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Inquiry Secretary
Joint Standing Committee on Northern Australia
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SUBMISSION TO THE INQUIRY INTO JUUKAN GORGE
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I make this submission to the Commonwealth Parliament's Northern Australia Committee inquiry into the destruction of the Juukan Gorge shelters as somebody with history and expertise in the matter under inquiry. From 2005 through 2013, I was Global Practice Leader - Communities and Social Performance at Rio Tinto, and prior to that worked for Rio Tinto and its predecessors for 27 years as a geologist and as Chief Advisor Aboriginal and Community Relations. For much of this period I worked in the field across northern and central Australia and developed an affinity for working with land-connected Aboriginal people. Later I was part of a small team that secured for Rio Tinto the first, and later the most comprehensive, agreements between land-connected Aboriginal groups and Australian mining businesses¹.

I retired from Rio Tinto in early 2014 and now work as a consultant in the area of Social Performance, as an Adjunct Professor at the Sustainable Minerals Institute at the University of Queensland, a faculty Lecturer at a leading business management school and an occasional lecturer at other institutions. I also currently Chair a Committee at the Australasian Institute of Mining and Metallurgy (AusIMM) that developed a 'Social Responsibility Framework' and 'Social Responsibility Public Statement' for the Institute. This sets out clearly the social responsibility expectations on its members and recognises Social Performance as a well-defined professional discipline alongside Health, Safety and Environmental Performance², a point that has relevance later in this submission.

I provide the biographical details above merely to affirm I have some basis to claim professional knowledge and expertise. I also disclose that I am proud and grateful of my long and successful career at Rio Tinto and I retain a modest shareholding in the company.

There is little point in my offering detailed commentary on statutory and regulatory matters relevant to the destruction at Juukan and the egregious abuse of Puutu Kunti Kurrama and Pinikura (PKKP) guardianship, because no doubt the Committee will hear from numerous other submissions that focus on these matters. It would appear that Rio Tinto Iron Ore acted according to a strict interpretation of the law, in particular the Western Australia Aboriginal Heritage Act (1972) Section 18 approval to destroy specified Aboriginal heritage objects and places. The Act has been under review for some time as deficient and will soon be reformed in line with contemporary societal expectations on heritage protection. In particular this should, and doubtless will, provide for heritage custodians to make their own decisions about the preservation, celebration, disturbance or destruction of their identified heritage values, rather than such decisions being a matter of ministerial discretion. Such updates are overdue in most, if not all, heritage legislation across Australia at State and Territory level where such matters have historically been handled.

Accordingly, my comments below relate to item (c) in the Inquiry Terms of Reference - *"the sequence of events and decision-making process undertaken by Rio Tinto that led to the*

¹ CRA's and Rio Tinto's 20-year history in learning to work constructively with Aboriginal groups is set out in the paper "The sky did not fall in" by Paul Wand and myself in "The Limits of Change" published by AIATSIS in 2012. <https://aiatsis.gov.au/publications/products/limits-change-mabo-and-native-title-20-years>

² (see <https://ausimm.com/about/governance/social-responsibility-statement/>).

destruction". Specifically, I will comment on the internal management structure and processes that enabled the destruction to proceed, whereas at an earlier time it would not have occurred because of Rio Tinto's own internal controls. In my view, as an experienced Social Performance professional, Adjunct Professor and management school lecturer, the three decisive management issues internal to Rio Tinto that led to the destruction of the Juukan shelters were;

1/ Several long-term, experienced cultural heritage and social performance professionals left Rio Tinto Iron Ore and Rio Tinto for various reasons over the past five years. These included world-class archaeologists and anthropologists who had the necessary seniority in Rio Tinto and sufficient forthrightness to have spoken up on the folly of the proposed destruction. While Rio Tinto may claim it currently has many people working in social performance roles, most of them lack the requisite social science qualifications and field experience needed to properly understand and provide sound advice on cultural heritage management. This is no reflection on the conscientiousness of the employees concerned, rather it is a poor reflection on management for failing to provide them with professional support and career path options.

2/ The attrition of experienced personnel happened during a period of restructuring within Rio Tinto in which the Communities and Social Performance (CSP) function (as the Social Performance function in Rio Tinto is still called) was moved from the Health, Safety, Environment, Community (HSEC) Corporate Assurance division over to the Corporate Affairs and Communications division reporting into Rio Tinto's London office.

3/ Until recently, CSP at Rio Tinto Asset level (in the case of Juukan, Brockman 4 Mine) sat under the leadership accountability of the mine manager. From what I understand, about three years ago this was changed as part of cost cutting measures and the work was centralised into the Corporate Affairs and Communications department in Perth, taking direct line accountability for Aboriginal engagement and heritage protection away from mine site leaders. This removed CSP accountability and staff from day to day work at mine sites, resulting in reduced mine site engagement with land-connected Aboriginal groups, along with a focus on remedying issues after events occur rather than prioritising the identification of possible issues before they occur.

With these points in mind, while Rio Tinto was not in breach of the law, I contend it was in serious breach of its own Standards and world leading guidance on the matter of cultural heritage management. This can be gauged against Rio Tinto's current (approved circa 2015) internal CSP Standard, available on the Rio Tinto website³ at <https://www.riotinto.com/en/sustainability/communities>.

