

DEPARTMENT OF THE PRIME MINISTER AND CABINET

PM&C
Secretary
Mr Fox
Prof.
Anderson
Ms Roberts
Mr Bulman
Mr Beswick
Mr Abrahams

To: Minister for Indigenous Affairs

ANINDILYAKWA LAND COUNCIL – UPDATES ON PROPOSED WINCHELSEA MINING PROJECT

PMO
Mr Kunkel

Recommendations - that you:

- 1. Note the information provided by the Anindilyakwa Land Council in respect of the proposed Winchelsea mining project.

Noted

- 2. Sign the draft reply and request for further information at Attachment A.

Signed / Not Signed

NIGEL SCULLION

Date:

Comments:

Key Points:

- 1. The Chairperson and Chief Executive Officer of the Anindilyakwa Land Council (ALC) wrote to you on 15 August 2018 and 6 September 2018, providing updates on the proposed Winchelsea mining project and associated joint venture arrangements that will potentially provide joint equity for traditional owners in mining operations on their own land (Attachments B-D refer).
- 2. The Anindilyakwa Advancement Aboriginal Corporation (AAAC) has been established to be the joint venture party with initial majority equity in the Winchelsea Mining Company Pty Ltd (Winchelsea Mining), which holds a number of mining tenement applications including Exploration Licence Application 27521 over Winchelsea Island.
- 3. The AAAC and Winchelsea Mining have entered into a shareholders agreement with Aus China International Mining Pty Ltd, which will contribute capital to Winchelsea Mining in exchange for an initial s47G ownership of Winchelsea Mining.
- 4. The AAAC Rule Book, at clause 4, stipulates it will appoint the persons who fulfil the roles of Chairperson and Chief Executive Officer (CEO) of the ALC as its nominee Directors of Winchelsea Mining (Attachment C refers). Those Directorships are to be paid positions and the Chairperson of the ALC will also be the Chairperson of Winchelsea Mining.

MO
s47F

5. In addition, the current CEO of the ALC will be a paid co-CEO and employee of Winchelsea Mining, in conjunction with a person to be nominated by Aus China International Mining Pty Ltd as a co-CEO of Winchelsea Mining.
6. The ALC Chairperson and CEO constitute the Accountable Authority of the ALC under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule). They have extensive disclosure obligations in respect of their proposed governance roles in Winchelsea Mining, including because of the ALC's statutory functions under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act) in respect of processing the mining tenement applications held by Winchelsea Mining.
7. The ALC has engaged external legal advice from Arnold Bloch Leibler on related matters. Amongst other measures to manage potential conflicts of interests on the part of the ALC Chairperson and CEO, it is proposed they would not participate in any and all future decisions by the ALC in respect to Winchelsea Mining unless the Board determines they can be present at relevant discussions to answer any related questions from the Board.
8. The ALC's correspondence of 6 September 2018 (Attachment C) notes the Chairperson and CEO disclosed proposed details of their interests to each other and the full Board of the ALC on 21 August 2018. The full Board of the ALC gave its in-principle agreement to the proposed governance arrangements. The full Board also agreed on a reduced remuneration package for the CEO of the ALC, noting its Mining and Environment Manager (s47F) will continue to assume administrative responsibility of ALC matters related to Winchelsea Mining. The correspondence notes the Chairperson and CEO absented themselves from the full Board's deliberations.
9. The Department is concerned that the updates provided by the ALC do not make explicit reference to the ALC Chairperson and CEO having disclosed to the full Board the remuneration they will receive for their paid governance roles as Directors of Winchelsea Mining or any additional benefits the ALC CEO may accrue as co-CEO of Winchelsea Mining. The draft reply at Attachment A seeks clarification in respect of these matters.
10. The ALC's correspondence of 6 September 2018 also notes the Board of Winchelsea Mining met on 28 August 2018 and approved:
 - a. the appointment of the ALC CEO (Mr Mark Hewitt) as co-CEO and Director of Winchelsea Mining, without Mr Hewitt participating in the relevant voting; and
 - b. the appointment of the ALC Chairperson (s47F) as Chairperson of Winchelsea Mining, without s47F participating in the relevant voting.
11. The ALC has subsequently written to you on 13 and 14 September 2018, advising it has given its consent to the grant of Exploration Licence 27521 to Winchelsea Mining and seeking your consent to the grant under section 42(8) of the Land Rights Act. The Department will brief you separately in respect of that correspondence.

Wayne Beswick
 Assistant Secretary
 Land Branch
 18 September 2018

Policy Officer: s22
 Phone no: s22
 Consultation: Anindilyakwa Land Council,
 IAG Legal Services, IAG Network

ATTACHMENTS

ATTACHMENT A DRAFT REPLY

ATTACHMENT B INCOMING CORRESPONCE – 15 AUGUST 2018

ATTACHMENT C ANINDILYAKWA ADVANCEMENT ABORIGINAL CORPORATION RULE BOOK

ATTACHMENT D INCOMING CORRESPONDENCE – 6 SEPTEMBER 2018



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Senator Nigel Scullion
Minister for Indigenous Affairs
Parliament House
Canberra ACT 2600

15 August 2018

Dear Minister,

- 1 As you know the ALC has, for the past 17 months, been assisting the traditional Aboriginal owners of Winchelsea Island to establish a mining venture on their country, in which the traditional Aboriginal owners will be significant equity participants. This endeavour is referred to in this letter as the Winchelsea mining project. The work of the ALC on the Winchelsea mining project has been in accordance with its functions under section 23(ea) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**Land Rights Act**).
- 2 In October last year we wrote to you and to NT Minister Vowles to update you both on the Winchelsea mining project. In that letter we explained that negotiations with Shan Dong remained productive, but negotiations with Yukida Resources had stalled.
- 3 The purpose of this letter is to update you on positive progress with the Winchelsea mining project since then. This is not a submission for consent to exploration; the project has not yet reached that stage. However, given that this is the first mining project on Groote Eylandt with traditional Aboriginal owner equity participation, it is important to ensure you receive regular briefings.

Winchelsea Mining project to date

- 4 The key developments since October last year are as follows:
 - (a) In December 2017 the ALC assisted with the incorporation of the Anindilyakwa Aboriginal Advancement Corporation (**AAAC**). AAAC is a not-for-profit Aboriginal corporation whose objective is to provide for and assist with the education and the economic, social and cultural advancement of the Traditional Aboriginal Owners of the ALC Region. AAAC was incorporated to be the joint venture party with majority equity in the company that will seek to explore and mine on Winchelsea Island. See paragraphs 5 to 8 below for more information about AAAC.

- (b) In June 2018 ALC finalised an agreement with Yukida Resources for ELA 27521 over Winchelsea Island to be transferred to a newly established joint venture company established by ALC. As part of that agreement a number of other tenement applications previously held by Yukida Resources in conjunction with NTM Gold and its subsidiaries were transferred to the new joint venture company.
- (c) The newly established joint venture company is Winchelsea Mining Company Pty Ltd (**Winchelsea Mining**). Winchelsea Mining is currently wholly owned by AAAC. See paragraphs 9 to 15 below for more information about Winchelsea Mining.
- (d) In July 2018 all tenements in and surrounding the Groote Eylandt Archipelago formerly held by Yukida Resources in conjunction with NTM Gold and its subsidiaries were either transferred to Winchelsea Mining or relinquished.
- (e) Meetings occurred last week with senior officers of the NT Department of Primary Industry and Resources, the Environment Protection Authority and the NT Department of Environment and Natural Resources to make progress on a Mine Management Plan and all necessary environmental approvals in relation to the Winchelsea mining project.
- (f) A shareholders agreement between AAAC, Winchelsea Mining and the other joint venture party Aus China International Mining Pty Ltd (**Aus China Mining**), is currently close to completion. Aus China Mining is the company which we have referred to as Shan Dong in previous correspondence. The relationship with the Directors of Aus China Mining came about due to introductions facilitated by the NT Chief Minister led trade delegation to Shandong Province in late 2016 attended by both of us. Under the shareholders agreement Aus China Mining will contribute capital to Winchelsea Mining in exchange for ownership of s47G of the company. AAAC will own s47G of the new joint venture company.

More detail about the companies involved and the proposal to date

AAAC

- 5 As outlined above AAAC is a not-for-profit Aboriginal corporation formed to assist the traditional Aboriginal owners of the ALC region. Its rule book is **attached**. It is specifically empowered to pursue its objective by, among other things, participating



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in resource development and other community enterprises on or related to Winchelsea Island.

