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PILBARA NATIVE TITLE SERVICE**

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BY:.....

Mr. Harry Adams
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'WITHOUT PREJUDICE'

Dear Harry

FMG - PNTS INPUT INTO PUBLIC ENVIRONMENTAL REVIEW

We refer to previous correspondence to your requests for PNTS's assistance in drafting the Aboriginal Heritage section of FMG's Public Environmental Review document ('PER').

As discussed, because of the limited time for PNTS to comply with your request we engaged the services of Mr. Nicholas Green to draft the document.

We **enclose** the document, which has been provided to us by Mr. Green. Provision of this document is not in anyway an endorsement or approval of the PER by PNTS or any of its clients.

PNTS however, welcomes any opportunity to work co-operatively with FMG.

Yours faithfully



**PAMELA KAYE
LEGAL OFFICER**

FMG Stage A Project PER

Section 6. Existing Environment

Native Title & Aboriginal Heritage

Background

The proposed port development and a large portion of the proposed railway corridor impacts on the Kariyarra (WC99/3) native title claim, with the remainder of the railway corridor impacting on the Kariyarra Yinjibarndi (WC95/053), Palyku (WC99/16), Martu Idja Banyjima (WC98/62); and the Nyiyaparli (WC99/4) native title claims (from north to south). The proposed mine development may impact on the Palyku (WC99/16), Martu Idja Banyjima (WC98/62); and the Nyiyaparli (WC99/4) native title claims. All of these native title claims are currently registered under the *Native Title Act* (1993). The native title claims collectively represent the Aboriginal Traditional Owners of the land over which FMG wishes to construct the proposed port, railway and mines.

FMG has signed a Memorandum of Understanding (MoU) with all of the above native title claimant groups, with the exception of the Kariyarra Yinjibarndi which is being progressed, and their Representative Body, the Pilbara Native Title Service (PNTS). The PNTS is a service division of the Yamatji Land and Sea Council, the authorised Native Title Representative Body under the *Native Title Act* (1993) for the Pilbara region. The MoU has establish the procedure by which Aboriginal heritage surveys and native title negotiations are being conducted between FMG, the affected native title claimant groups and the PNTS.

The Aboriginal Traditional Owners, represented by their particular native title claimant groups, have continually used and occupied the land covered by the project prior to the European settlement of the Pilbara region. This continued use and occupation of the land is evidenced by the existence of Aboriginal communities such as Mugarinya and the Yandeeyarra pastoral lease, Woodstock on the Woodstock/Abydos pastoral leases, Wirrilimara and Youngaleena on the Mulga Downs pastoral lease as well as Jigalong and various communities in and around the towns of Port Hedland, Marble Bar, Nullagine, Newman and Tom Price. Evidence of the long term occupation and use of the region by the Aboriginal Traditional Owners is reflected in the richness and variety of the cultural heritage sites that are found in abundance throughout the region today.

Historical Impacts

European settlers took up pastoral leases in the region in the late 1800s, displacing and indenturing Aboriginal people as seasonal labourers. Aboriginal men were employed as shepherds and station workers, women were engaged as 'domestics' at station homesteads. They received food and provisions in return for their services. Notwithstanding this impact, the Aboriginal Traditional Owners maintained their connection to country through ritual and hunting and gathering activities.

Ration camps were established by the Government around the turn of the century, in order to care for those Aboriginal people who were not in the employ of the stations. Increasingly poor conditions on the stations resulted in a series of strikes by the Aboriginal workers in the 1940s. The movement known as 'the Strike' was led by Aboriginal people mainly in the Port Hedland and Marble Bar areas.

The downturn in wool prices coupled with increased costs and land degradation resulted in the displacement of many Aboriginal people from the pastoral stations in the 1950s and 1960s. The Government introduced assimilation policies at this time. Many of the Aboriginal Traditional Owners moved off the stations, some forcibly, into the towns of Port Hedland, Marble Bar and Nullagine where they lived in camps and reserves on the outskirts of the towns. The Aboriginal Traditional Owners continued to maintain their connection to country through these difficult times.

Conditions in the camps and on the reserves were poor, with people living under sheets of corrugated iron. The Aboriginal Traditional Owners had limited employment opportunities. Despite the hardships, the sense of community remained strong. Mining was established in the region in the 1950s and 1960s, with gold, tin and asbestos being exploited. Many of the Aboriginal Traditional Owners worked 'yandeeing' tin in order to survive.

During this early mining boom, the mining companies and the Government of the day had little regard for the protection of cultural heritage or for consultation with the Aboriginal Traditional Owners in the region. Large areas of land were bulldozed to enable port facilities, railway lines, roads, and housing to be constructed, the latter to house the workers that came in from Perth and the eastern states.

