Pecuniary Interest | All investigations have been conducted independently and without influence from a third party in any way. I have no Potential Conflict of Interest or Pecuniary Interest (real or perceived) relating to the subject property. |
| 41. Highest and Best Use | The highest and best use is considered to be as the traditional country of the Yindjibarndi People. |
| 42. Local Authority/Zoning | Shire of Ashburton – Rural and Parks, Recreation and Drainage |
| 43. Site Area | The total area of the exclusive determination area is approx. 66,000 hectares. |
| 44. Valuation Approach | It is my opinion as a valuer that the most appropriate method of valuation for compensation is using an assessed royalty percentage applied to the net value of annual iron ore production based on similar compensation agreements with Aboriginal Groups having similar exclusive native title rights. The annual net output value is lodged with the Department of Energy, Mines, Industry Regulation by the miner (FMG) and allowable deductions are made which for iron ore is any shipping costs. |
| 45. Key Issues | <ul style="list-style-type: none">a) The land is severed into multiple areas by roads, rail, plant, existing and future mining excavation areas inclusive of the valley floors and surrounding mountains and hills.¹⁶b) Whilst the mining operation is substantial and expanding, other lands slightly outside of the affected lands (Exclusive Native Title Exists) are critical to the mining operation with 2 large accommodation precincts, diverse large utility storage sheds, water bore fields, railway lines including a load out facility “spur line” loop and a jet standard airport.c) General access to any of the lands affected by the mining operation is highly restricted because of 24/7 occupational health and safety concerns.¹⁷ |

¹⁶Google Mapping and my personal inspection.

¹⁷Any inspection would need approval in accordance with FMG’s inspection policies and procedures.

-
- d) The estimated completion of mining is in 14 years (2037) however there are active exploration licenses that may expand the known iron ore resources (or other minerals) that could prolong mining beyond 2040.
-

Specific questions posed in the brief

46. a) **What is the highest and best use of the land the subject of the FMG tenements and what would be a reasonable and appropriate method (or methods if more than one) for assessing the economic loss component of the compensation payable to the Yindjibarndi People by:**
- i. FMG or by,**
 - ii. The State,**

for the infringement of the Yindjibarndi People's native title rights and interests caused by the grant of the FMG tenements?

My Answer (a):

- i) On the basis of matters discussed at [46(d)(ii), (e) and (f)] and [88(2)] below, it is my opinion that the "highest and best use" of the Determination Area is as the traditional country of the Yindjibarndi People. In summary, the bases for my opinion are:
- The use of the Determination Area by the Yindjibarndi People is not comparable to the use of pastoral land by pastoralists;
 - The determined native title rights and interests are of a unique character; and
 - By reason of points 1 and 2, the best available measure of the value of the native title rights and interests is what other native title holders have agreed to accept for the impact of mining on the exercise and enjoyment of equivalent native title rights and interests, in a context where compensation to landholders for the impact of mining in Western Australia is almost invariably resolved by agreement.

Accordingly, the fair and reasonable and most appropriate method for valuation of the economic loss component of compensation payable to the Yindjibarndi People either by FMG or the State is considered to be the utilisation of an annual royalty based on available evidence. Whilst it is technically the State of Western Australia which did the "acts" for which compensation is claimed, being the grants of mining tenements to FMG, the effective parties to a notional purchase of a right to conduct mining on Yindjibarndi country are FMG and the Yindjibarndi People. This process is reflected in s125A of the

Mining Act 1978, which assigns liability for compensating native title holders in relation to the grant of mining tenements to the grantees. If my interpretation is not correct, and the relevant notional purchaser was the State, then it is my opinion that an assessment of compensation would need to take into account not only the royalties that would be payable to the State, but also matters in the public interest, such as the amount of employment that was generated by the mine.

- ii) I have assessed compensation for the economic loss of proposed or existing mining or a proposed mining expansion on portions of pastoral stations in rural WA. One example was the proposed installation of a haul road for quadruple trailer trucks passing through a Station and causing impact to grazing in adjoining areas. In addition, the road would “maroon” (sever) the land, rendering one long narrow part as uneconomic to operate any further. Mines often expand and that impact can have a resulting economic loss to a rural enterprise which may be significant or minor.
- iii) With some rural freehold properties economic loss can come from the proposal of a new highway passing through a small farm whereby a portion becomes severed from the main section. Access may not be possible to the land which has been cut off, and in such cases, compensation of that land and its improvements lost will be assessed and any depreciation in value that may arise as a consequence. Assessment of compensation for economic loss in any particular case will be made by reference to the use to which the land in question is being put, and/or its features. For example, higher values will be assessed in the case of an intensive agriculture farm (e.g. horticulture, broiler or egg laying farm), or where the land contains a viable sand or limestone pit that may be destroyed.

b) Taking into account assumptions contained in the attached “Brief To Prepare An Expert Valuation Report” [9(g)-(n)], would a fair and reasonable method of valuing the Yindjibarndi People’s economic loss be to assess compensation by reference to the royalties which miners in the Pilbara commonly agreed to pay to native title parties, in return for their consent to mining on their traditional lands or waters?

My Answer (b):

For the reasons summarised above at (a), it is my opinion that the economic loss suffered by the Yindjibarndi People for the effect of the grant of the FMG tenements is best valued by assessment of a royalty which is assessed in comparison to available evidence in the Pilbara and other areas of Australia.

- c) If your answer to (b) above is in the affirmative, what value will you place on that aspect of the economic loss component of the compensation payable to the Yindjibarndi People?**

My Answer (c):

The value of economic loss is shown in my valuation calculations in paragraph 96 of this report. I believe consideration should be given to the time when mining first started on Yindjibarndi land through to the present time which is approximately a 9-year period. Over this time period of full mining access and mining establishment has taken place and no compensation has been paid to the rightful owners as determined. Current fair and reasonable compensation can be calculated in arrears to the present time and there is a valid approach for estimating future compensation in present value terms.

- d) Would it be appropriate to assess the value of the economic loss by reference to amounts paid by mining companies to purchase freehold properties for mining purposes?**

My Answer (d):

- i) My experience where mining companies have purchased entire freehold properties for mining purposes including surrounding lands has resulted in a premium value being paid which could be at least $1\frac{1}{2}$ above the normal agricultural value of freehold land and in some cases much more. The mining company is usually desirous of having a wide separation from surrounding farms so that the impact of noise, dust, mining operation and haulage trucks will be minimised. The purchase price will not relate to the production value expected from a future or existing mine because with freehold land the Mining Act confers mineral rights to the miner and does not form economic loss to the freehold owner.

-
- ii) This method has little or no relationship to the valuation of the Yindjibarndi land which is in an arid pastoral region with a high production iron ore mine producing considerable value and the land has been determined in Court to be owned by the Yindjibarndi People prior to European settlement.
 - iii) If the freehold land was owned as part of the “Old System Title” that predates 1st January 1899 in Western Australia, then under the Mining Act payment of all rents and royalties received by The Crown less 1/10 or 10% to the owner of the freehold parcel would apply. There are some lands remaining under this system in “early selected” lands in the Swan River Valley and the Avon River Valley of Western Australia. Given that the Yindjibarndi’s native title rights have been determined to have been in existence since well before January 1899, it might be argued that the Yindjibarndi should be paid on the same basis. It is beyond my expertise as a valuer to provide an opinion as to whether such a comparison should be made.

e) What value would you place on the economic loss component of the compensation if you were to apply any principles or criteria in the Mining Act?

My Answer (e):

My calculations are in paragraph 96. Under Section 123 of the Mining Act 1978, the owner of land where mining takes place is entitled to compensation for all loss and damage suffered or likely to be suffered resulting from mining activity. In my experience, compensation claims under section 123 are invariably resolved by agreement. The Act outlines that compensation may include deprivation of possession, damage to the land, severance of the land, loss or restriction to access and social disruption that all appear to have relevance to the subject lands. I have included examples of such compensation agreements in Royalty Evidence (paras 75 – 80).

f) Would a valuation applying the principles or criteria in the Mining Act 1978 provide just terms compensation?

My Answer (f): Section 123 of the Mining Act 1978 refers to the entitlement for compensation to the owner and occupier of any land where mining takes place and is to cover all loss and damage suffered or likely to be suffered in respect of mining caused by the miner. My opinion is that just terms compensation for the significant loss and damage to the subject land should relate to the evidence of payments of a royalty which is commonly paid by miners in the region (e.g. Rio, BHP, FMG, Roy Hill) who are similarly affecting lands occupied and owned by Aboriginal Peoples. I

believe that to consider the subject lands as hypothetically used for pastoral lease purposes would not be appropriate. Pastoral leasehold land ownership is not equivalent to either freehold or native title rights and interests and the compensation evidence is of little comparison.

g) What value would you place on the economic loss component of the compensation payable to the Yindjibarndi People?

My Answer (g):

The value of economic loss is shown in my valuation calculations at the rear of this report in paragraphs 92 and 93.

h) Should the compensation for economic loss, whether payable by FMG or by the State, include a special value component for damage to and destruction of significant archaeological and spiritual sites?

My Answer (h):

(i) I believe a special value component for damage to, and destruction of significant archaeological and spiritual sites is fair and reasonable however the moment mining takes place then revenue is being generated from mining and a mining royalty would only be paid on the basis of mining continuing until such times as mining is concluded, and rehabilitation/regeneration is completed.

(ii) There has been destruction of significant archaeological and spiritual sites.¹⁸ If mining was to come to a standstill, the royalty process would not continue, and any further removal or destruction would cease. The royalty evidence for other Aboriginal Groups which is not generally available in detail may or may not include some reference to cultural and heritage claims.

¹⁸ Witness statement of Lyn Cheedy dated 1 May 2023 at [19],[21] and [29]; witness statement of Milton Cheedy dated 3 May 2023 at [9],[10],[35] and [38] to [40]; witness statement of Lorraine Coppin dated 27 April 2023 at [47], [51] and [69]; witness statement of Judith Coppin dated 3 May 2023 at [27]; witness statement of Angus Mack dated 16 May 2023 at [50], [117] and [131]; witness statement of Kaye Warrie dated 1 May 2023 at [35] to [37]; witness statement of Stanley Warrie dated 27 April 2023 at [21], [91] and [118]; witness statement of Wimiya Woodley dated 27 April 2023 at [47]; affidavit of Margaret Read sworn 19 February 2023 at [21] [all as excerpted in the document "Lay evidence re mine rehabilitation"]; witness statement of Michael Woodley dated 5 June 2023 at [13], [17], [34] and [329].

- i) If the answer to (h) above is in the affirmative:**
- i. how should compensation for that special value be assessed; and**
 - ii. what information or data would you need to make that assessment?**

My Answer (i):

Special value compensation for damage to, and destruction of significant archaeological and spiritual sites could logically only be assessed if total or partial mining were to cease, in which case any royalties, whole or in part, would cease to be payable. At that time the land value of the land parcel (the determination area) may revert to use as the traditional country of the Yindjibarndi People as the “highest best use”, and then damage to archaeological and spiritual sites may be assessed by suitably qualified professionals taking into account the severity of damage in various parts of the mining area affected. Currently mining is not likely to cease and access to view any such destruction is not possible. From a valuation standpoint the land value after mining and significant rehabilitation has taken place can be better assessed at that time.

Information Provided by Others

47.	<p>I have relied upon various financial and other information provided to me by Blackshield Lawyers and accessed through my own inquiries for the purposes of undertaking the valuation, all of which are cited in this report. Where possible, within the scope of the retainer and as the expertise of a valuer, the information has been reviewed and analysed. I do not warrant that all of the matters which a full audit, extensive examination or “due diligence” investigation might disclose have been identified. This valuation is conditional upon the information supplied being correct.</p> <p>This information includes, but is not limited to the following:</p> <ul style="list-style-type: none"> a) Landgate - land information and aerial photographs. b) Shire of Ashburton- zoning and planning c) Blackshield Lawyers- Instructions, Maps, Mines Department Records 	
48.	Exploration Licenses	E47/1333-1, E47/1334-1, E47/1319-1, E47/1447 held by FMG Pilbara Pty Ltd.
49.	Mining Licenses	M47/1409-1, M47/1411-1, M47/1473-1, M47/1413-1, M47/1431-1, M47/1453-1, M47/1475-1, M47/1570-1 held by FMG Pilbara Pty Ltd.

50.	Miscellaneous Licenses	L47/396, L47/302, L47/362, L47/363, L47/361, L47/813 held by FMG Pilbara Pty Ltd.
51.	Miscellaneous License	L1SA held by The Pilbara Infrastructure Pty Ltd.
52.	Prospecting License	L47/1947 held by FMG Pilbara Pty Ltd.
53.	If there are any encumbrances, encroachments, restrictions, leases or covenants which are not noted in this valuation report, they may affect the assessment of value.	

Site Description

54. **Identification** The property has been satisfactorily identified by visual inspection and reference to the cadastral maps, aerial photographs and an aerial landing on site close to the main mining area.
55. **Position** The land is situated on the northern side of Hamersley Road and a small portion is on the Southern side of Nanutarra-Wittenoom Road. The nearest town is Tom Price approximately 93km South.¹⁹
56. **Shape/Topography** The holding is predominantly steep mountain ranges broken by rocky hills, valleys, creeks, rivers and is part of the Hamersley Ranges. The shape is irregular and is severed by roads, railway lines, fixed and movable mining infrastructure.²⁰
57. **Flood Status** My enquiries indicate that the property is not subject to flooding although rare peak rainfall events may cause rivers and creeks to flood out to surrounding land temporarily.²¹
58. **Road Description** Main roads in the area (Hamersley Road, Tom Price Railway Road and Nanutarra-Wittenoom Road) are gravel sealed and there are extensive bitumen sealed haul roads having been constructed across the mining area

¹⁹ Google Maps.

²⁰ Landgate Map Viewer.

²¹ SLIP Locate V5 Maps.

for purposes of durability and dust suppression. The existing mine area extends over approx. 18km in length and by 3 -5kms in width.²²

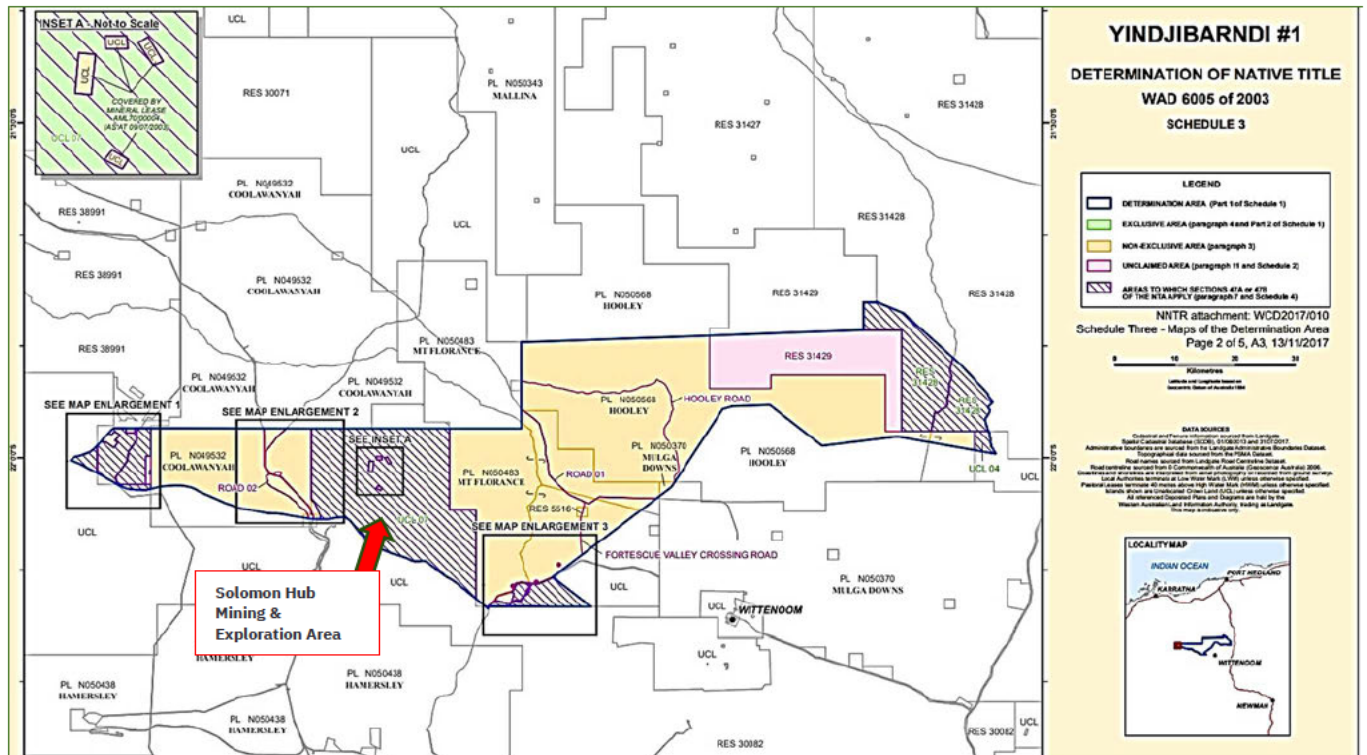
59. Services

FMG have established internal electricity, water and mobile telephone coverage across the entire mining area and Southwards servicing 2 residential accommodation camps, extensive sheds and including the Solomon Airport precinct and water borefield. FMG have established internal electricity, water and mobile telephone coverage across the entire mining area and Southwards servicing 2 residential accommodation camps, extensive sheds and including the Solomon Airport precinct and water borefield.