- 6 The AAAC Rule Book requires 5% of profits that AAAC receives from resource development on Winchelsea Island to be directed to charitable projects that benefit the traditional Aboriginal owners of Winchelsea Island. The Rule Book provides for a sub-committee to make decisions on these projects. The remainder of AAAC's profits are to be used to pursue charitable objects that benefit all traditional Aboriginal owners of the ALC region.
- 7 While AAAC is incorporated for the benefit of all traditional Aboriginal owners of the ALC region and membership is open to all those traditional Aboriginal owners, only traditional Aboriginal owners of Winchelsea Island are eligible to be directors. This is because of the specific focus of AAAC on the Winchelsea Island mining project.
- 8 Finally, the Rule Book of AAAC provides that AAAC will always appoint the persons who fulfil the roles of Chairperson and CEO of the ALC from time to time as their nominee directors of Winchelsea Mining. In other words, by AAAC's Rule Book the CEO and Chairperson of ALC, whomever is the ALC CEO and Chairperson at any given time, will serve as AAAC's nominated directors on the board of Winchelsea Mining.

Winchelsea Mining

- 9 Winchelsea Mining was formed to explore and mine Winchelsea Island as well as to hold other tenements in and around the Groote Eylandt archipelago.
- 10 The current draft shareholders agreement between Winchelsea Mining, Aus China Mining and AAAC allows each shareholder with more than a s47G shareholding to appoint two directors to Winchelsea Mining. It also provides that AAAC will always be able to appoint 1 director to Winchelsea Mining, even if its shareholding falls below s47G
- 11 As outlined above AAAC's Rule Book requires that it will appoint the CEO and Chairperson of ALC as its nominee directors on Winchelsea Mining.
- 12 The shareholders agreement also provides for the appointment of a CEO to Winchelsea Mining. The CEO is to be appointed by special decision of the Winchelsea Mining Board and will manage and generally administer the activities of Winchelsea Mining on a day to day basis, manage the business plan and report to the Winchelsea Mining Board.

- 13 The joint venture parties are currently contemplating the role of CEO of Winchelsea Mining to be a shared role between Dongfang Yu, who is a director of Aus China Mining, and Mark Hewitt. Provided the ALC Board approves this proposed arrangement Mark Hewitt is willing to fill the positions of CEO of the ALC and co-CEO of Winchelsea Mining, with the majority of his time still devoted to being CEO of ALC. The ALC Board will make a decision on this proposed arrangement in the near future.
- 14 The intended process to manage our respective roles with Winchelsea Mining and the ALC is described below in paragraphs 16 to 18 .
- 15 Finally, the shareholders agreement provides a fall back payment for AAAC, calculated with reference to any minerals from an eventual mine and to be provided for in any eventual mining agreement. This payment will be triggered if AAAC's share in Winchelsea Mining falls below **s47G**. This ensures that the traditional Aboriginal owners will continue to benefit when the company benefits, even if it cannot sustain its high level of equity participation in the company.

ALC/Winchelsea Mining - management of interests

- 16 As you are aware the *Public Governance Performance and Accountability Act 2013* (Cth) and the *Public Governance Performance and Accountability Rule 2014* (Cth) require certain duties to be complied with by the accountable authority, and officials, of the ALC. These are essentially standard directors' duties as well as some additional requirements for how the accountable authority governs the ALC. The duties include that a member of an accountable authority makes disclosure of a material personal interest to the other members of the accountable authority who do not have the same material personal interest.
- 17 Together, we comprise the accountable authority of the ALC as well as being officials of the ALC. If we are both to become paid directors and (in the case of Mark Hewitt) a co-CEO of Winchelsea Mining we potentially would also have the same or similar material personal interests with regard to Winchelsea Mining.
- 18 In relation to this project, to ensure proper governance, manage risks and comply with our statutory duties, we intend to do the following:
- (a) disclose the proposed details of our interests as directors and/or employees of Winchelsea Mining to one another as the accountable authorities of the ALC;





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- (b) disclose to the full Board of the ALC the proposed details of our interests as directors and/or employees of Winchelsea Mining;
- (c) not participate in any discussion of, or decisions in relation to, these matters, unless the ALC Board determines we can be present at the discussion, answer any questions the Board may have and, in the case of s47F [REDACTED], vote on any decisions;
- (d) if the ALC Board approves our roles as paid directors and/or co-CEO of Winchelsea Mining (in the case of Mark Hewitt), ensure that future decisions that need to be made by the ALC concerning Winchelsea Mining are made by the ALC Board, and that we do not participate in any such decisions, again unless the ALC Board determines that we can be present at the relevant discussion, answer any questions the Board may have and in the case of s47F [REDACTED], vote on any decisions; and
- (e) if, upon disclosure of our potential to have a material personal interest related to Winchelsea Mining through the proposed roles of each of us as paid directors and in the case of Mark Hewitt, the co-CEO of Winchelsea Mining, the ALC Board reasonably requires additional risk management strategies and procedures, we will comply with them.

The next steps for the Winchelsea Mining Project

- 19 In summary then, a number of applications for mineral tenements, including ELA 27521, are presently effectively owned by a non-profit traditional Aboriginal owner company, AAAC. This in itself is a first for the traditional Aboriginal owners of the Groote Eylandt archipelago and the ALC is incredibly proud of its role in assisting the traditional Aboriginal owners with such an achievement, in furtherance of the ALC's statutory functions under the Land Rights Act.
- 20 While the shareholders agreement is being finalised work is progressing on a mining management plan to support the application by Winchelsea Mining for ELA 27521. Alongside this, non-invasive aerial surveys are being carried out.
- 21 Once the shareholders agreement is finalised the formal consent provisions of the Land Rights Act will be engaged and worked through. Of course, the ALC's role in this project, in furtherance of its Land Rights Act functions, is to support the commercial goals of the traditional Aboriginal owners of Winchelsea Island, for their benefit and for the benefit of all traditional Aboriginal owners in the ALC region. Progress on the Winchelsea Project has continued with the active and close involvement of, and in accordance with wishes of, the traditional Aboriginal owners of Winchelsea Island.

- 22 In addition, as we advised in our letter of 10 October 2017, the traditional Aboriginal owners have previously resolved that they propose to formally consent to exploration on Winchelsea Island once all preliminary steps are completed, including the finalisation of the JV Company and the transfer of the tenement applications to that company.
- 23 As you know the consent processes under the Land Rights Act were originally contemplated to accommodate processes where traditional Aboriginal owners were expected to be passive land owners, rather than active joint venture partners in a sophisticated mining venture. The ALC will continue to ensure all Land Rights Act processes are properly followed for a project that is the very antithesis of a passive benefit arrangement, through the traditional Aboriginal owners' substantive equity participation in this project.
- 24 We have discussed many times the need to build an empowering economy for the traditional Aboriginal owners of Groote Eylandt which can sustain them for generations to come. We are very enthusiastic about the opportunities presented by this proposed exploration and mining joint venture and have worked hard to keep the momentum going on the Winchelsea mining project through difficult negotiations.
- 25 We look forward to the progressing with the next stages in the Winchelsea mining project. If you have any questions about any of the information in this briefing please contact either of us.

Yours sincerely

s47F

Chair



Mark Hewitt

CEO



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Senator Nigel Scullion
Minister for Indigenous Affairs
Parliament House
Canberra ACT 2600

6 September 2018

Dear Minister.

We refer to our letter to you dated 15 August 2018.

The purpose of this letter is to continue to update you on positive progress with the Winchelsea mining project.

Winchelsea Mining project to date

- 1 The key developments since our last letter are as follows:
 - (a) On 21 August 2018, the Board of the ALC met to discuss, amongst other things, our appointment as Co-Chief Executive Officer and Director (in respect to Mark) and Chairman (in respect to s47) of the Winchelsea Mining Company Pty Ltd.
 - (b) A shareholders agreement between Anindilyakwa Aboriginal Advancement Corporation and Winchelsea Mining Aus China International Mining Pty Ltd has now been signed.
 - (c) Winchelsea TOs have held their final meeting under Part IV of the ALRA on Tuesday 4 September 2018.

ALRA meeting

- 2 In relation to the meeting referred to in paragraph 1(c) above, as you know on 10 October 2017 the Winchelsea TOs met with the ALC and were asked whether they agree to the proposed commercial arrangements and suggested exploration methodology, as well as proposed terms and conditions of any agreement, which consent will be conditional on Winchelsea Mining ultimately holding the exploration licence application (which it now does hold).
- 3 A secret ballot was conducted, by request of the Winchelsea TOs, which returned a s47G result in favour of exploration on the terms and conditions discussed.
- 4 It was also agreed by the Winchelsea TOs at that meeting that selected senior Winchelsea TOs would confer after the application is so transferred to Winchelsea Mining (which it now has been) to confirm the 10 October decision, in accordance with Part IV of ALRA.



