



National
Native Title
Tribunal

Submissions of the National Native Title Tribunal:

Inquiry into Juukan Gorge

July 2020

Introduction

1. The Commonwealth Parliament's Northern Australia Committee has commenced an inquiry into the destruction of Aboriginal heritage sites at Juukan Gorge in the Pilbara region of Western Australia and has asked the National Native Title Tribunal (the "**Tribunal**") to provide submissions concerning possible legislative failures, possible changes to the *Aboriginal Heritage Act 1972* (WA) (the "**AH Act**") and the impact on the traditional owners of the mining company's actions.
2. The Tribunal was established under the *Native Title Act 1993* (Cth) (the "**NTA**") as an independent body with a wide range of functions. The Tribunal's functions include the resolution, by mediation or arbitration, of issues involving proposed future acts for the grant of exploration and mining tenements on land where native title exists, or might exist.
3. In relation to future acts which may affect native title, the NTA provides for the facilitation of negotiations between native title parties and other, often mining parties, to achieve flexible, pragmatic agreements about the use of land and waters, which agreements allow future acts to proceed, with or without conditions. Agreements as defined in ss 24BA, 24CA and 24 DA may be registered as Indigenous Land Use Agreements.

RTIO and PKKP People ILUA

4. In the context of the development of an agreement between the Puutu Kunti Kurrama and Pinikura People (the "**PKKP People**") and various mining parties, the Tribunal was initially engaged to provide assistance with preparation and checking of geospatial data and mapping.
5. On 21 November 2012, Hamersley Iron Pty Limited and Robe River Mining Co Pty Ltd (collectively, "**RTIO**") and Angelina Cox, Angie Cox, Annabelle Stewart, Arness James, Charleston Cox, Darryl Hughes, Gary Hughes, Howard Ashburton, Maudie Dowton, Mitchell Drage and Maurice Daublin (on their own behalf and on behalf of the Puutu Kunti Kurrama and Pinikura People) and the PKKP Aboriginal Corporation (collectively, the "**Native Title Parties**") lodged for registration testing, an Indigenous Land Use Agreement ("**ILUA**") which satisfied the requirements of section 24CA of the NTA.
6. Paragraph 4 of the ILUA identifies a number of companies and their subsidiaries, as well as a number of joint ventures. The term "**RTIO**" refers to all such "entities". Generally, RTIO's obligations are Hamersley's obligations

7. The Tribunal undertook the statutory notification of the ILUA, following which process, it was registered on 24 April 2013.
8. At the time at which the ILUA was registered, the relevant native title claim had not been determined. As there was no body corporate for the whole of the area, the ILUA was registered as an area agreement in accordance with s 24CC of the NTA. On 2 September 2015 the Federal Court made a native title determination in favour of the PKK People (*Chubby on behalf of the Puutu Kunti Kurrama People and the Pinikura People #1 and #2*: [2015] FCA 940).
9. The ILUA is expressed in relatively clear language. Nonetheless, such clarity is, to some extent, compromised by complex interaction between it and the NTA. The Tribunal suggests that the Committee consider obtaining an appropriate expert summary of its effect on the Native Title Parties' rights and interests as conferred by the NTA. Paragraphs 8 and 9 are of particular importance.
10. The terms of the ILUA demonstrate that the Native Title parties and RTIO entered into a Participation Agreement prior to the execution of the ILUA, which Participation Agreement requires that the signatories' obligations under it be complied with until it is terminated. The content of the Participation Agreement is confidential to the parties.
11. A copy of the ILUA, which was provided to the Tribunal on an open basis, is attached to this submission.

Protection of Aboriginal Heritage Sites

12. The Tribunal's role in connection with ILUAs, is effectively limited to assistance in the negotiations leading up to agreement and subsequently, notification and registration. It has a wider role in connection with future acts to which subd P of Pt 2 Div 3 of the NTA ("**subd P**") applies. In effect, that subdivision provides for compulsory good faith negotiation, unless the relevant future act is unlikely to interfere with the traditional owners' interests, or those of a native title claimant. Negotiation is not required if the proposed future act attracts the expedited procedure. Pursuant to s 237, the act will do so if:
 - (a) the act is not likely to interfere directly with the carrying on of the community or social activities of the persons who are the holders (disregarding any trust created under Division 6 of Part 2) of native title in relation to the land or waters concerned; and
 - (b) the act is not likely to interfere with areas or sites of particular significance, in accordance with their traditions, to the persons who are the holders (disregarding any trust created

under Division 6 of Part 2) of the native title in relation to the land or waters concerned;
and

- (c) the act is not likely to involve major disturbance to any land or waters concerned or create rights whose exercise is likely to involve major disturbance to any land or waters concerned.

State Legislation

13. The extent to which Western Australia recognizes and protects Aboriginal society and culture is a matter for that State. However, in the course of the Tribunal's consideration of s 237, the extent of such protection has, on occasions, been raised for consideration. In some cases the Tribunal has considered the effectiveness of the protection afforded by the AH Act for the purposes of the NTA.

14. In 2019, President Dowsett, in *Marputu v Gianni*¹ explained how sites of 'particular significance' to traditional owners, relying on s 237(b) of the NTA, may not necessarily be protected by the AH Act. At [44] he said:

It is possible that protection under the AH Act may not extend to areas or sites to which s 237(b) applies. It is also possible that s 237(b) may not apply to sites protected under the AH Act. Once this difference in focus is recognized, it becomes difficult to identify the extent to which the AH Act might protect sites of particular significance to traditional owners. In order to do so, it would be necessary that I identify a particular site, identify the various ways in which there might be an adverse impact of the kind contemplated by s 237(b), and then consider the extent to which the AH Act might reduce the likelihood that there will be such impact. No party has made any attempt to demonstrate how the AH Act might operate in the present case.

15. In *Bunuba Dawangarri Aboriginal Corporation v Oladipo Minerals*² Member Cooley discussed the consultation process under s 18 of the AH Act. She noted that the conduct which is permitted under s 18 of the AH Act may nonetheless be interference for the purposes of s 237(b) of the NTA. In *Bunuba Dawangarri Aboriginal Corporation v Buxton Resources*³ Member McNamara noted that the consultation process under s 18 is not necessarily a 'protection' (in the context of protection against harm), but presents the possibility 'perhaps' of avoidance. Member McNamara goes on to say at [72]:

Further, the use of the phrase 'protection afforded by the AHA' is apt to mislead. An offence provision (such as s 17), which applies once damage is done, is not in my view a protection. Damage may not occur knowingly. It will often be the case that an explorer is unfamiliar with the nature of Aboriginal sites and without some other mechanism to minimize the risk may unwittingly cause harm. When the risk is mitigated, for example following the conduct of a

¹ *Marputu Aboriginal Corporation RNTBC (INC 8085) v Peter Romeo Gianni* [2019] NNTTA 18.

² *Bunuba Dawangarri Aboriginal Corporation RNTBC v Oladipo Minerals Pty Ltd and Another* [2019] NNTTA 111.

³ *Bunuba Dawangarri Aboriginal Corporation RNTBC v Buxton Resources Limited & Another* [2019] NNTTA 72.

heritage survey, the s 18 process does provide for a further assessment of the site and results in a recommendation to the Minister. Again, in my view this is not necessarily a 'protection' (in the context of protection against harm), but presents the possibility perhaps of avoidance.

16. Other cases determined in the Tribunal⁴ demonstrate that the availability of ministerial consent under s 18 to 'excavate, destroy, damage, conceal or in any way alter' an aboriginal site may be a factor which leads to an inference that, for the purposes of s 237, interference is not unlikely.
17. In *Wintawari Guruma Aboriginal Corporation RNTBC v The Hon Benjamin Sana Wyatt*,⁵ a decision of the Supreme Court of Western Australia, Martin J found that even if a decision of the Minister's advisory body was invalid, such invalidity might not prevent or infect a subsequent decision by the Minister. All that is necessary is a "written recommendation" from the advisory body, not a legally valid decision.
18. Again, in the Supreme Court of Western Australia, Chaney J, in *Robinson v Fielding*⁶, noted that land owners (including the holders of exploration licences) have certain rights to appeal ministerial decisions under s 18, but Aboriginal persons, with interests in sites on the land in question, do not.
19. The Tribunal does not suggest that the State's legislative objectives should necessarily coincide with the Commonwealth's legislative intentions in connection with the NTA. Nor does it readily express views concerning the effect of State legislation. However the Tribunal must deal with the submissions which it receives.

Further Points

20. Pursuant to subd P, the Tribunal's jurisdiction is regularly invoked in connection with proposed future acts, particularly in Western Australia. Our experience suggests that the larger projects are usually dealt with by way of ILUA, rather than pursuant to subdiv P. The Tribunal may only speculate as to the reasons for this tendency, but that matter may be of interest to the Committee.
21. Secondly, as is mentioned earlier, where an ILUA is negotiated and registered, the parties, frequently execute a collateral agreement which is rarely seen in the public

⁴ See, e.g.: *Kalman Murphy and Others on behalf of Waturta v Lake Wells Exploration Pty Ltd and Another* [2020] NNTTA 13; *Kevin Allen & Others on behalf of Nyamal #1 v Haoma Mining NL & Another* [2020] NNTTA 45; *Wanjina-Wunggurr (Native Title) Aboriginal Corporation v Metalicity Limited and Another* [2019] NNTTA 15; *Kevin Allen & Others on behalf of Nyamal #1 and Another v Haoma Mining NL & Another* [2020] NNTTA 37; *Kalman Murphy & Ors on behalf of Waturta v FMG Resources Pty Ltd & Another* [2020] NNTTA 19; *Wakamurru (Aboriginal Corporation) RNTBC and Another v Kalium Lakes Potash Pty Ltd & Another* [2019] NNTTA 128; *Wanjina-Wunggurr (Native Title) Aboriginal Corporation v Coronet Resources Ltd and Another* [2019] NNTTA 117; *Tarlka Matuwa Piarku (Aboriginal Corporation) RNTBC and Another v Lake Wells Exploration Pty Ltd and Another* [2019] NNTTA 116.

⁵ *Wintawari Guruma Aboriginal Corporation RNTBC v The Hon Benjamin Sana Wyatt* [2019] WASC 33.

⁶ *Robinson v Fielding* [2015] WASC 108.

domain. It is not registered. There is no obligation to register an ILUA: see ss 24BG, 24CG and 24DH. However registration validates any agreed act. The preamble to the NTA indicates that it is intended to be a, “special measure for the advancement and protection of Aboriginal people and Torres Strait Islanders”. It may be difficult to reconcile the status of the NTA as a “special measure” with the restricted access to agreements which is permitted by the NTA.



RTIO and Puutu Kunti Kurrama and Pinikura People Indigenous Land Use Agreement (Area Agreement)

Hamersley Iron Pty Limited

ACN 004 558 276

Robe River Mining Co Pty Ltd on its own behalf as a
Venturer and as Manager for and on behalf of the Robe
River Iron Associates

ACN 008 694 246

Angelina Cox, Angie Cox, Annabelle Stewart, Arness
James, Charleston Cox, Darryl Hughes, Gary Hughes,
Harold Ashburton, Maudie Dowton, Mitchell Drage and
Maurice Daublin on their own behalf and on behalf of
the Puutu Kunti Kurrama and Pinikura People

The PKKP Aboriginal Corporation ICN 7630 as the LAC
for the Puutu Kunti Kurrama and Pinikura People

2012

This agreement is an important agreement between:

- the Native Title Applicants in the PKKP People's Native Title Claims;
- Rio Tinto Iron Ore (which means Hamersley Iron Pty Limited and the Robe River Iron Associates); and
- The PKKP Aboriginal Corporation as the LAC for the PKKP People.

To make this document easier to read some of the names of the parties have been shortened so that, for example, Rio Tinto Iron Ore is "RTIO".

This document operates in conjunction with the "RTIO and PKKP People Claim Wide Participation Agreement", which is called the Participation Agreement in this document. It includes many of the same obligations as in that agreement (other than obligations relating to the provision of benefits) but operates more specifically in relation to the part of the PKKP People's Native Title claim area which is not subject to any other native title claims.

This document is written in language that lawyers and courts can understand. That language is sometimes difficult for other people to understand because it uses words and phrases that we don't use every day. We have put in text boxes like this box into the agreement so that it is easier for people who are not lawyers to understand. The text boxes don't say everything that is in this document, only some of the main things.

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THIS DEED is made on 15 November 2012

BETWEEN:

- (1) **Hamersley Iron Pty Limited** ACN 004 558 276 ("**Hamersley**");
- (2) **Robe River Mining Co Pty Ltd** ACN 008 694 246 ("**Robe**") on its own behalf as a Venturer and as Manager for and on behalf of the Robe River Iron Associates;
- (3) **Angelina Cox, Angie Cox, Annabelle Stewart, Arness James, Charleston Cox, Darryl Hughes, Gary Hughes, Harold Ashburton, Maudie Dowton, Mitchell Drage and Maurice Daublin** on their own behalf as Registered Native Title Claimants and on behalf of the PKKP People (the "**Native Title Applicants**"); and
- (4) **The PKKP Aboriginal Corporation** ICN 7630 as the LAC for the PKKP People (the "**LAC**")

RECITALS:

This is where we set out some of the background to the agreement that explains why we have agreed to the things in the agreement and what this agreement is meant to do.