Land Area & Yindjibarndi Land

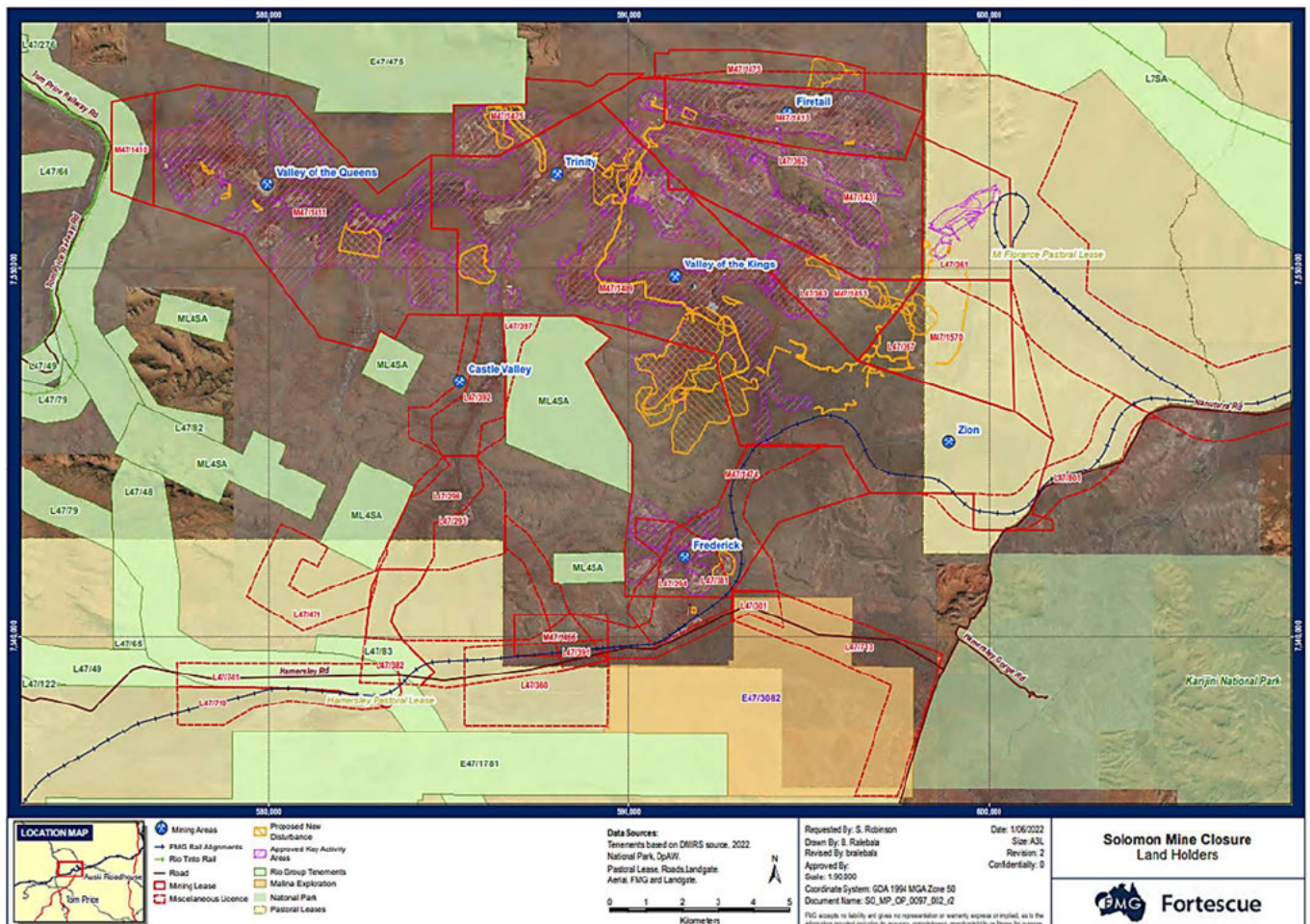
- | | |
|-----|--|
| 60. | The area that has been physically affected by mining and exploration to date (including infrastructure) comprises a total land area of approximately 10,000 hectares out of the approximately 66,000 hectares of exclusive native title within the wider determination area (based on Landgate mapping). The whole of the determination area is much greater, crossing Mt Florance Station, Hooley Stations, portion of Mungaroona Range Nature Reserve 31429 and Reserve 31428 (Use and Benefit of Aboriginals) and includes exclusive and non-exclusive lands. Some land within the non-exclusive area adjoins on the Eastern “end” of the Solomon Hub mining area and has mining infrastructure and the main railway loop that allows loading of iron ore to be transported away to port. |
|-----|--|

²² SLIP Locate V5 Maps.

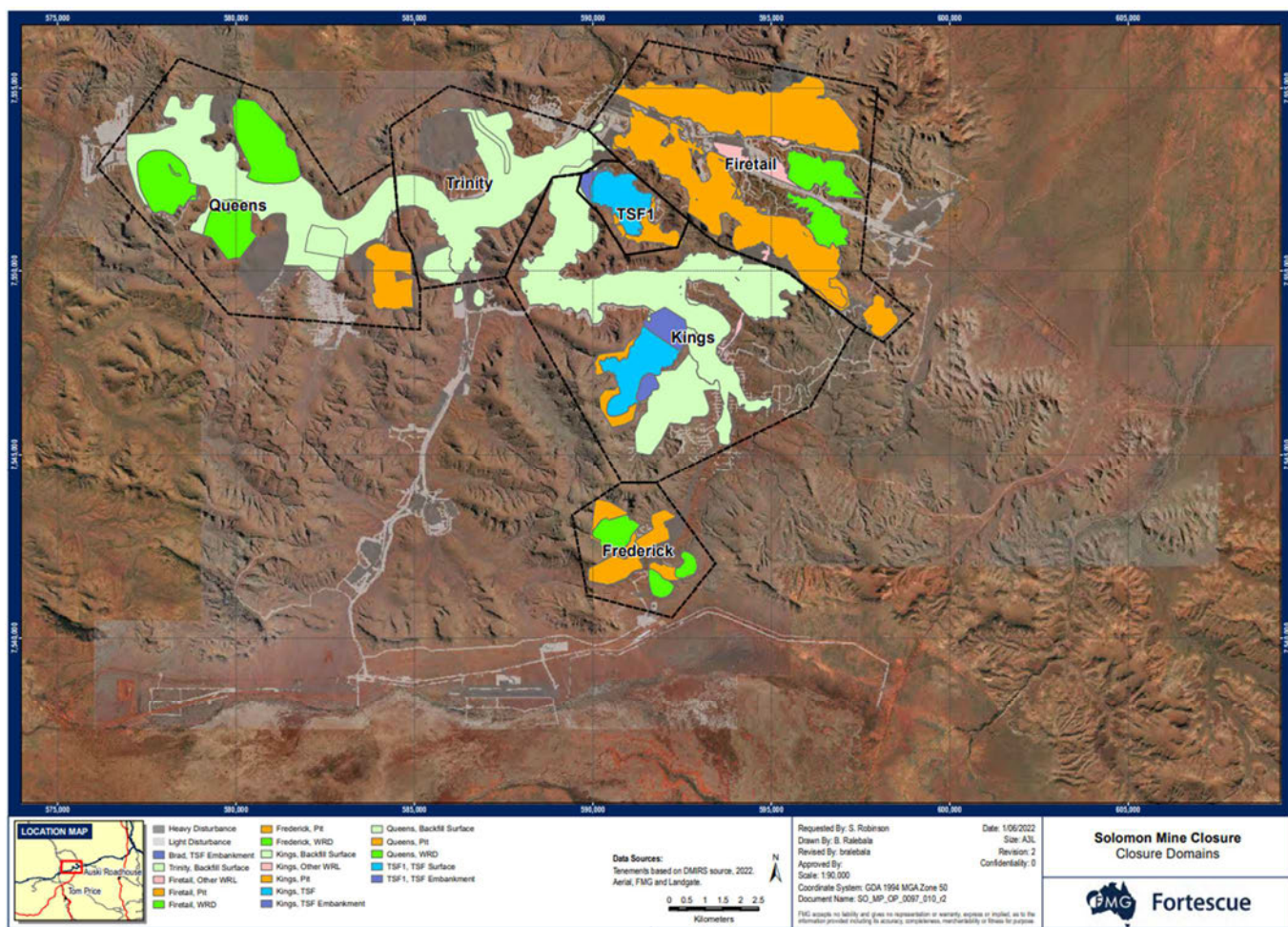


Source: National Native Title Tribunal

Location and Neighbourhood



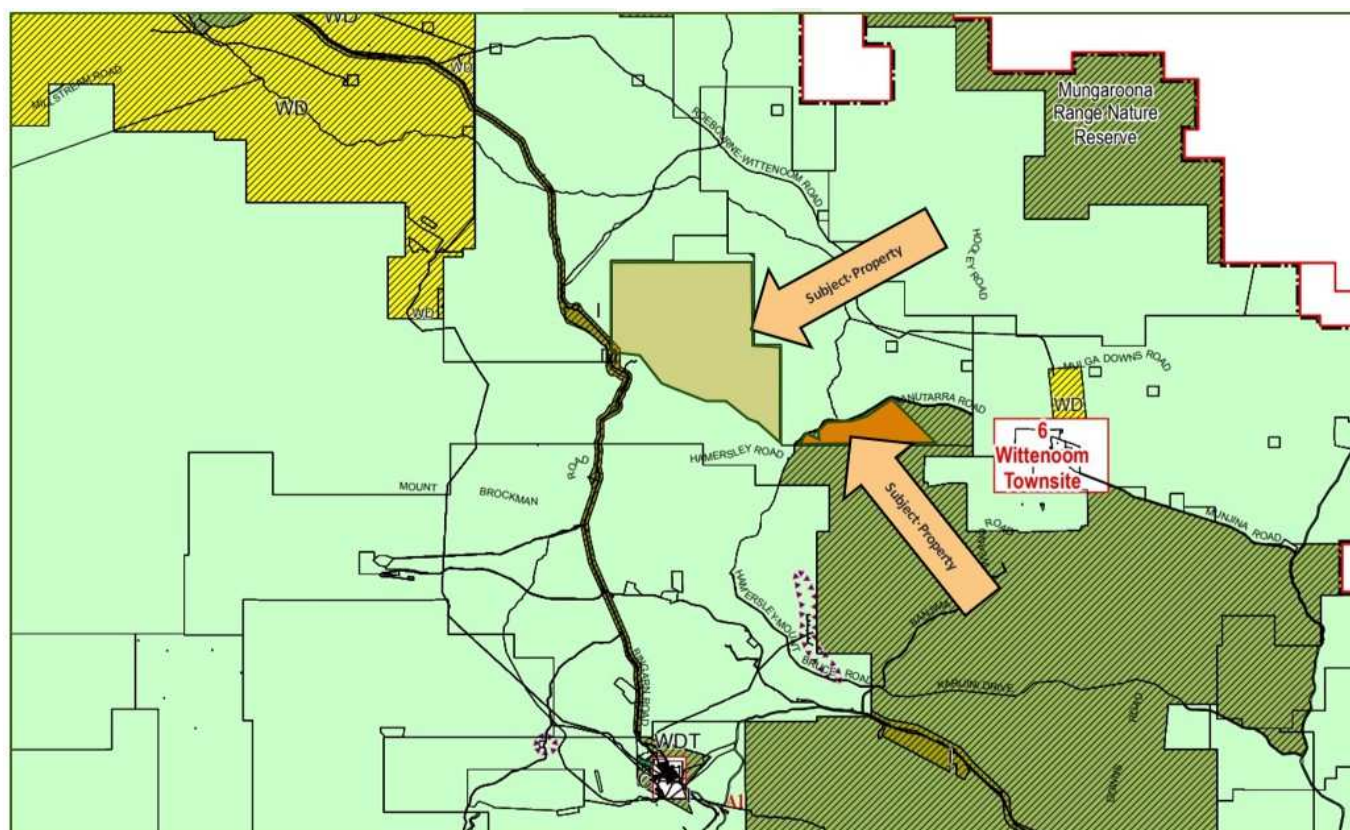
Source: Fortescue Mining Group Mine Closure Map June 2022



Source: Fortescue Mining Group Mine Closure Map June 2022

Town Planning Summary

- | | |
|---------------------------------|---|
| 61. Local Authority | Shire of Ashburton – Rural and Parks, Recreation and Drainage |
| 62. Planning Scheme | Town Planning Scheme No. 6 |
| 63. Zoning/Designation | “Rural” and “Parks, Recreation and Drainage” |
| 64. Zoning Objectives | The Rural zone allows for a variety of Rural activities. It also provides for extractive industry. |
| 65. Permissible Uses | The current use of mining is permissible under the zoning. |
| 66. Heritage | N/A |
| 67. Planning Information | This information has been relied upon in my assessment of value and no responsibility is accepted for the accuracy of the planning information provided. Should the information prove incorrect in any significant respect, the matter should be referred to the valuer for review of the valuation as we deem appropriate. |

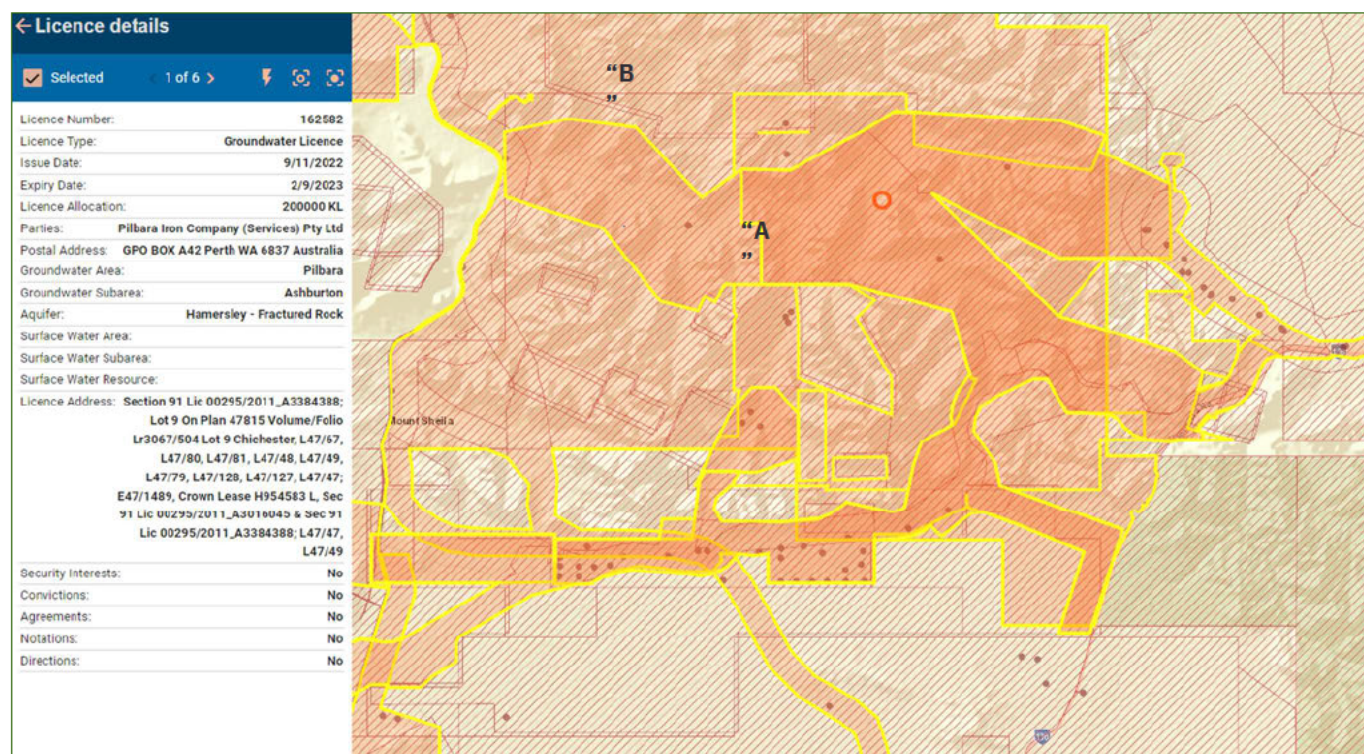


Source: Department of Planning - Shire of Ashburton

Water Licenses²³

68. Groundwater Licenses

	No	Issue Date	Expiry Date	Allocation	Licensee	Water Area	Sub Area	Aquifer	Map
a)	62582	9/11/2022	2/9/2023	200,000KL	Pilbara Iron	Pilbara	Ashburton	Hamersley	"A"
b)	68125	9/11/2022	23/6/2023	220,000KL	Company (Services) Pty Ltd			Hamersley-Fortescue	"B"
c)	175139	18/5/2020	1/11/2025	16,000,000KL	Fortescue Metals			Hamersley	"A"
e)	176913	19/6/2019	31/10/2025	2,200,000KL	Group Ltd			Hamersley	"A"
f)	177974	12/2/2020	11/2/2030	8,100,000KL				Wittenoom	"A"
g)	177976	12/2/2020	11/2/2030	<u>8,100,000KL</u>					
				34,820,000KL					



The water allocation of 34,820,000KL is substantial and covers adjoining lands and currently 2 licenses of 220,000KL have recently expired and are assumed to be able to be re-instated. Many water extraction points are on land outside the exclusively owned land with 11 within the "Determination Area". The subject water aquifer water availability and resource size is described as being of "limited information".

²³ Department of Water and Environmental Regulation- Water Register & Maps.

Compensation Claim

69. Brief

Description

- i) The entire Exclusive Native Title Area is extensive (66,000ha). However, for purposes of this report, I have focussed on approximately 10,000 hectares (24,710 acres) within the Exclusive Area which is subject to ongoing mineral exploration and mining activity conducted by the Fortescue Metals Group Limited (FMG) since 2006-2007 or thereabouts and a subsequent full-scale mining operation in October 2012 was established.
- ii) Initial exploration took place in 2006/7 by FMG. YNAC however was not in agreement on granting access for full mining.
- iii) The following photo was taken in 2008 of a valley in the Hamersley Ranges prior to any mining taking place and at the time of exploration and initial cultural surveys were proceeding. There are now 3 large mines (“Kings, Trinity, Firefly North and South”) being excavated within the Exclusive Area with associated service infrastructure in place. Queens Valley Mine is largely outside the determined area.



Source: View West Yindjibarndi Heritage Report 2008 (Michael Woodley, Witness Statement 5 June 2023).



Source: View West Yindjibarndi Land – (My aerial and land inspection November 2023)

70. “Solomon Hub Project” I have been asked to assume that FMG have developed an open-cut high-grade iron ore mine in the Hamersley Ranges with mine names of “Firetail North and South, Kings Valley and Trinity” (excluding “Queens Valley”) which have a current combined production capacity of around 45 million tonnes of iron ore per annum (excluding Queens Valley).

Full mining operations started at “Firetail” in May 2013. Total production from Solomon Hub up to April 2022 totalled over 630 million tonnes of iron ore (65 million tonnes per annum average). Future production within the subject determination area was expected to cease in 2037, however other information indicates around 2040 or beyond.

71. Environmental Approval I made investigations of the publicly available information on the Environmental Protection Authority website with respect to the proposed “Solomon Iron Ore Expansion”. Fortescue Metals Group Ltd made application to increase the footprint and mining life of Solomon Hub in 2014. The proposal was to expand mining operations and rail infrastructure and there was to be no additional clearing within the Yindjibarndi Native Title Determination Area. The FMG proposal in 2014 required new areas to sustain production for a further 35 years (concluding around

2049). The updated proposal in 2023 indicated existing ground disturbance to be approximately:

- (a) 459 ha - additional 3 borefield supplement areas expanding the development envelope to 37,061 ha.
- (b) 150 ha - additional permanent rail infrastructure increase to 2,324 ha rail corridor envelope which includes the rail spur line.