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5 The TOs on 10 October understood and agreed that the purpose of the further meeting is to simply formalise what is required under Part IV of ALRA, by confirming what was agreed to on the 10 October, once the JVCo is established and the application is transferred to it (which steps have now been completed).

6 That meeting took place on 4 September 2018 and consented to the project moving forward.

Winchelsea Mining - management of interests

7 As set out in our last letter, the *Public Governance Performance and Accountability Act 2013* (Cth) and the *Public Governance Performance and Accountability Rule 2014* (Cth) require certain duties to be complied with by the accountable authority, and officials, of the ALC. Together, we comprise the accountable authority of the ALC as well as being officials of the ALC.

8 To ensure proper governance, manage risks and comply with our statutory duties, we committed to a number of steps in relation to our appointments as Co-CEO, Director and Chairman. A summary of each of the steps taken is set out below.

Winchelsea Mining - appointments

Accountable authority disclosure

9 On 21 August 2018, we disclosed the proposed details of our interests as directors and/or employees of Winchelsea Mining to one another as the accountable authorities of the ALC.

ALC Board meeting

10 On 21 August 2018, we disclosed to the full Board of the ALC the proposed details of our interests as directors and/or employees of Winchelsea Mining. This included:

- (a) a description of the key aspects of the role of Co-CEO and Director of Winchelsea Mining, which includes:
 - (i) finalisation of the transfer of Yukida and NTM Gold/Reflective interests to the new Joint Venture company, Winchelsea Mining;
 - (ii) ensuring all key legal documents are in place and delivery of necessary government approvals; and
 - (iii) ensuring comprehensive TO engagement at AAAC and delivery of a whole of community broad level understanding of the project.
- (b) a description of the key aspects of the role of Chairman of Winchelsea Mining, which includes:
 - (i) participation in all important negotiations, decision making and all joint venture meetings;
 - (ii) providing leadership and support to TOs; and



(iii) providing advice to the exploration team and staff.

- 11 The ALC Board were provided with an opportunity to ask questions of each of us. We then left the meeting. Arnold Bloch Leibler were in attendance by telephone.

In camera portion of the ALC Board meeting

- 12 We have been informed by the ALC Board that the following occurred when we left the meeting. Other than the explanations provided (see paragraphs 10 and 11 above) we did not participate in any discussion of, or decisions in relation to, these matters.

- 13 The ALC Board provided in principle agreement to:

- (a) Mark's appointment as Co-CEO and Director of Winchelsea Mining; and
- (b) s47F appointment as Chairman of Winchelsea Mining.

- 14 ABL provided an overview of the legal framework outlined under the *Public Governance Performance and Accountability Act 2013* (Cth) and the *Public Governance Performance and Accountability Rule 2014* (Cth) including that if we were to become paid directors (and an employee in respect to Mark), of Winchelsea Mining, we would have the same or similar material personal interests with regard to Winchelsea Mining.

- 15 ABL recommended that the ALC Board consider the commitments involved in relation to the roles of Co-CEO, Director and Chairman and how this would impact our ability to satisfy our existing roles as CEO and Chairman of ALC. If the ALC Board considered that the commitment to Winchelsea Mining would result in a reduction in the time available to perform our ALC functions, it may consider an overall reduction to the work required (and therefore salary) of the existing ALC roles.

- 16 s47F, (Independent Chair of the ALC Audit Committee) provided recommendations to the Board in relation to the above and noted the following in relation to the two of us:

- (a) Mark has performed exceptionally in the role of CEO of ALC and the recent performance review characterised him as "exceeding expected performance" in all areas;
- (b) Mark has a large portfolio of work with the ALC and his involvement in mining on Winchelsea Island to date is just one of 13 different areas he has responsibility for;
- (c) Mark and s47F are not "time watchers" and always work as and when needed, including regular weekend work;
- (d) payment for the roles at Winchelsea Mining will come directly from Winchelsea Mining with no contribution by ALC;
- (e) the amount payable to s47F as Chairman of ALC is determined by the Remuneration Tribunal;



- (f) if Mark and s47F are appointed to the roles of Co-CEO, Director and Chairman at Winchelsea Mining, s47F will continue to, and the Board will, assume all responsibility for any and all future decisions at ALC involving Winchelsea Mining. Mark and s47F will not participate in any such ALC decisions unless the Board determines they can be present at the relevant discussion, answer any questions the Board may have and in the case of s47F vote on any decisions;
- (g) the mechanism above will remove a key area of responsibility (being mining on Winchelsea Island) from Mark's role as CEO of ALC; and
- (h) he was unsure whether to recommend that the ALC Board consider a percentage reduction or dollar reduction, if any, to the payments received by Mark and s47F
- 17 The Board discussed the role of s47F and noted the following:
- (a) s47F has performed exceptionally well in the role of Chairman of ALC;
- (b) his current remuneration is s47G
- (c) the proposed role of Chairman of Winchelsea Mining is unlikely to impact the time s47F is able to commit to his role as Chairman of ALC; and
- (d) the Chairs of the Northern and Central Land Council perform the same roles and get paid significantly more (up to s47G more per annum).
- 18 In light of the above, and in particular the fact that s47F is paid up to s47G less than the Chairs of the Northern and Central Land Councils, the Board (without us present) unanimously resolved:
- (a) to approve s47F appointment as Chairman of Winchelsea; and
- (b) not to reduce s47F current ALC payment.
- 19 The Board discussed the role of Mark and noted the following:
- (a) Mark has performed exceptionally in the role of CEO of ALC and this is reflected in his performance rating of "exceeding expected performance";
- (b) his current remuneration is s47G
- (c) the proposed role of Co-CEO and Director of Winchelsea Mining (see above at paragraph 10(a)):
- (i) would potentially result in less work for Mark in his role of CEO of ALC bearing in mind that all future matters and decisions at ALC involving Winchelsea Mining would be assumed by s47F (ALC Mining and Environment Manager) and the Board;
- (ii) will otherwise necessarily impact the time he is able to commit to his role as CEO of ALC; and



- (d) it wants to act in the best interests of ALC and also recognise the excellent and critical role played by Mark.
- 20 s47F noted that it is difficult to work in percentages and that he considered that the impact to Mark's role as CEO of ALC would be a reduction in the realm of s47G or s47G and that this equates to approximately s47G
- 21 A Board member suggested that the impact to Mark's role as CEO of ALC would be approximately a s47G in the thinking and doing time he is able to commit to ALC matters.
- 22 In light of the above, the Board (without us present) unanimously resolved:
- (a) to approve Mark's appointment as Co-CEO and Director of Winchelsea Mining;
 - (b) to reduce Mark's current ALC salary by 20% from the date on which he commences employment at Winchelsea Mining; and
 - (c) to revisit this matter in 12 months' time.
- 23 The ALC Board noted that if the proposed roles and remuneration of Co-CEO, Director and Chairman at Winchelsea Mining were to substantively change, we should provide the Board with an update.

Other information

- 24 ALC has been advised that on 28 August 2018, the Board of Winchelsea Mining met and:
- (a) approved the appointment of Mark as Co-CEO and Director of of Winchelsea Mining (without Mark voting); and
 - (b) approved the appointment of s47 as Chairman of Winchelsea Mining (without s47 voting).
- 25 If you have any questions about any of the information in this briefing please contact us.

Yours sincerely

s47F

Chair



Mark Hewitt

CEO



The rule book of Anindilyakwa Advancement Aboriginal Corporation (ICN 8751)

This rule book complies with the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

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1. Name

The name of the corporation is: Anindilyakwa Advancement Aboriginal Corporation

2. Objectives

The objectives of the corporation are to provide for and assist with the education and the economic, social and cultural advancement of the Traditional Aboriginal Owners of the ALC Region.

The corporation will do this by:

- participating in resource development and other community enterprises on or related to Winchelsea Island to build a strong financial base to be used for charitable work;
- supporting or establishing programmes for the purpose of the education, and economic, social and cultural advancement of the Traditional Aboriginal Owners of the ALC Region;
- securing improved education outcomes for Traditional Aboriginal Owners of the ALC Region;
- supporting or establishing Traditional Aboriginal Owner business development;
- supporting and establishing critical infrastructure;
- promoting the well-being of Traditional Aboriginal Owners of the ALC Region;
- promoting the cultural protection and transmission of cultural knowledge and language of Traditional Aboriginal Owners of the ALC Region;
- receiving payments from the ALC or any other person, being payments which have been disbursed by the ALC pursuant to s 35 of the Land Rights Act or pursuant to any agreement in relation to Aboriginal land or native title rights and interests in its region;
- contributing to or establishing a trust for the charitable purposes of the corporation; and
- doing all such other things as are incidental or conducive to the attainment of the objects and aims of the corporation.

