

GUMALA ABORIGINAL CORPORATION: SUBMISSION REGARDING PASTORAL LEASES



TO: The Public Administration Committee

FROM: Gumala Aboriginal Corporation

TOPIC: Pastoral Leases and how their expiry may impact the Homeland Movement

What is Gumala Aboriginal Corporation?

Gumala Aboriginal Corporation ("GAC") was formed in 1996 to represent the collective interests of three Traditional Owners groups who were negotiating with Hamersley Iron Pty Ltd, who are a wholly-owned subsidiary of Rio Tinto. The three language groups who are represented by Gumala Aboriginal Corporation are the Nyiyaparli, Banyjima and Innawonga. In March 1997, the Traditional Owners, Gumala Aboriginal Corporation and Hamersley Iron signed the Yandi Land Use Agreement.

This agreement primarily related to the Yandicoogina Iron Ore Project and provide for all mining and infrastructure titles for the life of the project and for exploration over the native title claim area.

The Agreement was historic as it was the first major land use agreement to be signed in Australia. The Agreement also represented a win-win for all parties as it enabled Hamersley Iron to proceed with developing the Yandicoogina mine located on the Hamersley Ranges of the Pilbara region. As part of the agreement Traditional Owners have benefited from receiving land use compensation from Hamersley Iron and Rio Tinto. Gumala Aboriginal Corporation uses compensation funds to deliver education - training - employment opportunities, health and well-being programs, heritage protection work and work in-kind assistance for community development. Because of the Agreement there has been a significant improvement in the life conditions and opportunities available to a large number of Traditional Owners.

Why is Gumala Aboriginal Corporation affected by the renewal of pastoral leases in 2015?

When the Agreement was drafted in 1997 it was the intention of all parties, and also the intention of the then Titled Minister for Lands ^{for} that GAC to be granted a lease in perpetuity under section 83 of the *Land Administration Act 1997* over specified areas of land located in the Rocklea and Juna Downs pastoral leases (which are currently held in Hamersley's name). Section 83 (1)(b) states that:

"The Minister may for the purposes of advancing the interests of any Aboriginal person or persons- grant a lease of Crown land, whether fixed or in perpetuity, to that person or those persons, or to an approved body corporate, on such conditions as the Minister thinks fit ^{Agree} in the best interests of the person or persons concerned".

Section 5.1 (b) of the Agreement states that Hamersley agrees to:

- i. obtain the approval of the State to excise the two areas marked in blue on Plan 7a annexed to Schedule 7, from the Juna Downs and Rocklea pastoral leases; and
- ii. procure the agreement of the State to grant Gumala leasehold tenure for those areas.

The specified areas indicated on the Juna Downs and Rocklea pastoral leases are of significant cultural importance to the Traditional Owners and GAC has assisted in maintaining Homeland Communities on these areas since its incorporation.

Homeland Communities can be defined as 'small decentralised communities of close kin, established by the movement of Aboriginal Peoples to land of social, cultural and economic significance to them'. They are established so that Aboriginal people can maintain a connection with their traditional land.

The Traditional Owners have a strong connection with the areas of land identified for excision in Schedule 7, and ~~the~~ Homeland Communities were already on these areas before the Land Use Agreement. By raising their families on these homelands, the Traditional Owners are able to maintain a deep spiritual connection with their land ~~and Homelands~~. ^{THAT IN AGREEMENT}
^{HAMERSLEY}
^{AGREE TO}
^{EXCISE}

In signing the Agreement, GAC and the Traditional Owners requested that Section 5.1 be included to ensure that the Homeland Communities would be

preserved. Unfortunately these excisions never occurred. 16 years after signing the Agreement the Traditional Owner's desire for leasehold tenure of the three homeland locations remains strong.

There are 3 GAC Homeland Communities who will be affected by the expiry of the pastoral Leases.

Rocklea Pastoral Lease

On the Rocklea Pastoral Lease there are two homelands: Bellary Springs and Ngumee Ngu.

Bellary Springs: The Bellary Springs Homeland Community is located just off the Paraburdoo Tom Price Road in Western Australia about 1010km north-northeast of Perth. The Bellary Springs Community is home to approximately 40 to 50 Traditional Owners. GAC has invested in developing a sustainable Bellary Springs Homeland Community. In 2012 GAC assisted the community in building a Community Centre which is now used to host community functions and learning, cultural and education programs. The Community Centre also enables support programs to take place for dental health and paediatric support.

Ngumee Ngu- Ngumee Ngu is located 25 kilometres out of Tom Price and is 5 kilometres from the Wakathuni Community on Innawonga Country. One of GAC's members, Dawn Hicks, is an elder of Ngumee Ngu as her mother, Lola Young is responsible for bringing their family back to this traditional homeland. Lola Young wrote a book about this journey to homelands which is entitled "In My Mother's Name".

Juna Downs Pastoral Lease

On the Juna Downs Pastoral Lease there is the Windell Block homeland.

Windell Block- Windell Block is on Banyjima Country. It has come to GAC's attention that a potential outcome of the impending expiry of pastoral leases is that a part of the Juna Downs pastoral lease may be excised and the boundaries of the Karijini National park extended to include the Windell Block, which would in turn potentially have adverse effects on the local community.