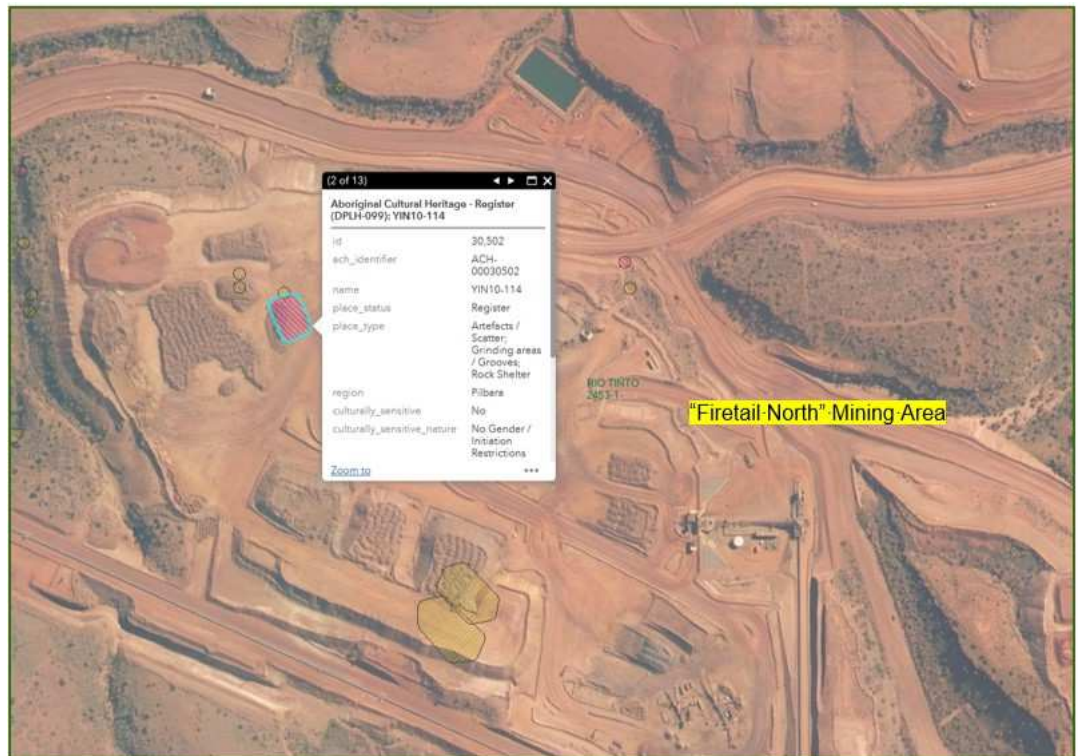
Approval was given on 7th June 2023 by the Environmental Protection Authority under original Report 1588 of November 2016. This was an upgrade to Stage 5 and assessment of number 2019.

72. Heritage & Cultural

- i) My brief physical inspection confirmed that significant mining has taken place over the past 11 years significantly changing the previously natural occurring valley floor and sides. I have been asked to assume that there are over 450 Aboriginal Heritage registered sites for heritage and cultural values (e.g. artefacts, grinding patches, rock shelters, painting, meeting place, modified tree). I have assumed from my inspection and public access aerial photography that many sites have been lost to mining across the valley.
- ii) I have been asked to assume that The Yindjibarndi country affected by iron ore mining has been substantially damaged or destroyed with the permanent loss of important archaeological and spiritual sites that have been registered.
- iii) When the mining is completed, rehabilitation will take place and the intention for regeneration of the natural environment. I assume that the State Government administered “Mining Rehabilitation Fund” will be of some importance at that time.
- iv) FMG mentions in the “Solomon Mine Closure Plan”²⁴ document of 2022 that the pre-existing environment should be re-established to the “maximum reasonable extent” after mining.

²⁴ FMG Solomon Project Mine Closure Plan 2015 & 2022.

- v) The report outlines a commitment from FMG to manage Aboriginal cultural heritage in consultation with the relevant Native Title Party. It says, “Traditional Owners access culturally significant places in the local area, to maintain traditional law and connection to country”.



Source: Locate V5 - Aboriginal Cultural Heritage Register

Compensation Commentary

73.	Property Taking Compensation Rights	<p>a) Property compensation is most common for Local Government and State Government in Western Australia and the main Act of Parliament is the Land Administration Act 1992. A statutory right is granted to take land for government works, subject to compensation being paid. Typically, a new government project requiring land or privately-owned land for a road taking is the most common requirement. The affected owner will have right of compensation in order that the landowner after the land taking will be suitably compensated and be placed in a position after the land taking that places the landowner in a position that is considered to be not less than prior to the land taking.</p> <p>b) A straightforward land taking would be a minor road widening. However, where the proposed taking is significant, severance and depreciation of value may come into play after the land taking. Compensation is intended to consider all aspects that are detrimental to the landowner such as removal expenses, disruption or re-instatement of a business, halting of or cancelling of building works, professional consultancy fees and any other costs that are considered to be valid. In some circumstance there can be a betterment aspect that is caused by the land taking and may be accounted for as an offset to the compensation assessed.</p>
74.	Mining Compensation	<p>a) The subject Yindjibarndi land has been effectively “taken” by Fortescue Mining Group using the provisions of the Mining Act 1978 with the granting of mining tenements for mining purposes with first access approximately in 2007 and a major mining operation established by 2012.²⁵ Compensation for the land taking is principally covered by the Native Title Act 1993. Subsection 33(1) of the Native Title Act expressly permits native title holders to negotiate with miners for compensation based upon the amount of profits made, the income derived or any things produced.</p>

²⁵ Contract for heritage survey services in relation to exploration between Fortescue Metals Group (“the Grantee”) and Yindjibarndi #1 Native Title Claim Group (“the Applicants”) dated 29th day of June 2007.

	<p>b) In mining, under the Mining Act ownership of all minerals is with the State Government and relevant rights to explore and mine are granted to the miner. Statutory fees are paid to the State Government for recovered minerals, principally by way of a “royalty”. A “specific rate” royalty is a flat rate fee per tonne of mineral produced. An “ad valorem” royalty is a proportion (percentage) of the royalty value of the mineral produced at a mine when first sold or to be sold minus any allowable deductions if applicable.</p> <p>c) A “free on-board” (FOB) royalty is where the buyer assumes all risk once the seller despatches the product. However, in Australia, FOB (CIF)* is typically used where responsibility moves to the buyer when the product reaches the point of destination. FOB (CIF) prices have cost, freight, insurance and bunker costs (shipping costs enroute) built in. When “FOB” is used it really means FOB (CIF)* which I have used in my report.</p> <p>d) Well before and prior to FMG taking possession of the subject land for a large-scale iron ore operation, it is confirmed by evidence²⁶ that FMG saw a responsibility to pay compensation and were offering the Yindjibarndi owners a compensation agreement that they advised was based on other aboriginal landowner and non-Aboriginal landowner access agreements that FMG had negotiated based largely on a royalty and contributions to training and employment programs. FMG’s process of compensation payable to an Aboriginal owner was for initial access/exploration, obtaining cultural and heritage agreement and then mining approval to proceed thereafter, but with an annual “ceiling” to compensation that is set at the outset.</p> <p>e) It is documented²⁷ that over several years from around 2008 onwards there were various offers for access and mining compensation made by FMG to YNAC. The YNAC were desirous of reaching an agreement subject to access</p>
--	---

²⁶ “MW-15” Federal Court of Australia No WA37 of 2022 – Witness Statement by Michael Woodley dated 5th June 2023 page 168 Yindjibarndi Community Meeting with FMG presenting a “Whole of Claim Land Access Agreement 30th January 2008.

²⁷ “MW-15” Federal Court of Australia No WA 37 of 2022 – Witness Statement by Michael Woodley dated 5th June 2023.

		<p>conditions being agreed which included understanding and preservation of many cultural and heritage sites over the land.</p> <p>f) The basis of the compensation agreement offered by FMG in 2010 was:</p> <ul style="list-style-type: none"> i. Signing Payments of \$250,000 to Yindjibarndi Group and \$250,000 to the Elders Council (\$500,000 total). ii. Annual payments for access prior to mining of \$100,000 per annum. iii. Mining royalty of 15 cents per tonne of ore capped to annual amount of \$3,000,000 each year. iv. Vocational Training Employment Centre (VTEC) commitment of 5 cents per tonne to a maximum of \$1,500,000/year. v. Elders Council Royalty of 5 cents per tonne to a maximum of \$1,000,000 per annum.²⁸ <p>g) The total compensation offered was a “capped” offer of \$5,500,000/year and offered no upside in the event that the iron ore price and volume increased, as subsequently occurred.</p> <p>h) YNAC originally started with an ambit claim of a fixed 5% royalty based on iron ore production which FMG rejected. YNAC provided a revised position 1.5% of sales revenue of all iron ore mined from Yindjibarndi Country in mid-2010.²⁹</p> <p>i) In November 2010, FMG made a “final offer”, after a meeting with the local member of Parliament, which-FMG stated would equate to a total of around \$10,000,000 annually inclusive of offering mining contracts worth up to \$3,000,000 annually and housing and other benefits worth up to \$2,000,000 annually.³⁰</p> <p>j) Currently the benchmark royalty rate for Aboriginal Groups is believed to be 0.5% of production from relevant mines with some paid up to 0.8%.³¹</p>
--	--	--

²⁸“MW-57” Federal Court of Australia No WA 37 of 2022 – Witness Statement by Michael Woodley dated 5th June 2023 page 493 “Attachment One - Financial Offer to Yindjibarndi” dated September 2010.

²⁹ “MW-57” Federal Court of Australia No WA 37 of 2022 – Witness Statement by Michael Woodley dated 5th June 2023 page 491 “Attachment One - Financial Offer to Yindjibarndi” dated September 2010.

³⁰“MW-61” Federal Court of Australia No WA 37 of 2022 – Witness Statement by Michael Woodley dated 5th June 2023 page 514 “Meeting with Hon Vince Catania MLA” dated September 2010.

³¹ Business News “Mining royalties a black and white issue” by Mark Beyer 14th February 2023.

		<p>Obtaining factual compensation information for iron ore mines is limited because of confidentiality agreements being in place. Mining companies are desirous of limiting knowledge of any negotiations relating to the particular circumstances of access and developing a mining operation and associated infrastructure.</p> <p>k) FMG's Executive Chairman, Andrew Forrest, expressed a firm view that paying money, capped annually, including a training and education component was a better outcome for Aboriginal people together with contracts to Aboriginal companies carrying out mining associated service work.³²</p>
--	--	---

³²Australian Financial Review +With Compo decision looming, Andrew Forrest hits back" by Joe Aston 4th February 2023.

Royalty Evidence

	No	Address	Land Description	Tenement No.	Owner	Royalty or Other Compensation	Comparison to YNAC Lands
75.	1. ³³	Lake Hillman, Gypsum Road, Kalannie	Gypsum mine on a salt lake (Vacant Crown Land)	M70/00136	Adelaide Brighton Cement Ltd	Current tenement owner receives a 3% royalty based on \$25/tonne of gypsum from the mine operator (Lake Hillman Mining Pty Ltd) who are local farming family with their own tenements adjoining. The actual royalty fee is between \$0.74 and \$0.76/tonne. Gypsum is a low value mineral used by farmers to spread on naturally occurring acidic soils (having a low pH level) to help neutralise the soil and grow higher yielding crops.	Considered to be a higher royalty rate than the subject because the resource is effectively owned by virtue of the mining tenement and is of a small size.
76.	2. ³⁴	Scotia Mine, Coolgardie-Esperance Highway, Dundas	Gold mine on vacant crown land	M63/00036, M63/00112, M63/000108	Pantoro South Pty Ltd (PSPL)	PSPL has been 100% purchased by Tulla Resources Pty Ltd. PSPL is to receive a 0.75%/\$tonne royalty FOB for lithium ore. The lithium resource has been proven and Tulla have the resources to develop, process and export the mineral via rail and sea.	This is a shared resource arrangement with junior company providing the rights to mine and size and quality of the mineral are proven. Overall considered slightly inferior.
77.	3. ³⁵	Area C & South Flank Mines, 95 Great Northern Highway, Newman	Iron ore mine site	MI281sa, ML 249SA, L E47/4390, E47/1329-1, E47/4919	Deterra Royalties (Iluka Resources)	BHP Minerals Pty Ltd, Itochu Minerals, Mitsui Iron Ore Joint Venture iron ore mine site and railway line connection is paid 1.232% of annual sales (est. \$17.695B) representing \$218,000,000. Plus \$1M is paid for every 1M tonne increase in production capacity per annum. The 2021/22 FY output was in excess 46,000,000 tonnes.	Considered to be a slightly higher royalty rate than the subject because the original mining tenements were established with an identified iron ore resource. The large mining company was prepared to provide a small ongoing share in return establishing a very viable mining operation.

³³Detailed information received from a neighbouring farming family.

³⁴ Tribune Financial Markets Desk - ASX announcement Mineral Resources Ltd purchase of Pantoro Ltd dated 10/11/2023.

³⁵ASX quarterly royalty revenue update for Deterra Royalties Ltd 31/10/2023.

	No	Address	Land Description	Tenement	Owner	Royalty or Other Compensation	Comparison to YNAC Lands
78.	5. ³⁶	Rio Tinto Mines (formerly Hamersley Iron Pty Ltd), Pilbara	Hamersley Ranges (Iron ore rich mountains and valleys)	Extensive tenements pegged since the early 1960's with Hope Downs a principal discovery.	Hancock Prospecting and Wright Prospecting since the late 1950's	The iron rich tenements were discovered by Lang Hancock and Peter Wright. A royalty agreement was negotiated with Hamersley Iron to mine and export the iron in return for access to all tenements at 2.5% of the iron ore value output. Currently is worth around \$360,000,000 annually to each Hancock and Wright group (\$720M total).	This royalty dates back to the 1 st major discoveries of iron in the Pilbara vast region. The rate is high however it was negotiated in the early days of the establishment. Considered superior to the subject.
79.	6. ³⁷	Cloudbreak & Christmas Creek Mines, Roy Hill-Munjina Road, Mulga Downs	Chichester Ranges & Fortescue River Valley	Various	Niyiyaparli People, Yamatji Marina Aboriginal Corporation	In 2005, FMG negotiations for seeking access had broken down with Niyiyaparli, Payyku, Martu Idja Banjima, Puutu Kunti Kurrama, Pinikura and Eastern Garuma People being owners of the lands. In order to expedite the matter, the Managing Director of FMG decided to negotiate with the Niyiyaparli People only and an "all round" compensation agreement was signed comprising a royalty of 2.5 cents/tonne which was equivalent to 0.025% at the time. Some inducements to sign for the group and elders were also included. However, the elders who signed failed to understand fully the contract and wanted to cancel within a week which was not possible. Other royalties in the Pilbara were around 0.5% per tonne at the time however were considered to be excessive by FMG. Training, education and the opportunity of work on the mines for aboriginal people were part of the agreement.	This FMG negotiated royalty is at the lower end of royalties negotiated which is common to FMG. The circumstances of the negotiation were somewhat unfortunate, and the aboriginal people had to accept a lower level. Considered to be a lesser impact overall then the Yindjibarndi lands which are currently being mined by FMG. Overall a higher royalty I believe would be appropriate for the subject lands which are more highly impacted in land destroyed and with respect to, heritage and cultural aspects.

³⁶ Business News "Mining royalties a black and white issue" by Mark Beyer 14th February 2023.

³⁷ "Native Title Contestation in Western Australia's Pilbara Region- Dr Paul Cleary, Australian National University published 2014.

80.	7. ³⁸	Newmont Tanami Gold Mine, Tanami, Northern Territory	Central Desert country with undulating sandy loams. Large underground mine at "Dead Bullocks Soak"	Callie and Auron ore bodies, unknown tenements	Warlpiri People managed by the Central Desert Aboriginal Lands Trust	A remote gold mine 520km North of Alice Springs on Aboriginal Freehold Land. It is the second largest gold mine in Australia. A 2.5% royalty on sales revenue is paid indirectly to the Aboriginal people via education and training trust and then distributed. Royalty revenue was around \$1,200,000 in 2012 however based on recent revenue with price rises (+70%), increased output, higher revenue would have been paid in recent years. Approximately 2,600,000 tonnes of ore are processed per annum with approximately 500,000 ounces of gold worth around \$700M (\$1,400/oz after costs). The royalty equates to approx. 0.0017%.	This is a relatively low royalty rate paid by the international gold mining company with the money going to the aboriginal people affected. The mine area is confined with limited impact on surrounding lands and is now largely centred on underground mining. Overall considered inferior to the subject lands.
-----	------------------	--	--	--	--	---	--

81. I have not been able to sight any of the royalty agreements and I have had to rely on reputable media reports/interviews and references made in other public documents which are cited in this report, and which I believe to be reliable.

82.

Mining Royalty Evidence Summary				
No.	Address	approx.	Royalty Rate	Royalty Comparison
Subject		10,000 ha		
1	Lake Hillman, Kalannie (Gypsum Mine)	Unknown	3.000%	Far Superior
2	Scotia Mine, Dundas	Unknown	0.750%	Slightly Superior
3	South Flank Mines, Newman	Unknown	1.232%	Superior
4	Rio Tinto Mines, Tom Price	Unknown	0.025%	Inferior
5	Hope Downs Mines, Newman	Unknown	2.500%	Superior
6	Cloud Break Mines, Mulga Downs	Unknown	0.025%	Inferior
7	Newmont Mine, Tanami	Unknown	0.002%	Far Inferior

83. As a matter of record, in Western Australia the ad valorem royalty rates imposed by the State Government is 7.5% of the royalty value of bulk material (crushed or screened) and a lower rate of 5% of the royalty value is for concentrate processed or bulk material improved or upgraded in some way (beneficiated) to increase its value. A royalty return is lodged by the miner and any allowable deductions are made which for iron ore is any shipping costs.

³⁸Australasian Journal of Regional Studies by Blackwell and Dollery Vol.20, No 1, 2014, page 72.

Under the Mining Regulations, the royalty value of iron ore is the 1st sale of the ore by the tenement holder onto or from the ship exporting the ore from Australia. The gross invoice value of the ore is less shipping costs and is the amount in Australian dollars multiplied by the quantity of the mineral by the price for the mineral. Shipping costs incurred on the shipping date (leaving WA) are costs reasonably incurred by the person or entity liable to pay the royalty and include freight costs, dead freight costs, marine and cargo insurance costs and bunkering costs. In summary the value “ad valorem” royalty is “FOB (CIF)”.