3. Money from Winchelsea Island Resource Development

The primary resource development project for the corporation is on Winchelsea Island within the ALC Region. In recognition of this and of the special impact of that resource development on the Traditional Aboriginal Owners of Winchelsea Island the corporation will ensure that 5% of the profits that the corporation receives from resource development on Winchelsea Island will be directed to charitable projects for the benefit of the Traditional Aboriginal Owners of Winchelsea Island (**Winchelsea projects**).

A sub-committee of the Members, which sub-committee will comprise between 2 and 10 Traditional Aboriginal Owners of Winchelsea Island (**Winchelsea Sub-committee**), will be formed by the directors to make recommendations as to Winchelsea projects.

The formation, composition, procedures and powers of the Winchelsea Sub-Committee are set out in Schedule 4.

The Winchelsea Sub-Committee will report to the directors at least 4 times a year on the progress of Winchelsea projects.

The remaining profits that the corporation receives from resource development on Winchelsea Island will be directed to achieving the corporation's charitable objectives for the benefit of all the Traditional Aboriginal Owners of the ALC Region.

4. Winchelsea Island Resource Development

Upon request for nominee directors from the joint venture company that undertakes any manganese development project on Winchelsea Island, the corporation will nominate to become directors of that company those persons who fulfil the roles of Chairperson and CEO of the Anindilyakwa Land Council from time to time.

If the person who fulfils the role of Chairperson or CEO of the Anindilyakwa Land Council is replaced at any time by any other person that other person will then become the replacement nominee director of the joint venture company.

5. Members

5.1 Who is eligible

A member must be:

- at least 18 years old;
- an Aboriginal or Torres Strait Islander person; and
- live in or be a Traditional Aboriginal Owner of the land and or seas of the Groote Eylandt Archipelago.

5.2 How to become a member

A person applies in writing.

A person needs to be eligible under rule 5.1.

The directors accept the application by resolution at a directors' meeting.

The directors must consider all applications for membership within a reasonable period after they are received.

The person's name, address and date they became a member is put on the register of members.

The directors may refuse to accept a membership application. If they do so, they must write to the applicant about the decision and the reasons for it.

A person does not become a member until their name is entered on the corporation's register of members. This must be done within 14 days after the directors accept the membership application. However, the corporation must not enter the person on the register of members until after the relevant general meeting or annual general meeting (AGM) has been held if:

- a person applies for membership after a notice has been given for a general meeting or AGM; and
- the general meeting or AGM has not been held when the directors consider the person's application.

Note: An application for membership form is at Schedule 1 of this rule book.

5.3 Members' rights

A member can:

- attend, speak and vote at general meetings;
- be made a director (if the member is eligible to be a director—see rule 7.3 on eligibility of directors);
- put forward resolutions at general meetings, including under rule 6.6;
- ask the directors to call a general meeting under rule 6.3;
- look at the members' register free of charge;
- look at the minutes of general meetings and AGMs free of charge;
- look at the rule book or get a copy (free of charge);
- raise a dispute and have a dispute dealt with using rule 14 ; and
- look at the books of the corporation if the directors have authorised it or the members pass a resolution at a members' meeting which approves it.

5.4 Members' responsibilities

A member must:

- follow the corporation's rules;
- let the corporation know if they change their address; and
- treat other members with respect.

Members should also attend general meetings (including AGMs) or give their apologies.

5.5 No membership fee

The members of the corporation are not required to pay fees to join or for ongoing membership of the corporation.

5.6 Liability of members

The members do not have to pay the corporation's debts if the corporation is wound up.

5.7 How to stop being a member

A person stops being a member if:

- they resign in writing;
- they pass away; or
- their membership is cancelled in accordance with rule 5.8 or 5.9.

When a person stops being a member the corporation must put their name, address and the date they stopped being a member on the register of former members.

5.8 Cancelling membership

A person's membership can be cancelled by members passing a special resolution at a general meeting if:

- the member can't be contacted for two years; or
- the general meeting is satisfied that member has behaved in a manner that significantly interfered with the operation of the corporation or of corporation meetings.

The directors must give the person notice of the cancellation of their membership at the person's last known address as soon as possible after the special resolution is passed.

When a person's membership is cancelled the corporation must put their name, address and the date they stopped being a member on the register of former members.

5.9 Directors' limited right to cancel membership

For grounds not covered by rule 5.8, a person's membership can be cancelled by the directors passing a resolution at a directors' meeting if the member is not or stops being eligible for membership as set out in rule 5.1.

To do this, the directors must:

- write to the member to tell them:
 - the directors are going to cancel their membership;
 - the member has 14 days to object to the planned cancellation; and
 - if the member objects, they must write to the corporation to say so; and
- allow the member 14 days to object in writing to the intended cancellation.

If the member does not object, the directors must cancel the membership by passing a resolution at a directors' meeting. Then give the former member a copy of the resolution.

If the member objects, the directors cannot cancel the membership. The membership can only be cancelled by members passing a resolution at a general meeting.

5.10 The register/s of members and former members

The register/s must contain:

- the names and addresses of members and former members;
- the date when each person's name was added to the register; and
- for former members, the date when they stopped being a member.

The register/s of members and former members must be kept at the corporation's document access address or, if it is a large corporation, its registered office.

The register of members must be made available at the AGM.

6. General meetings and AGMs (members' meetings)

6.1 AGM timing

The first AGM must be held within 6 months of the date of registration of the corporation.

Every subsequent AGM must be held before the end of November each year.

6.2 AGM business

AGM business includes:

- checking the register of members;
- confirming the minutes of the previous general meeting;
- presenting reports: general, financial, directors';
- asking questions about how the corporation is managed;
- appointing directors (if required); and
- choosing an auditor (if required) and agreeing on the fee.

6.3 Calling general meetings

The directors can call a general meeting or AGM by passing a resolution in a directors' meeting or by circulating resolution.

The required number of members can request the directors to call a general meeting.

| Number of members in corporation | Number of members required to request a general meeting |
|---|--|
| 2 to 10 members | = 1 member |
| 11 to 20 members | = 3 members |
| 21 to 50 members | = 5 members |
| 51 members or more | = 10 per cent of members |

The members' request must:

- be in writing;
- state any resolutions to be proposed at the meeting;
- be signed by the members making the request;
- nominate a member to be the contact member on behalf of the members making the request; and
- be given to the corporation.

Within the 21 days of receiving the request the directors must either call the meeting or apply to the Registrar to deny the request.

Directors apply to the Registrar to deny the request

If the directors resolve that:

- the request is frivolous or unreasonable; or
- complying with the request would be contrary to the interests of the members as a whole,

a director, on behalf of all of the directors, may apply to the Registrar for permission to deny the request to call a general meeting.

The directors' application to the Registrar to deny the members' request must:

- be in writing;
- set out the reasons why they wish to deny holding the meeting; and
- be made within 21 days after the members' request for a meeting was made.

The directors must give notice to the contact member that they have applied to the Registrar to deny the request.

6.4 General meeting business

General meetings business includes:

- confirming the minutes of the previous general meeting; and
- considering the business or resolutions in the notice of meeting.

6.5 Notice for general meetings and AGMs

At least 21 days' notice must be given.

Notice must be given to:

- each member;
- the directors;
- the contact person or secretary; and
- the auditor (if the corporation has one).

The notice must set out:

- the place, date and time for the meeting;
- the business of the meeting;
- if a special resolution is being proposed, the exact wording of it;
- any technology to be used in the meeting (if required); and
- if a member can appoint a proxy.

Notices must be given to each member individually. This can be done by sending the notice:

- by post to their address;
- by fax to a fax number they have provided;
- by email to their email address; or
- via social media.

In addition to individual notice a corporation can also give notice by placing a notice on the Community notice boards in Alyangula, Angurugu, Umbakumba and Milyakburra and in a manner which follows Aboriginal or Torres Strait Islander custom.

A notice of meeting:

- sent by post is taken to be given three days after it is posted; or
- sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

6.6 Members' resolutions

The required number of members can propose a resolution by giving notice of it to the corporation.

| Number of members in corporation | Number of members required to propose a resolution |
|---|---|
| 5 to 10 members | = 1 member |
| 11 to 20 members | = 3 members |
| 21 to 50 members | = 5 members |
| 51 members or more | = 10 per cent of members |

The notice must set out the resolution in writing and must be signed by the members proposing it.

The corporation must give notice of the resolution to all members in the same way as rule 6.5.

The corporation must consider the resolution at the next general meeting which is being held more than 28 days after the notice from the members has been given to the corporation.