Prior to the advent of the *Native Title Act* (1993), the involvement of Aboriginal people in the protection of their cultural heritage in the region was minimal. Consultation with Aboriginal people was not an essential prerequisite for compliance with the *Aboriginal Heritage Act* (1972), and their involvement was a matter of negotiation. However, since native title claims were lodged post 1994, the Aboriginal Traditional Owners have been able to demand their right to be involved in the management and protection of their cultural heritage and to seek compensation for any loss of their native title rights and interests.

Aboriginal Heritage Surveys

Aboriginal heritage surveys (ethnographic and archaeological) of the proposed port and railway alignment are currently being negotiated with the affected native title claimant groups to ensure consultation with and the participation of the relevant Aboriginal Traditional Owners. Aboriginal heritage surveys of the proposed mine have been undertaken and are ongoing.

The Abydos Plain, the Chichester Range, and the Hamersley Plateau lie within the Australian arid zone. A great deal of archaeological research has focussed on the Australian arid and semi-arid zones in an attempt to determine the nature and timing of Aboriginal occupation of the area.

Today the arid zone covers some 4,600,000 km², or 60% of Australia. Its extent and severity have changed over the past 50,000 years or so, in response to climatic fluctuations, particularly during the height of the last glaciation (LGM) at about 18,000 years BP. Until about 15 years ago, archaeological evidence suggested a terminal Pleistocene-early Holocene date of 10,000 to 12,000 years ago for the settlement of the arid zone. Recent excavations of rockshelters in the region have produced Pleistocene dates ranging from 18,000 BP to 26,000 BP and have consequently revealed that the initial (Pleistocene) Aboriginal occupation of the arid zone occurred at around 26,000 to 22,000 years BP at a time of increasingly dry climate which reached its nadir at around 18,000 BP. The increased aridity during the last glaciation caused reductions in the availability of water and food resources, which forced the abandonment of many arid areas until conditions improved in the mid-Holocene.

The development of settlement/subsistence models of the region by archaeologists suggest that the archaeological signature of semi-arid and arid regions would, be characterised by:

- many small sites associated with ephemeral water sources;
- a smaller number of larger sites, adjacent to more permanent water; and
- special purpose, task specific sites, such as stone quarries, located where conditions permit such as around outcrops of siliceous stone.

During the mid to late Holocene, a number of indicators of Aboriginal intensification have been identified by archaeologists which include an increase in site usage, an increased rate of site establishment, the use of marginal environments, the introduction of new tools types, specialised seed grinding and water procurement, storage and conservation techniques, increased complexity of exchange programs and increasingly complex social and ceremonial organisation.

Archaeological research of Holocene settlement patterns on the Pilbara coast have suggested that changes apparent in the archaeological record came about through social, economic and logistical restructuring, indirectly due to the effects of resource stress. Additionally, it is suggested that certain sites in the mid to late Holocene may represent increased group interaction involving economic interdependence and shared ceremonial activity (particularly ceremonies centred on *Thalu*, or increase sites) initiated as a result of the pressures associated with survival in the increasingly arid environment rather than population increases. Finally, periods of semi-sedentism may have occurred immediately after the wet season when resources were abundant.

The Abydos Plain contains an abundance of rock engravings. Similar engravings are found elsewhere in the Pilbara notably on the Burrup Peninsula adjacent to the towns of Dampier and Karratha. Most of the granite outcrops on the Woodstock/Abydos pastoral leases and the Abydos Plain generally contain engravings. The number of motifs varies from a few simple tracks to hundreds of often complex engravings. A range of motifs have been recorded; tracks and human figures are common, but depictions of animals and weapons also occur.

The human figures on the Abydos Plain are generally: long; with elongated bodies, long flowing limbs; have one or more 'antenna' at the back of the head; split/two digit hands and feet; dog/kangaroo-like beaked faces; and large genitalia on the male figures. Examples of these 'Woodstock' figures occur at engraving sites elsewhere in the Pilbara, from Hamersley pastoral lease to Cape Lambert on the coast.

There are two approaches to dating engravings; relative or absolute. Relative dating methods include the analysis of superimposition, style and weathering or patination. Available methods of absolute dating include the dating of engravings in stratified situations, historical data (eg. contact subject matter) and weathering (eg. micro erosion analysis). Dates for engravings near Woodstock/Abydos pastoral leases range between 160 and 11,545 years BP, and engravings on the Burrup Peninsula have been dated to at least 3,000 years old. Speculative ages of 17,000 years BP and greater have been put forward based on the presence of desert varnish.

The engravings located on the Woodstock and Abydos pastoral leases near the upper reaches of the Yule and Turner Rivers are listed on the Register of the National Estate. This area is also a Protected Area under the *Aboriginal Heritage Act* (1972).