Valuation Considerations

<p>84. Valuation Approaches</p>	<ol style="list-style-type: none">1. One method of valuation is discounted cash flow of an annual income flow (royalty) based on mineral value annual output. The valuation method was recently used to value a gold mining company takeover of the assets of a junior miner (mining tenements and infrastructure). A dispute arose as to the valuations and the State Tax assessed. Ultimately the dispute was settled in an appeal to the High Court in <i>Commissioner of State Revenue WA Vs Placer Dome Inc</i> (now Barrick Gold Corporation) (2018) HCA 59; (2018) 265 CLR 585. In that case a valuation provided by a Valuer using “gold price futures” as a guide and then applying annual even increase into the future was deemed erroneous by the High Court because of the volatility in the gold price history going back 179 years. The counter valuation argument accepted by the High Court was a gold price based on forecast gold prices derived from an average or consensus assessed by leading analysts providing a range of values and then adopting a figure that was the higher of the range. That figure was much less than the Valuer for the State.2. While it is established valuation practice to have regard to sales evidence in the immediate area, the valuation of the subject property has been complex due to the unique nature of the land rights being affected and have been accepted by the Federal Court of Australia to be in existence prior to European settlement. The subject cultural and heritage connection to these lands cannot be replicated in another locality. This may be contrasted with a situation where a pastoralist sold a pastoral property and used the proceeds to purchase an equivalent property elsewhere. Accordingly, it is my opinion that a comparison with the market value of neighbouring land that has been used for pastoral agricultural use to assess the value of determined native title rights and the consequent loss flowing from their impairment is not appropriate. For the reasons summarised at [46(a)] above, it is my opinion that compensation in this case should be based on royalty payments which the Yindjibarndi People might have received in the past and going forward whilst active mining is existing, with such payments continuing until such time as mining ceases and rehabilitation is complete.
--	--

		<p>3. I have considered the potential for compensation being assessed for heritage and cultural loss. A royalty is only payable when mining is proceeding with revenue from iron ore output and a royalty is payable to the State Government under the Mining Act. It is confirmed that mining has destroyed many important heritage and cultural sites that will not be recovered.³⁹ That process may proceed into the future. To value the damage would not be possible until mining ceased. Other suitable experts should be engaged to make such assessments at that time.</p> <p>4. It would appear that mining royalties paid to Aboriginal groups in other localities are an all-encompassing compensation with identified sacred and known highly important sites hopefully being preserved.</p>
--	--	---

Compensation Heads of Claim

85. Loss of Land by Mining	<p>1. The subject property is portion of a large vacant Unclaimed Crown Land (UCL) and the native title rights and interests of the Yindjibarndi People determined under the Native Title Act 1993. The determination in 2017 affirmed the valid native title rights and interests of the Yindjibarndi People conferring on them the right to possession, occupation, use and enjoyment of the Exclusive Area to the exclusion of all others.</p> <p>2. Exclusive rights and interests are acknowledged pertaining to the traditional laws and customs of the Yindjibarndi People before sovereignty in 1829.</p> <p>3. Compensation is to be assessed for loss or diminution of the exercise and enjoyment of Native Title rights and interests caused by a variety of mining tenements granted by the State of Western Australia to Fortescue Metals Group (FMG Pilbara Pty Ltd) allowing the full and unchallenged development of the “Solomon Hub Iron Ore Mine” with the loss of the use of the subject</p>
-----------------------------------	--

³⁹ See FN 18 above. Also see “MW-130” Federal Court of Australia No WA 37 of 2022 – “WAtoday” article published 12th September, 2012, page 1187- Witness Statement by Michael Woodley dated 5th June 2023.

		land as a consequence together with cultural and heritage sites across the land is considerable.
86.	Loss by Severance	<ol style="list-style-type: none"> 1. The ongoing mining of the land is essentially along a central valley over 18km in length and divides the holding into 2 sections with the Northern section at this point being only partly being mined.⁴⁰ The valley width is 3 to 5km across and to the South some future mining is expected⁴¹. The main FMG buildings and residential camps are generally outside of the determination area together with much of “Queens Mine” and the railway loop-line to the Eastern end of the mining zone.⁴² 2. Permanent access across the valley is virtually prohibited for the Yindjibarndi People for the next 17 years approximately when mining may or may not cease. Access would have ceased before mining establishment started taking place around 2011/2012. A period of around 30 to 32 years is likely for severance to be in existence affecting the land whilst rehabilitation and environmental restoration take place during the “closing down” procedure thereafter.
87.	Loss of Cultural and Heritage Use	<ol style="list-style-type: none"> 1. The Yindjibarndi Land has been subject of a substantial mining operation since initial establishment in 2012 with first shipment of iron ore by railway on 1st December 2012.⁴³ There has been a focus on valley lands and the mining in a straight line covers approximately 18km generally in a Westerly direction however mining, storage of tailings, haul roads, railway line, infrastructure and buildings fan out laterally into offshoot valleys.⁴⁴ The general width of mining activity varies from 3km to 5km approximately.⁴⁵

⁴⁰ Google Maps above with my annotations.

⁴¹ Ibid.

⁴² Ibid.

⁴³ “Fortescue Update” Issue 1 – January 2013 page 1278 - Witness Statement by Michael Woodley dated 5th June 2023.

⁴⁴ Google Maps above with my annotations.

⁴⁵ Ibid.



Source: Google Maps – Main mining valley approx. 18km

<p>88. Loss of Cultural and Heritage Use</p>	<ol style="list-style-type: none"> 2. As a result of mining there has been widespread destruction of cultural and heritage assets both tangible and intangible,⁴⁶ which will probably continue until mining is completed around 2040. 3. The substantial and meaningful negative effect on the Yindjibarndi People has been provided in recent Federal Court evidence by Yindjibarndi witnesses⁴⁷. Not only has sacred land been destroyed but additionally ancient artefacts, cave and rock paintings, ochre sites, grinding patches, rock shelters, meeting places and modified trees have been permanently lost.⁴⁸
--	--

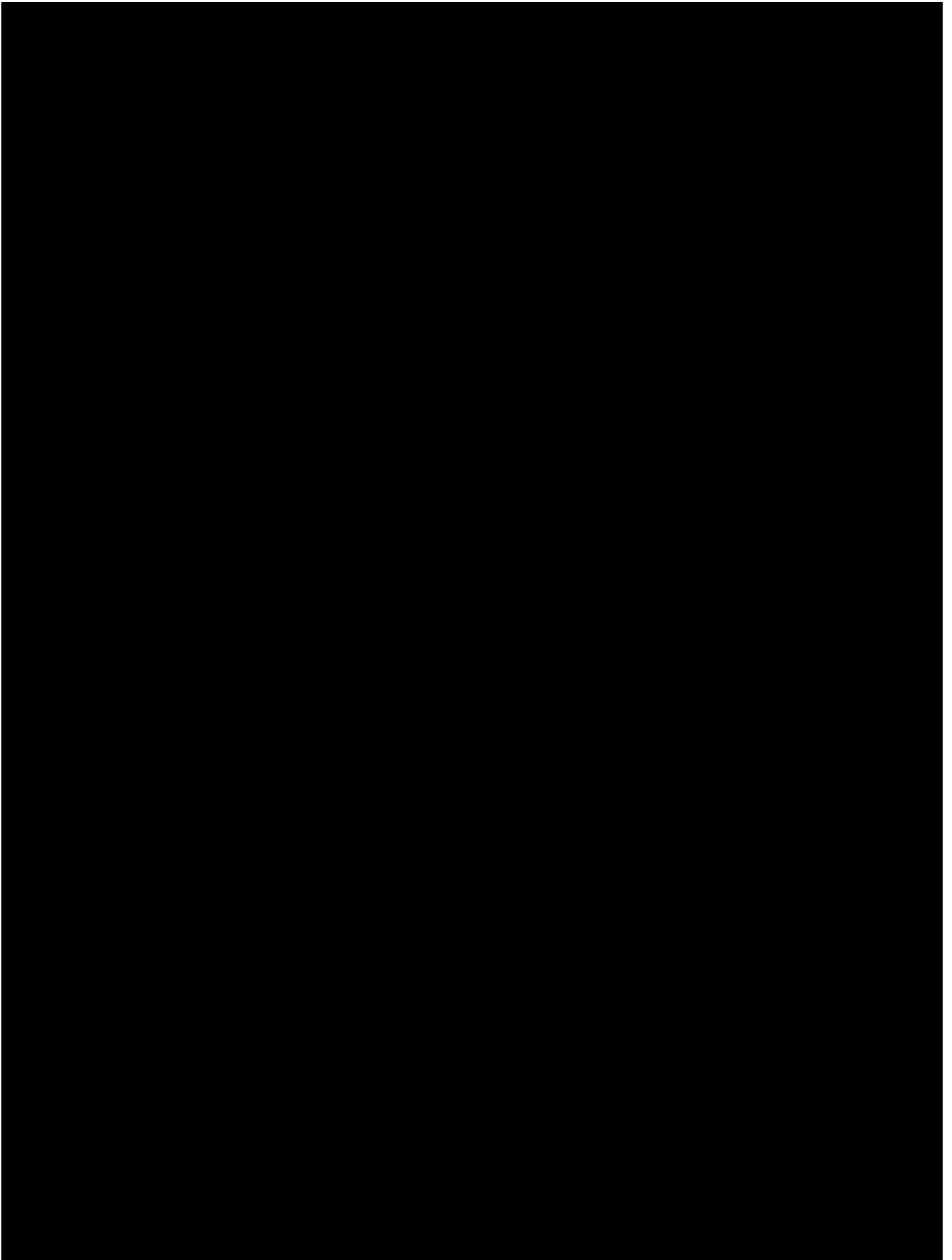
⁴⁶“MW-130” Federal Court of Australia No WA 37 of 2022 – “WAtoday” article published 12th September, 2012, page 1187- Witness Statement by Michael Woodley dated 5th June 2023.

⁴⁷See the references at FN 18 above; also see witness statement of Fabian Cheedy dated 15 May 2023 at [18],[23] and [24]; witness statement of Lyn Cheedy dated 1 May 2023 at [28]; witness statement of Milton Cheedy dated 3 May 2023 at [24],[24] and [33]; witness statement of Lorraine Coppin dated 27 April 2023 at [13], [48], [52] and [53]; witness statement of Judith Coppin dated 3 May 2023 at [8],[10],[11],[28] and [29]; witness statement of Isaac Guinness dated 1 May 2023 at [24],[26],[27] and [33] to [35]; witness statement of Kevin Guinness dated 4 May 2023 at [26],[27],[33],[48] and [55]; witness statement of Angus Mack dated 16 May 2023 at [51],[81],[82] and [87]; witness statement of Kaye Warrie dated 1 May 2023 at [26],[28] and [31]; witness statement of Stanley Warrie dated 27 April 2023 at [87] to [89] and [120 [all as excerpted in the document “Lay evidence re mine rehabilitation”].

⁴⁸ “MW-130” Federal Court of Australia No WA 37 of 2022 – “WAtoday” article published 12th September, 2012, page 1187- Witness Statement by Michael Woodley dated 5th June 2023.

	<p>4. When mining consent was eventually obtained from the Minister, YNAC subsequently lost control of their rights and country. A long contested Native Title claim against the Western Australian Government and FMG was finally determined in 2017 with the Federal Court finding in favour of the Yindjibarndi People as the traditional owners.</p> <p>5. When mining ceases there will be a requirement for FMG to carry out a program of rehabilitation and regenerating the natural environment where there are mined areas and removing infrastructure established. The “Solomon Mine Closure Plan” has been prepared in 2022 for the Department of Energy, Mines, Industry Regulation and Safety (DMIRS) Environmental Group.</p> <p>6. I note that there is an accepted practice for some mining pits to be left in stable ground and “abandoned” subject to an encircling engineered bund for safety reasons. These areas will never be restored to a semi-natural state. It is most likely that some access roads, bores and dams could be retained by the owners, subject to agreement.</p>
--	---

Valuation Calculations



90.	Volume and Value	<p>1. I have considered the evidence of iron ore volume and also the royalty information from 2013. The 2013 volume and unit value are an estimate because there is no actual evidence provided in figures. In 2020, the “Queens Mine” came into production which is largely outside the Determination Area and the total volume and value have been accordingly adjusted to reflect the output of “Firetail Mines (North and South), Kings Mine and Trinity Mine” only.</p>
		<p>2. Since the beginning of mining in 2012/2013, obviously significant revenue has been generated for the benefit of FMG and the State (by royalties) however there has been no money received by YNAC whilst having to establish their exclusive Native Title rights to the land in the Federal Court of Australia and therefore their entitlement to compensation. I have addressed this in the following valuation calculations. FMG access occurred first in 2007/2008 with mineral exploration followed by gaining all Statutory approvals required.⁴⁹</p>

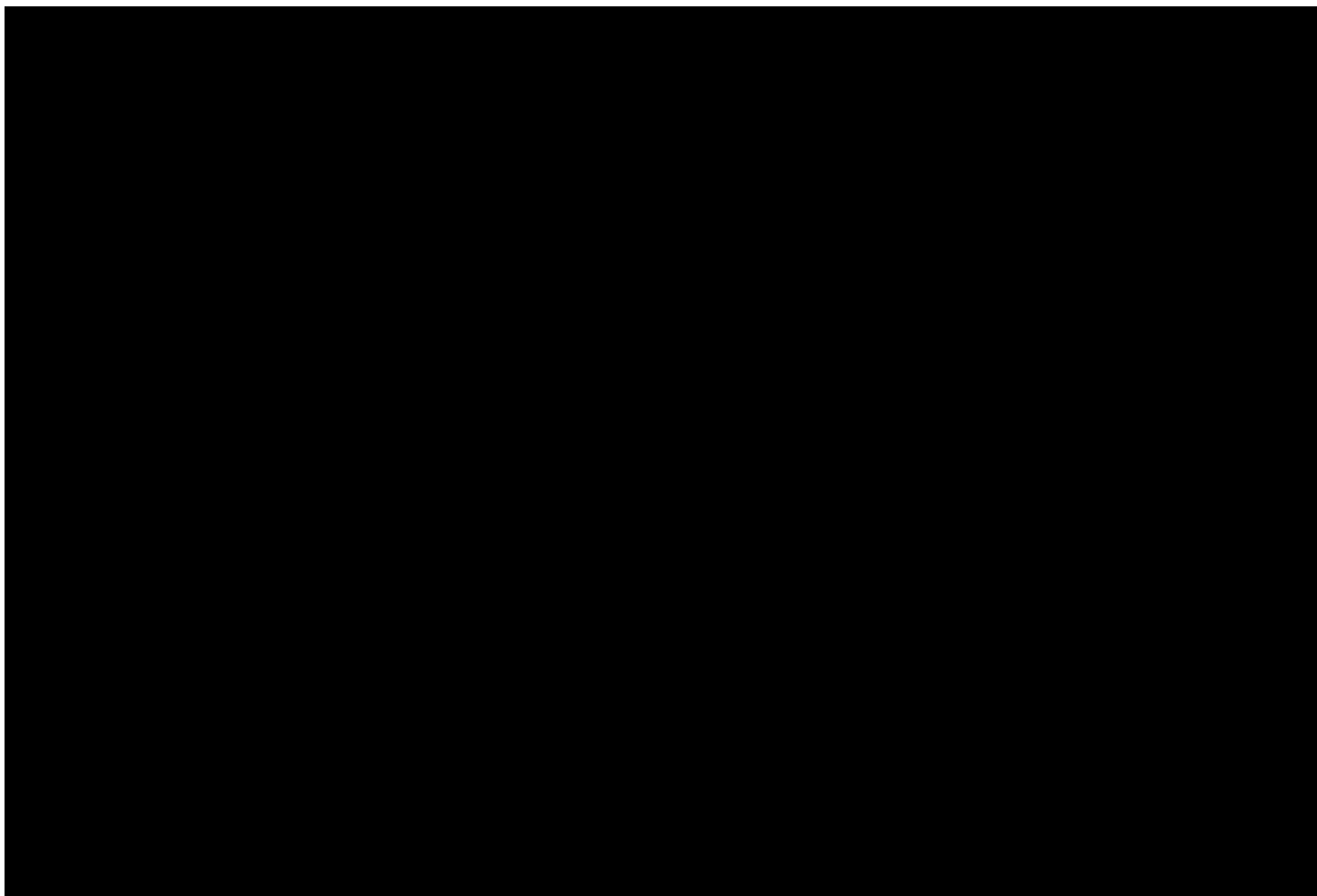
Royalty Valuation Assessment 1

91.	Royalty Valuation	<p>1. Compensation royalty income should have been derived from at least 2012-2013 from FMG however this has been forgone and it would be fair and reasonable for it to be recouped. FMG have been paying Wirlu-Murra Yindjibarndi Aboriginal Corporation (WMYAC) some compensation of unknown value since 2010.</p> <p>2. The following is a valuation approach based on the royalty information and certain assumptions based on available evidence.</p> <p>3. I have adopted a royalty of 0.55% for the loss of land use and an all-encompassing compensation approach.⁵⁰ I have decided that any additional factor to cover severance, for the loss of culture and heritage by damage is</p>
-----	--------------------------	---

⁴⁹“MW-130” Federal Court of Australia No WA 37 of 2022 –Minister for Energy, Training and Workforce Development; Indigenous Affairs page 864- Witness Statement by Michael Woodley dated 5th June 2023.

⁵⁰ See [74(j)] above. My calculation follows.