- (A) The PKKP People are Aboriginal people who claim to be the holders of Native Title in relation to areas in the Pilbara Region where RTIO has RTIO's Pilbara Iron Ore Business.
- (B) The Native Title Applicants have been authorised by the PKKP People to act on behalf of the members of the Native Title Claim Group in relation to matters relating to the PKKP People's Native Title Claim that has been brought under the Native Title Act.
- (C) RTIO and RTIO Entities conduct and operate existing mines, ports and infrastructure as part of RTIO's Pilbara Iron Ore Business in the Pilbara Region and intend to continue to develop, operate and expand those operations in the future.
- (D) On 18 March 2011 RTIO entered into the Participation Agreement with the PKKP People. The Participation Agreement provides for the parties to work together to ensure that RTIO's Pilbara Iron Ore Business in the Pilbara Region is conducted in a mutually beneficial manner with the agreement and support of the PKKP People. In return for the PKKP People's agreement and support for RTIO's Pilbara Iron Ore Business, RTIO agreed to provide financial and non-financial benefits to the PKKP People.
- (E) Under the Participation Agreement, the PKKP People, the Native Title Applicants and RTIO agreed to authorise and Register an Indigenous Land Use Agreement (**ILUA**) under the Native Title Act that contained the consents and support given by the PKKP People for RTIO's Pilbara Iron Ore Business in the Participation Agreement.
- (F) This document is an agreement between the Native Title Applicants, RTIO and The PKKP Aboriginal Corporation that sets out those consents and that support. The parties intend that this document will be Registered as an Indigenous Land Use Agreement (Area Agreement) within the meaning of Subdivision C of Division 3 of Part 2 of the Native Title Act.
- (G) The PKKP People have authorised the Native Title Applicants, who are the persons comprising the Applicant for the Native Title Claim and have capacity to act on their own behalf, to enter into this document under section 251A of the Native Title Act.

- (H) Once this document has been Registered as an ILUA, the Native Title Act operates so that the Registered ILUA will bind all persons who hold Native Title Rights and Interests in relation to the ILUA Area as if they were a party to this document.
- (I) The PKKP People, the Native Title Applicants and RTIO agree to authorise and Register Additional ILUAs including an Additional ILUA with the State as a party and an Additional ILUA (Body Corporate Agreement) when there is an Approved Determination of Native Title that Native Title exists in relation to some or all of the Agreement Area or ILUA Area and is held by some or all of the PKKP People.
- (J) This document, once commenced and Registered, does not replace the Participation Agreement but to the extent that this document and the Participation Agreement say the same thing, this document prevails once it has been Registered. Otherwise, the Participation Agreement prevails.

THE PARTIES AGREE AS FOLLOWS:

PART 1 – UNDERSTANDING THIS DOCUMENT

1. INTERPRETATION

1.1 Definitions

If a word or phrase used in this agreement has a special meaning, it is explained in this clause. It is very important to look at the definitions because every time a defined term is used in this agreement, it will have the meaning set out in this clause.

In particular, the following definitions are important to understand the full meaning of this agreement:

- Agreed Act;
- Agreed Purpose;
- Applicants;
- Approval;
- Compensation Entitlements;
- ILUA Area;
- Interest;
- RTIO Entity;
- RTIO's Pilbara Iron Ore Business; and
- RTIO Titles.

The following definitions apply in this document.

"Aboriginal Cultural Heritage" means Aboriginal cultural heritage that is protected under a Cultural Heritage Law and includes an Aboriginal Site.

"Aboriginal Heritage Act" means the *Aboriginal Heritage Act 1972* (WA).

"Aboriginal Site" means an "Aboriginal site" as defined in the Aboriginal Heritage Act or a "significant Aboriginal area" or "significant Aboriginal object" as defined in the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

"Additional ILUA" is defined in the Participation Agreement and includes the Additional ILUAs identified in clause 14.

"Agreed Act" refers to a thing or things agreed to, consented to or supported under clause 8.1 and clause 8.2.

"Agreed Act Certificate" is defined in the Participation Agreement.

"Agreed Purpose" is defined in clause 8.5.

"Agreement Area" is defined in the Participation Agreement.

"Approval" means any authorisation, licence, permit, approval, certificate, consent, direction or notice inclusive of any Modification, and includes an approval from a Minister, Government Agency or other competent authority, for example the approval of proposals under a Government Agreement.

"Assign" means sell, assign, transfer, convey, or otherwise dispose of.

"Assigned Commercial Mining Right" is defined in clause 16.2(e).

"Benefits Management Structure" is defined in the Participation Agreement.

"Business Day" means any day other than a Saturday, Sunday or public holiday observed in Perth, Western Australia.

"Commencement Date" means the earlier of:

- (a) the date inserted above the parties' names on page 1 of the body of this document or where no date has been inserted or the date inserted is manifestly wrong, the date on which this document is taken to have been signed by all of the parties named on page 1 of the body of this document; and
- (b) the date on which this document is notified by the Registrar in accordance with section 24CH of the Native Title Act.

"Commercial Mining Right" means a right to mine minerals or substances, at least one of which must be iron ore, in commercially saleable quantities (including pursuant to a mining lease or mineral lease).

"Compensation Entitlements" means any rights or entitlements (including to compensation or damages) whether monetary or otherwise, under any Law (including common law, equity and statute) arising from or in connection with and at any time:

- (a) the Agreed Acts whether done before or after the Commencement Date;
- (b) the Grant or Modification of the RTIO Titles;
- (c) the Grant or Modification of and enjoyment, exercise of rights or discharge of obligations under any RTIO Title, whether done before or after the Commencement Date;
- (d) the Grant of Interests or Approvals within or relating to the ILUA Area to, and the exercise of rights or discharge of obligations under them whether done before or after the Commencement Date by any RTIO Entity; and

- (e) any effect of any of the above things on Native Title,
but excluding any right or entitlements (including to compensation or damages) whether monetary or otherwise arising in relation to:
- (f) personal injury;
- (g) damage to personal property; or
- (h) a breach of this document.

"Connection Guidelines" means the State's "Guidelines for the Provision of Information in Support of Applications for a Determination of Native Title" published in October 2004 or, if those guidelines cease to exist, their replacement or, if not replaced, any principle or policy of the State directed at facilitating Approved Determinations of Native Title by consent.

"Corporations Act" means the *Corporations Act 2001* (Cth).

"Cultural Heritage Law" means a Law for the protection of Aboriginal cultural heritage and includes the Aboriginal Heritage Act, the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) and the provisions of the *Environment Protection Biodiversity Conservation Act 1999* (Cth) concerning Aboriginal cultural heritage.

"Dispute" is defined in clause 17.1(a).

"Dispute Notice" is defined in the Participation Agreement.

"Election Notice" is defined in the Participation Agreement.

"Election Venture" is defined in clause 4.2(a)(v).

"Election Venturer" means a person who comprises all or part of an Election Venture, but only for the purposes of such Election Venture.

"Election Venture Manager" means the person responsible for managing the Election Venture:

- (a) as named in an Election Notice; or
- (b) as advised to the LAC from time to time by each Election Venturer comprising the relevant Election Venture.

"Execution Date" is defined in clause 16.2(f)(i)(B).

"Existing Operations" refers to those parts of RTIO's Pilbara Iron Ore Business that are within the ILUA Area as at the Commencement Date.

"Existing RTIO Manager" means Hamersley and each Manager from time to time of an Existing RTIO Venture on behalf of the persons comprising the relevant Existing RTIO Venture, and who as at the Commencement Date is, with respect to the Robe River Iron Associates Joint Venture, Robe.

"Existing RTIO Venture" is defined in clause 4.2(a)(ii).

"Existing RTIO Venturer" is defined in clause 4.2(a)(iii).

"Government Agency" means any Commonwealth, state or local government, Parliament or any department authority or government agency, board, court or

instrumentality, Minister or other person having authority or delegation to act on behalf of any of those entities or government, including the Crown in right of the State, Crown in right of the Commonwealth, the Governor, the Governor in Council and the Governor General.

"Government Agreement" is defined in the *Government Agreements Act 1979* (WA).

"Grant" means grant, extend, renew, re-grant or re-make.

"GST Law" is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"ILUA" means an Indigenous Land Use Agreement.

"ILUA Area" means the area described in Schedule 1, a map of which is in Schedule 2.

"Individual Participating Interest" means the proportion of an Interest of a person in an Existing RTIO Venture or Election Venture from time to time, determined in accordance with the agreement pursuant to which the relevant Venture was established and which at the Commencement Date is, in respect of the Robe River Iron Associates Joint Venture:

- (a) Robe – 30%;
- (b) Mitsui Iron Ore Development Pty Ltd – 20%;
- (c) Cape Lambert Iron Associates – 5%;
- (d) Pannawonica Iron Associates – 10%; and
- (e) North Mining Limited – 35%.

"Interest" means any:

- (a) legal or equitable interest in land or waters;
- (b) right to occupy, use or traverse land or waters;
- (c) right to mine, quarry, extract or explore for minerals or water;
- (d) easement, charge, power or licence over or in connection with land or waters;
- (e) authorisation, permit or licence from any Government Agency,

whether Granted before, on or after the Commencement Date.

"LAC Requirements" is defined in the Participation Agreement.

"Law" means any law (including subordinate or delegated legislation or statutory instruments of any kind) of Australia or Western Australia or any Government Agreement.

"Local Implementation Committee" is defined in the Participation Agreement.

"Manager" means the person who, in accordance with the arrangement pursuant to which the relevant Venture is established, is responsible for managing the Venture.

"Mining Act" means the *Mining Act 1978* (WA).

"Modify" means extend, renew, vary, replace, modify, correct, alter, amend or change.

"Native Title Act" means the *Native Title Act 1993* (Cth).

"Native Title Area" is defined in clause 16.3(a).

"Native Title Claim" means the Claimant Applications (including as amended from time to time) lodged in the Federal Court and allocated numbers WAD126/2005 and WAD6007/2001 (NNTT numbers WC05/04 and WC01/05), and any Claimant Application/s made in accordance with this document in addition to, substitution for or in replacement of either or both of the Claimant Applications (including as amended from time to time).

"Non-State Agreement Minerals" is defined in the Participation Agreement.

"Novation Agreement" means the deed of novation and assignment referred to in clause 16.2(f).

"Participation Agreement" means the agreement referred to in recital (D).

"Payer" is defined in the Participation Agreement.

"Pilbara Region" means the geographical region containing the local government authorities of the Shire of Roebourne, the Shire of Ashburton, the Shire of East Pilbara and the Town of Port Hedland.

"PKKP People" or **"Puutu Kunti Kurrama and Pinikura People"** means the persons comprising the Native Title Claim Group represented in the Native Title Claim.

"Policy" means any policy, guideline (including the Connection Guidelines), official directive or request (even if it does not have the force of Law) of any Government Agency or regulatory body, including a stock exchange within Australia.

"Regional Framework Deed" means the deed called "Regional Framework Deed" dated 22 March 2011 between:

- (a) Hamersley;
- (b) Puutu Kunti Kurrama and Pinikura People;
- (c) Kuruma Marthudunera People;
- (d) Ngarlawangga People;
- (e) Nyiyaparli People; and
- (f) Ngarluma Aboriginal Corporation as agent for and on behalf of the Ngarluma People,

as amended from time to time.

"Registered" means the ILUA appears on the Register of Indigenous Land Use Agreements; and **"Registration"** has a corresponding meaning.

"Related Entity" means each of the following:

- (a) an entity or Venture, other than the LAC and the Benefits Management Structure, which is controlled by:
 - (i) the Native Title Applicants (or any of them);
 - (ii) the PKKP People (or any of them); or
 - (iii) the LAC;

- (b) an entity or Venture that is a beneficiary under the Benefits Management Structure; or
- (c) an entity or Venture that, to the knowledge of and with the express or implied approval or acquiescence of the Native Title Applicants (or any of them) or the LAC, purports to represent or be acting on behalf of the PKKP People, the Native Title Applicants or the LAC.

"Robe Manager" means the manager from time to time of the Robe River Iron Associates Joint Venture on behalf of the Robe River Iron Associates, and who as at the Commencement Date is Robe.

"Robe River Iron Associates" means the Venturers who from time to time comprise the Robe River Iron Associates Joint Venture in their capacity as Venturers in the Robe River Iron Associates Joint Venture, and who at the Commencement Date are:

- (a) Robe;
- (b) Mitsui Iron Ore Development Pty Ltd ACN 008 734 361;
- (c) Cape Lambert Iron Associates, a business carried on under that name by Nippon Steel Australia Pty Limited ACN 001 445 049, Sumitomo Metal Australia Pty Ltd ACN 001 444 604 and Mitsui Iron Ore Development Pty Ltd ACN 008 734 361;
- (d) Pannawonica Iron Associates, a business carried on under that name by Nippon Steel Australia Pty Limited and Sumitomo Metal Australia Pty Ltd; and
- (e) North Mining Limited ACN 000 081 434.

"Robe River Iron Associates Joint Venture" means the joint venture from time to time constituted and carried out pursuant to the agreement made 25 May 1970 under which participants are associated together in a joint venture, which at the Commencement Date is carried out under the name "Robe River Iron Associates", for the purposes of mining, overland transportation, processing and loading for shipment of iron ore, or any replacement or substitute agreement which provides for a joint venture for substantially the same purposes.

"RTIO" is defined in clause 4.1.

"RTIO Company" is defined in clause 4.2(a)(iv).

"RTIO Entity" is defined in clause 4.2(a)(i).

"RTIO Existing Title" is defined in clause 8.4.

"RTIO's Pilbara Iron Ore Business" is defined in clause 8.6.

"RTIO Titles" means all Interests and Approvals relating to RTIO's Pilbara Iron Ore Business or an Agreed Purpose, including RTIO Existing Titles. To avoid doubt, this includes the Interests and Approvals of an Election Venture insofar as they form part of RTIO's Pilbara Iron Ore Business.

"State" means the State of Western Australia.

"State Agreement Mineral" means a mineral (including any form of iron ore) which, at the Commencement Date, is or may be the subject of approved proposals under any Government Agreement of which a RTIO Company has the benefit.

"Substantial Reason" is defined in clause 8.5(c).

"Support Deed" is defined in the Participation Agreement.

"Trustee" is defined in the Participation Agreement.

"Venture" means an entity, association of persons or trust, including a partnership or a joint venture formed or constituted for the purpose of pursuing a joint business objective.

"Venturer" means a person who comprises all or part of a Venture, but only for the purposes of such Venture.