6.7 Quorum at general meetings and AGMs

| Number of members in corporation | Number of members to make a quorum |
|---|--|
| Up to 15 | = a majority of members of the corporation |
| 16 to 30 Members | = 8 members |
| 31 to 50 members | = 15 members |
| 51 to 90 members | = 25 members |
| 91 members or more | = 45 members |

The quorum must be present during the whole meeting. If there is no quorum after one hour, the meeting is adjourned until the next week at the same time and at the same place. If there is still no quorum, the meeting is cancelled.

How to count the quorum

To work out if there is a quorum:

- count each member present at the meeting (if a member also holds a proxy, that member is only counted once);
- If a member has appointed more than one proxy and each of those proxy holders are at the meeting, count only one of them; and
- If a member has appointed one or more proxies and the member is also present at the meeting, do not count the member's proxy holders.

6.8 Chairing general meetings and AGMs

The chairperson will chair general meetings. If the chairperson is not available, the deputy chairperson will chair the meeting. If neither chairperson nor deputy chairperson are available, the members must elect someone to chair the meeting.

6.9 Using technology at general meetings and AGMs

General meetings and AGMs can be held at more than one place using any technology that gives members a way of taking part. The type of technology to be used should, if possible, be set out in the notice of meeting.

6.10 Voting at general meetings and AGMs

Each member has one vote.

The chairperson has one vote plus a casting vote.

A challenge to a right to vote at a meeting may only be made at the meeting, and must be determined by the chairperson, whose decision is final.

A resolution is decided by majority on a show of hands, unless a poll is demanded under rule 6.11. (A poll is a formal vote, not by show of hands - for example, by writing on a voting paper or placing tokens in labelled jars.)

The chairperson tells the meeting whether they have received any proxy votes and how they are to be cast.

The chairperson declares the results of the vote, on a show of hands, or when a poll is demanded.

6.11 Demanding a poll

Either the chairperson or any member entitled to vote on the resolution can demand a poll. A poll is a formal count of votes. It can be done by secret ballot if there is general consensus amongst members present at the meeting to adopt such a method of voting.

A poll can be held instead of, or immediately after, a vote decided by majority on a show of hands.

A poll on the election of a chairperson or on the question of an adjournment must be taken immediately. A poll demanded on other matters must be taken when and in the manner the chairperson directs.

6.12 Proxies at general meetings and AGMs

Members can appoint another member as their proxy to attend meetings and vote for them.

Proxies can also speak at meetings and join in demanding a poll. They can vote if their appointment allows them to.

A person appointed by a member as their attorney under a power of attorney may not give a proxy to another member or person to attend meetings and vote for them.

A proxy appointment must contain the member's name and address, the corporation's name, the proxy's name, the meeting where the proxy is going, and it must be signed by the member.

The corporation must receive the proxy's appointment at least 48 hours before the meeting.

A person must not be a proxy for more than three members.

Note: An appointment of proxy form is at Schedule 2 - Appointment of proxy form.

6.13 Other people at general meetings and AGMs

A person appointed by a member as their attorney under a power of attorney may not in their capacity as attorney attend general meetings and AGMs or vote for the member, whether personally or through a proxy.

The chairperson may allow any person (excluding an attorney) other than a corporation director, member, proxy (if proxies are allowed) or auditor to attend general meetings and AGMs. But the person cannot propose or vote on resolutions.

6.14 Postponing a general meeting or AGM

After notice has been given for a general meeting or AGM the directors can decide to postpone the meeting if there are exceptional reasons for doing so (such as the death of a community person or a natural disaster).

The directors postpone the meeting by passing a resolution in a directors' meeting. A postponed meeting must be held within 30 days of the date that the meeting was due to occur.

The directors must give reasonable notice of the postponement and give each member individually a notice of the postponed meeting setting the new date, time and place.

7. Directors

7.1 Role of directors

The directors oversee the running of the corporation on behalf of all members, make decisions about the affairs of the corporation, and should always be aware of what the corporation and its employees are doing. The directors manage, or set the direction for managing, the business of the corporation.

The directors may exercise all the powers of the corporation except any that the CATSI Act or this rule book requires the corporation to exercise in a general meeting.

7.2 Number of directors

The number of directors of the corporation is decided at the general meeting but the corporation must have at least 3 directors and the corporation must not have more than 12 directors.

7.3 Eligibility of directors

A director must be:

- at least 18 years old;
- a member; and
- a Traditional Aboriginal Owner of Winchelsea Island.

A person is not eligible to become a director if the person has been disqualified from managing corporations.

7.4 Majority of director requirements

A majority of directors of the corporation must:

- usually reside in Australia;
- not be employees of the corporation.

The chief executive officer (CEO) may be a director but cannot chair directors' meetings.

7.5 How to become a director

The corporation can appoint a director by the members passing a resolution at a general meeting or AGM.

If there is a casual vacancy in a directorship the other directors can pass a resolution in a directors' meeting to fill the vacancy (see rule 8).

Before being appointed as a director, the person must give the corporation their consent in writing to act as a director.

The corporation must notify the Registrar of the director's appointment and personal details within 28 days after they are appointed.

7.6 Directors' terms of appointment and rotation

Other than the First Directors, the Directors will be appointed on a rotation system for a two-year term, so that half the directors retire at each AGM but are eligible to be re-appointed.

To implement the rotation system:

- At the first AGM of the corporation:
 - the First Directors will retire and will be eligible for re-appointment;
 - half the directors will be appointed for a term of one year which will expire at the next AGM following the AGM when they take office; and
 - half directors will be appointed for a term of two years which will expire at the second AGM following the AGM when they take office.
- At every subsequent AGM the appointment of any directors will be for a term of two years, which ends at the second AGM after they take office. If a director is replaced during their term, the replacement director holds office for the remainder of the replaced director's term.
- The AGM minutes must record the term of each director appointed.

If, despite the operation of section 246-25(4) of the CATSI Act, the terms of all directors expire so that there are no directors appointed at a particular time, the directors holding office immediately before the expiry will continue to hold office until the members appoint new directors or reappoint the existing directors by resolution at a general meeting.

7.7 How to become an office bearer (for example, chairperson, vice- chairperson, treasurer)

The corporation will have a Chairperson and a Deputy Chairperson elected from among the Directors.

The Chairperson and the Deputy Chairperson are each elected by resolution passed in general meeting for a term of up to two years but their term cannot continue past their term of office as a Director.

The Chairperson and Deputy Chairperson can be re-elected at the expiry of their term.

8. How to fill casual vacancies

The directors can appoint a person as a director to fill a casual vacancy.

A casual vacancy is where a person stops being a director before their term of appointment expires (see rule 8.1) and so the position of that director is vacant.

The person must meet the director eligibility criteria in rule 7.3 and any criteria that applies to the particular vacancy.

The term of an appointment made to fill a casual vacancy is for the balance of the term remaining on the vacant position.

However, a person's appointment to fill a casual vacancy must be confirmed by members passing a resolution at the next general meeting otherwise the person stops being a director at the end of the general meeting.

The directors may fill a casual vacancy even if the number of directors is reduced to less than the number required for a quorum.

8.1 How to stop being a director

A person stops being a director if:

- the director passes away;
- the director resigns in writing;
- the director's term of appointment expires;
- the director is removed as a director by the members or the other directors;
- the director is disqualified from managing a corporation; or
- the director ceases to be a member, but was a member when they became a director.

The corporation must send the Registrar a notice within 28 days after a person stops being a director.

8.2 How to remove a director

By resolution of the members in a general meeting:

- A notice for a resolution to remove a director must be given to the corporation at least 21 days before the next general meeting or AGM. (Alternatively, the members can request a meeting (rule 6.3) for the purpose of removing a director.);
- The corporation must give the director concerned a copy of the notice as soon as possible; and
- The director can give the corporation a written statement and speak at the meeting. The written statement must be given to everyone entitled to notice of the meeting (see rule 6.5).

By the other directors:

- Directors can only remove a director if the director fails to attend three or more consecutive directors' meetings without a reasonable excuse;
- Directors must give the director a notice in writing and they must give the director 14 days to object in writing; and
- If the director objects, they cannot remove the director. The director can only then be removed at a general meeting or AGM by resolution.

8.3 Directors' and officers' duties

The duties are:

- a duty of care and diligence;
- a duty of good faith and to act in the best interests of the corporation;
- a duty to disclose a conflict of interest ;
- a duty not to improperly use position or information; and
- a duty to not trade while insolvent.

8.4 Conflict of interest

A director who has, or thinks they may have, a conflict of interest in a corporation matter must tell the other directors. This includes, but is not limited to, a material personal interest.

The director must give details of what the interest is and how it relates to the corporation. These details must be given at a directors' meeting as soon as possible, and must be recorded in the minutes of the meeting.

A director who has a conflict of interest must not:

- be present at a directors' meeting while the matter in question is being considered; and
- vote on the matter,

unless they have been granted approval by:

- the other directors (those that do not have a conflict of interest) passing a resolution; or
- the Registrar in writing.