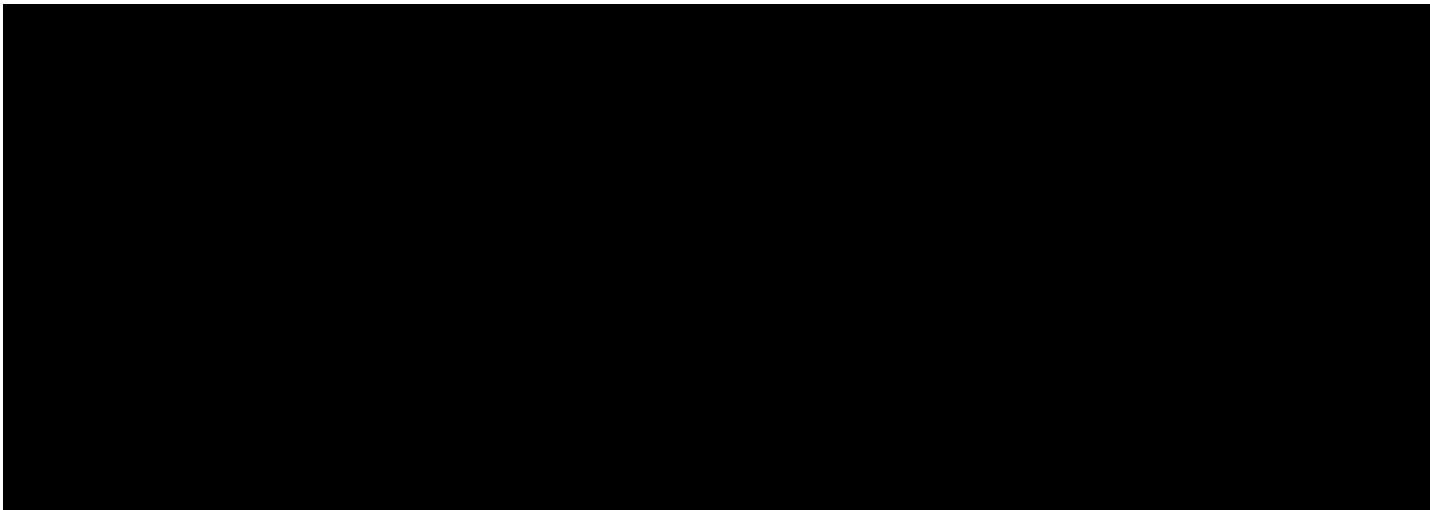
		not possible for as long as mining is taking place.
		4. The cashflow is based on actual volume and values of the iron ore and I have applied annual increase in value if each royalty was invested at an average of 2.5% over the 9 years from 2013 to 2022.



Royalty Valuation Assessment 2

92.	Royalty Valuation	<p>1. The following is a valuation approach based on the royalty information and certain comparisons made in the royalty evidence provided earlier in this report (paras 77-82).</p> <p>2. I have adopted a royalty of 0.55% for the loss of land use and an all-</p>
-----	-------------------	---

		encompassing compensation approach. ⁵¹ I have decided that any additional factor to cover the loss of culture and heritage by damage is not possible as long as mining is taking place. In any event, such an assessment would not fall within my area of expertise.
--	--	---



⁵¹ See [74(j)] above. Royalty Evidence Schedule as provided in paragraphs 75 – 80.

Valuation

93.	Market Value – As Is	Subject to the conditions, limitations and qualifications contained within the body of this report, I have assessed the Market Value exclusive of Nil GST of the subject property, for Compensation for the effect of the grant of Fortescue Metals Group (FMG Pilbara Pty Ltd) mining tenements on Determined Yindjibarndi native title rights and interests as at 8 November 2023, to be:		
	1. Compensation	Lost Royalty Cash Flow: 2013 - 2022	\$350,000,000	(Three Hundred & Fifty Million Dollars)
	2. Compensation	Royalty 2023*	\$33,000,000	Thirty-Three Million Dollars
	Total Compensation to 31 December 2023		\$383,000,000	Three Hundred & Eighty-Three Million Dollars

- *Year 1 Determination Exclusive Area Compensation based on the recorded DMIRS Solomon Hub (Firefly North & South, Kings Valley and Trinity Mines) iron ore volume and value that is subject to annual variation and applying a 0.55% royalty going forward annually. Year 2 (2024) will be assessed similarly applying a 0.55% royalty and subsequent years going forward until completion of the mine operation.



Valuer Brian Miles
AAPI CPV 64945
WA Licence No. 221

Conditions and Limitations

Verifiable Conditions and Qualifications

Verifiable conditions and qualifications relate to environmental issues, structural integrity of the improvements, condition of building services, zoning and encroachments, and can be confirmed by obtaining appropriate documentation relating to each.

Conditions Based Upon Opinion: Where included are detailed with the Market Comment, Leasing and Sales Evidence and Rationale sections of the report.

Cultural Heritage/Sacred Sites: The value and utility of land can be adversely affected by the presence of aboriginal sacred and cultural heritage sites. Aboriginal requirements can only be determined by the appointment of an appropriate expert which was originally done in 2007 and multiple Cultural Heritage or Sacred Sites affecting the subject property have been registered. This valuation is undertaken on the basis that the subject property is affected by issues relating to Cultural Heritage or Sacred Sites.

Environmental: Unless stated otherwise in the report, no soil tests or environmental studies have been made available. Therefore, it should be noted that the valuation is subject to there being no surface or sub-surface soil problems including instability, toxic or hazardous wastes, toxic mould, asbestos or building material hazards in or on the property that would adversely affect its existing or potential use or reduce its marketability. Should any problems be known or arise, then the valuation should be referred to.

YNAC acknowledges and recognises that I am not an expert in identifying environmental hazards and compliance requirements affecting properties.

Encumbrances: If there are any encumbrances, mining tenements, encroachments, restrictions, leases or covenants which are not noted in this valuation report, they may affect the assessment of value.

Flooding information noted has been obtained from the relevant authority. This information has been relied upon and no responsibility is accepted for the accuracy of the flooding information provided. Should the information prove incorrect in any material respect, the valuation should be returned to for comment.

GST: Unless stated otherwise the assessment is made on a GST exclusive basis. Notwithstanding this commentary, YNAC acknowledges that I am not a taxation expert. Should you have any query in this regard, specific legal and taxation advice should be obtained by a suitably qualified expert.

Market Movement: This valuation is current at the date of valuation only. The value assessed herein may change significantly and unexpectedly over a relatively short period including as a result of general

market movements or factors specific to the particular property. I do not accept liability for losses or damage arising from such subsequent changes in value including consequential or economic loss. Without limiting the generality of the above comment, I do not accept any responsibility or accept any liability where this valuation is relied upon after the expiration of three months from the date of the valuation, or such earlier date if you become aware of any factors that have any effect on the valuation.

Planning: I have searched the publicly available records for the relevant zoning and/or designation for the information noted above. I advise however, that unless otherwise stated, a formal search with the appropriate Local Authority has not been carried out or obtained.

Site Survey: Unless stated in this report a current site survey has not been sighted. Any comments given in relation to the property are not given in the capacity as an expert, however, are based on the inspection of the property and review of title plan. The assessment is made on the basis that there are no encroachments (unless otherwise noted) by or upon the property. If encroachments are noted by a site survey, I should be consulted to assess any impact on the stated assessment.

Definitions

As Is Valuation means a valuation that provides the current value of the land as it currently exists rather than an "as if complete" valuation of a proposed development.

Payments in Arrears:

This is the status of payments that should have been received over a period of time on a due date. This can be seen as an obligation or liability or lost income that is considered to be payable. The income if payable is a lost opportunity for the person or organisation who could have re-invested the funds at an investment market rate or purchased another asset and made a better return on capital. As an accepted valuation approach, the lost payments which if paid (annually, monthly, weekly etc.) are accumulated and a suitable interest rate is applied as compounding return (earning interest on interest) on each payment due going forward for the particular time period.

Discounted Cash Flow (DCF) Analysis is:

- a. A method of analysing investment opportunities in which annual cash flows are discounted to arrive at their Net Present Value (NPV) or Internal Rate of Return (IRR). Also used as a basis in certain types of property valuations;
- b. A financial modelling technique based on explicit conditions regarding the prospective cash flow to a property or business.

As an accepted methodology within the income approach to valuation, DCF analysis involves the projection of a series of periodic cash flows either to an operating property, a development property, or a business. To this projected cash flow series, an appropriate, market-derived discount rate is applied to establish an indication of the present value of the income stream associated with the property or business. In the case of operating real properties, periodic cash flow is typically estimated as gross income less vacancy and collection losses and less operating expenses/outgoings. The series of periodic net operating incomes, along with an estimate of the reversion/terminal value, anticipated at the end of the projection period, is then discounted. In the case of development properties, estimates of capital outlays, development costs, and anticipated sales income are estimated to arrive at a series of net cash flows that are then discounted over the projected development and marketing periods. In the case of a business, estimates of periodic cash flows and the value of the business at the end of the projection period are discounted. The most widely used applications of DCF analysis are the internal rate of return (IRR) and net present value (NPV).

Highest and Best Use is the use of an asset that maximises its potential and that is physically possible, legally permissible and financially feasible.

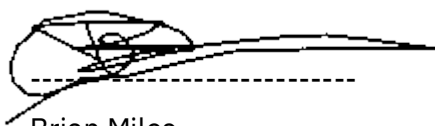
In Use Value is the estimated value of an asset that is either purpose built or of a specialised nature, has special value to the owner or will continue to be used for a profitable comparable enterprise. This value may also include any specialised plant and equipment that is considered an integral part of the business operation and will pass with the real estate, but excludes goodwill and/or business value.

Market Value is the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

Expert's Declaration

I, Brian Miles, declare as follows:

1. I have made all the enquiries which I believe are desirable and appropriate, and the opinions expressed in this report are based wholly or substantially on specialised knowledge arising from my training, study, and experience.
2. No matters of significance which I regard as relevant have, to my knowledge, been withheld from the Court.
3. I have read Expert Evidence Note (GPN-EXPT) of October 25, 2016, governing the requirements of expert witnesses in Federal Court proceedings (**the Practice Note**). I agree to be bound by it, and have complied with it to date, subject to the qualification in [4] below.
4. Due to the large volume of documents which are covered by [5.2(c)(ii)] of the Practice Note, I have not annexed or exhibited all of them to this report, but am relying on my instructors to provide copies of them in electronic form to the parties and the Court.

A handwritten signature in black ink, appearing to read 'Brian Miles', written over a horizontal dashed line.

Brian Miles

Date: 16 January 2024

Annexures

- Annexure 1 Brief To Prepare A Expert Valuation Report
- Annexure 2 Yindjibarndi Legal Determination Summary
- Annexure 3 Native Title Register Extract
- Annexure 4 Certification
- Annexure 5 Curriculum Vitae
- Annexure 6 List of documents and other materials which the expert was asked to consider for the purpose of preparing this report
- Annexure 7 Directions given to the expert other than those contained in the brief

Annexure 1 – Brief To Prepare An Expert Valuation Report

BLACKSHIELD LAWYERS

20 October 2023

Brian Miles

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

By email: [Brian.Miles@\[REDACTED\].com.au](mailto:Brian.Miles@[REDACTED].com.au)

Privileged and confidential

Dear Mr Miles,

BRIEF TO PREPARE AN EXPERT VALUATION REPORT FOR USE BY THE APPLICANT IN PROCEEDINGS WAD 37/2022 – Yindjibarndi Ngurra Aboriginal Corporation Compensation Claim

Background

1. Under s.56(3) of the *Native Title Act 1993* (Cth) (**NTA**) the Yindjibarndi Ngurra Aboriginal Corporation (**YNAC**) holds in trust for the common law holders (**Yindjibarndi People**) the native title rights and interests that were recognised in a determination of native title made by the Federal Court on 17 November 2017 in *Warrie (formerly TJ) on behalf of the Yindjibarndi People v State of Western Australia (No.2)* [2017] FCA 1299; (2017) 366 ALR 467 (*Warrie (No.2)*).
2. In the ‘Exclusive Area’¹ within the *Warrie (No.2)* Determination Area (**Exclusive Area**), the native title rights and interests of the Yindjibarndi People confer on them the right to possession, occupation, use and enjoyment of that area to the exclusion of all others.² In the balance of the *Warrie (No.2)* Determination Area (**non-exclusive area**), the Yindjibarndi People possess the following rights, including the right to conduct activities necessary to give effect to them:

¹ ‘Exclusive Area’ is defined in [11] of *Warrie (No. 2)* to mean that part of the Determination Area described in Part 2 of Schedule 1 and depicted on the maps in Schedule 3. It is those parts of the Determination Area where ss.47A and 47B apply to disregard any prior extinguishment of native title.

² *Warrie (No. 2)* [4].

- (a) a right to access (including to enter, to travel over and remain);
 - (b) a right to engage in ritual and ceremony (including to carry out and participate in initiation practices);
 - (c) a right to camp and to build shelters (including boughsheds, mias and humpies) and to live temporarily thereon as part of camping or for the purpose of building a shelter;
 - (d) a right to fish from the waters;
 - (e) a right to collect and forage for bush medicine;
 - (f) a right to hunt and forage for, and take, fauna;
 - (g) a right to forage for, and take, flora;
 - (h) a right to take and use resources;
 - (i) a right to take water for drinking and domestic use;
 - (j) a right to cook on the land including light a fire for this purpose; and
 - (k) a right to protect and care for sites and objects of significance in the Determination Area (including a right to impart traditional knowledge concerning the area, while on the area, and otherwise, to succeeding generations and others).³
3. The Fortescue Metals Group (**FMG**) has been granted a variety of mining tenements (Mining Leases Exploration Licences, Prospecting Licences and various Miscellaneous Licences), by the State of Western Australia (**State**) within the Exclusive Area and in parts of the non-exclusive area (**FMG tenements**). The FMG tenements underpin and provide the basis for the operation of a significant portion of FMG's Solomon Hub Mine (**FMG's Solomon Project**).⁴ The native title rights and interests have been diminished by the grants of the FMG tenements and by the mining and related activities carried out under those tenements.
4. In particular, the native title rights and interests of the Yindjibarndi People have been suppressed by and must yield to the rights and interests granted under the FMG tenements. In this respect, the Mining Leases confer on FMG exclusive possession of

³ *Warrie (No. 2)* [3].

⁴ *Warrie (formerly TJ) on behalf of the Yindjibarndi People v Western Australia* [2017] FCA 803; (2017) 365 ALR 624, Rares J at [8].

the land for mining purposes. The Yindjibarndi People's native title rights and interests will remain suppressed and significantly diminished and impaired, for the life of the FMG's Solomon Project on the *Warrie (No.2)* Determination Area.

5. With the exception of the grant of a single exploration licence, neither the Yindjibarndi #1 registered native title claimant, as the representative of the Yindjibarndi native title claimants prior to the making of the *Warrie (No.2)* determination, nor YNAC as the post-determination representative of the Yindjibarndi native title holders, either consented or agreed to or received any compensation for, the grants of the FMG tenements.
6. On 18 February 2022, YNAC, as the representative of the Yindjibarndi People, filed an application in the Federal Court for a determination of compensation under s.50(2) of the NTA for any loss, diminution, impairment or other effect on the Yindjibarndi People's native title rights and interests, as a result of the grants of the FMG tenements. The claim is made in the alternative against both FMG and the State.
7. The area of the compensation application is identical to the area the subject of the *Warrie (No.2)* Determination Area. **Attachment 1** to this Brief is a map of a notional parcel bordered in dark blue showing the *Warrie (No.2)* Determination Area and the FMG tenements. **Attachment 2** is a copy of a document filed with the Court by FMG entitled "FMG Respondents' mining tenements and infrastructure (provided in compliance with the Court's order 3 of 11 October 2022 filed 13 February 2023)", which shows the nature, location and extent of the FMG tenements, as well as the infrastructure, including the Kings, Trinity, Firetail North and Firetail South Mine Pits, constructed or established by FMG pursuant to the rights granted by the FMG tenements.
8. Also included with this Brief, at **Attachment 3**, is a copy of the Applicant's Further Amended Points of Claim filed on 5 July 2023, which sets out a detailed description of the compensation claim (**Points of Claim**). I would direct you in particular to paragraphs 39 – 46 of the Points of Claim in terms of how the YNAC frames its claim for compensation for economic loss but ask you also to note that the claim, including the way in which it is framed, is disputed by the State and FMG.

Assumptions

9. In addition to the information already provided above, you should adopt, for the purpose of preparing your report, the following assumptions:

- (a) FMG's Solomon Project is an open-cut iron ore mine in the Hamersley Ranges located 60 km north of Tom Price;
- (b) it comprises the Firetail, Kings Valley and Queens Valley mines. Mining operations at the Firetail deposit of the mine commenced in May 2012;
- (c) the FMG tenements were granted between 2006 and 2020 (applications for further mining tenements by FMG appear to be ongoing);
- (d) a significant proportion of the tenements comprising FMG's Solomon Project fall within the area which was covered up to 13 November 2017 by the Yindjibarndi #1 native title determination application (which was filed on 9 July 2003 and was registered from 8 August 2003), and from 17 November 2017 by the *Warrie (No.2)* Determination Area;
- (e) production from FMG's Solomon Project within the *Warrie (No.2)* Determination Area was earlier estimated at 392 million tonnes up to June 2022 but this figure will need to be updated now that the State has served Mr Sharman's affidavit dated 29 September 2023 (**Sharman Affidavit**), a copy of which is **Attachment 4**;
- (f) as raised in our correspondence of 19 October 2023, FMG's most recent 'Mine Closure Plan' (**Attachment 6**; provided by way of DropBox link on 19 October 2023) indicates that FMG is presently uncertain as to when the production of iron ore from that portion of FMG's Solomon Project which is located on the *Warrie (No.2)* Determination Area will cease but estimates that it will be subsequent to 2040. Otherwise, it has been estimated that future production at FMG's Solomon Project (from the *Warrie No. 2* Determination Area) will amount to 137 million tonnes but again that figure is subject to the further information provided in the Sharman Affidavit;
- (g) neither the Yindjibarndi #1 registered native title claimant, as the representative of the Yindjibarndi People prior to the making of the *Warrie (No.2)* determination, nor YNAC, as the post determination representative of the Yindjibarndi People, consented or agreed to or received any compensation for, the grant of any of the FMG tenements;
- (h) the grant of the FMG tenements, including the various infrastructure licences and the activities carried out under those tenements, have caused significant physical

interference with the Yindjibarndi People's rights of occupation, use and enjoyment;

- (i) extensive open cut mining and mining related activities have caused and will continue to cause, significant damage to Yindjibarndi country and have damaged or destroyed important archaeological and spiritual sites;
- (j) there is a common or standard practice for miners to enter into compensation agreements with native title parties to secure the native title party's consent to mining activities on land or waters where the native title party either possesses, or asserts that they possess, native title rights and interests;
- (k) those agreements and in particular, iron ore mining agreements, mostly include a mix of benefits with fixed cash payments, employment and training, business opportunities and royalties on the value of the minerals sold;
- (l) the royalties payable under iron ore mining agreements in the Pilbara are generally based on the Free On Board (FOB) price at Port Hedland (\$A dmt) and range from 0.05% to 1.5% of the FOB sale revenue;
- (m) those iron ore mining agreements were negotiated in respect of land or waters that were either subject to a registered but yet to be determined native title claim or were within an area of determined but non-exclusive, native title rights and interests; and
- (n) the royalties and rents have been paid and will continue to be paid to the State by FMG for the iron ore produced from that portion of FMG's Solomon Project that is located on the *Warrie (No.2)* Determination Area until at least 2040 (but likely for a significant period subsequent) and details of the royalties and rents that have been paid are addressed in the affidavits of Mr Sharman and Mr Vielhauser. Mr Vielhauser's affidavit is **Attachment 5**.