All engravings, particularly the human figures as well as geometric designs are of current significance to the Aboriginal Traditional Owners.

FMG is negotiating the conduct of Aboriginal heritage surveys which include the use of archival research; a formal field survey for Aboriginal ethnographic and archaeological sites as well as consultation with the Aboriginal Traditional Owners as representatives of the affected native title claimant groups.

The archival research, involves a search of the Register of Aboriginal Sites conducted at the Department of Indigenous Affairs in order to access Aboriginal site files pertaining to previously recorded sites within the area and heritage survey reports detailing previous heritage surveys conducted in the region.

The object of the archival research is to:

1. ensure that any previously recorded Aboriginal sites which may be located within, or in close proximity to the port, railway corridor and/or mines are identified in advance;
2. gain an appreciation of the type of Aboriginal sites previously recorded in the region to provide an indication of the site types likely to be encountered during the surveys; and
3. gain an appreciation of site patterning throughout the region to provide an indication of the general distribution of sites and identify areas of high and low potential for sites in the region.

On the basis of previous Aboriginal ethnographic and archaeological surveys conducted in the region, a number of different types of Aboriginal sites are expected to be encountered. Definitions of these sites are as follows:

Artefact scatter refers to a location where a range of activities have occurred such as the manufacture and maintenance of tools and the processing of foods. Such sites will often contain a wider range of lithic materials than quarries and knapping floors.

Ceremonial refers to a location where the Aboriginal Traditional Owners have practiced and/or continue to practice ceremonial activities.

Gnamma hole/water source refers to a natural or artificial rock cavity, which holds water after rain or is linked to the water table.

Grinding patches refers to patches of smoothed rock of varying size. In the Pilbara region these are believed to be seed grinding patches, elsewhere though they are linked to ceremonial practices. Grinding patches are frequently associated with engraving sites throughout the Pilbara.

Midden refers to a location usually on the coast or adjacent to a creek which contains the remains of shellfish and bone.

Modified tree refers to a tree, which has trunks and/or limbs that have been modified by the removal of bark and/or wood. Aboriginal people removed (and continue to remove) wood and bark for material items such as shields and baskets or to access native honey inside hollows in the tree.

Mythological refers to a location which may be a natural feature such as a hill or waterhole which has a name, story and/or song known to the Aboriginal Traditional Owners and which is of current significance to them.

Quarry refers to a location from which stone used to manufacture flaked or ground stone artefacts has been extracted.

Reduction area (or knapping floor) refers to a cluster of stone artefacts, which represent the remains of an episode (or episodes) of stone artefact manufacture. Artefacts within a knapping floor can usually be conjoined back together.

Rock art refers to art placed on a rock surface that may be created by additive (such as painting or drawing) or subtractive (such as abrading or engraving) processes. The Woodstock/Abydos pastoral leases are known to be an extremely rich rock art province with all of the art panels being engravings on the ubiquitous granitic domes and granite and dolerite boulders and dykes.

It is a requirement of the professional anthropological and archaeological organisations (Anthropological Society of Western Australia Inc. the Australian Anthropological Society Inc. and the Australian Association of Consulting Archaeologists Inc.) that Aboriginal Traditional Owners participate in Aboriginal heritage surveys. This ensures that the views of the Aboriginal Traditional Owners concerning ethnographic and archaeological sites are adequately represented and recorded during the conduct of surveys. The Aboriginal Traditional Owners that have participated in surveys to date were previously chosen by their respective native title Working Groups at formal meetings.

To date, FMG has commissioned the PNTS to undertake the following Aboriginal heritage surveys:

1. Preliminary ethnographic survey (by helicopter) of the proposed mine and the southern portion of the railway alignment (Chichester Range to the proposed Mindy Mindy mine and the Mt Nicholas mine); and
2. Specific work program clearance surveys (ethnographic and archaeological) of the proposed Mt Nicholas mine and exploration drilling and hydrological drilling areas at Christmas Creek, Mt Lewin and Mt Nicholas).

The results of the preliminary ethnographic survey have revealed that there are several ethnographic sites of significance to the Aboriginal Traditional Owners which FMG has agreed to avoid and protect.

The results of the ongoing work program clearance surveys have revealed that there are ethno-archaeological sites (mainly stone artefact scatters) in the region which are presently being avoided during FMG's exploratory drilling program.

Section 7. Impacts and Management

Native Title and Aboriginal Heritage

FMG has established a protocol of regular meetings with the affected native title Working Groups established by the five Native Title claimant groups that are impacted by the proposed port, railway alignment and mine. These meetings are facilitated by the PNTS and are held in a co-operative manner enabling FMG to present information on a range of matters associated with the proposed development of the port, railway alignment and mine. The matters discussed at these meetings include the timing and conduct of Aboriginal heritage surveys, negotiation of the native title agreements as well as employment and contracting opportunities.