1.2 Rules for interpreting this document

This clause sets out some rules to explain how to understand certain phrases and words in this agreement.

The following rules apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) Headings are for convenience only, and do not affect interpretation.
- (b) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) this document includes the schedules;
 - (v) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
 - (vi) a Part, clause or Schedule is a reference to a Part, clause or Schedule of this document;
 - (vii) anything (including a right, obligation or concept) includes each part of it; and
 - (viii) \$ or dollars means Australian dollars.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes the other genders.
- (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

- (g) Words defined in the Native Title Act, capitalised in this document and not otherwise defined in this document have the same meaning as in the Native Title Act.
- (h) The word "**agreement**" includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (i) The expression "**this document**" includes the agreements, arrangements, understandings and transactions contemplated by this document.
- (j) The word "**control**" has the meaning in section 50AA of the Corporations Act, and the word "**controlled**" has a corresponding meaning.

1.3 **Business Days**

If the day on or by which a person must do something under this document is not a Business Day, the person must do it on or by the next Business Day.

1.4 **Multiple parties**

Subject to clause 3, if a party to this document is made up of more than one person, or a term is used in this document to refer to more than one person:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately.

2. **PLAIN ENGLISH SUMMARY AND TEXT BOXES**

This clause says that although the text boxes in this agreement have been inserted to help explain the meaning of the agreement, they are not really part of the agreement. You need to read the words in each clause to work out its meaning.

Words in text boxes are for convenience only and do not affect interpretation.

3. **INTERACTION WITH THE PARTICIPATION AGREEMENT**

This clause confirms that the Participation Agreement continues even though this agreement has been entered into.

However, it also says that if something has to be done under the Participation Agreement and under this agreement, it need only be done once.

- (a) The Native Title Applicants, RTIO Entities and the LAC affirm the Participation Agreement and, subject to clauses 3(b) and 3(c) and, agree:
 - (i) to comply with their respective obligations in the Participation Agreement; and
 - (ii) that the Participation Agreement continues in full force and effect unless and until it is terminated in accordance with its provisions.

- (b) If any of the clauses of this document, which sometimes repeat various provisions in the Participation Agreement, oblige a party to take an action which it is also obliged to do under the Participation Agreement, by taking the action once the party will satisfy its obligations under both this document and the Participation Agreement.
- (c) Nothing in this document releases RTIO or any RTIO Entities from complying with their obligations in the Participation Agreement.

4. **RIO TINTO PARTIES**

This agreement is between Rio Tinto Iron Ore (RTIO), the LAC and the Native Title Applicants. RTIO is made up of a number of companies and their subsidiaries as well as a number of joint ventures in which the RTIO Companies participate (which are all referred to as RTIO Entities). This clause makes it clear which companies are being referred to when RTIO is mentioned in this agreement.

Generally RTIO's obligations are Hamersley's obligations.

4.1 **References to RTIO in this document**

- (a) If this document imposes on RTIO an obligation, other than an obligation to give a notice or request, the obligation is imposed on Hamersley.
- (b) If this document confers on RTIO a right, excluding a right to give a notice or request, the right is exercisable by Hamersley.
- (c) If this document provides that RTIO must or may give a notice or a request, the notice or request must or may, as applicable, be given by Hamersley, or such other RTIO Entity nominated by Hamersley and advised in writing to the Native Title Applicants.
- (d) If this document contemplates that something, including a notice or request, must or may be given to RTIO, it must or may, as applicable, be given to Hamersley or such other RTIO Entity nominated by Hamersley and advised in writing to the Native Title Applicants.
- (e) If this document provides for RTIO to:
 - (i) have an opinion;
 - (ii) be satisfied about a matter; or
 - (iii) make any other decision including in relation to the nomination or appointment of a person,the reference to RTIO is to be read as a reference to Hamersley, or such other RTIO Entity nominated by Hamersley and advised in writing to the Native Title Applicants.
- (f) To the extent not otherwise provided in clauses 4.1(a) to 4.1(e), a reference to RTIO is a reference to Hamersley.

4.2 References to RTIO Entities in this document

- (a) In this document, a reference to:
 - (i) **"RTIO Entity"** means:
 - (A) an RTIO Company;
 - (B) each Existing RTIO Venture; and
 - (C) each Election Venture;
 - (ii) **"Existing RTIO Venture"** means the Robe River Iron Associates Joint Venture;
 - (iii) **"Existing RTIO Venturer"** means a Venturer who comprises all or part of an Existing RTIO Venture, but only for the purposes of such Existing RTIO Venture;
 - (iv) **"RTIO Company"** means each of the following:
 - (A) Hamersley;
 - (B) Robe, irrespective of whether it is a Robe River Iron Associate;
 - (C) Hamersley Iron - Yandi Pty Limited ACN 009 181 793; and
 - (D) each subsidiary of Hamersley Holdings Limited ACN 008 445 222 other than any subsidiary of Rio Tinto Investments One Pty Limited ACN 093 137 323; and
 - (v) **"Election Venture"** means each Election Venture under the Participation Agreement;
- (b) If this document confers a right on an RTIO Entity, then:
 - (i) if the RTIO Entity is an RTIO Company, the right is exercisable by the RTIO Company;
 - (ii) if the RTIO Entity is an Existing RTIO Venture, the right is held jointly and severally by each of the persons comprising the Existing RTIO Venture, and only to the extent of and for the purposes of that Existing RTIO Venture; and
 - (iii) if the RTIO Entity is an Election Venture, the right is held jointly and severally by each of the persons comprising the Election Venture and only:
 - (A) to the extent of and for the purposes of that Election Venture; and
 - (B) to the extent of the subject matter of that Election Venture's Election Notice.
- (c) If this document confers an obligation on an RTIO Entity, then subject to clause 4.2(e) and clause 4.3:
 - (i) if the RTIO Entity is an RTIO Company, the obligation must be performed by that RTIO Company;

- (ii) if the RTIO Entity is an Existing RTIO Venture, each person comprising the Existing RTIO Venture is responsible for the performance of the obligations of the Existing RTIO Venture under this document to the extent and only to the extent of its Individual Participating Interest in that Existing RTIO Venture and such obligations are to be several and not joint and several; and
- (iii) if the RTIO Entity is an Election Venturer:
 - (A) the obligations of that Election Venture are limited to the extent only of the subject matter of that Election Venture's Election Notice;
 - (B) each of the persons comprising the Election Venture is responsible for the performance of the obligation of the Election Venture under this document to the extent and only to the extent of its Individual Participating Interest in the Election Venture (as specified in the Election Notice and as varied under clause 15.9(g)(v) of the Participation Agreement) and such obligations are to be several and not joint and several; and
- (d) If this document:
 - (i) provides that an RTIO Entity must or may give a notice or request;
 - (ii) contemplates that something, including a notice or request may be given to an RTIO Entity; or
 - (iii) provides for an RTIO Entity to:
 - (A) have an opinion;
 - (B) be satisfied about a matter; or
 - (C) make any decisions including in relation to the nomination or appointment of a person,

the reference to RTIO Entity is to be read as a reference to Hamersley or such other RTIO Entity nominated by Hamersley and advised to the Native Title Applicants in writing.

- (e) Except to the extent that an RTIO Entity has delivered a Support Deed, if:
 - (i) this document imposes commitments on an RTIO Entity that is not a party to this document; and
 - (ii) Hamersley is unable to procure the performance of those commitments by that RTIO Entity,

Hamersley will perform those commitments in full satisfaction of the commitments imposed by this document on the RTIO Entity.

- (f) Hamersley enters into this document for the benefit of each RTIO Company as contemplated by section 11 of the *Property Law Act 1969* (WA). The parties agree that each of the RTIO Companies is entitled to the rights and benefits and is subject to the obligations conferred on RTIO Entities under this document even though the RTIO Company might not be named as a party to this document.

4.3 Performance of obligations and exercise of rights by agent

The obligations and rights of an RTIO Entity do not necessarily have to be carried out or exercised by that RTIO Entity. They can be carried out or exercised by one or more entities which are not RTIO Entities on behalf of an RTIO Entity.

The parties acknowledge that:

- (a) an RTIO Entity's obligations under this document may be performed on behalf of that RTIO Entity by one or more entities (including entities other than RTIO Entities); and
- (b) an RTIO Entity's rights under this document may be exercised on behalf of that RTIO Entity, by one or more entities (including entities other than RTIO Entities).

4.4 Capacity of Existing RTIO Managers

Each Existing RTIO Manager signs this agreement on behalf of the participants in each of the Existing RTIO Ventures.

- (a) Each Existing RTIO Manager, other than Hamersley, enters into this document in its capacity as the Manager of an Existing RTIO Venture and on behalf of each of the Venturers as at the Commencement Date in each of the Existing RTIO Ventures that the Existing RTIO Manager manages.
- (b) Without limiting clause 4.5, each Existing RTIO Manager, other than Hamersley, warrants and represents to the Native Title Applicants that it is authorised to execute this document as agent for and on behalf of each of the Venturers as at the Commencement Date in each of the Existing RTIO Ventures that the Existing RTIO Manager manages.

4.5 Additional warranties

This clause says that the Existing RTIO Managers promise that each of the Existing RTIO Venturers has authorised their Existing RTIO Manager to sign the agreement on their behalf.

Each Existing RTIO Manager warrants and represents to the Native Title Applicants that:

- (a) any authorisations, consents, Approvals and licences required or necessary for it to:
 - (i) execute this document in its capacity as the Existing RTIO Manager and on behalf of each of the Existing RTIO Venturers as at the Commencement Date in each of the Existing RTIO Ventures that the Existing RTIO Manager manages; and
 - (ii) undertake and carry out the obligations imposed on it and each of the Existing RTIO Venturers as at the Commencement Date in each of the Existing RTIO Ventures that the Existing RTIO Manager manages by this document,

have been obtained; and

(b) this document:

- (i) constitutes valid and binding obligations on each Existing RTIO Manager and each of the Venturers as at the Commencement Date in each of the Existing RTIO Ventures that the Existing RTIO Manager manages; and
- (ii) is enforceable in accordance with its terms as against each Existing RTIO Manager and each of the Venturers as at the Commencement Date in each of the Existing RTIO Ventures that the Existing RTIO Manager manages.

5. CAPACITY OF THE NATIVE TITLE APPLICANTS AND THE PKKP PEOPLE AND NATIVE TITLE APPLICANTS' WARRANTIES

5.1 Enforceability of document

This document binds and is enforceable against the Native Title Applicants and the PKKP People.

5.2 Native Title Applicants' warranties

The Native Title Applicants warrant that:

- (a) jointly they are the living persons (with capacity) who are the Applicant for the Native Title Claim, authorised in accordance with section 61(2) of the Native Title Act;
- (b) they have been authorised, in their capacity as the living persons who are the Applicant and Registered Native Title Claimant, to sign this document as a party for the purposes of section 24CD of the Native Title Act, on behalf of the PKKP People in accordance with section 251A of the Native Title Act;
- (c) the PKKP People authorised the making of this agreement under section 251A of the Native Title Act;
- (d) they execute this document as the living persons who are the Registered Native Title Claimant and on behalf of the PKKP People; and
- (e) they will undertake and carry out the obligations imposed on the Registered Native Title Claimant.

6. CAPACITY AND ROLE OF THE LAC

6.1 The LAC's role under this document

- (a) The LAC's role under this document is to:
 - (i) be the primary entity responsible for implementing this document and coordinating arrangements under this document as the agent, for and on behalf of the Native Title Applicants; and
 - (ii) without limiting the generality of clause 6.1:
 - (A) ensure that appropriate communication protocols are established and maintained between RTIO Entities and the Native Title Applicants; and

(B) perform the functions and roles and discharge the responsibilities required of it under this document.

(b) The LAC acts as the agent for and is to perform the obligations of the Native Title Applicants under the clauses set out in the table below:

Clause	Summary only of obligation – refer to clause
4.1(c)	Receive notice that another RTIO Entity may give notice
4.1(d)	Receive notice that another RTIO Entity may receive notice
4.1(e)	Receive notice that another RTIO Entity may make decisions
4.2(d)	Receive notice that another RTIO Entity may give or receive notices or make decisions
9.1(a)	Receive notice of application for Agreed Act
9.2(a)	Receive Agreed Act Certificate
9.2(b)(i)	Receive copy of notice of application for an Agreed Act
9.2(c)(i)	Receive a further copy of Agreed Act Certificate
9.2(d)	Serve Dispute Notice
9.4(b)	Receive notice of application for Agreed Act
10.2(a)	Provide documents and information for Registration
15(b)	Provide notice of suspension of obligations
15(c)(ii)	Provide notice of suspension ceasing
16.2(b)	Receive notice of Assignment
16.2(c)(iii)	Receive notice that entity ceases to be an RTIO Company
16.2(c)(iv)	Receive deed of assumption
16.2(d)(i)	Receive notice of Assignment
16.2(d)(ii)	Receive deed of assumption
16.2(e)(i)	Receive deed of assumption
16.2(h)(i)	Receive offer to arrange meeting
16.2(h)(ii)	Request RTIO to arrange meeting
16.3(a)(iv)	Procure Assignee to execute deed of covenant
16.3(e)	Request RTIO Entities to do all things to give effect to Assignment or transfer
16.3(f)	Provide RTIO copy of executed deed of covenant

- (c) To avoid doubt, clause 6.1(b):
- (i) does not operate to release the Native Title Applicants from their obligations under this document;
 - (ii) where RTIO Entities are required to do an act or thing involving the Native Title Applicants (such as give a notice) and clause 6.1(b) requires the LAC to act as agent of the Native Title Applicants, RTIO Entities may do that act or thing only to the LAC; and
 - (iii) where the Native Title Applicants may exercise a right or perform an obligation under this document (such as give a notice), and clause 6.1(b) requires the LAC to act as agent of the Native Title Applicants, only the LAC may exercise that right or discharge that obligation.

