



The Committee Secretariat
The Joint Standing Committee of Northern Australia
PO. Box 6021 Parliament of Australia,
Parliament House, Canberra
ACT 2600

3 May 2021

Dear Senator Dodson and the Committee

**SUBMISSION TO THE INQUIRY INTO THE DESTRUCTION OF 46,000-YEAR-OLD
CAVES AT THE JUUKAN GORGE IN THE PILBARA REGION OF WESTERN
AUSTRALIA**

The UNSW Global Water Institute has prepared this submission to the inquiry into the destruction of 46,000-year-old caves at the Juukan Gorge in the Pilbara region of Western Australia. We have read the Interim Report from the Committee and in our submission focus specifically on the Committee's intention to expand its consultation to encompass other jurisdictions, and we specifically request the committee to consider the Glencore's McArthur River Mine (MRM) and its relationship with the Traditional Owners and the community of Borroloola.

With respect to MRM our submission responds directly to item (g) from the Terms of Reference which considers "*the effectiveness and adequacy of state and federal laws in relation to Aboriginal and Torres Strait Islander cultural heritage in each of the Australian jurisdictions*". Our submission is primarily informed by the report that we released in February 2021, jointly with the Environment Centre of the Northern Territory (ECNT) which examined the effectiveness of the Independent Monitor (IM) process for MRM, focusing on issues around water resources. A copy of the report can be obtained at <https://www.globalwaterinstitute.unsw.edu.au/mcarthur-river-mine-environmental-reporting-synthesis>.

Our report was prepared by the multi-disciplinary team of researchers who are signatories to this submission and includes researchers from the Faculty of Engineering and the Faculty of Arts, Design & Architecture, with expertise in groundwater, surface water, water treatment and risk assessments, social and cultural geography, contemporary social theory and environmental law.

Our report concluded that despite the oversight of the Independent Monitor, the regulatory process has failed to protect the community and the environment. Of specific relevance to the current inquiry are the potential impacts of MRM on Aboriginal sacred sites. There are 11 registered sacred sites within or close to the mine site as documented by the Aboriginal Areas Protection Authority and a further 11 sites that are not registered but are significant in Aboriginal tradition and therefore sacred sites within the meaning of the Northern Territory Aboriginal Sacred Sites Act 1989.

Given our expertise in water, our report focused on water related impacts on sacred sites. Water related sites include rivers, creeks, springs and groundwater dependent trees. Of the 11 registered sites, four are water related and two are trees. However, the environmental assessment process has only considered impacts to a single water-related site, Djirrinmini water hole. In our expert opinion, there is insufficient baseline data to be able to assess if MRM is causing any impacts on water levels in the

Djirrinmini which is an issue that was raised in 2009, 2014 and again in 2015 by the MRM Independent Monitor. The results of more recent monitoring have not been publicly released.

With respect to water, MRM could impact sacred sites in three main ways. Firstly, mine dewatering leads to regional groundwater drawdown which could affect waterholes, streams and trees that rely on the groundwater. Secondly seepage from the tailing storage facility is changing the flow regimes and water quality in Surprise Creek which ultimately joins the McArthur River. Finally acid mine drainage may result from the misclassification of waste rock from the mine.

As noted in our report, the Condition 30 of the approved Overburden Management Plan requires “that at all times the Operator must conduct works consistent with the Northern Territory Aboriginal Sacred Sites Act 1989 and valid AAPA certificate” and Condition 32 requires a consultation plan with “appropriate custodians and traditional owners that would be or may be impacted by the Overburden Management Project”. In our opinion it is not clear how impacts to any of the sacred sites could be comprehensively assessed at this stage. Even though certificates have not been issued by AAPA, the Overburden Management Plan has been approved by the Northern Territory government, effectively side-stepping the Government’s own advice around impacts on sacred sites.

These issues all show that current laws in the Northern Territory are insufficient and ineffective to adequately protect culturally and historically significant sites. Without improvements to the regulatory process, mines such as MRM can continue to potentially damage sacred sites for decades or centuries into the future. The Independent Monitor Community Report is not presented in a form that encourages adequate public and community dialogue or addresses community concerns. It is vital that the Committee expands its consultations to consider MRM and visits the community of Borroloola.

We recommend a number of improvements to national, state and territory regulatory processes which would improve the protection of sacred sites. These include:

1. Ensuring that the approval conditions for approving projects such as MRM are stringent and that there is adequate recourse to prevent delays in addressing problems. For example, there are currently over 70 outstanding issues identified by the Independent Monitor which are either not addressed or only partially addressed by MRM.
2. The committee should recommend that there is ongoing and meaningful engagement with communities such as in Borroloola and surrounding districts in future project impact report and ongoing assessments such as the MRM IM reports. To address these issues, we believe that it is crucial that such IM processes incorporate community concerns, expertise and observations of environmental impacts around the mine.
3. The period for public consultation on Environmental Assessments (such as EISs) is too short, given the large amount of technical information and the remote location of many projects and communities. This leads to potentially poor outcomes for sacred sites impacted by development.
4. Ongoing environmental assessment reports need to be released in a more timely manner so that environmental impacts are identified quickly. For example, there is normally at least a year between the last point in time covered by the IM reports for MRM and the release of these reports. As of April 2021, there are no IM reports covering the period since March 2018.

Thank you for considering our submission and we look forward to seeing strengthened legislation and regulations at national and state levels that ensure better protections for Indigenous sacred sites.

Signed,

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