Native title compensation

10. In the 29 years that have passed since the commencement of the NTA on 1 January 1994, *Northern Territory v Griffiths* (2019) 269 CLR 1; [2019] HCA 7 (***Griffiths* HC**) is the only fully litigated native title compensation application under that Act. The compensation application in *Griffiths* HC related to the compulsory acquisition by the Northern Territory of non-exclusive native title rights and interests over 39 lots and 4 roads within the small town of Timber Creek. The compensable acts there consisted

largely of acts which the NTA describes as “*past acts*”, which resulted in the extinguishment of what were non-exclusive native title rights and interests over a total area of approximately 127 hectares.

11. The YNAC compensation application is very different to the compensation application in *Griffiths* HC. It relates to the grants of FMG’s Solomon Project mining tenements, which are described in the NTA as “*future acts*”. They are acts which have seriously affected and suppressed, and will continue to seriously affect and suppress, the Yindjibarndi People’s native title rights and interests in the *Warrie (No.2)* Determination Area but they have not extinguished them. There are no decided cases on the assessment of compensation for the grant of mining tenements. Nonetheless, *Griffiths* HC does provide some guidance in respect to the assessment of compensation for the impairment as well as for the extinguishment, of native title.
12. *Firstly*, although native title rights and interests have different characteristics from common law land title rights and interests, native title holders are not to be deprived of their native title rights and interests or to have those interests impaired to a point short of extinguishment, without payment of just compensation.⁵
13. *Secondly*, the majority judgement said :

“...the assessment of just compensation for the infringement of native title rights and interests in land include both a component for the objective or economic effects of the infringement (being, in effect, the sum which a willing but not anxious purchaser would have been prepared to pay to a willing but not anxious vendor *to obtain the latter’s assent to the infringement* or, to put it another way, *what the Claim Group could fairly and justly have demanded for their assent to the infringement*) and a component for non-economic or cultural loss (being a fair and just assessment, in monetary terms, of the sense of loss of connection to country suffered by the Claim Group by reason of the infringement).”⁶ (**emphasis added**)
14. *Thirdly*, the majority judgment said of the economic loss component of the compensation payable that:

“... the objective economic value of ‘exclusive’ native title rights and interests in land, in general, equates to the objective economic value of an unencumbered freehold estate in the land.”⁷
15. *Fourthly*, the majority judgment said:

“With the compulsory acquisition of land, the value of land is, generally speaking, not limited to the pecuniary benefit of past uses but extends to its highest and best use in light of possible

⁵ *Griffiths* HC at [74].

⁶ *Griffiths* HC at [84].

⁷ *Griffiths* HC at [3].

benefits in the future. So too, with the valuation of native title rights and interests in land, the value of the native title rights and interests is not ordinarily to be confined to the benefit of their past uses but should be extended to their highest and best use.”⁸

16. *Fifthly*, the majority judgment said:

“... that, as with the economic value of any other encumbrance, the economic value of native title rights and interests accords to what a willing but not anxious purchaser is prepared to pay to a willing but not anxious vendor to obtain the latter's assent to their extinguishment. But either way, the benefit of extinguishment to the Northern Territory was relevant only in so far as it would have informed the amount that the Northern Territory, as the sole, hypothetical willing purchaser, would have been prepared to pay for the *consensual extinguishment* of the native title rights and interests.”⁹ (**emphasis added**)

17. Section 51(3) requires the Court when determining compensation to apply any principles or criteria for determining compensation set out in the *Mining Act 1978* (WA) (**Mining Act**). Section 51A of the NTA provides that the total compensation payable 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.
18. Note that s.51A does not cap the compensation payable as the *market value* of the land. The cap in s.51A is the freehold value of the land the subject of the native title rights and interests, and the market value of land is only one component of the freehold value. The freehold value can include special value, severance value, injurious affection value and disturbance. None of these aspects of freehold value were raised or considered in *Griffiths* HC. Section 51A is also expressed to be subject to s.53.
19. Section 53 provides for additional compensation to be paid if the compensation otherwise payable would not amount to just terms compensation if the act would result in any acquisition of property other than on just terms as required by s.51(xxxi) of the *Constitution*. Again, this was not an issue that was raised or considered in *Griffiths* HC. YNAC's contention is that the suppression of the Yindjibarndi People's native title rights and interests by the grants of the FMG tenements has resulted in an acquisition of property for which just terms compensation must be paid.
20. Just terms compensation is based on the value to the owner. What this recognises is that land (or an interest in land) may have a value to a current owner over and above its market value. This special value is what a willing but not anxious buyer, pays for the land rather

⁸ *Griffiths* HC at [97].

⁹ *Griffiths* HC at [104].

than fail to attain it.¹⁰ This special value to the owner is confined to economic value only and not eg “sentimental value”. Dixon CJ observed in *Turner v Minister for Public Instruction* (1956) 95 CLR 245, 267:

“Indeed, *Spencer’s case* itself does not provide the ultimate test of compensation. An observation made in *Minister for Public Works v Thistlethwayte* [1954] AC 474, 491, shows that it does not. ‘It must not be forgotten’ said Lord Tucker for the Privy Council, ‘that it is the value of the land to the owner that has to be ascertained, and that the willing seller and purchaser is merely a useful and conventional method of arriving at a basic figure to which must be added, in appropriate cases, further sums for disturbance, severance, special value to the owner and the like’.”

Negotiations with miners under the NTA

21. The right to negotiate under Subdivision P of Part 2 Division 3 of the NTA before a “future act” is done significantly supplements the native title rights and interests recognised by the common law. Subdivision P applies, inter alia, to the “creation of a right to mine, whether by the grant of a mining lease or otherwise” (s.26(1)(c)(i)). The definition of “mining” in s.253 includes exploration and prospecting for, as well as the extraction of, minerals. The right to negotiate does not include a right of veto.
22. Section 33 identifies certain matters which may be included within the scope of negotiations for the purposes of Subdivision P and in particular, s.31(1)(b). Section 33 states that, without limiting the scope of any negotiations, they may include the possibility of including a condition that has the effect that native title parties are to be entitled to payments worked out by reference to the amount of profits made, any income derived or any things produced by any grantee party (miner) as a result of doing anything in relation to the land or waters concerned after the act is done. There have been many such compensation agreements made between native title parties and miners where the amount of compensation is based upon the amount of minerals produced.
23. If the native title party and the grantee reach agreement on the doing of a future act, being the grant of a mining lease, and on the terms of a determination of compensation which specifies that the method for determining the amount of compensation is by reference to either the amount of profits made, the income derived, or the minerals produced, the

¹⁰ *Pastoral Finance Corporation v The Minister* [1914] AC 1083, 1088 (Lord Moulton).

Federal Court has the power to make such a determination by consent (ss.50(2), 86G, 87 and 94(b)).

24. The benefits of native title do not include alienability but do include (as outlined above at [21]) the right to negotiate with, and receive compensation from, Government or third parties who wish to carry out mining or other development activities on the land concerned. This statutory ‘right to negotiate’ in relation to certain development projects, and in particular mining and petroleum resource exploitation, can at times provide significant wealth to native title holders. Furthermore, it is common or usual practice for mining companies to negotiate and to enter into compensation agreements with native title parties to secure the native title party’s consent to mining activities on land or waters where the native title party either possesses, or asserts that they possess, native title rights and interests.

Nature and scope of the consultancy services

25. This Brief requires you to write a report in which you express your expert opinion as a valuer on:
 - (a) What is the highest and best use of the land the subject of the FMG tenements and what would be a reasonable and appropriate method (or methods if more than one) for assessing the economic loss component of the compensation payable to the Yindjibarndi People:
 - (i) by FMG;¹¹ or
 - (ii) by the State,¹²

for the infringement of the Yindjibarndi People’s native title rights and interests caused by the grant of the FMG tenements?
 - (b) In particular, taking into account the assumptions contained in [9(g)-(n)], would a fair and reasonable method of valuing the Yindjibarndi People’s economic loss be to assess compensation by reference to the royalties which miners in the Pilbara commonly agree to pay to native title parties, in return for their consent to mining on their traditional lands or waters?

¹¹ See Points of Claim [46(a)]-[46(aaa)] for how YNAC frames its claim for compensation against FMG.

¹² See Points of Claim [46(a)] and [46(aaaa)] for how YNAC frames its claim for compensation against the State.

- (c) If your answer to (b) above is in the affirmative, what value would you place on that aspect of the economic loss component of the compensation payable to the Yindjibarndi People (or should that be left to a minerals economist to determine)?
 - (d) Would it be appropriate to assess the value of the economic loss by reference to amounts paid by mining companies to purchase freehold properties for mining purposes?
 - (e) What value would you place on the economic loss component of the compensation if you were to apply any principles or criteria in the Mining Act.
 - (f) Would a valuation applying the principles or criteria in the Mining Act provide just terms compensation?
 - (g) If the State is found responsible to pay compensation, what value would you place on the economic loss component of the compensation payable to the Yindjibarndi People?
 - (h) Should the compensation for economic loss, whether payable by FMG or by the State, include a special value component for damage to and destruction of, significant archaeological and spiritual sites?
 - (i) If the answer to (h) above is the affirmative:
 - (i) how should compensation for that special value be assessed; and
 - (ii) what information or data would you need to make that assessment?
26. In undertaking this task, please note that your report will be filed in the Federal Court and served on the parties to the proceedings. It is likely that you will be required to attend the Federal Court in Perth to give expert evidence on the issues addressed in your report. To this end, the Court has now listed the dates in which the expert witnesses of each party will be heard, being **8 to 12 April** and **15 to 19 April**. By way of email, can you please confirm at soonest convenience your availability for these dates.
27. Otherwise, we thank you for confirming your availability for the dates proposed by the Court for the Conference of Experts in **March 2024**. We will separately contact you once dates are confirmed.

Preparation of the Report

28. You should use defensible and sound methodologies in your report to support your opinions.
29. In preparing and compiling your report, you are asked to:
 - (a) prepare a valuation of the economic loss component of compensation having regard to the principles or criteria for determining compensation set out in the Mining Act; and
 - (b) to the extent (if any) that you would have reached a different valuation than the valuation prepared pursuant to (a) above, state how the valuation would differ and why it would differ.

The form and content of the report

30. The report must:
 - (a) give details of your qualifications and experience, and of the literature and other materials used in writing the report;
 - (b) clearly and fully state all assumptions of fact which you have made in arriving at the conclusions expressed in your report;
 - (c) identify with precision the factual premises upon which your opinions are based;
 - (d) explain the process of reasoning by which you reached the opinions expressed in your report;
 - (e) clearly differentiate between the facts upon which your opinions are based and the opinions themselves; and
 - (f) be prepared in accordance with the Federal Court's *Expert Evidence Practice Note (GPN-EXPT)* dated 25 October 2016 annexing the Harmonised Expert Code of Conduct (**Annexure A** to this brief).
31. If you are assisted by any others in the preparation of the report, the nature of that assistance must be identified with details given of the work carried out by, and the qualifications of, each such person who has assisted.
32. The report should be set out in numbered paragraphs and should append a copy of this Brief. It would also be desirable if you could set out very early in the report, a short

description of the materials that you have had regard to and the methodology employed in the preparation and the writing of the report.

33. You should also provide an explanation of the way in which your specialised knowledge, based upon your training, study and experience, has equipped you to provide expert opinion evidence on the issues that are addressed in your report.

Delivery of the report

34. You should:

- (a) provide YNAC with a draft of your report no later than **10 November 2023**;
- (b) consider any comments or feedback by YNAC on the draft report which may be provided to you on or before **15 November 2023**; and
- (c) having reviewed the comments/feedback provided by YNAC, provide a final report to YNAC no later than **20 November 2023**;

Conclusion

35. If you have any questions in relation to this Brief, please contact Simon Blackshield on **0414 257 435** or at simon@blackshield.net

Yours sincerely



Simon Blackshield,
Solicitor for YNAC

Annexure 2 - Yindjibarndi Legal Determination Summary

Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia (No 2) [2017] FCA 1299

Category:	Case Law
Binomial Name:	Federal Court of Australia
Date:	13 November 2017
Sub-Category:	Litigated Determination
Place:	The Pilbara region.
State/Country:	Western Australia, Australia In the vicinity of the Fortescue River, north of the Karijini National Park and south-east of the Millstream-Chichester National Park.
Legal Status:	Registered on the National Native Title Register
Legal Reference:	Federal Court No: WAD6005/2003; National Native Title No: WCD2017/010.
Alternative Names:	☐ Yindjibarndi #1
Subject Matter:	Native Title
URL:	https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2017/2017fca1299

Summary Information:

Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia (No 2) [2017] FCA 1299.

Between:

- Stanley Warrie, Kevin Guinness, Angus Mack, Michael Woodley, Joyce Hubert, Pansy Sambo, Jean Norman, Esther Pat, Judith Coppin, and Maisie Ingie, on behalf of the Yindjibarndi People (Applicant); and
- the State of Western Australia (First Respondent);
- Fortescue Metals Group Ltd (ACN 002 594 872), the Pilbara Infrastructure Pty Ltd (ACN 103 096 340) and FMG Pilbara Pty Ltd (ACN 106 943 828) (Second Respondent);
- Robe River Mining Co Pty Ltd, Hamersley Iron Pty Ltd and Hamersley Exploration Pty Ltd (Third Respondent);
- Georgina Hope Rinehart and Hancock Prospecting Pty Ltd (Fourth Respondent);
- Yamatji Marlpa Aboriginal Corporation (Fifth Respondent); and
- Margaret Todd, Lindsay Todd and Phyllis Harris ('the Todd party') (Sixth Respondent).

Judge: Rares J

Where made: on the papers.

Determination:

Native title exists in the entire determination area. The native title consists of **exclusive and non-exclusive rights and interests.**

Native title is held by the Yindjibarndi People.

The Yindjibarndi Ngurra Aboriginal Corporation RNTBC (ICN: 8721), as the prescribed body corporate, holds the determined native title in trust for the Yindjibarndi People.

The Yindjibarndi People's native title includes rights:

- to access;
- to engage in ritual and ceremony (including to carry out and participate initiation practices);
- to camp and build shelters;
- to fish;
- to collect and forage for bush medicine;
- to hunt and forage for and take fauna;
- to forage for and take flora;
- to take and use resources;
- to take water for drinking and domestic use;
- to cook on the land including a light a fire for this purpose;
- to protect and care for sites and objects of significance, including a right to impart traditional knowledge concerning the area, while on the area, and otherwise, to succeeding generations and others; and
- to conduct activities necessary to give effect the above rights.

Qualifications on the native title: The above native title rights and interests are exercisable in accordance with the laws of the State and the Commonwealth, and the traditional laws and customs of the Yindjibarndi People. They do not provide:

- exclusive rights in relation to water in any watercourse, wetland or underground water source as defined in the *Rights in Water and Irrigation Act 1914* (WA) at the determination date;
- any rights in relation to minerals as defined in the *Mining Act 1904* (WA) (repealed) and in the *Mining Act 1978* (WA);
- petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and the *Petroleum and Geothermal Energy Resources Act 1967* (WA);
- geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA);
- water captured by the holders of the 'other interests' (see below), pursuant to those other interests.

Native title in the Exclusive Area: Subject to the rights of the 'other interests' (as below) the above native title rights confer, in the exclusive area, the right to possession, occupation, use and enjoyment of the area to the exclusion of all others. ♦

The Exclusive Area (see map in 'Documents' below) consists of the area where **s 47A** applies: Reserve 31428, and also the Unclaimed Crown Land (UCL) areas where **s 47B** applies: UCL01, except to the extent covered by mineral lease AML70/00004 as at the date the application was filed; UCL02, except to the extent covered by mineral lease AML70/00004 as at the date the application was filed; UCL04; UCL06; UCL07, except to the extent covered by mineral lease AML 70/00004 and miscellaneous licence 47/47 as at the date the application was filed; UCL08; UCL09; UCL10; UCL11; UCL11; UCL13, except to the extent covered by mineral lease AML70/00004 as at the date the application was filed; UCL14; UCL17; UCL 18; UCL19; UCL22; UCL23; UCL24; and WATER1, except to the extent covered by mineral lease 70/00004 as at the date the application was filed.

Other (non-native title) interests: Other rights and interests existing in the determination area include those in relation to:

- Reserve Numbers: 5516 (water); 27915 (resting place travellers and stock); 31428 (use and benefit of Aborigines); and
- Pastoral Lease Numbers: PL N049532 (Coolawanyah Station); PL N050483 (Mt Florence Station); PL N050568 (Hooley Station); PL N050370 (Mulga Downs Station); and
- Water interests: licences to take groundwater, licences to construct or alter wells, and permits to obstruct or interfere;
- Mining Tenements (mining leases, miscellaneous licences, exploration licences, prospecting licences);
- Petroleum interests: PL105 (pipeline licence under the *Petroleum Pipelines Act 1969* (WA)); and
- other rights and interests including: licences and permits granted by the State or the Commonwealth; rights and interests by the operation of the laws of the State or Commonwealth; rights to access as required by law; public access (so far as confirmed per s 212(2) of the *NTA* and s 14 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA)) to waterways, beds and banks or foreshores of waterways, stock routes, and areas that were public places as the end of 31 December 1993; and any other valid or validated interest in the land or waters or any other right in connection with the land or waters, or an interest in the land or waters, or a restriction on the use of the land or waters.

For full details of the above non-native title interests see Schedule 5 of the determination (or the Extract from the National Native Title Register in 'Documents' below).

Detailed Information:

Determination Area

The Extract from the National Native Title Register describes the area subject to the Yindjibarndi People's native title per Schedule 1 (description) and Schedule 3 (maps - see in 'Documents' below) of the Federal Court determination.

Background

On 20 July 2017, in the proceeding *Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia* [2017] FCA 803, Justice Rares decided almost all of the issues in dispute in this proceeding and made orders that the parties consult towards preparing a draft determination of native title for the Court's final determination. The parties worked constructively together and did this, however two issues remained in dispute:

1. FMG maintained that a note should be included in the final determination in relation to the areas of Reserve and Unclaimed Crown Lands affected by six exploration licences, to the effect that any extinguishment of [the Yindjibarndi's exclusive] native title was either disregarded under ss 47A and 47B of the *Native Title Act 1993* (Cth) ('the NTA') or otherwise wholly extinguished [2].
2. The second issue involved deciding what form a declaration should be made about the Todd party's unsuccessful claim to be recognised as Yindjibarndi [2].

Details of Judgment

The NTA recognises what has not been extinguished under its own provisions. Accordingly, Justice Rares said that no rights or interests, capable of being disregarded, can have existed prior to the Court making a final determination [5]. Rares J rejected FMG's application for the note to be included in the final determination [9 - 11].