7. RELATED ENTITIES NOT TO ACT INCONSISTENTLY WITH THIS DOCUMENT

If a Related Entity or the LAC does any act which, if done by the Native Title Applicants, would constitute a breach of this document, then that act is deemed for the purposes of this document to be an act done by the Native Title Applicants.

PART 2 – SUPPORT FOR RIO TINTO'S IRON ORE BUSINESS IN THE PILBARA

8. CONSENT TO RTIO'S PILBARA IRON ORE BUSINESS AND ITS ONGOING EXPANSION

This clause is important because it sets out what the Native Title Applicants and the LAC agree to about the operations of RTIO's Pilbara Iron Ore Business.

To fully understand the consents, support and agreements provided by the Native Title Applicants, the definitions in clause 1.1 should be carefully considered. Sometimes it is necessary to read more than one definition to understand what a term means. For example, to understand what an "Agreed Act" is, the definitions of "Grant", "Modify", "RTIO Existing Title", "Commencement Date", "Interest", "Approval", "RTIO's Pilbara Iron Ore Business", "Agreed Purpose", "RTIO Entity" and "ILUA Area" should be read.

If a thing is not agreed to, that does not mean RTIO promises it won't do that, it just means the agreement doesn't give RTIO the support of the Native Title Applicants for those things.

8.1 Consent to Agreed Acts

This clause says that the Native Title Applicants and the LAC agree to RTIO's Pilbara Iron Ore Business and expansion of it in the Native Title Applicants' country. This includes the Grants of Interests and Approvals to RTIO or associated companies generally anywhere within the boundaries of the claim areas of the Native Title Applicants.

The Interests or Approvals sought must be for things that relate to RTIO's Pilbara Iron Ore Business (ie, for exploration or mining or for the processing, transportation and marketing of minerals) or for infrastructure as described in clause 8.5. This includes all the things needed for RTIO's mines, railways and things that support them, like accommodation and services. Some of these things might also be needed by others (like electricity and town services) or done by contractors. The Native Title Applicants agree to these things as well so long as one of the main reasons is for RTIO's Pilbara Iron Ore Business. There are

special rules about new land for houses and commercial services so this agreement just covers what RTIO needs.

The Native Title Applicants also agree that RTIO and its associated companies can do everything that is permitted under the Interests and Approvals.

- (a) The Native Title Applicants agree with, consent to and support and continue to agree with, consent to and support the Existing Operations including all RTIO Existing Titles.
- (b) Subject to clause 11.11 of the Participation Agreement, the Native Title Applicants agree with, consent to and support, and continue to agree with, consent to and support:
 - (i) the doing of every Future Act;
 - (ii) the Grant or Modification of every:
 - (A) Approval; and
 - (B) Interest, and
 - (iii) the Modification of every RTIO Existing Title,that is for an Agreed Purpose.

8.2 Consent to reliance on Approvals and Interests

The Native Title Applicants agree to the activities that are permitted by Approvals held by RTIO and its associated companies.

Without limiting clause 8.1, the Native Title Applicants agree with, consent to and support and continue to agree with, consent to and support the reliance on and the conduct by RTIO Entities of all activities required, permitted or contemplated by each Agreed Act, including as Modified.

8.3 Application of clause 8.1 to third parties

This clause says that RTIO will not in all cases be the holder of an Approval (like an Approval under environmental or land Laws) or Interest (like an easement or lease). It may be the case that RTIO may seek to rely on an Approval or Interest sought by a person other than RTIO.

- (a) Subject to clause 8.3(b), an Agreed Act does not cease to be an Agreed Act by virtue of the Agreed Act being applied for or held by a party other than an RTIO Entity.
- (b) An Approval or Interest that confers a Commercial Mining Right can only be Granted under or in accordance with clause 8.1 if it is applied for by and Granted to an RTIO Entity.

8.4 What is an RTIO Existing Title?

This clause describes the existing Approvals and Interests for RTIO's Pilbara Iron Ore Business in the PKKP People's country, which the Native Title Applicants agree to.

"RTIO Existing Title" means:

- (a) each Approval and each Interest which relates in whole or in part to the ILUA Area, Granted or purported to have been Granted as at the Commencement Date and held by:
 - (i) an RTIO Entity; or
 - (ii) a third party that is for the purpose of, or upon which an RTIO Entity materially relies for or in relation to, RTIO's Pilbara Iron Ore Business; and
- (b) any Approval or Interest created in substitution of and for substantially the same purpose as an Approval or Interest in clause 8.4(a), including as Modified.

8.5 What is an Agreed Purpose?

This clause sets out the purposes for which Approvals and Interests for RTIO's Pilbara Iron Ore Business can be sought. The Native Title Applicants agree to all Approvals and Interests for these purposes.

These purposes include infrastructure purposes and the consent of the Native Title Applicants means that RTIO or other companies associated with RTIO's Pilbara Iron Ore Business will be able to build things such as roads, powerlines, pipelines, houses and dams, which benefit not only people in the ILUA Area but also outside the area. For example, a water pipeline which is built within the ILUA Area might also supply water to areas outside the ILUA Area.

- (a) An **"Agreed Purpose"** means any of the following from time to time:
 - (i) the Existing Operations;
 - (ii) any Modification of any of the things comprising those operations provided they remain part of RTIO's Pilbara Iron Ore Business; and
 - (iii) the planning, development, operation and expansion, further expansion and decommissioning of any aspect of RTIO's Pilbara Iron Ore Business from time to time, including new iron ore mines, borrow and ballast pits and necessary supporting infrastructure.
- (b) Without limiting clause 8.5(a), the development, operation or expansion of each of the following is deemed to be an **"Agreed Purpose"** if a Substantial Reason for its development, operation or expansion is for RTIO's Pilbara Iron Ore Business:
 - (i) new power, water, rail and road infrastructure and associated infrastructure and works within the ILUA Area such as:
 - (A) power generation facilities to produce electricity;
 - (B) substations, power lines and switching yards;
 - (C) communication facilities and infrastructure;

- (D) gas and water pipelines, pumping stations and borefields;
- (E) land fill sites;
- (F) water storage dams and tanks;
- (G) borrow pits and quarries;
- (H) access and haulage roads and tracks;
- (I) airports and related infrastructure;
- (J) rail infrastructure and works including multi-tracking of railways, sidings, marshalling yards and loops, maintenance and storage facilities, deviation of railways, rail corridors and movement of rail infrastructure, and associated buildings and works;
- (K) buffer zones, car parks and landscaped areas;
- (L) administrative offices and other buildings; and
- (M) associated buildings and works;
- (ii) iron ore processing infrastructure and works including:
 - (A) stockpiles;
 - (B) crushing and screening plants;
 - (C) conveyors;
 - (D) facilities for the blending of iron ore; and
 - (E) associated buildings and works;
- (iii) construction camps; and
- (iv) town infrastructure and accommodation infrastructure within the ILUA Area, including:
 - (A) dwellings;
 - (B) commercial facilities;
 - (C) open space and recreational facilities;
 - (D) dining facilities;
 - (E) communal facilities;
 - (F) roads;
 - (G) car parks;
 - (H) landfill sites;
 - (I) water treatment facilities; and
 - (J) associated buildings and works.

- (c) In this clause 8.5, "**Substantial Reason**" means, subject to clause 8.5(d), on the balance of probabilities, it would have been unlikely to be developed, constructed or operated were it not required for RTIO's Pilbara Iron Ore Business, even though it may be used for other purposes.
- (d) Where the Agreed Purpose is for town infrastructure comprising dwellings or commercial facilities within a town:
- (i) if:
- (A) the dwellings or commercial facilities are being established in accordance with a Government Agreement or a requirement or right created in accordance with a Government Agreement that requires that not more than 20% of the total occupied, or to be occupied, dwellings or commercial facilities to be offered for sale or lease to the general public; and
- (B) each of the dwellings or commercial facilities that are not required to be offered for sale or lease to the general public would have been unlikely to be developed or constructed were it not required for RTIO's Pilbara Iron Ore Business,
- then each of the dwellings or commercial facilities will be an Agreed Purpose;
- (ii) where clause 8.5(d)(i) does not apply, it will only be an Agreed Purpose if and insofar as each of the dwellings or commercial facilities would have been unlikely to be developed or constructed were it not required for RTIO's Pilbara Iron Ore Business.

For example:

- *a subdivision done under a Government Agreement may be for an Agreed Purpose in circumstances where the land will be used for dwellings or commercial facilities in a town as part of RTIO's Pilbara Iron Ore Business, and that will be the case even if not more than 20% of the lots are required to be released to the general public.*
- *where the same release is not being done under a Government Agreement, or where it is being done under a Government Agreement that requires more than 20% of the lots to be released to the general public, only the individual lots that are required for RTIO's Pilbara Iron Ore Business will be an Agreed Purpose. This is the case even if RTIO's Pilbara Iron Ore Business is a Substantial Reason for the subdivision when viewed as a whole.*

8.6 What is RTIO's Pilbara Iron Ore Business?

This clause explains what RTIO'S Pilbara Iron Ore Business does and the activities that the Native Title Applicants have agreed not to object to under clause 8.10.

At the Commencement Date, RTIO's Pilbara Iron Ore Business does not include mining for minerals other than iron ore and State Agreement Minerals. However, there are special provisions in clause 15.10 of the Participation Agreement that say what happens if RTIO wants to mine Non-State Agreement Minerals.

- (a) **"RTIO's Pilbara Iron Ore Business"** means the whole and each part of the business of mining and recovering, processing, stockpiling, blending, transporting (including by rail and shipping) and marketing of iron ore or any State Agreement Mineral and products derived from iron ore or any State Agreement Mineral in and around the Pilbara Region by RTIO Entities including the planning, development, operation and expansion, further expansion and decommissioning of each of those things and which includes:
- (i) the planning, development, operation, expansion, further expansion and decommissioning, of infrastructure, works and other things for that business from time to time;
 - (ii) searching for and/or evaluating occurrences of minerals or other substances at least one of which is iron ore, including:
 - (A) carrying out exploration, drilling and testing activities for such minerals or other substances;
 - (B) entering and remaining on land with such vehicles, machinery and equipment as are necessary or convenient for carrying out such exploration, drilling and testing activities;
 - (C) sampling, extracting, removing and production testing of sufficient material for the purpose of establishing the presence and quantifying the potential economic value of such mineral or other substance; and
 - (D) conducting all other pre-production investigations including testing for water and the drilling and pump testing of water bores;
 - (iii) the rehabilitation of the areas disturbed by the operations referred to in paragraphs (i) and (ii) of this definition, and of such other areas as may be required to be rehabilitated;
 - (iv) all activities, things and infrastructure for or directly connected with any of the matters referred to in this definition including:
 - (A) workshops and other support facilities;
 - (B) air, road and rail transport;
 - (C) energy generation, piping and transmission;
 - (D) water abstraction, processing, production, storage and transport;
 - (E) communications; and
 - (F) accommodation and town facilities, and
 - (v) any of the above things that are the subject of an Election Notice, with effect from the date of the Election Notice and for so long as that they remain the subject of an Election Notice,

and excludes any mine or part of a mine in respect of which a certificate has been issued to the PKKP People under clause 15.10(j) of the Participation Agreement.

(b) For the avoidance of doubt, unless otherwise provided in this document (including by the operation of clause 8.5(b)), this document does not apply to a Venture where RTIO is the Manager of that Venture, unless it is:

- (i) an Existing RTIO Venture; or
- (ii) a Venture which is the subject of an Election Notice.

8.7 Confirmation of validity of RTIO Existing Titles

This clause says that the Native Title Applicants agree that the Approvals and Interests already granted to RTIO and its associated companies are valid.

The Native Title Applicants acknowledge and agree and continue to acknowledge and agree that all Interests and Approvals for the purpose of, or upon which any RTIO Entity materially relies for, or in relation to, RTIO's Pilbara Iron Ore Business, including all RTIO Existing Titles to the extent that they are within the ILUA Area, are valid and, to the extent that they coexist with Native Title, prevail and take precedence over any Native Title Rights and Interests.

8.8 Confirmation of validity of Agreed Acts

This clause says that the Approvals and Interests granted to RTIO and its associated companies in accordance with this agreement will be valid.

The Native Title Applicants acknowledge and continue to acknowledge that all Agreed Acts are valid and to the extent that they coexist with Native Title, prevail and take precedence over any Native Title Rights and Interests.

8.9 Actions to show support

If there are other consents that need to be signed or things to be done to make sure that RTIO or its associated companies get the Interests and Approvals they need or want, and have been agreed to under this agreement, the Native Title Applicants and the LAC must sign those consents on behalf of the Native Title Applicants.

The Native Title Applicants and the LAC agree to tell the State and other people that they have agreed to support RTIO's Pilbara Iron Ore Business.

(a) Subject to clause 8.9(b), the Native Title Applicants and the LAC must sign all documents and do all things that are reasonably required or requested by an RTIO Entity to facilitate the matters agreed and consented to under this document, including clause 8.1, as soon as reasonably practicable after a request by an RTIO Entity and in particular must:

- (i) execute all such deeds, agreements, consents, Approvals and documents no later than 20 Business Days after receipt of a written request from an RTIO Entity;
- (ii) lodge or register any such document with any person, competent body, Government Agency, arbitral body, group of persons, committee, board or party as may be required by Law or under Policy or by an RTIO Entity, no

later than 20 Business Days after receipt of a written request from the RTIO Entity, provided that the RTIO Entity pays or undertakes to pay any fee or charge levied by any such person;

- (iii) if requested by an RTIO Entity, indicate their consent, agreement or support (whether orally or in writing) to any person, competent body, Government Agency, arbitral body, group of persons, committee, board or party;
 - (iv) if requested by an RTIO Entity, make representations (whether orally or in writing) against objections made by third parties; and
 - (v) withdraw any objections or complaints, whether under any Law or otherwise.
- (b) Without limiting the operation of the Participation Agreement, clause 8.9(a) does not require the Native Title Applicants to give their consent to the destruction of Aboriginal Cultural Heritage where the Native Title Applicants consider it not culturally appropriate to do so.
- (c) To avoid doubt, the Native Title Applicants and the LAC must still facilitate the matters agreed and consented to under this document including where:
- (i) a Cultural Heritage Law or Approval requires an RTIO Entity to procure the consent of the Native Title Applicants before it may impact or destroy Aboriginal Cultural Heritage or procure an Approval to impact or destroy Aboriginal Cultural Heritage; or
 - (ii) a Government Agency as a matter of Policy requires the RTIO Entity to procure the consent of the Native Title Applicants before it may impact or destroy Aboriginal Cultural Heritage.