There is a Memorandum of Understanding between the Department of Conservation and Land Management (CALM) and GAC which provides for a consultative approach in the management of the lands, and where there must be regard for the environmental and cultural significance of the land. In the MOU, it is noted that Department of Conservation and Land Management strongly supports Windell Block being excised from the current lease so it is preserved for the exclusive use of the Traditional Owners.

The language groups who reside in these Homeland Communities are the Banyjima and Innawonga. GAC has consulted with elders of the Banyjima group who have confirmed their desire for a lease to be created which will be held in GAC's name for a period of up to 10 years. Kate Holloman, a lawyer for the Innawonga peoples employed by Yamatji Marlpa Aboriginal Corporation (YMAC) is currently in consultation with the Innawonga elders to ascertain their desires. Previous discussions with Rio Tinto indicate that they want to honour their commitment under the Agreement (YLUA) and they have expressed a willingness to surrender the portions of Rocklea and Juna Downs that contain Homeland Communities to GAC.

Why are Homeland Communities Important?

There are social and health benefits for Aboriginal Peoples returning to their homelands, as has been documented by the United Nations Special Rapporteur on the Rights of Indigenous Peoples. Research has consistently demonstrated that Homelands have a significantly lower rate of ~~indigenous~~ social problems such as domestic violence and substance abuse compared to more populated communities. Comparative studies have concluded that the health of Indigenous peoples living on homeland communities is significantly better in comparison to the indigenous populations living in larger communities. Homelands act as a place of respite for Traditional owners, providing a positive rehabilitation setting for individuals suffering from addiction or rehabilitating from incarceration.

Over the last 40 years there has been oscillating government support for the traditional homelands, despite the strong support within the Aboriginal community for the homeland movement. Indigenous support for the

homeland movement extends beyond the just the individuals living in these communities, as the very existence of these homeland communities provides a strong symbolic value of the connection to land for the wider indigenous community.

To date there has been a lack of any meaningful strategic consultation with Traditional Owners affected by land tenure issues and the expiry of pastoral leases. The homeland communities in Western Australia have been given little opportunity to determine for themselves what is the best way forward and then to engage with government on policies and programs. Despite their desire to stay on country, homelands in the Pilbara have been largely excluded from the government's ~~national~~ plans.

A major concern that has underpinned the lack of support is the question over the economic sustainability of homelands and how governments can justify significant expenditure on relatively small populations in remote areas. However, well respected advocates for Homeland Communities argue that they are a necessary and preferred way of life for many Aboriginal people, and denying people them means to live on traditional lands is denying their fundamental rights to self-determination. The Return to Country report found that the Australian Government has limited its role in supporting homelands and prioritised larger communities. The Return to Country Committee concluded that the government should *"be prepared to make compromises to ensure that the homelands movement has a strong future"*.

Respected commentators (e.g. John Altman of the Centre for Aboriginal Economic Policy and Research) have commented positively on the viability of the homelands movement and noted that homelands have been undermined as a result of the lack of government investment in housing infrastructure and municipal and other services in homeland communities. GAC submits that the idea of economically sustainable homeland communities has not adequately been explored and that there is opportunity for both economic and cultural returns from investment into these communities have adequate infrastructure and a communication network. There is scope for Homelands to generate ~~significant~~ revenue though cultural activities such as art, food production and as a hub for cultural awareness training. GAC has a number of homeland residing members who are employed in such activities, as well as homeland members who work for corporations such as Rio Tinto. Furthermore, there is

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potential for less government spending on ~~police~~ and health on Homelands that provide significant health benefits to residents.

The homeland movement represents a clear statement from the Aboriginal people about their future aspirations for themselves and future generations. Indigenous populations derive great value from their spiritual, historical and ^{CULTURAL} economic connection with the land and legal right to the land therefore represent a greater level of empowerment for a population that suffers relative disadvantage on most social measures.

The Traditional Owners have a history of being disposed from their land. If the Traditional Owners are not granted a new lease, this could result in another cycle of Traditional Owners being removed from locations which hold special importance to them. Question would arise such as where these homeland populations would be located to, and whether any locations exist that can cater of their cultural needs.

The Australian Government's International Law Obligations

In 2009 Australia became a signatory to the United Nations Declaration on the Rights of Indigenous Peoples, and expressed its desire to "reset the relationship" between Aboriginal communities and the State. The Declaration is an authoritative framework for the effective protection and implementation of their rights. One of the core principles of the Declaration is the right of Indigenous Peoples to their traditional lands. Under international law, indigenous rights to traditional lands are recognised and protected regardless of whether local domestic laws recognise them. Article 19 of the Declaration states that:

"States shall consult with and cooperate with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative and administrative measures that may affect them".

Australia is also a signatory of the International Covenant on Economic, Social and Cultural Rights. Article 11 of this covenant recognises the right of all

people to adequate housing. The UN Committee for this covenant comments that adequacy, amongst other things, includes legal security of tenure which guarantees legal protection against forced evictions, harassment and threats. Pastoral leases provide an element of certainty about the future and that is why a number of stakeholders are here to today including GAC.