In relation to the second issue, Justice Rares set out the declaration about the Todd party as defined in the final determination at [22].

Outcomes:

Native title exists in the **entire determination area**.

Annexure 3 - Native Title Register Extract



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6005/2003
NNTT Number: WCD2017/010

Determination Name: [Warrie \(formerly TJ\) \(on behalf of the Yindjibarndi People\) v State of Western Australia \(No 2\)](#)

Date(s) of Effect: 13/11/2017

Determination Outcome: Native title exists in the entire determination area

Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

Determination Date: 13/11/2017

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Yindjibarndi Ngurra Aboriginal Corporation RNTBC
Trustee Body Corporate
C/- George M Irving
Principal Legal Officer & In-House Counsel
Suite T6, 152 Great Eastern Highway
Ascot Western Australia 6104

Note: current contact details for the Registered Native Title Body Corporate are available from the Office of the Registrar of Indigenous Corporations www.oric.gov.au

COMMON LAW HOLDER(S) OF NATIVE TITLE:

2. The native title in the Determination Area is held by the Yindjibarndi People. The Yindjibarndi People are the people referred to in Schedule 6.

Yindjibarndi People are Aboriginal persons who recognised themselves as, and are recognised by other Yindjibarndi People as, members of the Yindjibarndi language group.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. There be a determination of native title in terms of the attached Determination.
2. The Yindjibarndi Ngurra Aboriginal Corporation (ICN 8721) shall hold the determined native title in trust for the native title holders pursuant to s 56(2)(b) of the *Native Title Act 1993* (Cth).
3. There be no order as to costs.

AND THE COURT DECLARES THAT:

4. Winningbung was not Yindjibarndi and is not an apical ancestor of the Yindjibarndi People;
5. None of the following is one of the Yindjibarndi People:
 - (a) Phyllis Harris (neé Todd), Lindsay Todd and Margaret Todd (**the Todd respondents**);
 - (b) the siblings of the Todd respondents (**the siblings**);
 - (c) the children and later issue of the Todd respondents and the siblings unless the other parent of any such child or issue is one of the Yindjibarndi People and the child or issue has elected, or is capable of electing and does elect, to be Yindjibarndi.

DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of native title (s 225 *Native Title Act*)

1. Native title exists in the Determination Area in the manner set out in paragraphs 3 and 4 of this Determination.

Native title holders (s 225(a) *Native Title Act*)

2. The native title in the Determination Area is held by the Yindjibarndi People. The Yindjibarndi People are the people referred to in Schedule 6.

The nature and extent of native title rights and interests and exclusiveness of native title (s 225(b) and (e) *Native Title Act*)

3. Subject to paragraphs 4, 5, 6 and 9, the nature and extent of the native title rights and interests in relation to the Determination Area are that they confer the following rights on the Yindjibarndi People, including the right to conduct activities necessary to give effect to them:
 - (a) A right to access (including to enter, to travel over and remain);
 - (b) A right to engage in ritual and ceremony (including to carry out and participate in initiation practices);
 - (c) A right to camp and to build shelters (including boughsheds, mias and humpies) and to live temporarily thereon as part of camping or for the purpose of building a shelter;
 - (d) A right to fish from the waters;
 - (e) A right to collect and forage for bush medicine;
 - (f) A right to hunt and forage for and take fauna;
 - (g) A right to forage for and take flora;
 - (h) A right to take and use resources;
 - (i) A right to take water for drinking and domestic use;
 - (j) A right to cook on the land including light a fire for this purpose;
 - (k) A right to protect and care for sites and objects of significance in the Determination Area (including a

right to impart traditional knowledge concerning the area, while on the area, and otherwise, to succeeding generations and others).

4. Subject to paragraph 5, in the Exclusive Area, the native title rights and interests confer the right to possession, occupation, use and enjoyment of that area to the exclusion of all others.

Qualifications on the native title rights and interests

5. The native title rights and interests set out in paragraphs 3 and 4:

(a) are subject to and exercisable in accordance with:

- (i) the laws of the State and the Commonwealth, including the common law; and
- (ii) the traditional laws and customs of the Yindjibarndi People;

(b) do not confer exclusive rights in relation to water in any watercourse, wetland or underground water source as is defined in the *Rights in Water and Irrigation Act 1914* (WA) as at the date of this Determination; and

(c) do not confer any rights in relation to:

- (i) minerals as defined in the *Mining Act 1904* (WA) (repealed) and in the *Mining Act 1978* (WA);
- (ii) petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and in the *Petroleum and Geothermal Energy Resources Act 1967* (WA);
- (iii) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA); or
- (iv) water captured by the holders of the Other Interests pursuant to those Other Interests.

6. Subject to paragraph 4 the native title rights and interests set out in paragraph 3:

(a) do not confer:

- (i) possession, occupation, use and enjoyment on the Yindjibarndi People to the exclusion of all others; or
- (ii) a right to control the access to, or use of, the land and waters of the Determination Area or its resources.

Areas to which ss 47A or 47B of the *Native Title Act* apply

7. Sections 47A and 47B of the *Native Title Act* apply to disregard any prior extinguishment in relation to the land and waters described in Schedule 4.

The nature and extent of any other Interests (s 225(c) *Native Title Act*)

8. The nature and extent of the Other Interests are described in Schedule 5.

Relationship between native title rights and other Interests (s 225(d) *Native Title Act*)

9. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraphs 3 and 4 and the Other Interests apart from exploration licence 47/1349 is that:

(a) to the extent that any of the Other Interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title rights and interests continue to exist in their entirety, but the native title rights and interests have no effect in relation to the Other Interests to the extent of the inconsistency during the currency of the Other Interests; and otherwise,

(b) the existence and exercise of the native title rights and interests do not prevent the doing of any activity required or permitted to be done by or under the Other Interests, and the Other Interests, and the doing of any activity required or permitted to be done by or under the Other Interests, prevail over the native title rights and interests and any exercise of the native title rights and interests but do not extinguish them.

10. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraphs 3 and 4 and exploration licence 47/1349 is that:

(a) to the extent that the rights under the licence are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the rights under the licence continue to exist in their entirety, but have no effect in relation to the native title rights and interests to the extent of the inconsistency during the currency of the licence; and otherwise,

(b) the existence and exercise of the rights under the licence do not prevent the doing of any activity required or permitted to be done by or under and in accordance with the native title rights and interests, and the doing of such activities prevails over the exercise of any rights under the licence to the extent of inconsistency with those rights.

Definitions and Interpretation

11. In this determination, unless the contrary intention appears:

Commonwealth means Commonwealth of Australia;

Determination Area means the land and waters within the external boundary described in Part 1 of Schedule 1 and depicted on the maps at Schedule 3, but not including the Unclaimed Area;

Exclusive Area means that part of the Determination Area described in Part 2 of Schedule 1 and depicted on the maps in Schedule 3;

land has the same meaning as in the *Native Title Act* and, for the avoidance of doubt, includes any natural collection of water found on the land which does not fall within the definition of "waters";

Other interests means the legal or equitable estates or interests and other rights in relation to the Determination Area described in Schedule 5 and referred to in paragraph 8, as at the date of this determination;

Native Title Act means the *Native Title Act 1993* (Cth);

resources means flora, fauna, and other natural resources such as charcoal, stone, soil, wood, resin, and ochre (except, for the avoidance of doubt, ochres for use in the manufacture of porcelain, fine pottery or pigments which are minerals pursuant to the *Mining Act 1904* (WA) (repealed));

State means State of Western Australia;

Unclaimed Area means the land and waters described in Schedule 2 and shaded pink on the maps in Schedule 3;

underground water includes water that percolates from the ground;

waters has the same meaning as in the *Native Title Act*.

12. In the event of any inconsistency between the written description of an area in Schedule 1 or 2 and the area as depicted on the maps at Schedule 3, the written description prevails.

SCHEDULE 1: DETERMINATION AREA AND EXCLUSIVE AREA

PART 1: DETERMINATION AREA

All those lands and waters commencing at the intersection of Native Title Determination WAD6208/1998 Eastern Guruma (WCD2007/001) with a eastern boundary of Native Title Determination WAD6090/1998 Kuruma Marthudunera (Part A) (WCD2016/006) at Latitude 22.003438 South and extending generally northeasterly along boundaries of that native title determination to the intersection with a western boundary of Native Title Determination WAD6017/1996 Ngarluma/Yindjibarndi (WCD2005/001) at Latitude 21.955526 South; then southerly, generally easterly and northerly along boundaries of that native title determination to the intersection with a western boundary of Native Title Application WAD6169/1998 Kariyarra People (WC1999/003); then generally southeasterly along the boundaries of that native title application through the following coordinate positions:

LATITUDE (SOUTH) LONGITUDE (EAST)

21.874703 118.591512
21.860344 118.676151

Then continuing southwesterly along the boundary of that native title application to the intersection of the eastern bank of the Cockeraga River with a line joining coordinate positions Latitude 21.860344 South, Longitude 118.676151 East and Latitude 22.008794 South, Longitude 118.814893 East; then generally southerly along that river bank to the intersection with a northern boundary of Native Title Determination WAD6096/1998 Banjima People (WCD2014/001); then generally westerly, generally northwesterly, generally southwesterly and southeasterly along boundaries of that native title determination to the intersection with a northern boundary of Reserve 30082 (Karijini National Park) at Longitude 118.124481 East; then westerly and southerly along boundaries of that reserve to the intersection with a eastern boundary of Native Title Determination WAD6208/1998 Eastern Guruma (WCD2007/001); then northwesterly along the boundary of that native title determination to the intersection with a southern boundary of Pastoral Lease N050483 (Mt Florance) at Longitude 117.966611 East; then generally northwesterly through the following coordinate positions:

LATITUDE (SOUTH) LONGITUDE (EAST)

22.220779 117.965134
22.216053 117.959709

LATITUDE (SOUTH) LONGITUDE (EAST)

22.211266 117.953720

Then northwesterly to the intersection of a western boundary of Pastoral Lease N050483 (Mt Florance) with Latitude 22.210019 South being a point on the present boundary of Native Title Determination WAD6208/1998 Eastern Guruma (WCD2007/001) and then generally northwesterly along the boundaries of that native title determination back to the commencement point.

Note: Geographic Coordinates provided in Decimal Degrees.

Cadastral boundaries sourced from Landgate's Spatial Cadastral Database dated 31 July 2017.

Cockeraga River data based on 250K vector data © Commonwealth of Australia (Geoscience Australia) 2008.

For the avoidance of doubt the application excludes any land and waters already claimed by:

Native Title Determination WAD6017/1996 Ngerluma/Yindjibarndi (WCD2005/001) as Determined in the Federal Court on the 2nd May 2005.

Native Title Determination WAD6096/1998 Banjima People (WCD2014/001) as Determined in the Federal Court on the 11th March 2014.

Native Title Determination WAD6208/1998 Eastern Guruma (WCD2007/001) as Determined in the Federal Court on the 1st March 2007.

Native Title Determination WAD6090/1998 Kuruma Marthudunera (Part A) (WCD2016/006) as Determined in the Federal Court on the 1st November 2016.

Native Title Determination Application WAD6169/1998 Kariyarra People (WC1999/003) as Registered in the Federal Court on the 22nd April 1999.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Prepared By: Graphic Services (Landgate) 18th October 2017

Use of Coordinates:

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed

ground survey.

PART 2: EXCLUSIVE AREA

The Exclusive Area, shaded in green on the maps in Schedule 3, comprises:

Areas where section 47A applies

Reserve 31428

Areas where section 47B applies

UCL 01, except to the extent covered by mineral lease AML70/00004 as at the date the application was filed

UCL 02, except to the extent covered by mineral lease AML70/00004 as at the date the application was filed

UCL04

UCL06

UCL 07, except to the extent covered by:

- (a) mineral lease AML70/00004; and
- (b) miscellaneous licence 47/47

as at the date the application was filed.

UCL08

UCL09

UCL10

UCL11

UCL13, except to the extent covered by mineral lease AML70/00004 as at the date the application was filed

UCL14

UCL17

UCL18

UCL19

UCL22

UCL23

UCL24

WATER1, except to the extent covered by mineral lease AML70/00004 as at the date the application was filed

SCHEDULE 2: UNCLAIMED AREA

The following areas, shaded in pink on the maps at Schedule 3, being land and waters where native title has been completely extinguished, were excluded from the application for native title in WAD 6005 of 2003 and are excluded from the Determination Area:

1. RESERVES

Reserve No.	Current / Last Purpose
31429	Conservation of flora and fauna
38991	Water supply

2. LEASES

Lease No.	Summary / General Description of the Current / Last Purpose
GE H954583	Permanent campsite for use in connection with the Tom Price to Dampier railway (Camp Anderson)
SL 3116/7842 (GE I123646)	Construction and operation of a 220 KV power transmission line and ancillary purposes (the Dampier/Paraburdoo Power Transmission Line)
SL 3116/4984 (GE I195323)	Railway and ancillary purposes (the Dampier/Tom Price Railway)

3. ROADS AND ASSOCIATED FEATURES

(a) Dedicated roads, roads set aside, taken or resumed, or roads which are to be considered public works (as that expression is defined in the *Native Title Act* and the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA)), including the following:

MapInfo ID	Description	Shown /referred to in
ROAD 01	Roebourne-Wittenoom Road, including a 200m- wide corridor	Cancelled public plan 503 154 (97/300) dated 30 June 1941 1: 250,000 plan for Pyramid (SF50-7, Edition 1) Map 2553 1: 100 000 plan for Wittenoom (Edition 1)
ROAD 02	Road 1644	Government Gazette 31 July 1903, 1 April 1904, 4 December 1914 Cancelled public plan 505 558 dated 28 March 1894 Cancelled public plan 506 648 dated 15 August 1903
HISTORICAL ROAD 01	Nanutarra-Wittenoom Road, including a 200m-wide corridor	Cancelled public plan 502 692 dated August 1963 1: 250 000 plan for Mt Bruce (F50) dated January 1969 1: 250 000 plan for Mount Bruce (SF50-11, Edition 1) Map 2553 1: 100 000 plan for Wittenoom (Edition 1)
	Fortescue Valley Crossing Road	Map 2553 Wittenoom 1:100 000, dated 20 March 1996 Plan LAWA 1221 dated 29 November 1996 Government Gazette 15 July 1997 18 May 1999

Hooley Road (north-south road from Hooley Station homestead to Roebourne-Wittenoom Road) Map 2553 Wittenoom 1:100 000, dated 20 March 1996
1: 250,000 plan for Pyramid (SF50-7, Edition 1)
Map 2553 1: 100 000 plan for Wittenoom (Edition 1)

Hooley Road (east-west road from Hooley Station homestead to Roebourne-Wittenoom Road) Cancelled public plan 503 155 (97/3000) dated 9 November 1951
1: 250,000 plan for Pyramid (SF50-7, Edition 1)

(b) The following public works (as that expression is defined in the *Native Title Act* and the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA)) associated with the roads identified in subparagraph 3(a) above:

Public work	Location /description
Material pit 1	Main Roads Western Australia material pit at 337.58 straight line kilometres along Nanutarra-Wittenoom Road at Longitude 118.007943°, Latitude 22.191282°, approximately 250m from the left-hand side of the road
Material pit 2	Main Roads Western Australia material pit at 337.67 straight line kilometres along Nanutarra-Wittenoom Road at Longitude 118.007943°, Latitude 22.191282°, approximately 180m from the left-hand side of the road
Material pit 3	Main Roads Western Australia material pit at 338.12 straight line kilometres along Nanutarra-Wittenoom Road at Longitude 118.013747°, Latitude 22.189070°, approximately 150m from the right-hand side of the road
Material pit 4	Main Roads Western Australia material pit at 338.21 straight line kilometres along Nanutarra-Wittenoom Road at Longitude 118.013747°, Latitude 22.189070°, approximately 150m from the right-hand side of the road
Material pit 5	Main Roads Western Australia material pit at 341.29 straight line kilometres along Nanutarra-Wittenoom Road at Longitude 118.042615°, Latitude 22.185471°, approximately 210m from the left-hand side of the road
Water bore	Main Roads Western Australia Pilbara bore No. 211 at 345.9 straight line kilometres along the Nanutarra-Wittenoom Road at Longitude 118.076340°, Latitude 22.158818°, approximately 1.2km from the left-hand side of the road.

4. RESUMPTIONS FOR VESTING OF ESTATES IN FEE SIMPLE

Mapinfo ID Description / purpose

Resumption 2 Additions to Hamersley-Tom Price Railway Lease

SCHEDULE 3: MAPS OF DETERMINATION AREA

[See NNTR attachment 1: "Schedule 3 - Maps of Determination Area"]

SCHEDULE 4: AREAS TO WHICH SECTION 47A AND 47B APPLY (PARAGRAPH 7)

Sections 47A or 47B of the *Native Title Act* apply to the following land and waters within the Determination Area, which are generally shown as hatched in purple on the maps at Schedule 3:

1. SECTION 47A

Section 47A of the *Native Title Act* applies with the effect that any extinguishment by the creation of prior interests, including those referred to below, in relation to those parts of the Determination Area the subject of the following interests has been disregarded:

Areas where section 47A applies

Reserve 31428

2. SECTION 47B

Section 47B of the *Native Title Act* applies with the effect that any extinguishment by the creation of prior interests in relation to those parts of the Determination Area referred to below has been disregarded:

Areas where section 47B applies

UCL 01, except to the extent covered by mineral lease AML70/00004 as at the date the application was filed

UCL 02, except to the extent covered by mineral lease AML70/00004 as at the date the application was filed

UCL04

UCL06

UCL 07, except to the extent covered by:

(a) mineral lease AML70/00004; and

(b) miscellaneous licence 47/47

as at the date the application was filed.

UCL08

UCL09

UCL10

UCL11

UCL13, except to the extent covered by mineral lease AML70/00004 as at the date the application was filed

UCL14

UCL17

UCL18

UCL19

UCL22

UCL23

UCL24

WATER1, except to the extent covered by mineral lease AML70/00004 as at the date the application was filed

SCHEDULE 5: OTHER INTERESTS (PARAGRAPH 8)

The nature and extent of the Other Interests in relation to the Determination Area as at the date of this Determination are:

1. RESERVES

(a) the following reserves:

Reserve No.	Current Purpose
-------------	-----------------

5516	Water
27915	Resting Place Travellers and Stock
31428	Use and benefit of Aborigines

(b) the rights and interests of persons who have the care, control and management of the reserves identified in paragraph 1(a) above;

(c) the rights and interests of persons entitled to access and use the reserves identified in paragraph 1(a) above for the respective purposes for which they are reserved, subject to any statutory limitations upon those rights; and

(d) the rights and interests of persons holding leases over areas of the reserves identified in paragraph 1(a) above, including lease 353382 over reserve 31428.