For example:

The development of a mine will impact two Aboriginal Sites. In applying for an Approval to impact the Aboriginal Sites the Native Title Applicants are not required to provide a letter saying that they consent to the destruction of the Aboriginal Sites, but they do have to say that they agree to the mine proceeding and they cannot oppose the giving of an Approval that will result in the Aboriginal Site being impacted.

8.10 No objections or challenges to RTIO's Pilbara Iron Ore Business

The Native Title Applicants and the LAC must not do things that would be inconsistent with what has been agreed. This clause sets out what those things are. It includes not objecting to certain Approvals and Interests of RTIO or its associated companies and trying to make sure no-one else objects.

- (a) This clause 8.10 does not apply to prevent the Native Title Applicants to the extent they are:
- (i) compelled by a Government Agency to take a type of action specified in a Law of the State or Commonwealth; or
 - (ii) requested by a Government Agency to provide information in relation to a prosecution that has commenced under a Cultural Heritage Law, *Environmental Protection Act 1986* (WA) or the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth);

- (b) The Native Title Applicants and the LAC, except to the extent they are expressly permitted in accordance with this document or clause 28 of the Participation Agreement, agree not to:
 - (i) commence any claim, proceeding or action to object to or challenge:
 - (A) any Agreed Act;
 - (B) the validity of any Agreed Act;
 - (C) any applications or other procedures presently, or in the future, undertaken for the purposes of any Agreed Act;
 - (D) any agreement giving rise to, authorising or providing the mechanism or processes for any Agreed Act; or
 - (E) any Law or Policy giving rise to, authorising or providing the mechanism or processes for any Agreed Act except to object to, question or challenge Law or Policy which is not specific to any part of RTIO's Pilbara Iron Ore Business and which will potentially apply throughout the whole of the State or the Commonwealth;
 - (ii) make any adverse public comment in relation to any of the matters in paragraphs (i)(A) to (i)(D) or make any application referred to in clause 8.10(b)(i)(C);
 - (iii) lodge or attempt to lodge any caveat, restrictive covenant, encumbrance or any other registrable instrument over any Agreed Act;
 - (iv) commence or continue to prosecute any claims or legal actions in relation to the ILUA Area to the extent that any such claims or legal actions are inconsistent with their representations and obligations under this document;
 - (v) make any nomination or application for a declaration or proclamation under any State or Commonwealth legislation, including under a Cultural Heritage Law that could have the effect of limiting, preventing, delaying or inhibiting any Agreed Act;
 - (vi) encourage, or assist others to take any of the steps or actions prohibited under clauses 8.10(b)(i) to 8.10(b)(v); or
 - (vii) exercise Native Title Rights and Interests in relation to the ILUA Area in a way that is inconsistent with this document or RTIO Entities' rights under this document.
- (c) The Native Title Applicants and the LAC, except to the extent they are expressly permitted in accordance with this document or clause 28 of the Participation Agreement, agree not to:
 - (i) commence any claim, proceeding or action to object to or challenge RTIO's Pilbara Iron Ore Business to the extent that such claim, proceeding or action is inconsistent with the Native Title Applicants' representations and obligations under this document or the Participation Agreement;
 - (ii) make any adverse public comment in relation to RTIO's Pilbara Iron Ore Business to the extent that such comments are inconsistent with the Native Title Applicants' representations and obligations under this document or the Participation Agreement;

- (iii) lodge or attempt to lodge any caveat, restrictive covenant, encumbrance or any other registrable instrument over any part of RTIO's Pilbara Iron Ore Business;
 - (iv) commence or continue to prosecute any claims or legal actions in respect of RTIO's Pilbara Iron Ore Business to the extent that any such claims or legal actions are inconsistent with the Native Title Applicants' representations and obligations under this document or the Participation Agreement;
 - (v) make any nomination or application for a declaration or proclamation under any State or Commonwealth legislation, including under a Cultural Heritage Law that could have the effect of limiting, preventing, delaying or inhibiting any part of RTIO's Pilbara Iron Ore Business; and
 - (vi) encourage, or assist others to take any of the steps or actions prohibited under clauses 8.10(c)(i) to 8.10(c)(v).
- (d) To avoid doubt:
- (i) clause 8.10(c) applies equally to those parts of RTIO's Pilbara Iron Ore Business outside of the ILUA Area; and
 - (ii) nothing in clause 8.10(c) prevents the Native Title Applicants from doing any lawful thing in respect of that part of RTIO's Pilbara Iron Ore Business which is outside of the ILUA Area in a capacity other than as:
 - (A) Native Title Applicants; or
 - (B) a person with rights or responsibilities under Aboriginal law and custom in respect of the ILUA Area,provided it does not have a purpose or substantial effect which is inconsistent with the Native Title Applicants' representations and obligations under this document in respect of the ILUA Area.

8.11 Capacity of Native Title Applicants

This clause 8 does not apply to the any of the Native Title Applicants, the LAC or any Related Entity in their capacity solely as:

- (a) the owner of a freehold estate;
- (b) the holder of a lease of land that is used for industrial or commercial purposes; or
- (c) the holder of an Interest in land for the establishment of or use as an Aboriginal residence or residential community.

9. PROCESSES FOR CERTAIN AGREED ACTS

9.1 Notice of application for Agreed Act

This clause sets out a notification process RTIO must follow when it or an associated company seeks:

- a mining tenement, easement or tenure that confers a right of exclusive possession such as an exclusive lease or freehold exclusive possession; or
- an Interest or Approval that will be held by a third party,

and it wants to rely on the consents of the Native Title Applicants in this agreement.

(a) Where:

- (i) an application is made for an Interest or Approval that is an Agreed Act that is:
 - (A) a mining tenement as defined in the *Mining Act 1904* (WA) or the Mining Act;
 - (B) an easement;
 - (C) a tenure that confers a right of exclusive possession;
 - (D) an RTIO Title to be held by an entity that is not an RTIO Entity; or
 - (E) an Interest, the Grant of which necessitates a compulsory acquisition; and
- (ii) an RTIO Entity wishes to rely on the consents of the Native Title Applicants in this document,

the RTIO Entity must give notice to the Native Title Applicants in accordance with clause 9.1(b).

(b) A notice referred to in clause 9.1(a) must be in writing and:

- (i) identify the type of Agreed Act;
- (ii) give a description of the location of the Agreed Act;
- (iii) identify the type, nature and purpose of any infrastructure to be located on the land the subject of the Agreed Act;
- (iv) state that the Native Title Applicants may issue a Dispute Notice in relation to the proposed act's identification as an Agreed Act;
- (v) attach a map showing the land the subject of the Agreed Act; and
- (vi) state that it is given pursuant to, and attach a copy of, this clause 9.1.

9.2 Agreed Act Certificate

This clause contains a process for confirming whether something (like an application for a lease by RTIO) is covered by the agreement. RTIO can decide to issue a certificate to the Native Title Applicants when it thinks that something is covered by the agreement, however, there is no obligation for RTIO to issue a certificate. If the Native Title Applicants do not dispute RTIO's certificate, neither the Native Title Applicants nor the LAC will be able to later say that RTIO is wrong.

RTIO can also use the process in this clause to show the State that everyone agrees that the thing is covered by this agreement.

- (a) If RTIO honestly and reasonably considers that a proposed act is an Agreed Act, RTIO may, but is not obliged to, give the Native Title Applicants an Agreed Act Certificate in relation to the proposed act.

- (b) If RTIO gives an Agreed Act Certificate to the Native Title Applicants, RTIO must:
 - (i) give to the Native Title Applicants a copy of any notice under clause 9.1 which relates to the proposed Agreed Act; and
 - (ii) serve a copy of the Agreed Act Certificate on each of the representatives on the Local Implementation Committee appointed by the PKK People in accordance with the Participation Agreement.
- (c) If the Native Title Applicants do not within ten Business Days of receiving an Agreed Act Certificate respond, either by notifying RTIO that it wishes to be consulted about the proposed Agreed Act, or by agreeing that the proposed Agreed Act described in the Agreed Act Certificate is an Agreed Act, or by giving a Dispute Notice to RTIO, RTIO must within a further two Business Days give a further copy of the Agreed Act Certificate to:
 - (i) the Native Title Applicants;
 - (ii) each of the representatives on the Local Implementation Committee; and
 - (iii) if there are no Native Title Applicants, the Representative Bodies for the area of the proposed Agreed Act at either their street address or postal address listed on the NNTT's website.
- (d) Unless the Native Title Applicants serve a Dispute Notice on RTIO on or before the date specified in the Agreed Act Certificate, being a date not earlier than 30 Business Days after their receipt of the Agreed Act Certificate, all proposed Agreed Acts identified in the Agreed Act Certificate are deemed for all purposes and agreed by the parties to be Agreed Acts.
- (e) Nothing in this document requires RTIO to issue an Agreed Act Certificate in relation to a proposed Agreed Act and the absence of an Agreed Act Certificate does not prevent an act from being an Agreed Act.
- (f) RTIO may:
 - (i) if given a Dispute Notice about an Agreed Act Certificate within the time referred to in clause 9.2(d), within ten Business Days after receiving the Dispute Notice; or
 - (ii) if not given a Dispute Notice about an Agreed Act Certificate or given a Dispute Notice after the time referred to in clause 9.2(d), at any time,withdraw the Agreed Act Certificate, in which case clause 9.2(d) does not apply.
- (g) In relation to a proposed Agreed Act, RTIO may provide to the State and any Government Agency:
 - (i) a copy of a relevant Agreed Act Certificate which has been served on the Native Title Applicants;
 - (ii) evidence of the date when the relevant Agreed Act Certificate was given to the Native Title Applicants;
 - (iii) a copy of this document;
 - (iv) confirmation that the Agreed Act Certificate has not been withdrawn; and

- (v) if applicable, a statement that the Native Title Applicants did not serve a Dispute Notice within the time referred to in clause 9.2(d),

as additional evidence of the consent of the Native Title Applicants to the proposed Agreed Act.

9.3 Process does not affect validity

Even if a RTIO Entity does not do what it is supposed to do in clause 9.1 or 9.2, the PKKP People cannot challenge the validity of a Future Act that has already been done.

For the avoidance of doubt, failure to comply with clause 9.1 or 9.2 does not affect the validity of any Agreed Act, once the Agreed Act has been completed.

9.4 No other procedural rights

Except in a few circumstances such as where the Native Title Applicants own a lease for a business or have their name on the title to land, the Native Title Applicants agree that this agreement replaces the "right to negotiate" process and other rights to object and be consulted about things that have been agreed. This agreement covers all of the processes that will apply. However, the Law might still require certain notices to be given and other papers to be signed and the Native Title Applicants have agreed to sign those papers.

- (a) Subject to clause 9.1 and this clause 9.4 and without derogating from any duties which RTIO Entities have under the Regional Framework Deed, to the maximum extent possible by Law, in relation to Agreed Acts this document discharges any obligation of RTIO Entities in relation to procedural rights conferred on the Native Title Applicants as a consequence of the Native Title Act or any other Law or Policy.
- (b) Where, despite clause 9.4(a), RTIO Entities have an obligation, apart from under this document, to notify the Native Title Applicants of an application for an Agreed Act, that notice may be given separately or as part of a notice contemplated by clause 9.1 or through an Agreed Act Certificate under clause 9.2.
- (c) In respect of any Agreed Act, nothing in this clause 9.4 derogates from any procedural rights conferred on any of the Native Title Applicants as, if applicable:
 - (i) the owner of a freehold estate;
 - (ii) the holder of a lease of land that is used for industrial or commercial purposes; or
 - (iii) the holder of an Interest in land for the establishment of or use as an Aboriginal residence or residential community.

10. REGISTRATION OF THIS DOCUMENT

10.1 Application for Registration

RTIO may sign the paper that goes to the National Native Title Tribunal to have this ILUA Registered under the Native Title Act.

- (a) Subject to clause 10.1(b), this document is intended to be an ILUA under Subdivision C of Division 3 of Part 2 of the Native Title Act and each of the parties agree:
 - (i) to this document being Registered;
 - (ii) that RTIO is authorised to apply for the Registration of this document;
 - (iii) to use their best endeavours to procure and maintain the Registration of this document, including by complying with the relevant requirements of the Native Title Act and the *Native Title (Indigenous Land Use Agreements) Regulations 1999* (Cth).
- (b) If, before this document is Registered, there is an Approved Determination of Native Title in favour of the PKKP People and as a result a Registered Native Title Body Corporate exists in respect of the entire ILUA Area, the parties agree to apply to Register this document (or a further or substituted agreement) as an ILUA under Subdivision B of Division 3 of Part 2 of the Native Title Act.

10.2 Provision of documents and information

Without limiting the effects of clause 10.1(a)(iii), following the execution of this document:

- (a) the Native Title Applicants must within ten Business Days provide RTIO with all documents and information necessary or, in RTIO's opinion, desirable to accompany an application for Registration, including:
 - (i) any document or information prescribed pursuant to section 24CG(2) of the Native Title Act or, if clause 10.1(b) applies section 24BG(2) of the Native Title Act, and which has not already been provided to RTIO; and
 - (ii) if applicable, either:
 - (A) where available, a certification as mentioned in section 24CG(3)(a) of the Native Title Act; or
 - (B) a statement in a form suitable to be attached to the application for Registration and containing information sufficient to satisfy the requirements of section 24CG(3)(b) of the Native Title Act; and
- (b) RTIO will within ten Business Days of receiving the documents and information referred to in clause 10.2(a):
 - (i) prepare an application for the Registration of this document; and
 - (ii) lodge this document and the completed application for Registration with the NNTT.