8.5 Payments to directors

A director can be paid for their work as a director provided the remuneration is agreed to by the corporation by resolution in a general meeting.

Directors may be paid if they are employed by the corporation, or if they have a contract to provide goods or services to the corporation (so long as the director has fulfilled any duty to disclose a conflict as required by this rule book and the payment is fair and reasonable to the corporation).

The corporation may pay the directors' travelling and other expenses for attending meetings or to do with other corporation business.

8.6 Related party benefit

If a corporation wants to give a financial benefit to a director or other related party (including a spouse, child or parent of a director) it must comply with Part 6.6 of the CATSI Act and, where required, follow the procedure to get the approval of the members.

8.7 Delegation of directors' powers

The directors can pass a resolution to delegate any of their powers to:

- another director;
- a committee of directors;
- an employee of the corporation; or
- any other person.

The delegate must follow the directions of the directors when using the delegated powers.

The exercise of the power by the delegate is as effective as if the directors had exercised it themselves. This means the directors are still responsible for what the delegate does with the powers.

Delegates must report to directors on the exercise of their delegated power.

8.8 Calling and giving notice of directors' meetings

Directors must meet at least every three months.

All directors must be given reasonable notice of a directors' meeting.

The directors will usually decide at a meeting when and where the next meeting will be.

A director can call a meeting by giving reasonable notice to all the other directors.

8.9 Quorum for directors' meetings

A majority of the directors must be present at all times during the meeting.

The directors may appoint a person as a director to make up a quorum for a directors' meeting.

8.10 Chairing directors' meetings

There must be a chair elected for each directors' meeting.

If someone has not already been elected to chair the meeting, or the person previously elected as chair is not available, the directors must elect a director present to chair the meeting (other than the CEO).

When electing a chair, the directors must decide how long that director will be the chair (i.e. just for that meeting, or at every meeting over a certain period of time). The directors may also remove a chair (but not their appointment as a director) by a resolution of the directors.

8.11 Using technology

Directors' meetings can be held at more than one place using any technology, as long as all directors agree to it. The type of technology to be used may be set out in the notice for a directors' meeting.

8.12 Resolutions by directors

Directors pass a resolution at a directors' meeting by a majority of the votes.

Each director has one vote.

The chairperson of the meeting also has a casting vote (if required).

Directors can pass a resolution without a directors' meeting if all directors sign a statement saying that they are in favour of it.

9. Contact person or secretary

Small and medium corporations have a contact person. Large corporations have a secretary.

The directors appoint a contact person/secretary.

The contact person/secretary must be at least 18 years old.

The directors decide the contact person/secretary's pay and terms and conditions of employment, if any.

The contact person/secretary must pass on any correspondence received to at least one of the directors within 14 days.

The contact person/secretary must give the corporation their consent in writing to become a contact person/secretary before being appointed.

The corporation must send the Registrar a contact person's/secretary's details within 28 days after they are appointed.

10. Records

The corporation must keep the:

- minutes of meetings (in writing or as an audio or video recording);
- rule book (constitution);
- register of members and former members;
- names and addresses of directors, officers and the contact person/secretary; and
- written financial records.

11. Finances

The corporation must keep written financial records that:

- correctly record and explain its transactions, financial position and performance; and
- would enable true and fair financial reports to be prepared and audited.

When the corporation is a trustee it must also keep written financial records for the trust.

The corporation must follow these procedures:

- the corporation must give receipts for all money it receives;
- all money of the corporation must be deposited into a corporation bank account;
- all accounts must be approved for payment at a directors' meeting or in accordance with valid delegations;
- all cheques, withdrawal forms, electronic funds transfer (EFT) transactions, and other banking documents must be signed by at least two people authorised by the directors;
- all payments made out of the corporation's money must be supported by adequate documents which explain the nature and purpose of the payment; and
- the corporation must keep adequate records for all cash withdrawals from the corporation's bank accounts (i.e. records that show the cash was used for a proper purpose and in accordance with the corporation's objectives).

The financial records must be retained for seven years after the transactions covered by the records are completed.

12. Application of funds

The corporation is a not-for-profit corporation.

Directors can use the money and property of the corporation solely to carry out its objectives. They cannot give the money and property directly or indirectly to members of the corporation except as genuine compensation for services rendered or expenses incurred on behalf of the corporation.

Note: This rule does not stop the corporation from making reasonable payment to:

- a member in their capacity as an employee; or
- a member under a contract for goods or services provided.

13. Winding up

The winding up of the corporation will follow the CATSI Act.

The rule book of the Anindilyakwa Advancement Aboriginal Corporation (ICN 8751).

Registered by a delegate of the Registrar on 12 December 2017.

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If the corporation is wound up all debts, liabilities and costs of winding up must be paid first. If there are any assets left over they must be distributed to one or more charitable organisations or funds with similar purposes, which are charitable at law and which have rules prohibiting the distribution of their assets and income to their members.

The members can pass a special resolution about how to distribute the surplus assets in accordance with this rule.

Surplus assets of the corporation cannot be given to any member or any person to be held on trust for any member.

14. Dispute resolution

This rule is subject to rule 15.

If a dispute arises, the parties must first try to resolve it themselves.

If the dispute is not resolved within 10 business days, any party may give a dispute notice to the other parties.

The dispute notice must be in writing and must say what the dispute is about. It must be given to the corporation.

The directors must help the parties resolve the dispute within 20 business days after the corporation receives the notice.

If the directors cannot resolve the dispute, it must be put to the members to resolve it at a general meeting.

15. Dispute in relation to Traditional Aboriginal Owner status

If there is a dispute regarding whether a person is a Traditional Aboriginal Owner of the ALC Region, of the land and or seas of the Groote Eylandt Archipelago, or of Winchelsea Island that dispute will be referred to the ALC whose decision will be final.

16. Changing the rule book

Subject to the terms of this rule 16 the rule book can be changed by the members passing a special resolution at a general meeting or an AGM. The proposed changes must be set out in the notice of the meeting.

If the proposed changes are intended to amend this rule 16, rule 3 or rule 4 the resolution must be passed unanimously and can only be put to such a resolution if the amendments are first:

- approved unanimously by the Winchelsea Island Sub-Committee; and
- approved unanimously by the directors.

Within 28 days after the resolution is passed, the corporation must send the Registrar copies of the:

- rule book changes;
- special resolution; and
- minutes of the meeting.

The changes do not take effect until the new rule book is registered by the Registrar.

17. Dictionary

Aboriginal means a person who is a member of the Aboriginal race of Australia.

ALC means the Anindilyakwa Land Council and its successors.

Note: The ALC is a body which is established under s 21 of the Aboriginal Land Rights (Northern Territory) Act 1976.

ALC Region means the area of land that is the responsibility of the ALC and for which the boundary is established by the Land Rights Act.

CATSI Act means the Corporations (Aboriginal And Torres Strait Islander) Act 2006 (Cth).

corporation means the Anindilyakwa Advancement Aboriginal Corporation.

First Directors means the directors named in the application for incorporation of the Corporation.

Land Rights Act means Aboriginal Land Rights (Northern Territory) Act 1976 (Cth). Native title rights and interests has the same meaning as in the Native Title Act 1993 (Cth).

Registrar means the Registrar of Aboriginal and Torres Strait Islander Corporations appointed under the CATSI Act.

Traditional Aboriginal Owners has the same meaning as that given by the Land Rights Act

Schedule 1—Application for membership form

Anindilyakwa Advancement Aboriginal Corporation (ICN 8751)

Application for membership

I, _____ (first name of applicant)

_____ (last name of applicant)

of _____ (address of applicant)

apply for membership of the corporation.

I declare that I am eligible for membership.

I am: Aboriginal Torres Strait Islander neither

Signature of applicant

Date

.....

Corporation use only

| | |
|--|----------|
| Application received | Date: |
| Application tabled at directors' meeting held on | Date: |
| Directors consider applicant is eligible for membership | Yes / No |
| Directors enter name, address and date on register of members (also Indigeneity if non-Indigenous members are allowed) | Date: |
| Directors have sent notification of directors' decision to the applicant | Date: |

Schedule 2—Appointment of proxy form

Anindilyakwa Advancement Aboriginal Corporation (ICN 8751)

Appointment of proxy

I, _____ (full name of member)

Of _____ (address of member)

am a member of the corporation.

I appoint _____ (full name of proxy)

Of _____ (address of proxy)

as my proxy to vote for me on my behalf at the general meeting of the corporation (annual general meeting or other general meeting, as the case may be) to be held on

_____ (insert date of meeting)

and at any adjournment of that meeting.

Signature of member
appointing proxy:

Date:

Please return your completed form to the corporation **at least 48 hours before** the meeting.