2. PASTORAL LEASES

(a) The following pastoral leases and the rights and interests of the holders from time to time of those leases:

Lease No.	Station Name
-----------	--------------

PL N049532	Coolawanyah Station
PL N050483	Mt Florance Station
PL N050568	Hooley Station
PL N050370	Mulga Downs Station

(b) Any rights and obligations of the pastoralists pursuant to the pastoral leases referred to in paragraph 2(a) above to adopt and exercise best practice management of the pasture and vegetation resources, livestock and soils within the boundaries of the pastoral leases in order to manage stock and for the management, conservation and regeneration of pasture for permitted uses.

3. WATER INTERESTS

(a) The following licences and permits granted pursuant to the *Rights in Water and Irrigation Act 1914* (WA) and the rights and interests of the holders from time to time of those licences and permits:

(i) Licences to take groundwater:

Licence ID

GWL160076(6)
GWL162582(6)
GWL164735(4)
GWL171729(2)
GWL174095(7)
GWL175224(2)
GWL179579(1)
GWL179792(1)

GWL180991(1)

(ii) Licences to construct or alter wells:

Licence ID

CAW181825(1)

CAW181841(1)

CAW182162(1)

CAW200255(1)

(iii) Permits to obstruct or interfere:

Licence ID

PMB180179(2)

(b) The following proclamations made under the *Rights in Water and Irrigation Act 1914* (WA) and the rights and interests comprised in, conferred under or in accordance with those proclamations:

(i) Pilbara Surface Water Area Proclamation 1965 (proclaimed on 13 August 1965); and

(ii) Pilbara Ground Water Area Proclamation 1965 (proclaimed on 12 February 1965 and varied by proclamation on 21 December 1990 and 2 May 1997)

4. MINING TENEMENTS

(a) The following mining tenements under the *Mining Act 1904* (WA) (repealed) and the *Mining Act 1978* (WA) and the rights and interests of the holders from time to time of those mining tenements:

(i) Mining leases

Tenement ID

M47/542

M47/543

M47/1409

M47/1411

M47/1413

M47/1431

M47/1453

M47/1473

M47/1475

(ii) Miscellaneous licences

Tenement ID

L47/0047

L47/0048

L47/0361

L47/0362

L47/0363
L47/0367
L47/0472
L47/0697

(iii) Exploration Licences

Tenement ID

E47/0054
E47/0473
E470474
E47/0475
E47/0585
E47/1311
E47/1314
E47/1315
E47/1319
E47/1333
E47/1334
E47/1349
E47/1384
E47/1397
E47/1398
E47/1399
E47/1447
E47/1489
E47/1557
E47/2769
E47/3132
E47/3205
E47/3397
E47/3464
E47/3483
E47/3491

(iv) Prospecting licences

Tenement ID

P47/1601

P47/1701

(b) The agreement as amended and ratified by the *Iron Ore (Hamersley Range) Agreement Act 1963* (WA) and rights and interests comprised in, conferred under or in accordance with, or pursuant to that agreement, including the following mining tenements:

Tenement ID	Tenement Type
--------------------	----------------------

AML7000004 (ML 4SA)	Mineral lease
---------------------	---------------

(c) The agreement as amended and ratified by the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* (WA) and rights and interests comprised in, conferred under or in accordance with, or pursuant to that agreement, including the following mining tenements:

Tenement ID	Tenement Type
--------------------	----------------------

AL7000001 (L 1SA)	Miscellaneous licence
-------------------	-----------------------

5. PETROLEUM INTERESTS

(a) The following petroleum title under the *Petroleum Pipelines Act 1969* (WA) and the rights and interests of the holders from time to time of that petroleum title:

Title ID	Title Type
-----------------	-------------------

PL 105	Pipeline Licence
--------	------------------

6. OTHER

The following rights and interests:

(a) Valid or validated rights and interests, including licences and permits, granted by the Crown in right of the State or of the Commonwealth pursuant to statute or otherwise in the exercise of its executive power and any regulations made pursuant to such legislation.

(b) Valid or validated rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth, including but not limited to, the force and operation of the *Rights in Water and Irrigation Act 1914* (WA) and the *Land Administration Act 1997* (WA).

(c) The right to access the Determination Area by:

- (i) an employee, agent or instrumentality of the State;
- (ii) an employee, agent or instrumentality of the Commonwealth;
- (iii) an employee, agent or instrumentality of any local government or other statutory authority;

as required and permitted by law in the performance of his or her statutory or common law duty.

(d) So far as confirmed pursuant to s 212(2) of the *Native Title Act* and s 14 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA), any then-existing public access to, and enjoyment of, the following places in the Determination Area:

- (i) waterways;
- (ii) beds and banks or foreshores of waterways;
- (iii) stock routes; and

-
- (iv) areas that were public places at the end of 31 December 1993.
 - (e) Any other valid or validated:
 - (i) legal or equitable estate or interest in the land or waters; or
 - (ii) any other right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with:
 - (A) the land or waters; or
 - (B) an estate or interest in the land or waters; or
 - (iii) restriction on the use of the land or waters, whether or not annexed to other land or waters.

SCHEDULE 6: NATIVE TITLE HOLDERS (PARAGRAPH 2)

Yindjibarndi People are Aboriginal persons who recognised themselves as, and are recognised by other Yindjibarndi People as, members of the Yindjibarndi language group.

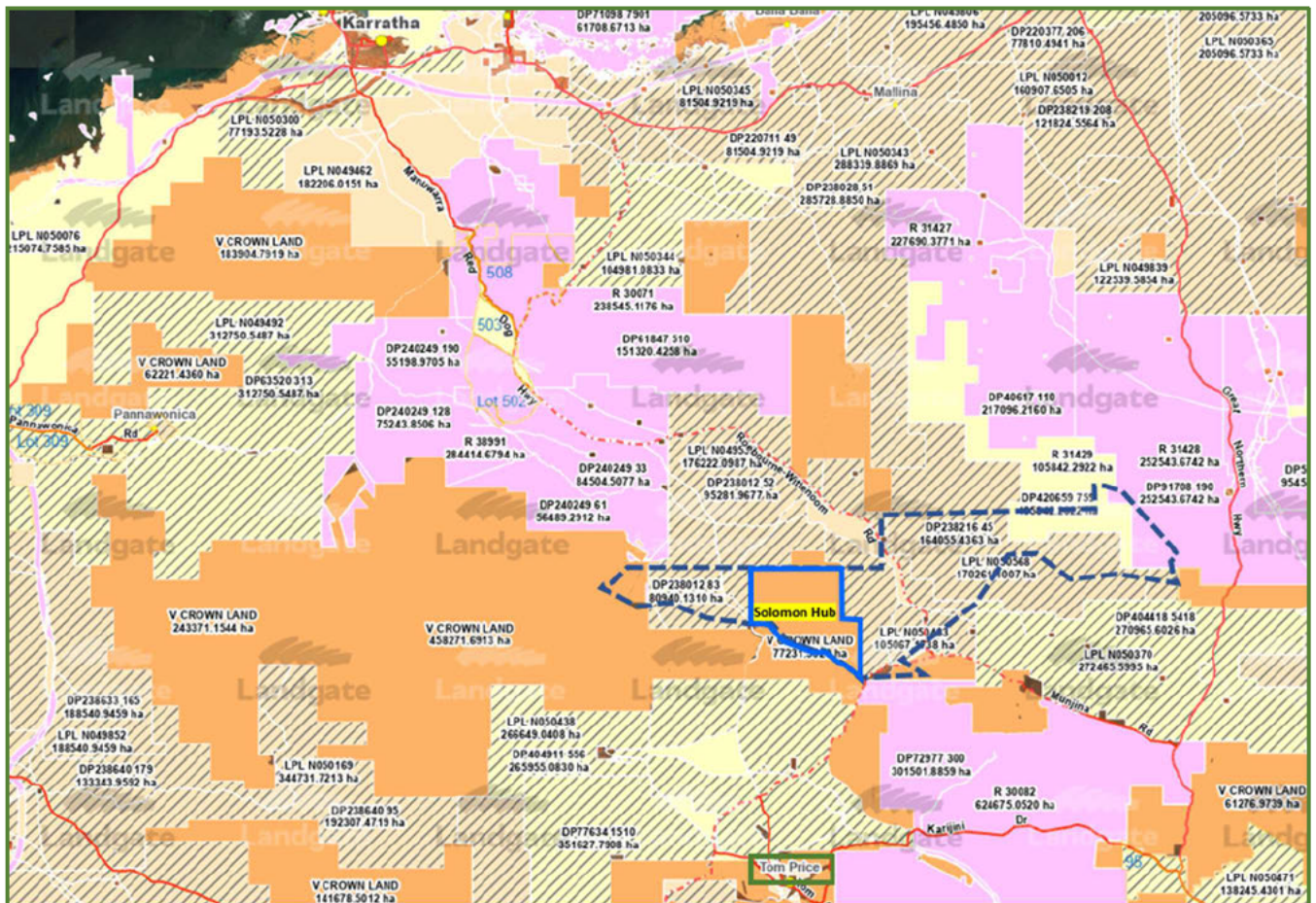
REGISTER ATTACHMENTS:

1. Schedule 3 Maps of Determination Area, 5 pages - A3, 17/11/2017

Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.

Annexure 4 - Certification

This diagram formally shows part of the Pilbara Region which is of main interest. Land holdings (pastoral, aboriginal, reserves and vacant Crown Land) show Landgate certified land areas, the legal land description, main road names and main towns. The subject Native Title Determination wide area is a blue dotted outline and the exclusive ownership area of the Yindjibarndi Ngurra people is a blue “full line” encompassing the majority of the FMG named, “Solomon Hub”.



Annexure 5 - Curriculum Vitae

Name	Brian Miles AAPI CPV Licensed Valuer
Email	brianm1952@gmail.com
Mobile	0408 948 612
Professional membership	Associate of the Australian Property Institute Certified Practising Valuer No. 64945
Education & Registration	Associate Diploma (Valuation) Management Diploma (Real Estate) Western Australia Registered Valuer No. 221



Credentials

Years of experience	<ul style="list-style-type: none">Over 47 years as a Valuer including 7 years as a Licensed Real Estate Agent and Sales Person (Perth Western Suburbs).
----------------------------	---

Valuation specialisation	<ul style="list-style-type: none">Broad acre rural across Western Australia since 1974.Residential, Commercial and Industrial Valuations since 1978.Pastoral, Plant and Machinery and Business Valuations since 1987.
---------------------------------	---

Professional diversity	<ul style="list-style-type: none">Valuation of plant, machinery, equipment, vehicles, stock which form part of a going concern farm or business operation.Specialised agriculture properties including orchards, horticulture, poultry, piggeries, feedlots, mining, quarries, wind farms, forestry/tree plantations and abattoirs.Broadacre cropping, grazing, intensive agriculture and water license valuations, pastoral holdings throughout WA.Mixed use properties (residential/commercial).Residential valuations including luxury rural lifestyle properties.Industrial propertiesCommercial/retail properties including going concern businesses.Market rental assessments (residential & commercial including mobile phone sites).Multi-tenanted investment properties.Compensation affecting rural and pastoral properties.Rural valuations conducted in Victoria and New South Wales.
-------------------------------	---

Expert witness attendance:	<ul style="list-style-type: none">Magistrates Court, Supreme Court of WA, Family Law Court, State Administration Tribunal and Federal Court of Australia.
-----------------------------------	---

Professional history:	<ul style="list-style-type: none">Qualified as a Valuer in 1976 with the State Government. Joined private enterprise in 1980 specialising in property sales. I have worked with several real estate sales and valuation companies. I have also owned and operated my own Valuation and Real Estate Consultancy.
------------------------------	---

Professional contribution:

- Member of the Australian Property Institute organising committee for the preparation and accomplishment of the annual 2-day professional development seminar for Rural Valuers over the last for the past 10 years.
 - Training of graduates of the Curtin University Bachelor of Business (Property) Degree in the complexities and diversity of Rural Valuation since 1987.
-

Annexure 6

List of documents and other materials which the Expert was asked to consider for the purpose of preparing this report

1. Affidavit of John Sharman filed in YNAC v State of WA & Ors on 4 October 2023;
2. Affidavit of Peter Heinz Vielhauer filed in YNAC v State of WA & Ors on 2 October 2023;
3. Applicant's Further Amended Points of Claim filed in YNAC v State of WA & Ors on 5 July 2023;
4. Aston J, 'With compo decision looming, Andrew Forrest hits back', *The Australian Financial Review*, 24 February 2023;
5. The Australian Institute, 'Dark side of the boom: What we do and don't know about mines, closures and rehabilitation' [Submission 13 to the Mine Rehabilitation Inquiry], April 2017;
6. Australian Research Council's Centre for Mining Restoration, Submission 64 to the Mine Rehabilitation Inquiry;
7. Beyer M, 'Mining royalties a black and white issue', *Business News*, 14 February 2023;
8. Department of Industry and Department of Foreign Affairs and Trade, 'Mine Rehabilitation: Leading Practice Sustainable Development Program for the Mining Industry', September 2016. Department of Mines, Industry Regulation and Safety (Western Australia), Annual Report 2022-23;
9. Environment and Communications References Committee (Australian Senate), 'Report: Rehabilitation of mining and resources projects as it relates to Commonwealth responsibilities', March 2019;
10. "FMG Respondents' mining tenements and infrastructure", filed in YNAC v State of WA & Ors on 13 February 2023;
11. FMG's Solomon Mine Closure Plan dated 20 September 2022;
12. Krigt M and Manero A, 'Identifying industry practice, barriers, and opportunities for mine rehabilitation completion criteria in Western Australia', *Journal of Environmental Management* 287, 1 June 2021;
13. Map of a notional parcel bordered in dark blue showing the Warrie (No.2) Determination Area and the FMG tenements;

14. Map of Yindjibarndi country divided into 13 areas (Exhibit 8 in YNAC v State of WA & Ors);
15. " Preliminary advice 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" by Eureka Archaeological Research and Consulting UWA;
16. Snow M, 'Goldfields shire CEO says asbestos, collapsed shafts among 190,000 mine remnants in WA', *ABC News (Online)*, 21 October 2021;
17. Southalan J, (on behalf of Resources Law Network), 'State Agreements: summary and references', *Mining and Resources Law Update*, 8 March 2023;
18. Table titled "Lay evidence re mine rehabilitation";
19. *TJ (on behalf of the Yindjibarndi People) v State of Western Australia* [2015] FCA 818
20. Transcript from the lay witness evidence hearing in YNAC v State of WA & Ors (9 -17 August, with proposed corrections tracked);
21. Witness Statement of Michael Woodley dated 5 June 2023;
22. "Yindjibarndi Orthography"

Annexure 7

Directions given to the Expert other than those contained in the brief

Attached are copies of:

1. Email from Max Henshaw of Blackshield Lawyers to the Expert dated 19 October 2023; and
2. Email from Simon Blackshield of Blackshield Lawyers to the Expert dated 14 November 2023.

Mr Blackshield's letter to the expert of 1 December 2023 which enclosed the transcript which is item 19 in Annexure 6 said the following:

"I ... draw your particular attention to Day 6 where various Yindjibarndi elders attended a visit to the Mine, and Day 8 where the archaeologist YNAC engaged for this proceeding, Peter Veth, gave evidence about the extent of the history of the country affected."

On Thu, Oct 19, 2023 at 10:49 AM Max Henshaw <max.henshaw@blackshield.net> wrote:

Morning Brian,

Since we last spoke, the team has undertaken research into FMG's most recent Mine Closure Plan (**Plan**), which can be accessed via this link:

<https://www.dropbox.com/scl/fo/w4ypevd283ewfx7j0909k/h?rlkey=8m8779h4fy0gvc9c0kmovt8pe&dl=0>

In short, the Plan illustrates that FMG cannot currently confirm the life of the Mine, for example:

- "Solomon Hub **may have an operational life beyond 2040**. This estimate is based on the understanding that economic ore remains in the ground in and adjacent to the current mining areas at the end of the FY21 Life of Mine, which is a 20 year forward looking mining sequence." (page 54)
- "As a consequence of this staged development, **closure planning knowledge may develop at different locations across the operation** and the sequencing of the pit development, and therefore the **timeframe to closure may change during the life of the operation**." (page 60)
- "**Closure commences when mining and ore processing cease**." (page 62)

These comments are obviously contrary to the assumptions we raised in respect of the life of the Mine at [9(f)] and [9(n)] of your Brief. Accordingly, please consider this revised parameter when preparing the expert report.

As previously foreshadowed, we will shortly provide you with an amended version of your Brief (including to update it pursuant to the above).

Any questions, please let me know.

Warm regards,
Max

==

Max Henshaw
Senior Lawyer
PH: 0411 544 285

From: simon@blackshield.net
Sent: Tuesday, 14 November 2023 12:33 PM
To: Brian Miles
Cc: Max Henshaw
Subject: Evidence re rehabilitation
Attachments: 230806 Yindjibarndi Orthography.docx; 20231114 Lay evidence re mine rehabilitation.docx

Dear Brian,

Please find **attached (1)** a schedule which extracts the relevant material from the witness statements; and **(2)** the orthography / word list of Yindjibarndi words which will assist you with translating some of the Yindjibarndi language words when reviewing the extracts. Please refer to this link to access copies of the witness statements: <https://www.dropbox.com/scl/fo/mln7sfwmrtfwk2tpdz4fw/h?rlkey=fw7mg6j3888tyn6gddpzcbqdc&dl=0>

To further assist with contextualising where extracts are positioned, we have included the relevant heading that an extract falls under at the conclusion of each extract.

With respect to what has been included, please note the following colour coding:

- extracts directly addressing rehabilitation in **yellow** (most relevant to your request);
- extracts addressing permanent physical damage in **green** (we suspect also quite relevant to your request); and
- extracts addressing permanent spiritual damage in **blue** (more for your context).

Extracts not highlighted have been included to provide further context (specific and general geographical connections, traditions associated with the land etc).

Any questions, please let us know.

Max will also be sending you transcript references where witnesses were cross-examined by the State on the specific question of whether FMG's rehabilitation of the mine-site would be adequate, so that you have a complete picture of the evidence.

Best regards

Simon Blackshield
Principal Lawyer
PH: 0414 257 435

BLACKSHIELD

LAWYERS

ERRATA for Miles 2024

Page 14, first line under “MY ANSWER (a)”: Change “[88(2)]” to “[84(2)]”

Page 16, first line under “MY ANSWER (c)”: Change “96” to “89”

Page 17, first line under “MY ANSWER (e)”: Change “96” to “89”