10.3 No objections allowed

The Native Title Applicants must:

- (a) ensure that:
 - (i) neither they nor any member of the PKKP People:
 - (A) advise the Registrar that any of them do not wish this document to be Registered; or

- (B) do any act or make any omission that could prevent or hinder the Registration of this document; and
- (ii) any objection made by a member of the PKKP People to the Registration of this document is withdrawn before the end of any relevant objection period specified in the Native Title Act;
- (b) use their best endeavours to ensure that:
 - (i) no other person advises the Registrar that the person does not wish this document to be Registered; and
 - (ii) any such objection to the Registration of this document is withdrawn before the end of any relevant objection period specified in the Native Title Act.

11. NATIVE TITLE ACT STATEMENTS

This clause contains statements that are required by the Native Title Act, including:

- the Native Title Applicants promise that they have told the representative body for the ILUA Area, Yamatji Marlpa Aboriginal Corporation, that they intend to sign this agreement;
- the ILUA applies to the area described in Schedule 1, a map of which is in Schedule 2;
- the right to negotiate won't apply to the things that are agreed to under the ILUA;
- Native Title won't be Extinguished by things done under the ILUA; and
- there won't be any compensation for things done under the ILUA except the benefits provided for under the Participation Agreement.

11.1 Native Title Representative Bodies Notified

The Native Title Applicants warrant that they have informed all Representative Bodies for the ILUA Area of their intention to enter into this document in accordance with section 24CD(7) of the Native Title Act.

11.2 Area Indigenous Land Use Agreement – Native Title Act section 24CA

This document is an Indigenous Land Use Agreement (Area Agreement) within the meaning of Subdivision C of Division 3 of Part 2 of the Native Title Act in relation to the ILUA Area.

11.3 Area - Native Title Act section 24CB

This document applies to the ILUA Area.

11.4 Consent to Future Acts – Native Title Act section 24CB

For the purposes of section 24EB(1) of the Native Title Act, the parties consent to all Agreed Acts to the extent they involve Future Acts without conditions but in accordance with this document.

11.5 The Non-extinguishment Principle applies - Native Title Act section 24EB(3)

The Non-extinguishment Principle applies to all Agreed Acts.

11.6 Right to negotiate does not apply – Native Title Act section 24EB(1)(c)

The process set out in Subdivision P of Division 3 of Part 2 of the Native Title Act, known as the "right to negotiate" process, is not intended to apply to any Agreed Act.

11.7 Restriction on Native Title compensation – Native Title Act section 24EB(5)

Subject to clause 12, the Native Title Applicants are not entitled to compensation in respect of:

- (a) any Agreed Acts that are Future Acts to the extent that they are in the ILUA Area; and
- (b) any Agreed Acts that are Past Acts or Intermediate Period Acts.

12. SATISFACTION OF COMPENSATION ENTITLEMENTS

Under this clause, the Native Title Applicants agree that the money to be paid under the Participation Agreement is final compensation to them for everything that RTIO and its associated companies have done in the past and are allowed to do under this agreement into the future. That includes for mining and for the construction of mines and infrastructure anywhere within the boundaries of the PKKP People's Native Title Claim.

The Native Title Applicants also agree to accept the amounts as final compensation for everything that RTIO has done in the past in the ILUA Area. The Native Title Applicants promise not to ask for any more compensation from RTIO and its associated companies or from the State for any of those things.

12.1 Satisfaction and release

The Native Title Applicants:

- (a) acknowledge and agree that the payments made under the Participation Agreement:
 - (i) are in full and final satisfaction of any Compensation Entitlements of:
 - (A) the Native Title Applicants; and
 - (B) the LAC; and
 - (ii) constitute benefits to which all members of the PKKP People are entitled in accordance with Part 3 of the Participation Agreement;
- (b) release every RTIO Entity, Payer and the State from, and acknowledge that this document may be pleaded as an absolute bar against, all claims for Compensation Entitlements by the Native Title Applicants and each member of the PKKP People; and
- (c) unless permitted by this document or otherwise agreed between the parties, agree not to, and agree to procure a Registered Native Title Body Corporate not to, charge RTIO Entities or the State under section 60AB of the Native Title Act for any

of the matters permitted by that section that are done or authorised under this document.

12.2 Capacity of Native Title Applicants

The Native Title Applicants may seek more compensation payments under the Law where they have specific kinds of leases, freehold and mining tenements that are badly affected.

Clause 12.1 applies to each of the Native Title Applicants in their capacity as Native Title Holders or otherwise, except in their capacity, if applicable, as:

- (a) the owner of a freehold estate;
- (b) the holder of a mining tenement for the purposes of section 132 of the Mining Act;
- (c) the holder of a lease of land that is used for industrial or commercial purposes; or
- (d) the holder of an Interest in land for the establishment of or use as an Aboriginal residence or residential community,

and only to the extent their Interest in those things is impaired or adversely affected.

13. TERM OF THIS DOCUMENT

This clause states that this document will end if the Participation Agreement ends.

13.1 Commencement and termination

This document commences on the Commencement Date and, subject to clauses 13.2 and 18.3(c), terminates on the termination of the Participation Agreement in accordance with its provisions.

13.2 Continuation of rights after termination

The rights and obligations of the parties under clauses 8 and 12 which have accrued at the date of termination of this document pursuant to clause 13.1 will continue beyond such date of termination until the particular obligation is fulfilled and the provisions of this document dealing with procedural matters, including clause 18, will continue to apply until the fulfilment of such obligations.

13.3 No termination for breach

Unless a breach of this document is a breach of the Participation Agreement which results in the termination of the Participation Agreement, no breach of this document by any party will give any other party a right to elect to terminate this document but that party may exercise any right or remedy otherwise available to it in respect of such a breach.

13.4 Removal from the Register

If this agreement comes to an end, it will also get taken off the register of ILUAs that is kept at the National Native Title Tribunal. This makes sure everyone knows the agreement has come to an end and is a technical requirement.

- (a) The parties must within five Business Days after the termination of this document under clause 13.1 give written notice of its termination to the Registrar and seek its removal from the Register.
- (b) Despite section 24EA(1) of the Native Title Act but subject always to clause 13.2, the parties are not required to comply with this document between its termination under clause 13.1 and its removal from the Register.

14. ADDITIONAL INDIGENOUS LAND USE AGREEMENTS

- (a) The PKKP People agree to enter and Register Additional ILUAs in accordance with this clause 14 and clauses 31.4 to 31.9 of the Participation Agreement.
- (b) Where there is an Approved Determination of Native Title that Native Title exists to some or all of the Agreement Area or ILUA Area and is held by some or all of the PKKP People, the PKKP People agree to enter into an Additional ILUA (Body Corporate Agreement) under Subdivision B of Division 3 of Part 2 of the Native Title Act:
 - (i) in relation to some or all of the Agreement Area or the ILUA Area the subject of the Approved Determination of Native Title (as RTIO requests); and
 - (ii) substantially in the form of this document including any amendments reasonably requested by RTIO to give effect to the Participation Agreement.
- (c) If RTIO requests, the PKKP People agree to enter into an Additional ILUA with RTIO Entities and the State that provides for:
 - (i) the validation of RTIO Existing Titles that are Future Acts and Intermediate Period Acts under section 24EBA of the Native Title Act;
 - (ii) their consent to the surrender of Native Title to the State in accordance with clause 11.11 of the Participation Agreement; and
 - (iii) any other provisions reasonably requested by RTIO to give effect to the Participation Agreement,in relation to some or all of the Agreement Area or the ILUA Area (as RTIO requests).
- (d) The Additional ILUA required under clause 14(b) may be the same ILUA as the Additional ILUA required under clause 14(c).

15. **SUSPENSION OF OBLIGATIONS**

If for a while a party doesn't have to keep a promise under the Participation Agreement, eg, because of an event which is not in its control, and the party has made similar promises under this agreement, then it doesn't have to keep its promise under this agreement either.

(a) Where:

- (i) clause 35.4(c) of the Participation Agreement applies; and
- (ii) no notice has been given by the PKKP People under clause 35.5 of the Participation Agreement,

the Native Title Applicants may suspend their obligations under clause 8 (excluding clause 8.10) in relation to the same Approvals and Interests that are affected by the suspension under clause 35.4(b) of the Participation Agreement.

- (b) The suspension under clause 15(a) will take effect on and from the day that the Native Title Applicants provide notice of their suspension of obligations to RTIO, in accordance with clauses 35.4(b) and 35.4(c) of the Participation Agreement.

(c) If:

- (i) the Native Title Applicants provide notice to RTIO under clause 15(b); and
- (ii) the Native Title Applicants provide notice to RTIO that the PKKP People's suspension has ceased under clause 35.5(b) of the Participation Agreement,

then:

- (iii) the Native Title Applicants' suspension under clause 15(a) also ceases on and from the date of the notice.

16. **ASSIGNMENT**

This clause says that another company might wholly or partly take the place of RTIO or any of its associated companies in this agreement if RTIO or an associated company sells its Interests or rights in the iron ore business to another company. However, another company can only take the place of RTIO or an associated company if it agrees to do everything that RTIO or the associated company must do under this agreement.

16.1 **Assignment of rights under this document**

Before a party can Assign its rights and obligations under this agreement it must get the written consent of the other parties.

Except as contemplated by clause 16.2, the obligations and liabilities imposed and the rights and benefits conferred on the parties under this document may not be Assigned by any person without the prior written consent of the other parties.

16.2 Assignments by RTIO Entities

- (a) Subject to the requirements in this clause 16.2, an RTIO Entity may Assign:
 - (i) all or part of any of its Interests or Approvals; and
 - (ii) its rights under this document,without restriction.
- (b) An RTIO Company may Assign any or all of its rights under this document to another RTIO Company provided that it notifies the Native Title Applicants upon such an Assignment. If the Assignee RTIO Company executes a deed of assumption substantially in the form of Schedule 3 by which it assumes all of the assignor RTIO Company's liabilities and obligations (present or future, actual or contingent) under or in relation to this document to the extent that they relate to the rights Assigned, the Assigning RTIO Company is wholly and unconditionally released from those liabilities and obligations (present or future, actual or contingent).
- (c) If an RTIO Company:
 - (i) to which any rights have been Assigned in accordance with clause 16.2(b) above has not executed a deed of assumption substantially in the form of Schedule 3; or
 - (ii) which:
 - (A) is not a party to this document;
 - (B) has not signed a Support Deed; and
 - (C) holds a Commercial Mining Right that forms part of RTIO's Pilbara Iron Ore Business to which this document applies,ceases to be an RTIO Company, then RTIO must:
 - (iii) notify the Native Title Applicants when the entity ceases to be an RTIO Company; and
 - (iv) procure that the entity executes and provides to the Native Title Applicants a deed of assumption substantially in the form of Schedule 3 by which it assumes all of the liabilities and obligations (present or future, actual or contingent) under or in relation to this document to the extent that they relate to the:
 - (A) rights Assigned; or
 - (B) relevant Commercial Mining Right held by the entity,as the case may be upon which RTIO is wholly and unconditionally released from those liabilities and obligations (present or future, actual or contingent).
- (d) Unless clause 16.2(c) applies, if an RTIO Entity Assigns any or all of its rights under this document other than in accordance with clause 16.2(b) above, then it must:
 - (i) notify the Native Title Applicants upon such an Assignment; and

- (ii) procure that the Assignee executes and provides to the Native Title Applicants a deed of assumption substantially in the form of Schedule 3 by which it assumes all of the Assignor RTIO Entity's liabilities and obligations (present or future, actual or contingent) under or in relation to this document to the extent that they relate to the rights Assigned,

upon which the Assigning RTIO Entity is wholly and unconditionally released from those liabilities and obligations (present or future, actual or contingent) to the extent they relate to the rights Assigned.

- (e) If an RTIO Entity Assigns rights or Interests in a Commercial Mining Right that forms part of RTIO's Pilbara Iron Ore Business to which this document applies ("**Assigned Commercial Mining Right**"), to any person that is not an RTIO Entity,

- (i) then:

- (A) if the Assigning RTIO Entity is a party to this document or has assumed (in a manner contemplated by this document) the liabilities and obligations of RTIO to the extent that they relate to the Assigned Commercial Mining Right, the Assigning RTIO Entity; or
- (B) if the Assigning RTIO Entity is not a party to this document and has not assumed (in a manner contemplated by this document) the liabilities and obligations of RTIO to the extent that they relate to the Assigned Commercial Mining Right, RTIO,

must procure that the Assignee executes and provides to the Native Title Applicants a deed of assumption (in a form in the RTIO Entity's discretion, acting reasonably), by which the Assignee assumes all of the RTIO Entity's liabilities and obligations (present or future, actual or contingent) under or in relation to this document to the extent that they relate to the Assigned Commercial Mining Right and any Interests and Approvals in connection with its development; and

- (ii) upon the Assignee assuming the liabilities and obligations of or attributable to (as the case may be) the RTIO Entity under this document in accordance with clause 16.2(e)(i), RTIO and the Assigning RTIO Entity are wholly and unconditionally released from those liabilities and obligations (present or future, actual or contingent).