The EPA objectives with regard to Aboriginal heritage are to:

- ensure that the proposal complies with the requirements of the *Aboriginal Heritage Act 1972*; and
- ensure that changes to the biological and physical environment resulting from the Project do not adversely affect cultural associations with the area.

Protection of Aboriginal Sites

As detailed in the previous section, the Abydos Plain, the Chichester Range and the Hamersley Plateau are known to contain a rich diversity of Aboriginal sites. FMG has been able to avoid impacting any Aboriginal sites to date as a result of the Aboriginal heritage surveys commissioned with the PNTS and the participation of the Aboriginal Traditional Owners.

FMG is committed to ensure that Aboriginal sites are located, recorded and protected wherever possible. The Aboriginal heritage surveys commissioned by FMG to date have revealed that there are both ethnographic and archaeological sites of significance to the Aboriginal Traditional Owners within the proposed port, railway alignment and the mine. FMG is committed to avoid disturbing Aboriginal sites (particularly ethnographic sites) in the final design of the project however it is acknowledged that it may not be possible to avoid impacting all known archaeological sites.

The results of the Aboriginal heritage surveys that are currently occurring and which will be commissioned for the proposed port and railway alignment in the near future will be used to identify the location, nature and significance of any Aboriginal sites. The final alignment of the railway and port layout will take into account the presence of any Aboriginal sites. The alignment of the proposed railway will be refined within its current, approximately, 2 km wide corridor to avoid where practicable, constraints within the corridor, including Aboriginal sites as well as environmental and engineering constraints.

The long term management of Aboriginal sites within the project area will necessitate the involvement of the Aboriginal Traditional Owners and the PNTS in the development and application of an appropriate Cultural Heritage Management Plan (CHMP). The CHMP will be in place prior to construction and will apply during the operation and subsequent decommissioning and rehabilitation of all aspects of the project by FMG and its contractors. Agreed management measures will be implemented by FMG in consultation with and the participation of the Aboriginal Traditional Owners.

The proposed CHMP will ensure that Aboriginal Monitors are employed by FMG and/or the construction contractors to oversee the construction of the project infrastructure within the relevant native title claims to ensure that no known Aboriginal sites are inadvertently impacted. Additionally, the CHMP will contain procedures for the protection and mitigation of any Aboriginal sites that are uncovered during construction (human burials, stratified deposits) as well as procedures for the physical management of Aboriginal sites in close proximity to the construction (fencing and signposting engravings) as necessary.

Should FMG need to disturb an Aboriginal site, then consultation with the Aboriginal Traditional Owners of the affected native title claimant group will occur to ensure that disturbance is kept to a minimum and any mitigation of the site is undertaken under the supervision of and with the participation of the Aboriginal Traditional Owners. FMG will apply under Section 16 and Section 18, of the *Aboriginal Heritage Act 1972* only after it has exhausted options to avoid the Aboriginal site in question and after consultation with the affected native title claimant group has occurred.

Use of Land by the Aboriginal Traditional Owners

The Aboriginal Traditional Owners of the land covering the project area have registered five native title claims to ensure that their stated native title rights and interests within their traditional country are recognised at law. These rights and interests include the continued use and occupation of the land for traditional purposes such as ceremonies, hunting, fishing and procuring ochre and bush foods.

FMG acknowledges that there are specific areas of land that the Aboriginal Traditional Owners wish to protect to ensure that they are available for their ongoing traditional use and enjoyment. These places will be identified during consultations with the Aboriginal Traditional Owners to ensure that any potential impacts during the construction and development of the project are kept to a minimum. One example is the desire of the Kariyarra Aboriginal Traditional Owners to be able to continue to fish the tidal creeks adjacent to the proposed port. FMG will ensure that the proposed CHMP will take into consideration the need for the Aboriginal Traditional Owners to continue to have access to traditional fishing grounds within imposed health and safety requirements.

Where the presence of the project is likely to have an adverse impact on access to food, medicinal and other natural resources by the Aboriginal Traditional Owners, FMG will discuss management measures with them, and will ensure that these measures are part of the proposed CHMP. Management measures may include providing alternative access to resources, using native plant species traditionally used for food in the rehabilitation of disturbed areas, or assistance to the Aboriginal Traditional Owners in other ways.

FMG will implement the proposed management measures outlined in Section 7 to minimise the impacts on vegetation, fauna and water supplies. Mitigation of socio-economic impacts in general on both the local Aboriginal and non-indigenous community are discussed in Section 7.1.6 of the PER.