For the sake of convenience, the clause relating to cultural heritage protection and management is reproduced below;

- 1.6 Cultural heritage must be managed in consultation with relevant communities. Tangible cultural heritage features and an understanding of intangible cultural values must be documented. To manage documented heritage values businesses must:*
- a) develop and implement a fit for purpose cultural heritage management system;*
 - b) design and locate activities to avoid damage to non-replicable cultural heritage wherever practicable;*
 - c) if disturbance is unavoidable, seek approval as appropriate from those for whom the cultural heritage feature has significance;*

³ Rio Tinto's Standards and other related material were available on its website up until circa 2015, and then removed. The CSP Standard appears to have been reinstated on the website around the time of the destruction at Juukan.

- d) address any industrial and historical heritage features and values of the business, particularly during closure; and*
- e) address changes that are occurring in local intangible values, where the changes are a result of interaction with the business.*

If Rio Tinto had operated at Brockman 4 according to its own CSP Standard, it would not have proceeded with the destruction of the shelters. Furthermore, the current CSP Standard is substantially reduced on earlier Standards that were replaced in late 2014 or early 2015.

Between the years 2011 and 2014 there were two CSP Standards at Rio Tinto, one of which was dedicated to cultural heritage protection and management in Australia. This earlier *Cultural heritage management standard for Australian businesses* was designated *confidential to companies in the Rio Tinto Group and for Rio Tinto internal use only*, hence is not available on the Rio Tinto website nor elsewhere in the public domain. This *Cultural heritage management standard for Australian businesses* was superseded in early 2015 by a *Group procedure – Cultural Heritage Management* that was not designated confidential for internal purposes only but is not available in the public domain. Several world-class publications prepared by Rio Tinto some years ago also exemplify how far the company has departed from its own expectations of itself. For instance, see;

- <https://www.csr.uq.edu.au/publications/why-cultural-heritage-matters>, and
- <https://www.csr.uq.edu.au/publications/why-agreements-matter>.

Collectively the *mandatory* requirements set out in the Standards and procedures, and other 'beyond compliance' cultural heritage work undertaken by Rio Tinto up until several years ago put it at the forefront of cultural heritage management in the minerals sector worldwide.

The Juukan destruction should be analysed in this light, showing how far Rio Tinto has departed from its own Standards and leading practice. Not only do relevant Standards and guidance appear to have been progressively sidelined by Rio Tinto Corporate Affairs over the past five years, presumably under the direction of senior executives, they were removed from Rio Tinto's website where they were once publicly available. Most remain available elsewhere in the public domain.

An overarching conclusion to be drawn from the analysis presented above is that Juukan, or an event like it, sadly was waiting to happen and perhaps overdue.

There is little opportunity to enforce remedy and/or penalty for the destruction at Juukan through statutory and regulatory avenues when the law has not been broken. Changes to State heritage acts (ironically, mirroring requirements and intent of the Rio Tinto cultural heritage management standards) can substantially reduce the risk to events like Juukan occurring again, and this should include substantial provisions for proportionate remedy and penalty if breach occurs.

Simultaneous to the Northern Australian Committee Inquiry, Rio Tinto is undertaking its own Board-led review of events leading up to the destruction at Juukan, presumably with a focus on management and decision-making processes. Given the peer-reviewed and global acknowledgement of Rio Tinto's still-current and past cultural heritage management systems, there seems little scope to identify much in the way of documented system improvement (although clearly there is always room to improve anything). However, with its ability to interrogate its own non-public domain materials and sources, Rio Tinto is in a position to uncover misdirection and/or lack of application of its cultural heritage management systems. Internal inquiry also has the ability to identify inadvertent or deliberate covering up of management omissions or directives and attempts to gloss over events, aftermath and outcomes. While not to suggest this has the same public importance as investigating the destruction at Juukan, from a management and ethical perspective they

are equally deserving of attention. Afterall, guarding against the ever-present 'agency' danger of employees knowingly or inadvertently placing their own career and other interests ahead of those of the company is a primary duty of company Boards.

There seems little possibility to be able to prosecute remedy and penalty for the Juukan destruction under the law, however Rio Tinto has of its own volition the ability to offer remedy to the PKKP, to enforce penalty internally for breaches of its own Standards if these are found to have occurred, and to revisit its management structure to guard against such events happening again. In the interests of its own endurance as a world-leading mining house, there is real value for Rio Tinto in using its Board-led review findings to reset internal standards and other matters as a basis for re-building public trust.

References

Rio Tinto *Communities and Social Performance Standard* (downloaded July 2020)

<https://www.riotinto.com/en/sustainability/communities>.

Bradshaw, E., Bryant, K., Cohen, T., et al. (2011) *Why Cultural Heritage Matters*. Rio Tinto.

<https://www.csr.uq.edu.au/publications/why-cultural-heritage-matters>

Everingham, J., Kemp, D., Ali, S., Cornish, G., Brereton, D., Parmenter, J., Langton, M., Harvey, B., et al. (2016) *Why Agreements Matter*. Rio Tinto.

<https://www.csr.uq.edu.au/publications/why-agreements-matter>.

Bauman, T. and Glick, L. (eds) *The Limits of Change*. AIATSIS (2012).

<https://aiatsis.gov.au/publications/products/limits-change-mabo-and-native-title-20-years>