Schedule 3—Consent to become a director form

Anindilyakwa Advancement Aboriginal Corporation (ICN 8751)

Consent to become a director

I, _____ (first and last name of person)

of _____ (residential address, a postal address is not sufficient)

give consent to become a director of the corporation.

I confirm my date of birth is _____ (date of birth)

and my place of birth was _____ (place of birth)

I also acknowledge I am automatically disqualified from managing corporations (ss. 279-5 and 279-10 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act)) if I:

- have been convicted of an offence under the CATSI Act that is punishable by imprisonment for more than 12 months
- have been convicted of an offence involving dishonesty that is punishable by imprisonment for at least three months
- have been convicted of an offence against the law of a foreign country that is punishable by imprisonment for more than 12 months
- am an undischarged bankrupt
- have signed a personal insolvency agreement and have not kept to the agreement
- have been disqualified under the *Corporations Act 2001* from managing corporations

and I will notify the corporation if any of the above events occur after my appointment.

Signature of person

Date

NOTE: This form should be completed and given to the corporation before the person is appointed as a director—section 246-10(1) of the CATSI Act.

Schedule 4—Winchelsea Sub-Committee

Establishing the Winchelsea Sub-Committee

The Winchelsea Sub-Committee will be a Committee appointed by the directors and must comprise between 2 and 10 members who are Traditional Aboriginal Owners of Winchelsea Island.

The Winchelsea Sub-Committee must be established before the first AGM of the corporation.

Once established the members of the Winchelsea Sub-Committee can:

- determine their own procedures for replacing Sub-Committee Members; and
- determine their own procedures for holding meetings and making decisions.

Once it has determined these procedures the Winchelsea Sub-Committee must advise the directors of these procedures.

Role of the Winchelsea Sub-Committee

The directors will advise the Winchelsea Sub-Committee:

- how much money the corporation receives from resource development on Winchelsea Island on a quarterly basis; and
- what figure represents 5% of this value (**Winchelsea Funds**).

The Winchelsea Sub-Committee can make recommendations to the directors about what projects should be funded by the Winchelsea Funds.

The directors must advise the Winchelsea Sub-Committee of any proposal for the use of the Winchelsea Funds and the Winchelsea Sub-Committee will have 21 days in which to object to the use of the Winchelsea Funds in that way.

If the Winchelsea Sub-Committee does not agree with the directors proposal for the use of the Winchelsea Funds the Winchelsea Sub-Committee will meet with the directors to discuss the use of the Winchelsea Funds.

The Winchelsea Sub-Committee and the directors will work hard to reach an agreement on the use of the Winchelsea Funds, but the Winchelsea Sub-Committee will not have a veto on the use of the Winchelsea Funds.

For the avoidance of doubt the Winchelsea Funds can only be used on projects that further the charitable purposes of the corporation but it is intended that they are specifically directed to the Traditional Aboriginal Owners of Winchelsea Island in accordance with rule 3 of the rule book.

NATIONAL INDIGENOUS AUSTRALIANS AGENCY
MINISTERIAL SUBMISSION

NIAA
Mr Griggs
Mr Exell
Ms Hope
Mr Bulman
Mr Beswick
Mr Jeffries
Mr Mudaliar

To: Minister for Indigenous Australians (for decision by 15 July 2021 to ensure compliance with the timeframe prescribed by legislation to make the relevant determination)





NIAA Executive
Coordination

PARAGRAPH 47(3)(B) LAND RIGHTS ACT - DETERMINATION IN RESPONSE
TO STATEMENT BY INTENDING MINER - WINCHELSEA MINING PTY LTD

MO

s47F

Recommendations - that you:

1. Agree to determine, under paragraph 47(3)(b) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act), that you are satisfied that the national interest does not require that the mining proposed by Winchelsea Mining Pty Ltd (Winchelsea Mining) should proceed.

Agreed / Not Agreed
2. Sign the letter to Mr Mark Hewitt, Director and Co-Chief Executive Officer (Co-CEO) of Winchelsea Mining, to advise of your determination.

Signed / Not Signed
3. Note there is no requirement to advise parties in writing of your determination, however it is recommended as a courtesy to enable the parties to proceed to request your consent and approval for related Mineral Lease and Mining Agreement

Noted / Please Discuss
4. Note the Land Rights Act requires your determination under paragraph 47(3)(b); however, in light of the Northern Territory (NT) Mining Minister's determination under paragraph 47(3)(a) of the Land Rights Act (Attachment D), your determination does not engage subsection 47(4) of the Land Rights Act to prevent the grant of the application for mining interest in this instance.

Noted / Please Discuss

KEN WYATT



Date:

30 June 2021

Comments:

Key Points:

1. Winchelsea Mining has applied for Mineral Lease (ML) 32704 to extract manganese on the area subject to Exploration Licence (EL) 27521 at Winchelsea Island in the Groote Archipelago, NT. Consent for the grant of EL 27521 by the NT Government was given by the former Minister for Indigenous Affairs on 12 October 2018.

2. Winchelsea Mining is owned under a joint venture arrangement between Anindilyakwa Advancement Aboriginal Corporation s47G and Aus China Mining Pty Ltd s47G (shareholding).
3. If the proposed mining operations goes ahead, Winchelsea Mining will be the second mining company with shareholders who are traditional owners of the mined area to commence operations in the NT, the first being the Gulkula bauxite mine on the Gove Peninsula in Arnhem Land.
4. As required by subsection 46(1) of the Land Rights Act, Winchelsea Mining provided a statement setting out a comprehensive proposal about the mining works it proposes to undertake to the Anindilyakwa Land Council (ALC). The statement formed the basis of subsequent negotiations and consultations about the proposed Mining Agreement with traditional owners on 23-24 March 2021, which was then agreed and endorsed by resolution of the ALC Full Council.

Relevant determinations under subsection 47(3) of the Land Rights Act

5. As required under subsection 46(2) of the Land Rights Act, Winchelsea Mining provided copies of the statement to you and the NT Minister for Mining and Industry, the Hon Nicole Manison MLA, on 16 April 2021 (Attachments B and C). For the purpose of drafting this brief, the statutory timeframe of 90 days for making related determinations under subsection 47(3) is calculated from that date as 15 July 2021.
6. Determinations provided for under paragraphs 47(3)(a) and 47(3)(b) can operate to prevent the grant of a mining interest or to cancel a mining interest that has been granted.
7. The power to make a determination under paragraph 47(3)(a) of the Land Rights Act, in conjunction with certain other specified functions and powers under Part IV of the Land Rights Act, was delegated to the NT Mining Minister (currently the Minister for Mining and Industry) in an Instrument of Delegation signed by former Minister for Indigenous Affairs on 19 November 2013 (Attachment E refers).
8. The NT Minister for Mining and Industry wrote to you on 13 May 2021 advising of her determination under paragraph 47(3)(a) of the Land Rights Act (Attachment D). The nature of that determination does not contribute to preventing the grant of the proposed Mineral Lease to Winchelsea.
9. The power to make a determination under paragraph 47(3)(b) of the Land Rights Act, about any related national interest issues, is reserved to the Australian Government Minister.
10. Consultation with the Commonwealth Department of Industry, Science, Energy and Resources confirmed there are no matters relevant to the national interest in relation to this proposed production of manganese ore.
11. Subsection 47(4) of the Land Rights Act can only be used to stop a mining interest proceeding if matters in paragraph 47(3)(a) and 47(3)(b) are both made out. Given the determination by the NT Minister at Attachment D is that the matters at paragraph 47(3)(a) are not made out, the determination recommended to you in this brief under paragraph 47(3)(b) does not, by itself, prevent the grant of the proposed ML to Winchelsea Mining.

12. Additional information about the relevant provisions of the Land Rights Act is at Attachment F.

Future considerations about proposed Mining Agreement and grant of Mineral Lease

13. After you advise Winchelsea Mining of the determinations made under subsection 47(3) of the Land Rights Act, it is anticipated the ALC will seek your consent to the grant of ML 32704 under subsection 45(b) of the Land Rights Act, in conjunction with a request for your approval to enter into the Mining Agreement under subsection 27(3) of the Land Rights Act.
14. The Agency will provide a comprehensive brief about sensitivities, conflicts of interest and other considerations when providing advice on the request for your consent for the grant of ML 32704 and approval to enter into the Mining Agreement.
- The Agency is aware that Winchelsea Mining has already signed the Mining Agreement however the ALC and Anindilyakwa Land Trust advised they will not countersign the Mining Agreement until after receiving your approval as required by subsection 27(3) of the Land Rights Act.
 - There are sensitivities about potential conflicts of interest arising from the dual roles of ALC Chair and ALC CEO also being directors of Winchelsea Mining. The ALC CEO is also a Co-CEO of Winchelsea Mining. Similar issues arose in managing the previous request for the Minister's consent to the grant of EL 27521 and the ALC adopted procedures designed to mitigate risk, which included excluding the Chair and CEO from related decision-making meetings by traditional owners and elected members.
 - The ALC was approved \$13.3 million funding under the NT Indigenous Economic Stimulus Package from the Aboriginals Benefit Account in the 2020-21 and 2021-22 financial years. The Agency has noted a number of the project proposals have relevance to the Winchelsea Mining project.
15. These issues are not relevant to the determination under paragraph 47(3)(b) of the Land Rights Act about national interest considerations.

