

LEGISLATIVE COUNCIL
Question on notice

13 NOV 2012

Tuesday, 16 October 2012

6166. Hon Robin Chapple to the Minister for Indigenous Affairs.

On 9 November 2011, in the course of considering an application by Fortescue Metals Group (FMG), under section 18 of the Aboriginal Heritage Act 1972 (AHA), the Aboriginal Cultural Materials Committee (ACMC) asked the Director General of the Department of Indigenous Affairs (DIA) to inform the Minister that the Committee was 'uncomfortable making a decision, given the challenge to the veracity of the information provided to the Committee by FMG regarding sites in Yindjibarndi Country'. I ask --

- (1) Was the Minister informed of this?
- (2) If yes to (1), on what date was this information sought?
- (3) If no to (1), why not?
- (4) If yes to (1), what response, direction or guidance did the Minister provide to the Director General of DIA?
- (5) If yes to (1), was a response provided to the ACMC by the Director General of DIA or the Minister?
- (6) If yes to (4), what response, direction or guidance occurred?
- (7) If yes to (4), will the Minister table that response, direction or guidance?
- (8) If yes to (5), what was the nature of the response?
- (9) If yes to (5), will the Minister table that response?

The Committee also asked the Director General to seek additional funding if necessary to 'enable DIA to provide the ACMC with information regarding the nature and significance of sites relating to the FMG Firetail section 18 applications'. I ask --

- (10) Was the Minister informed of the Committee's request for DIA to provide information regarding the nature and significance of sites relating to the FMG Firetail section 18 applications?
- (11) If yes to (10), on what date?
- (12) If no to (10), why not?
- (13) If yes to (10), did the Minister approve of the Committee's request for DIA to provide information regarding the nature and significance of sites relating to the

FMG Firetail section 18 applications?

(14) If no to (10), why not?

(15) If yes to (13), what action was undertaken by DIA to facilitate the Committee's request for DIA to provide information regarding the nature and significance of sites relating to the FMG Firetail section 18 applications?

(16) If yes to (15), on what date did this occur?

(17) If yes to (15), will the Minister table that information?

(18) Was additional funding provided to DIA by the Director General?

At the time when the ACMC made this request, FMG had made five 'Firetail section 18 applications'; including --

(a) the section 18 Notice for the Firetail Priority Mining Area (DIA File No: 11/0211), which identified nine sites on the land and was --

(i) submitted to the ACMC on 18 February 2011;

(ii) resubmitted on 17 March 2011;

(iii) considered by the ACMC on 1 June 2011;

(iv) given conditional ministerial consent on 30 June 2011;

(v) made the subject of an appeal by FMG to the State Administrative Tribunal (SAT) on 8 August 2011;

(vi) in accordance with orders made by the SAT, pending ministerial reconsideration;

(b) the section 18 Notice for the Firetail Conveyors & Trinity TSF (Tailings & Storage Facility) (DIA File No: 11/0755), which identified 22 sites on the land and was --

(i) submitted to the ACMC on 19 August 2011;

(ii) considered by the ACMC on 13 October 2011;

(iii) pending ministerial consent;

(c) the section 18 Notice for the Firetail West and Trinity (DIA File No 11/0975), which identified six sites on the land and was --

(i) submitted to the ACMC on 21 October 2011; and

(ii) pending consideration by the ACMC on 14 December 2011,

and I ask --

(19) Will the Minister confirm that at the time of the ACMC's request, the application for the Firetail Priority Mining Area (the 'land') was again before the Minister, pending reconsideration of the Minister's earlier conditional consent, given on 30 June 2011?

On or around 24 October 2011, in accordance with orders made by the SAT (on 6 October 2011), the Minister received submissions from Yindjibarndi Aboriginal Corporation RNTBC (YAC), regarding the Minister's reconsideration of his earlier decision on FMG's section 18 Notice for the Firetail Priority Mining Area. (see submissions of invitee - Yindjibarndi Aboriginal Corporation RNTBC - Concerning Minister's Reconsideration of section 18 Decision, dated 24 October 2011, at [6.4]), and I ask --

(20) Will the Minister confirm that the submissions of YAC included a list of coordinates for 22 Aboriginal sites, previously recorded by YAC's anthropologist, Philip Davies (during a site visit in May 2011), all of which were apparently within the land (the subject of FMG's section 18 Notice for the 'Firetail Priority Mining Area') but had not been included as 'sites on the Land' by FMG?

On or around 11 November 2011, the Registrar received a spread sheet from YAC listing the coordinates of sites previously recorded by Eureka and Veritas; and, a review of the spread sheet revealed 'several of the listed sites were located within section 18 land and had not been included as sites on the land by FMG' --

(a) for section 18 Notice 11/0755 [Firetail Conveyors & Trinity TSF] FMG had indicated in its application that the land subject of the Notice contained 22 Aboriginal heritage sites. Based on information from the Eureka report and spread sheet the sites on the land subject of this Notice may have been as many as 39; and

(b) for section 18 Notice 11/0975 [Firetail West and Trinity] FMG had indicated in its application that the land subject of the Notice contained six Aboriginal heritage sites. Based on information from the Eureka report and spread sheet the sites on the Land subject of this Notice may have been as many as ten; and

(c) (see: DIA Report on the 'Assessment of 17 Heritage Places', undated internal report released under FOI, at 2-3). The DIA subsequently conducted a field investigation in the Firetail area to determine if FMG had failed to include the additional sites, identified in the spread sheet, in the Notices,

and I ask --

(21) Will the Minister explain why his department's field investigation did not include an examination of the Firetail Priority Mining Area to determine if (in the section 18 Notice for that land) FMG had failed to include the 22 sites that were identified in the submissions from YAC, given that Notice was then before the Minister for reconsideration?

Answer

(1) No.

(2) Not applicable.

(3) The Director General, Department of Indigenous Affairs (DIA), decided that DIA should conduct a field investigation in response to the Aboriginal Cultural Material Committee's (ACMC) concerns.

(4 – 9) Not applicable.

(10) Yes.

(11) 30 November 2011.

(12) Not applicable.

(13) The Minister's consent was not sought. The matter was dealt with at a Departmental level. A Briefing Note dated 30 November 2011 was provided to the Minister after the field investigation. This was provided before the outcome was given to the ACMC.

(14 - 17) Not applicable.

(18) No.

(19) No. The section 18 11/0211 (Firetail Priority Mining Area) was not forwarded to the Minister for reconsideration at the time of the ACMC request.

(20) The ACMC was provided with a report by the Yindjibarndi Aboriginal Corporation RNTBC (YAC) anthropologist Mr Phil Davies that included a table of coordinates and corresponding names of 27 places described as rockshelters and caves. Of the 27 places, 13 are located within the 'Firetail Priority Mining Area' section 18 Land. Insufficient information was provided for a proper assessment to be made under section 5 of the *Aboriginal Heritage Act 1972*.

(21) The Notice was not before the Minister for reconsideration at that time.



Minister for Indigenous Affairs