



YINDJIBARNDI ABORIGINAL CORPORATION

I.C.N. Number 4370
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THE FACTS ABOUT FMG's PROPOSED 'SOLOMON HUB' IN YINDJIBARNDI COUNTRY

Background

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FMG has applied for 43 exploration licences, 4 mining leases and more than 100 miscellaneous licences in Yindjibarndi Country. The proposed "Solomon" project, which would be authorised by the grant of all these mining tenements, will have a massive impact on the exercise of native title rights in both the Yindjibarndi Native Title Determination Area and the area covered by the Yindjibarndi #1 Native Title Claim. It will also prevent the continuation of particular religious observances by the Yindjibarndi traditional owners.

Collectively FMG's mining tenements will cover 4,475 square kilometres of the Determination Area and over 1,800 square kilometres of the Claim Area. FMG's proposed railway will also affect both the Determination Area and the Claim Area.

The Native Title in the Determination Area is held in trust by Yindjibarndi Aboriginal Corporation (YAC), for the benefit of the *Yindjibarndi People* - a distinct society of Aboriginal people, united under and bound together by a traditional system of law. As the legal owner of the Native Title, YAC alone has power to negotiate agreements which affect the exercise of native title rights in the Determination Area.

The Native Title of the *Yindjibarndi People* in the Yindjibarndi Claim Area is yet to be determined by the Federal Court. In the interim (because the Claim has been 'registered' under the Native Title Act) it attracts the 'right to negotiate' agreements in respect of proposed developments that will affect the exercise of native title rights in the Claim Area. This right to negotiate is held by seven Yindjibarndi persons who, jointly, comprise 'the Applicant' for the Yindjibarndi #1 Native Title Claim. In 2007 those seven persons jointly authorised YAC to lead all negotiations that affect both the Determination Area and the Claim Area.

Given the magnitude of FMG's proposed Solomon project, YAC tried to negotiate an agreement that would deliver substantial economic benefits for the society of the *Yindjibarndi People* - an agreement not dissimilar in outcomes to those in the agreement between FMG and Cazaly Resources over the Rhodes Ridge project, which conferred a royalty of 2% FOB revenue pa.

FMG rejected YAC's approach and instead negotiated an agreement with the splinter Wirlumurra Yindjibarndi Aboriginal Corporation (WYAC), which has no legal right to negotiate anything that affects Native Title in Yindjibarndi Country. YAC will not execute that agreement and neither will the Applicant. This means that instead of having certainty and stability over its operations on Yindjibarndi country, which a properly concluded land access agreement registered with the Native Title Tribunal would provide, FMG will be compelled to make applications for native title approvals in relation to each of its tenements against the objections of YAC. Another consequence is that it creates uncertainty in respect of FMG's future liability for compensation - for loss of the use of the land affected by the proposed project; and for any social disruption caused to the Yindjibarndi People by FMG's activities. YAC will continue to oppose FMG's project in Yindjibarndi Country until such time as a fair and just agreement has been negotiated between YAC and FMG.



The current position in respect of the mining tenements required by FMG for the Solomon project is:

FMG's "Firetail" Mining Lease (M47/1413)

- The proposed 60 mtpa 'Firetail' mine site is to be developed on Mining Lease M47/1413. This mining lease is situated in the Yindjibarndi #1 Claim Area – in a part of Yindjibarndi Country where Yindjibarndi people have always enjoyed a right of exclusive possession. The area is used, among other things, for religious ceremonies; and contains sites that are sacred under the religious beliefs of the Yindjibarndi People.
- YAC objected to the grant of M47/1413; however, in mid-2009, the National Native Title Tribunal (Tribunal) made a determination that it could be granted.
- The Tribunal's determination was appealed (on religious and Constitutional grounds) to a single Judge of the Federal Court; and, then to the Full Court of the Federal Court. However, a legal technicality prevented an order staying the Tribunal's determination until such time as the Full Court determined the appeal. Accordingly, the State Government granted the lease. The Full Court is now considering the validity of that grant.
- Because the appeal raises issues under the Commonwealth Constitution, the decision of the Full Court, one way or the other, may well be the subject of a further appeal to the High Court.

FMG's "Valley of the Kings" Mining Leases (M47/1409 and M47/1411)

- The proposed "Valley of the Kings" mine site is to be developed on Mining Leases M47/1409 and M47/1411, both of which partially affect Yindjibarndi country (74% of the former and 5% of the latter fall within Yindjibarndi Claim Area). Again, these leases affect areas where Yindjibarndi people have always enjoyed a right of exclusive possession; and are used, among other things, for religious ceremonies. These areas also contain sites that are sacred under the religious beliefs of the Yindjibarndi People
- These two mining leases were granted under identical circumstances as those surrounding the grant of M47/1413, and the validity of M47/1409 is likewise the subject of an appeal to the Full Federal Court, which raises the same religious and constitutional arguments as the appeal against the grant of M47/1413.
- This appeal likewise raises issues under the Commonwealth Constitution; and so the decision of the Full Court, one way or the other, may well be the subject of a further appeal to the High Court.

FMG's Application for Mining Lease M47/1431

- This mining lease has not been granted.
- The application is the subject of an Objection lodged by YAC in the Mining Wardens Court under the WA Mining Act. That Objection has been heard but has not yet been determined by the Wardens Court; and, one way or the other, the Wardens' Court determination may well be the subject of an appeal.

FMG's Applications for Miscellaneous Licences

- FMG has applied for eight Miscellaneous Licences, to develop infrastructure (an airport, roads, power lines, accommodation village, etc.) in the same areas of Yindjibarndi Country that are affected by the three Mining Leases (M47/1409, M47/1411 and M47/1413). However, these Miscellaneous Licences have not been granted because YAC lodged Objections against the grant of each of them in the Mining Wardens Court under the WA Mining Act. Those Objections have been heard but have not yet been determined by the Wardens Court and, again, one way or the other, the Wardens' Court determinations may well be the subject of appeals.

- FMG has applied for in excess of 100 Miscellaneous Licences, to develop a railway to transport ore from the proposed 'Firetail' mine to the proposed Anketell Port.
- YAC has objected to all of these Miscellaneous Licences and those Objections have not yet been heard.

Yindjibarndi Heritage Issues

- FMG has obtained conditional consent, under the WA Aboriginal Heritage Act, to disturb 'for the first time' an area of ground, which is situated in the Firetail M47/1413 lease area. However FMG is required to work through those conditions with YAC and this has not yet occurred.

YAC's Position

- Yindjibarndi Aboriginal Corporation is the chosen representative institution of the Yindjibarndi People, a Prescribed Body Corporate under the Native Title Act, and the corporate trustee for the Yindjibarndi People.
- YAC will continue to oppose FMG's project in Yindjibarndi Country until such time as a fair and just agreement has been negotiated between YAC and FMG.