- (f) If an RTIO Entity Assigns an Assigned Commercial Mining Right and RTIO or the RTIO Entity requests before or after the execution of a deed of assumption by the Assignee pursuant to clause 16.2(e)(i), the Native Title Applicants and the LAC must execute a novation agreement with the RTIO Entity (and, if RTIO requests, RTIO) and the Assignee (in a form in the RTIO Entity's discretion, acting reasonably) ("**Novation Agreement**"), by which:

- (i) the parties wholly or partly novate the rights and obligations under this document to the extent that they relate to the Assigned Commercial Mining Right so that:
 - (A) there is in effect a new agreement between the Assignee, the Native Title Applicants and the LAC in relation to the Assigned Commercial Mining Right on substantially the same terms and conditions as this document to the extent that those terms relate to any Interests and Approvals in connection with its development;

- (B) the Assignee has all the rights and obligations of the RTIO Entity (and, if RTIO requests, RTIO) under this document to the extent that they relate to the Assigned Commercial Mining Right and any Interests and Approvals in connection with its development, excluding rights and obligations that arise before the date of execution of the Novation Agreement by all the parties ("**Execution Date**"); and
 - (C) the Assignee and the Native Title Applicants are bound by and must comply with the rights and obligations under this document to the extent that they relate to the Assigned Commercial Mining Right and any Interests and Approvals in connection with its development;
 - (ii) with effect from the Execution Date, the Native Title Applicants, RTIO and the RTIO Entity:
 - (A) have no further rights against each other under this document to the extent that they relate to the Assigned Commercial Mining Right and any Interests and Approvals in connection with its development; and
 - (B) release each other from all obligations and liabilities (present or future, actual or contingent) under or in relation to this document to the extent that they relate to the Assigned Commercial Mining Right and any Interests and Approvals in connection with its development, including obligations and liabilities (present or future, actual or contingent) that arise before the Execution Date;
 - (iii) if RTIO or the RTIO Entity has procured the Assignee to execute a deed of assumption pursuant to clause 16.2(e)(i), with effect from the Execution Date the deed of assumption is replaced by the Novation Agreement and has no further effect;
 - (iv) this document separately continues in full force and effect as it applies to RTIO's Pilbara Iron Ore Business, but is discharged to the extent that it is novated in the Novation Agreement; and
 - (v) for the avoidance of doubt, RTIO and each RTIO Entity reserves all its rights (present or future, actual or contingent) under this document to the extent that they do not relate to the Assigned Commercial Mining Right.
- (g) The Native Title Applicants must, if and when requested by an RTIO Entity, do all things and execute all documents reasonably necessary to give effect to any Assignment, novation or transfer contemplated by this clause. RTIO will pay the reasonable costs of the Native Title Applicants and the LAC complying with this clause 16.2(g).
- (h) If an RTIO Entity Assigns any rights or Interests other than in accordance with clause 16.2(b), RTIO must:
 - (i) offer to the Native Title Applicants to arrange a meeting between the Assignee and the Native Title Applicants (or their representatives) in order to for the Assignee and the Native Title Applicants (or their representatives) to meet; and
 - (ii) if the Native Title Applicants so request, use its best endeavours to arrange such a meeting.
- (i) Non or partial compliance with clause 16.2(h) does not affect any Assignment or novation done otherwise in accordance with this clause 16.2.

16.3 Assignment by Native Title Applicants

- (a) If an Approved Determination of Native Title that Native Title exists is made in relation to any part or all of the ILUA Area, and:
 - (i) that Native Title is held by the Native Title Applicants; or
 - (ii) that Native Title is held by the Native Title Applicants together with persons who are not members of the Native Title Applicants (whether shared or otherwise),

("Native Title Area") then the Native Title Applicants must:

 - (iii) jointly (but not severally) Assign the whole of their rights (but not part) under this document to the Registered Native Title Body Corporate in respect of the Native Title Area; and
 - (iv) procure that the Assignee executes a deed of covenant, by which, from the date of Assignment, the Assignee covenants to observe, perform, comply with and be bound by the provisions of this document as if expressly named in this document as the Native Title Applicants.
- (b) A purported Assignment pursuant to clause 16.3(a)(iii) will be of no effect unless the Assignee has executed a deed of covenant for the purposes of clause 16.3(a)(iv).
- (c) Upon the Assignee executing a deed of covenant for the purposes of clause 16.3(a)(iv), the Registered Native Title Body Corporate will be entitled to exercise all the rights, and will be obliged to observe, comply with, be bound by and perform all the obligations of the Native Title Applicants under this document on behalf of the Native Title Applicants.
- (d) Nothing in this clause 16.3 has the effect of releasing the Native Title Applicants from continuing to perform and observe their obligations under this document.
- (e) The RTIO Entities must, if and when requested by the Native Title Applicants, do all things and execute all documents reasonably necessary to give effect to any Assignment or transfer.
- (f) The Native Title Applicants must provide RTIO with a copy of the deed of covenant executed in accordance with this clause within ten Business Days of its execution.

17. **DISPUTE RESOLUTION**

This clause explains what will happen if under this agreement there is a disagreement which doesn't involve any matter in the Participation Agreement.

Basically, the same process in the Participation Agreement will apply, that is, RTIO and the Native Title Applicants must get together to discuss the problem and try to solve it. If the representatives who meet to try to sort out the problem don't succeed, senior people will meet and try to resolve it.

Even if there is a disagreement, all of the parties must still keep their promises under this agreement.

17.1 **Dispute**

In the event of a disagreement under this agreement, the procedure set out in this clause must be followed.

- (a) Subject to clause 17.1(b), the dispute resolution process set out in clauses 41.1 to 41.4 of the Participation Agreement applies to any dispute or difference between the parties arising under or in connection with this document, including any dispute or difference as to the formation, validity, existence or termination of this document ("**Dispute**") as if they were repeated in this document.
- (b) If a Dispute also involves a dispute or difference between parties arising under or in connection with the Participation Agreement, then the Dispute must be dealt with as part of the dispute or difference under the Participation Agreement and there will be no separate dispute resolution process under this document.

17.2 **Continuance of performance**

Even though there is a disagreement in relation to this agreement, the parties must continue to carry out their obligations under it.

Despite the existence of a Dispute, unless otherwise specified, the parties must continue to perform their respective obligations under this document and any related agreements.

17.3 **Summary or urgent relief**

Despite following the procedure to resolve a dispute under this clause, RTIO or the PKKP People can still go to a court to make sure they get a payment they are owed under this agreement, or to get an order made about something urgent arising from the Dispute.

Nothing in this clause 17 prevents RTIO or the Native Title Applicants from instituting court proceedings to seek:

- (a) enforcement of any payment due under this document; or
- (b) urgent injunctive, interlocutory or declaratory relief in respect of a Dispute,

at the same time as participating in the processes under this clause 17.

18. **GENERAL PROVISIONS**

18.1 **Amendment**

Any changes to this agreement must be agreed between the parties and in writing.

Unless otherwise provided for in this document, this document can only be amended, supplemented, replaced or novated by another document signed by Hamersley, the other RTIO Entities and the Native Title Applicants.

18.2 **Notices**

This clause describes how parties are to give notices to each other.

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or fax. If it is sent by mail, it is taken to have been received three Business Days after it is posted. If it is sent by fax, it is taken to have been received at the date and time the sender's fax confirmation indicates unless the addressee can demonstrate that the fax was not received in full and in legible form.
- (b) The address and fax number of a person, other than an Election Venturer, are those set out below, or as the person notifies the sender:

Hamersley

Address: Pilbara Iron, GPO Box A42, Perth WA 6837
Fax number: (08) 9327 2459
Attention: General Manager, External Relations and Community Affairs

and

Address: PO Box 21, Dampier WA 6713
Fax number: (08) 9143 5190
Attention: Manager, Community Affairs

Robe River Iron Associates or the Robe Manager

Address: Pilbara Iron GPO Box A42, Perth WA 6837
Fax number: (08) 9327 2459
Attention: General Manager, External Relations and Community Affairs

and

Address: PO Box 21, Dampier WA 6713
Fax number: (08) 9143 5190
Attention: Manager, Community Affairs

The Native Title Applicants

Address: c/- Yamatji Marlpa Aboriginal Corporation
Level 2, 16 St Georges Terrace, Perth WA 6000
Fax number: (08) 9225 4633
Attention: Principal Legal Officer

The PKKP Aboriginal Corporation

Address: c/- Yamatji Marlpa Aboriginal Corporation
Level 2, 16 St Georges Terrace, Perth WA 6000
Fax number: (08) 9225 4633
Attention: Donna Meyer

The address and fax number of an Election Venturer or an Election Venture Manager are those of the Election Venture Manager as set out in the relevant Election Notice, or as the Election Venture Manager notifies the sender.

18.3 Confidentiality

This document is not confidential so it can be shown to others. However, there are some parts of the Participation Agreement that are secret and can't be shown to others.

- (a) Subject to clause 18.3(b), a party may disclose the contents of this document to any person without the consent of any other party.
- (b) For the avoidance of doubt, the parties' rights in clause 18.3(a) do not extend to the contents of the Participation Agreement or any other agreement between the parties.
- (c) The confidentiality provisions in this document survive the termination of this document.

18.4 Governing Law

This clause is a technical provision that says that the Laws of the State apply to this agreement.

This document is governed by the Law in force in the State.

18.5 Liability for expenses

This clause says that each party must pay their own expenses relating to this agreement.

- (a) Subject to clause 18.5(b), RTIO and the Native Title Applicants must pay their own expenses incurred in negotiating and executing this document.
- (b) RTIO must pay any duty that is payable on this document and on any documents produced pursuant to obligations in this document.

18.6 Giving effect to this document

If any of the parties have to do other things to make the agreement work (like writing letters), then they will.

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that a party may reasonably require to give full effect to this document.

18.7 Timeliness

This clause emphasises the need for the parties to not delay in doing the things that are contemplated by this agreement.

The Native Title Applicants must ensure the timely compliance with this document in order to ensure that the Agreed Acts are not delayed or otherwise inhibited.

18.8 Waiver of rights

This clause says that even if a party doesn't object to something wrong done by another party, on one occasion, it can still object to the wrongdoing if it is done again.

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

18.9 Operation of this document

This clause says that, except where it is clear that other agreements apply, this agreement is the entire agreement between RTIO and the Native Title Applicants.

- (a) Except for the Participation Agreement and except where otherwise contemplated in this document, this document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document

enforceable, unless this would materially change the intended effect of this document.

- (d) Where this document contemplates that RTIO may agree or consent to something (however it is described), RTIO may:
 - (i) agree or consent, or not agree or consent, in its absolute discretion; and
 - (ii) agree or consent, subject to conditions,unless this document expressly contemplates otherwise.

18.10 GST

This clause says that goods and services tax (GST) might be payable under or in connection with this agreement in accordance with this clause. No amounts in this document include GST.

- (a) Unless the context otherwise requires, words defined in the GST Law have the same meaning in this clause 18.10.
- (b) If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.
- (c) The parties and all persons and corporations on whose behalf they have entered into this document acknowledge that GST may be payable on a taxable supply under or in connection with this document or any agreement entered into pursuant to this document.
- (d) All amounts in this document are expressed as exclusive of GST, unless specified otherwise.
- (e) The GST exclusive consideration is, so far as the consideration for the supply is not expressed as an amount of money, the GST exclusive market value of that consideration.
- (f) Subject to clause 18.10(k), if GST is payable upon any supply under or in connection with this document or any agreement entered into pursuant to this document, to the extent that the consideration otherwise provided for that supply is not stated to include an amount in respect of GST on the supply:
 - (i) the consideration otherwise provided for that supply under this document is increased by the amount of that GST; and
 - (ii) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within five Business Days of receiving a written demand from the supplier.
- (g) Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this document must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit

and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

- (h) The parties each indemnify the other against all GST, and losses, liabilities and expenses (including legal liabilities on a full indemnity basis) that the other incurs (directly or indirectly) as a result of a breach of a warranty or other provision in this document relating to GST.
- (i) Subject to clause 18.10(k), if it is determined on reasonable grounds that the amount of GST collected from the recipient under this clause differs, for any reason, from the amount of GST paid or payable by the supplier, including by reason of:
 - (i) any amendment to the GST Law;
 - (ii) the issue of a ruling or advice by the Commissioner of Taxation;
 - (iii) a refund to that supplier in respect of a taxable supply made under this document; or
 - (iv) an adjustment event in relation to the supply,the recipient must pay to the supplier any amount underpaid, and the supplier must refund to the recipient any amount overpaid.
- (j) For the purposes of clause 18.10(i), the parties to the transaction shall exchange such information as is reasonably necessary for each to make a reasonable assessment of the amount underpaid or overpaid.
- (k) Despite any other provision of this document, a recipient of a taxable supply need not make a payment under this clause until the supplier has given such recipient:
 - (i) a tax invoice (or adjustment note) for that payment stating the amount of GST paid or payable by the supplier in respect of the supply to which the tax invoice (or adjustment note) relates; and
 - (ii) reasonable written evidence that the supply is a taxable supply and that the supplier is registered for GST.

18.11 Other taxes

Each party must pay their own taxes.

Subject to clause 18.10 the Native Title Applicants acknowledge that the Native Title Applicants must meet all liability for tax on any monies provided under this document to them.

18.12 Advice received

Under this clause, the Native Title Applicants and the LAC promise that they have been independently advised about this agreement.

The Native Title Applicants and the LAC warrant that they have received independent legal, commercial, taxation and economic advice in relation to this document and its

operation; and have carried out their own enquiries in relation to the subject matter of this document.

18.13 No interest in RTIO's Pilbara Iron Ore Business or infrastructure

This clause makes it clear that this agreement does not operate to give the Native Title Applicants any rights or Interests in RTIO's Pilbara Iron Ore Business.

Nothing in this document or anything contemplated by or done to give effect to this document is intended to or will create in favour of any of the Native Title Applicants any legal or equitable Interest in any aspect of RTIO's Pilbara Iron Ore Business or the Agreed Purposes.

18.14 Denial of partnership and fiduciary relationship

This clause makes it clear that by entering this agreement, no trust or agency relationship is created.

Nothing in this document will be construed as creating the relationship of partnership, principal and agent, trust or any fiduciary relationship between the parties.

18.15 Inconsistency with other documents

The parties want this agreement to override other agreements between them.