GAC's Submission

GAC on behalf of the Traditional Owners requests that the areas of land identified in Schedule 7 be excised from their current pastoral leases into new leases which will be held in GAC's name as lessee for a period of up to 10 years. ROCKLSEA
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If granted a new lease, GAC will work with all competent organisations representing the individual rights of the Banyjima and Innawonga peoples to transfer the leases into their names when it is appropriate to do so. Currently, there is no Aboriginal Corporation representing the Banyjima alone. There is an Innawonga Corporation, however it has only been recently created. Transferring the new leases into GAC's name for a period of up to 10 years will ensure that these areas of land and Homeland Communities are kept safe on the expiry of their current pastoral leases, and would also ensure that the leases are eventually transferred into the appropriate Corporation's name representing the language group once after the Corporation has been properly established.

Supporting and assisting GAC to obtain tenure over the land containing Bellary Springs, Ngumee Ngu and Windell Block represents an opportunity for the WESTERN Australian Government to demonstrate support for the aspirations of Aboriginal People and their Homeland Communities, while also offering an opportunity to contribute towards a bright, independent future for the Banyjima and Innawonga peoples.

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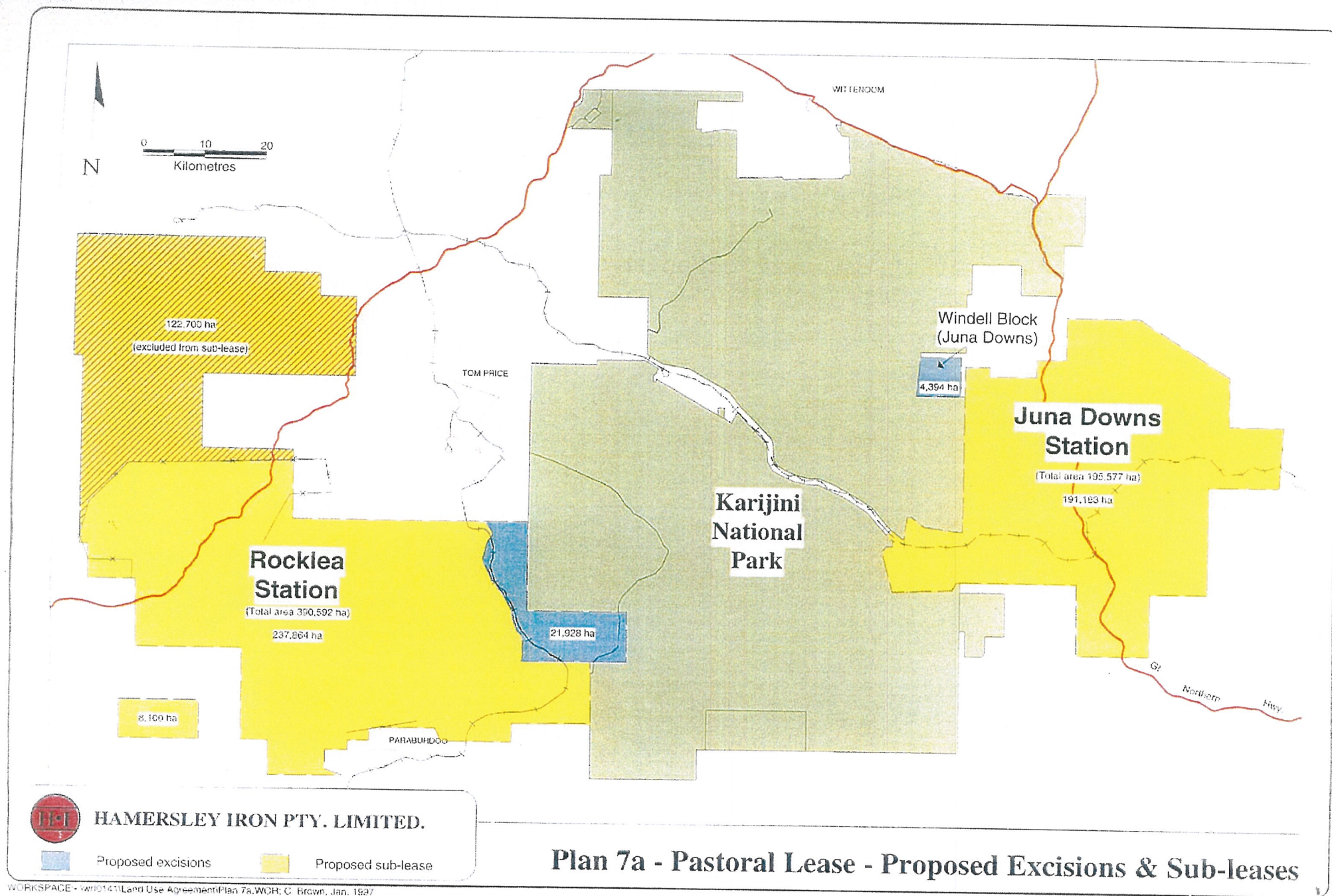
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Plan 7a - Pastoral Lease - Proposed Excisions & Sub-leases