Federal Court of Australia

District Registry: Western Australia

Division: General No: WAD37/2022

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC
Applicant

STATE OF WESTERN AUSTRALIA and others named in the schedule
Respondents

APPLICANT'S EXPERT VALUER'S SHORT RESPONSE TO THE FMG RESPONDENTS' EXPERT VALUATION REPORTS

Filed on behalf of the Applicant
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Consideration of Comments Made by Experts Acting for FMG on the Valuation by Brian Miles

Report of Wayne Lonergan and Martin Hall

[20(c)] By virtue of NTA s49(a) and s44H, there should be a single compensation amount assessed as at the date of the grant of a mining tenement

1. I have not valued according to the date of issue of each individual mining tenement, but taken an overall practical approach based on mining activity having been in full operation from 2012.

2. I have been instructed to produce for the purposes of this response a single one-time valuation in place of the valuation provided in my report of 16 January 2024 at [93] (which only addressed compensation for the period ending 31 December 2023).

3. To do this, I have adopted an approach whereby the expected cashflow based on the assessed 0.55% royalty from 2024 to 2045 is discounted back to present value using a suitable discount factor and margin within the range of 17% to 22% and have adopted 20% over the forthcoming 17 years to 2045 (although mining termination could be an additional 5 years). The discount factor is based on current evidence as an appropriate rate considering money markets and the Commonwealth Government Bonds, higher risks associated with mining and unforeseen impacts that may occur from time to time such as an oversupply and undersupply to world markets.

4. China is Australia's largest customer (80% of Australia's iron ore exports) and has the ability to influence world prices and demand. China has other potential iron ore mines in other countries being developed which may have an impact on demand from Australia in the future. In addition, a commitment to reducing carbon output from China's steel mills may also see China looking to higher grade iron ore rather than the lower grade being mined in Australia, which requires a higher energy input to refine it.
5. World political factors have been at play for some time that could also impact demand for Australia's minerals. Forecasting what can happen in the next 17 years is highly hazardous and I have adopted a relatively high discount factor to potentially reflect the unknown variables that are evident and will be of influence going forward.

6. For obtaining the forecast price for iron ore over the next 4 years maximum I have relied on information from Goldman Sachs and Fitch Ratings who are recognised over many years to be the best authorities. Beyond the year 2027 is speculative but an appropriate discount factor can reduce the margin of error as I have applied.

[redacted]

[redacted]

7. This produces a single figure of $480,000,00, calculated as follows:

1.	**Compensation**	**Lost Royalty Cash Flow 2013 – 2022:**	**$350,000,000**	**(Three Hundred & Fifty Million Dollars)**
2.	**Compensation**	**Future Discounted Royalty Cash Flow 2023 - 2040:**	**$130,000,000**	**(One Hundred & Thirty Million Dollars)**
Total Compensation			**$480,000,000**	**Four Hundred & Eighty Million Dollars**

[302(a)] Mr Miles did not establish a proper basis for the valuation approach he adopted

8. I assessed the highest and best value of the land based on the indications of the value of the Yindjibarndi People's rights to use the land for traditional purposes, which I inferred from the amounts which other Indigenous groups in the same region had received to allow their own rights to be supressed and their country damaged.

Reports of Gregory Preston and Campbell Jaski (all para refs are to Jaski)

[336(a)] Calculation of economic Loss

9. Mr Jaski considered the Mining Leases M47/1409, M47/1411 And M47/1413. The mining leases were granted on the 26th November 2010. Used the FMG tenement workbook calculating 5308 hectares was part of the exclusive area. He used the theoretical Unencumbered Freehold $/ha land value calculated by Greg Preston, Valuer. Mr Preston created a mathematical and hypothetical freehold value which Mr Jaski adopted in his own calculations. Mr Preston used a "vegetation" $/ha, "bare ground" $/ha and then a "blended $/ha" which are unknown concepts in pastoral sales and valuation in Western Australia.

[336(a) & [341(i)] Calculation of economic Loss

10. Jaski did not question the Freehold land value calculation, essentially because he assumed the assessment to be correct without further analysis.

11. In my opinion the theoretical freehold land value assessed is incorrect. Pastoral Stations are long term leases that are rented at a low rate from the State Government and legally cannot be "freeholded" However the low base produces a low "freehold value" to complete Preston's and Jaski's valuations.

[368] Maximum possible freehold value

12. Jaski refers to the "maximum possible" freehold value of the land (as determined by Mr Preston, on a compulsory acquisition basis).

13. Jaski and Preston use precise Tenement areas for all calculations and consider overlaps so that there is no double counting. They have both considered the start dates of the tenements as the valuation date. I have made a general estimate of the past, current and future mining influence area in the Exclusive NT Area which is less precise but was my view of fair and reasonable basis of how compensation should be considered.

14. Both experts have focussed on Exclusive and Non-Exclusive Areas extending across other Stations regardless of any mining activity. Jaski uses various factors - rights and interests, impairment, deprival and applies a subjective percentage.

[393] "In addition to the Exclusive Area and Non-Exclusive Area, the Determination Area also includes an Unclaimed Area (refer Figure 1 of this report)".

15. This area is located North East and he is correct but it was not relevant to the Exclusive Determined Area that I was focussing on.

[402 – 405]

16. See [8] above re my approach to ascertaining "highest and best value".

17. If my assumption that there is generally a standard 0.55% FOB royalty payable paid under native title agreements across the Pilbara region is correct, there is no basis for assuming that any particular agreements are reached having regard to factors which differentiate particular native title groups from others in that same region, or that rights and interests held by YNAC are more or less unique, better, worse or indifferent, in comparison to those held by other groups.

[411] estimated annual iron ore production

18. I relied on DMIRS figures going back to 2012 and there appears to be a belief that I have misread the government document as to value and volume. I had to make some calculation amendments when the mining volume changed from 2020 to 2023. Queens Mine (M47/1411-1 and M47/1474-1) came into production and were external to the Exclusive Determination Area and I removed their volume and value from my calculations. Jaski considers that the figures I used varied from FMG's historical iron ore prices per tonne contained in the DMIRS Affidavit, but these were the only figures I used.

Dated 18th March 2024

Signed:

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Brian Miles AAPI CPV
Licensed Valuer