Subject to clause 3, if this document is inconsistent with any other document or agreement between the parties, this document prevails to the extent of the inconsistency.

18.16 Counterparts

The parties can sign different copies of this agreement and together they will make one full copy.

This document may be executed in counterparts.

18.17 Attorneys

This document can be signed under a power of attorney and when this occurs, the person signing under the power of attorney promises that the power of attorney allows them to do so.

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

SCHEDULE 1

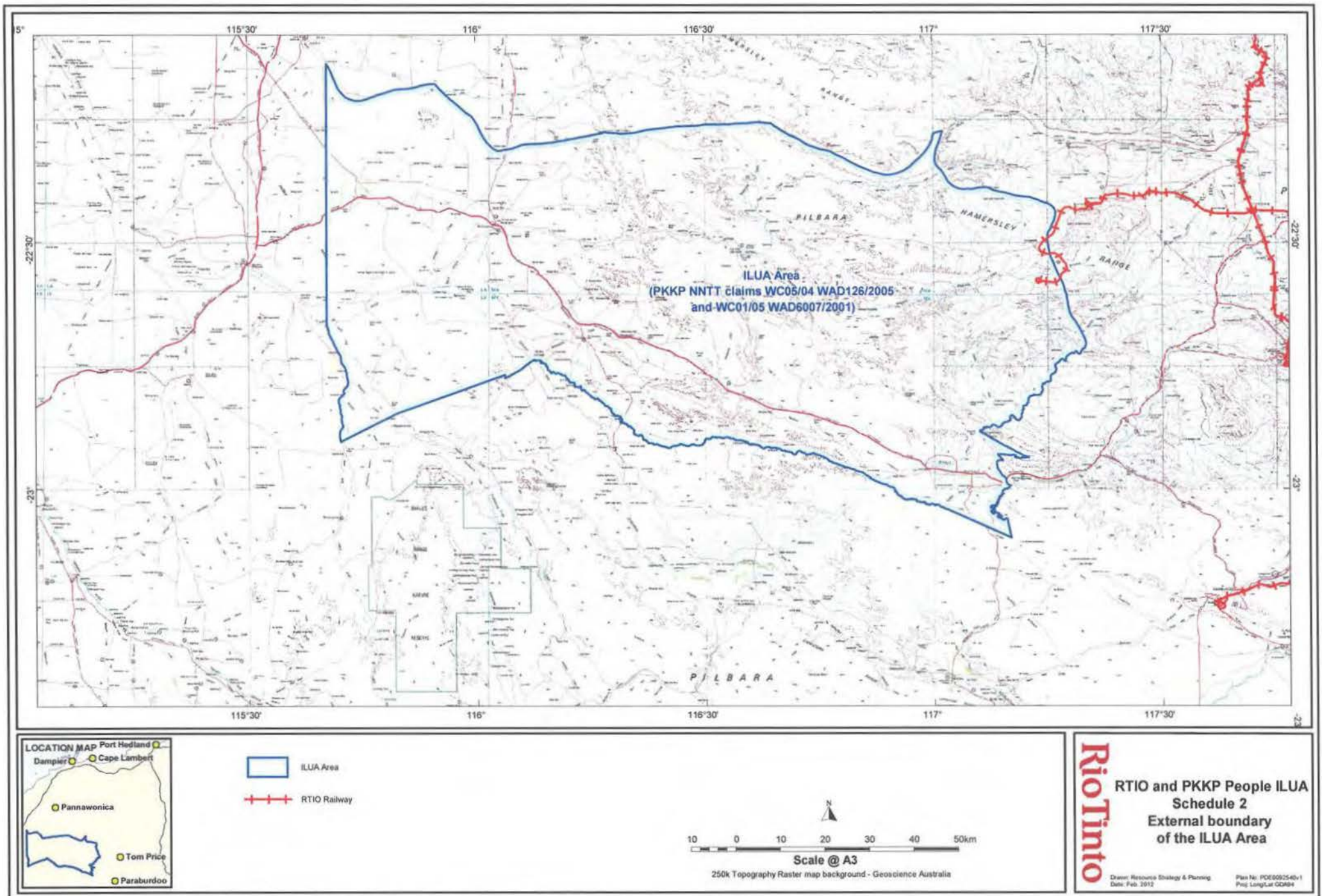
Description of ILUA Area

The ILUA Area:

- (a) means the land and waters within the external boundaries of the Claimant Applications lodged in the Federal Court and allocated numbers WAD126/2005 (NNTT number WC05/04) and WAD6007/2001 (NNTT number WC01/05) accepted for registration on 15 August 2006 and 29 November 2011 respectively as shown on the map in Schedule 2; but
- (b) excludes any land and waters within the external boundaries that are not the subject of the Claimant Applications.

SCHEDULE 2

Map of ILUA Area



SCHEDULE 3

Deed of Assumption



Deed of Assumption and Release

[Assignor Company]
[ABN/ACN/ARBN]

and

[Assignee Company]
[ABN/ACN/ARBN]

THIS DEED is made on

BETWEEN:

- (1) [Name] [ABN/ACN/ARBN...] (the "Assignor"); and
- (2) [Name] [ABN/ACN/ARBN...] (the "Assignee").

RECITALS

- (A) The Assignor and the PKKP People are parties to the ILUA.
- (B) By this Deed, the Assignee assumes the liabilities and obligations under or in relation to the ILUA to the extent that they related to the Assigned Rights and Interests and the Assignee releases the Assignor from its liabilities and obligations in respect of those Assigned Rights and Interests.
- (C) This Deed does not Assign the Assigned Rights and Interests to the Assignee. The terms of that Assignment are set out in a separate document.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this Deed.

"Assign" means sell, assign, transfer, convey, or otherwise dispose of.

"Assigned Rights and Interests" means those rights and interests listed in Schedule 1.

"Deed" means this deed, including the recitals, as amended from time to time.

"Effective Date" means the date when the Assignor provides a copy of this Deed to the Native Title Applicants.

"Government Agency" means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

"ILUA" means the agreement entitled "RTIO and Puutu Kunti Kurrama and Pinikura People Indigenous Land Use Agreement (Area Agreement)" dated **[insert date]** between the following parties (as defined under that agreement):

- (a) Hamersley Iron Pty Limited ACN 004 558 276;
- (b) Robe River Mining Co Pty Ltd ACN 008 694 246 on its own behalf as a Venturer and as Manager for and on behalf of the Robe River Iron Associates;
- (c) **[insert any other parties];**

- (d) Angelina Cox, Angie Cox, Annabelle Stewart, Arness James, Charleston Cox, Daryl Hughes, Gary Hughes, Harold Ashburton, Maudie Dowton, Mitchell Drage and Maurice Daublin on their own behalf and on behalf of the PKKP People; and
- (e) The PKKP Aboriginal Corporation ICN 7630 as the LAC for the PKKP People.

"Native Title Act" means the *Native Title Act 1993* (Cth).

"Native Title Applicants" means the living Registered Native Title Claimants in the Native Title Claim from time to time, and who, at the date of this Deed, are **[insert]**.

"PKKP People" means the PKKP People as defined in the ILUA.

"Tax" means a tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge, other than one that is imposed on net income in any jurisdiction.

1.2 Rules for interpreting this Deed

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Deed, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (ii) a party to this Deed or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **"agreement"** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) Words defined in the Native Title Act, capitalised in this document and not otherwise defined in this document have the same meaning as in the Native Title Act.

2. **CONSIDERATION**

The Assignor acknowledges that it has received valuable consideration for entering into this Deed.

3. **ASSIGNMENT AND ASSUMPTION**

3.1 **Assignment**

On and from the Effective Date, the Assignor Assigns to the Assignee all of its rights and interests under or in relation to the ILUA to the extent that they relate to the Assigned Rights and Interests on the terms set out in this Deed. The Assignee accepts the Assignment.

3.2 **Assumption**

With effect on and from the Effective Date, the Assignee assumes all of the Assignor's liabilities and obligations (present or future, actual or contingent) under or in relation to the ILUA to the extent that they relate to the Assigned Rights and Interests.

3.3 **Indemnity**

- (a) The Assignee indemnifies the Assignor against, and must pay the Assignor on demand the amount of, all losses, costs, liabilities, expenses and Taxes incurred in connection with the Assignee failing to comply with the liabilities and obligations referred to in clause 3.2.
- (b) The Assignor indemnifies the Assignee and must pay the Assignee on demand the amount of, all losses, costs, liabilities, expenses and Taxes incurred in connection with the Assignor failing to comply with the liabilities and obligations under the ILUA arising before the Effective Date.

3.4 **Consent of Native Title Applicants**

The Assignor and the Assignee acknowledge that the ILUA does not require the Native Title Applicants to provide their consent to the assignment and assumption of the Assigned Rights and Interests by the Assignor to the Assignee.

4. **MEETING**

[Drafting note: insert this clause 4 if clause 16.2(h) of the ILUA applies]

- (a) The Assignor must use its best endeavours to meet with the Native Title Applicants (or their representatives) to discuss the effect of the Assignment on the Native Title Applicants.
- (b) Non or partial compliance with clause 4(a) does not affect any Assignment to the Assignee.

5. **REPRESENTATIONS AND WARRANTIES**

5.1 **Representations and warranties**

The Assignor and Assignee each represent and warrant that:

- (a) all necessary authorisations have been obtained to enable it to enter into this Deed; and
- (b) this Deed is valid, binding and enforceable in accordance with its terms.

6. **AMENDMENT**

This Deed can only be amended, supplemented, replaced or novated by another deed signed by the parties.

7. **GENERAL**

7.1 **Governing law**

This Deed is governed by the law in force in Western Australia and each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia for any proceedings in connection with this Deed.

7.2 **Liability for expenses**

- (a) The Assignor and Assignee must each pay its own expenses incurred in negotiating and executing this Deed.
- (b) The Assignee must indemnify each other party against, and must pay each other party on demand the amount of, any Taxes that are payable on or in relation to this Deed and the transactions that this Deed contemplates.

7.3 **Giving effect to this Deed**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to this Deed.

7.4 **Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

7.5 **Operation of this Deed**

- (a) This Deed contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Deed and has no further effect.
- (b) Any right that a person may have under this Deed is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Deed which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Deed enforceable, unless this would materially change the intended effect of this Deed.

7.6 Operation of indemnities

- (a) Each indemnity in this Deed survives the expiry or termination of this Deed.
- (b) A party may recover a payment under an indemnity in this Deed before it makes the payment in respect of which the indemnity is given.

7.7 Inconsistency with other documents

If this Deed is inconsistent with any other document or agreement between the parties, this Deed prevails to the extent of the inconsistency.

7.8 Counterparts

This Deed may be executed in counterparts.

7.9 Attorneys

Each person who executes this Deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

SCHEDULE 1

Assigned Rights and Interests

A reference to the Assigned Rights and Interests means a reference to the following rights and interests under the ILUA:

[insert]

EXECUTED as a deed.

EXECUTED by [*insert*]

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by [*insert*]

Signature of director

Signature of director/secretary

Name

Name

EXECUTED as a deed.

EXECUTED by **HAMERSLEY IRON PTY LIMITED** ACN 004 558 276 pursuant to section 127(1) of the Corporations Act

Signature of director

Gregory Lilleyman

Name

Signature of director/secretary

Helen Fernihough

Name

EXECUTED by **ROBE RIVER MINING CO PTY LTD** ACN 008 694 246 pursuant to section 127(1) of the Corporations Act

Signature of director

Gregory Lilleyman

Name

Signature of director/secretary

Helen Fernihough

Name

SIGNED by **THE PKKP ABORIGINAL CORPORATION** ICN 7630 in accordance with section 99-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)

Signature of director

MITCHELL DRAGIE

Name

Signature of director/secretary

DONNA MEYER

Name

SIGNED, SEALED and DELIVERED by
ANGELINA COX in the presence of:

Signature of ANGELINA COX

27-7-2012

Date

Signature of witness

JERRI MAHER ELO

Name

SIGNED, SEALED and DELIVERED by
ANGIE COX in the presence of:

Signature of ANGIE COX

27/7/12

Date

Signature of witness

Catherine McLeish

Name

SIGNED, SEALED and DELIVERED by
ANNABELLE STEWART in the presence
of:

Signature of ANNABELLE STEWART

17/09/2012

Date

Signature of witness

Janet Paddy

Name

SIGNED, SEALED and DELIVERED by
ARNESS JAMES in the presence of:

Signature of witness

Janet Padley

Name

Signature of ARNESS JAMES

17. 9. 2012.

Date

SIGNED, SEALED and DELIVERED by
CHARLESTON COX in the presence of:

Signature of witness

Michael Gospen.

Name

Signature of CHARLESTON COX

19/09/2012.

Date

SIGNED, SEALED and DELIVERED by
DARRYL HUGHES in the presence of:

Signature of witness

Janet Padley

Name

Signature of DARRYL HUGHES

17. 9. 2012

Date

SIGNED, SEALED and DELIVERED by
GARY HUGHES in the presence of:

Signature of witness

Janet Padley

Name

Signature of GARY HUGHES

17. 9. 12.

Date

SIGNED, SEALED and DELIVERED by
HAROLD ASHBURTON in the presence
of:

Signature of witness

Janet Paddy

Name

Signature of HAROLD ASHBURTON

17/09/2012

Date

SIGNED, SEALED and DELIVERED by
MAUDIE DOWTON in the presence of:

Signature of witness

Janet Paddy

Name

Signature of MAUDIE DOWTON

17.9.2012

Date

SIGNED, SEALED and DELIVERED by
MITCHELL DRAGE in the presence of:

Signature of witness

MICHAEL GOSPER

Name

Signature of MITCHELL DRAGE

20/9/12

Date

SIGNED, SEALED and DELIVERED by
MAURICE DAUBLIN in the presence of:

Signature of witness

Janet Paddy

Name

Signature of MAURICE DAUBLIN

17/09/2012

Date