Wayne Beswick
Branch Manager
Land Branch
18 June 2021

Policy Officer: s22 [REDACTED]
Phone no: s22 [REDACTED]
Consultation: Central Group (Arnhem Land and Groote Eylandt Region), Legal Services Branch, Department of Industry, Science, Energy and Resources, Anindilyakwa Land Council, Northern Territory Department of Industry, Trade and Tourism

ATTACHMENTS

**ATTACHMENT A DRAFT REPLY TO MR MARK HEWITT, DIRECTOR
WINCHELSEA MINING**

ATTACHMENT B INCOMING CORRESPONDENCE

ATTACHMENT C WINCHELSEA MINING PROJECT STATEMENT

**ATTACHMENT D NORTHERN TERRITORY MINISTER'S DETERMINATION -
PARAGRAPH 47(3)(A) LAND RIGHTS ACT - 13 MAY 2021**

**ATTACHMENT E DELEGATIONS TO NORTHERN TERRITORY MINING
MINISTER - PART IV ALRA - 19 NOVEMBER 2013**

ATTACHMENT F ADDITIONAL INFORMATION



MINISTER FOR MINING AND INDUSTRY

Parliament House
State Square
Darwin NT 0800
minister.manison@nt.gov.au

GPO Box 3146
Darwin NT 0801
Telephone: (08) 8936 5547
Facsimile: (08) 8936 5609

The Hon Ken Wyatt AM, MP
Minister for Indigenous Australians
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

Email: Minister.Wyatt@ia.pm.gov.au

Dear Minister *Ken*

I write to advise you of a determination I have made under section 47(3)(a) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (ALRA), as per delegated arrangements, in relation to an application for a mining interest identified as Mineral Lease (ML) 32704.

Winchelsea Mining Pty Ltd (Winchelsea) applied for ML 32704 for the purposes of mining manganese oxide ore bodies.

Under the ALRA, Winchelsea must provide a copy of its mining statement to the Northern Territory Minister, triggering a determination to be made under section 47(3) of the ALRA.

Section 47(3) of the ALRA provides that before consideration to grant the ML, I must determine that the mining statement is consistent with the description of the exploration proposal set out under section 41(6)(e). If it is consistent, I cannot make a determination to cancel the application.

After assessing the mining proposal, I am satisfied that it is consistent with the exploration proposal and that section 47(3)(a), related to cancellation of the application, does not apply. I provide this determination to you to enable you to make your determination under section 47(3)(b) of the ALRA.

Yours sincerely


NICOLE MANISON

13 MAY 2021

FOI/2526/031 (IR)

A very exciting project!

Instrument Number M5 of 2013
Minister for Indigenous Affairs

Commonwealth of Australia

Aboriginal Land Rights (Northern Territory) Act 1976

INSTRUMENT OF DELEGATION

I, NIGEL SCULLION, Minister for Indigenous Affairs, exercising my power under subsection 76(2) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act):

- a. REVOKE all previous delegations of functions and powers made under subsection 76(2) of the Act.
- b. DELEGATE my functions and powers under the provisions of the Act set out in Column 2 and described in Column 3 of an item of the Schedule to this Instrument to the Northern Territory Mining Minister as defined in subsection 3(1) of the Act.

This Instrument has effect on and from the date it is signed.

Signed this19...day ofNOVEMBER.....2013.




NIGEL SCULLION

Minister for Indigenous Affairs

SCHEDULE

| Item (Column 1) | Provision of the Act (Column 2) | Summary of function or power (Column 3) |
|--------------------|--|---|
| 1. | subsection 41(2A) | To decide any request to extend the standard period in which to submit an application for consent to an exploration licence. |
| 2. | subsection 42(5) | To authorise in writing a specified person, or any person included in a specified class of persons, to attend the meeting, or each meeting, referred to in paragraph 42(4)(c) and attend any subsequent meeting. |
| 3. | subsection 42(15) | To determine in writing that a specified day is to be the end of the negotiating period. |
| 4. | subsection 42(16) | To consult the applicant and the Land Council before making a determination under subsection 42(15). |
| 5. | subsection 42(18) | To determine in writing a period to be the <i>negotiating period</i> for the purposes of subsection 42(17). |
| 6. | subsection 42(19) | To give written notice of a determination under subsection 42(15) or subsection 42(18) to the applicant and the Land Council. |
| 7. | subsection 44(11) | To determine a longer period for the applicant to enter into an agreement with the Land Council to give effect to any terms and conditions determined by the Mining Commissioner. |
| 8. | subsection 46(6) | To authorise in writing a specified person, or any person included in a specified class of persons, to attend the first meeting and any subsequent meeting referred to in subsection 46(5). |
| 9. | subsection 46(15) | To determine a longer period for the intending miner to enter into an agreement with the Land Council to give effect to any terms and conditions determined by the Mining Commissioner under section 46. |
| 10. | subsection 47(1) other than the power under paragraph 47(1)(e) | To: <ul style="list-style-type: none"> - receive a statement from a Land Council under paragraph 47(1)(b); and - determine in writing whether satisfied that the Land Council was entitled to make the statement. |

Initials 

Date ¹⁹ 12/11/13

| Item (Column 1) | Provision of the Act (Column 2) | Summary of function or power (Column 3) |
|--------------------|---|--|
| 11. | subsection 47(2) following a determination made by the Commonwealth Minister under paragraph 47(1)(e) | To inform the Land Council and the licence-holder of the matters determined under paragraph 47(1)(d) and paragraph 47(1)(e). |
| 12. | subsection 47(3) other than the power under paragraph 47(3)(b) | To determine in writing whether satisfied in relation to the matters referred to in paragraph 47(3)(a). |
| 13. | subsection 47(4) following a determination made by the Commonwealth Minister under paragraph 47(3)(b) | To inform the Land Council and the intending miner of the matters determined under paragraph 47(3)(a) and paragraph 47(3)(b). |
| 14. | subsection 48(3) | To: <ul style="list-style-type: none"> - receive an application from a Land Council under paragraph 48(3)(b); - consult with the Commonwealth Minister responsible for mineral resources matters; - determine whether satisfied in relation to the matters referred to in paragraph 48(3)(c); - authorise a further application to be made under section 41; and - receive notification from the original applicant that he or she does not intend to apply under paragraph 48(3)(e). |
| 15. | subsection 48(3A) | To authorise, under subsection 48(3), an application in respect of the land concerned or an area within that land to be made by any person under section 41. |
| 16. | subsection 48(5) | To consent to the making of an application under section 41 or section 46 within 5 years of an exploration licence or mining interest in respect of particular land being cancelled under subsection 47(2) or subsection 47(4). |

Initials 

Date 19/11/13

Page 2 of 2

ATTACHMENT F**Additional Information**

On 16 April 2021, Winchelsea Mining Pty Ltd (Winchelsea Mining) provided a statement setting out a comprehensive proposal about mining works it proposes to undertake on the area subject to Exploration Licence (EL) 27521 at Winchelsea Island on Groote Archipelago, Northern Territory (NT) as required under subsection 46(2) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act).

Subsection 47(3) of the Land Rights Act provides that:

- (3) *If an intending miner causes a copy of a statement of mining proposals to be sent to the Minister under subsection 46(2), the Minister must, within 90 days after receiving the statement:*
- (a) *determine, in writing, whether the Minister is satisfied that:*
 - (i) *the proposed mining works or related activities are not in accordance with the description set out under paragraph 41(6)(e) in respect of the application relating to the relevant exploration licence; and*
 - (ii) *the Land Council consented to the grant of the licence (including because of the operation of subsection 42(7)); and*
 - (iii) *the works or activities are causing, or are likely to cause, a significant impact on the affected land and on Aboriginals, to the extent that the Council would not have consented to the grant of the licence; and*
 - (b) *determine, in writing, whether the Minister is satisfied that the national interest does not require that the works or activities should proceed.*

The power to make a determination under paragraph 47(3)(a) of the Land Rights Act, in conjunction with certain other specified functions and powers under Part IV of the Land Rights Act, was delegated to the NT Mining Minister (currently the Minister for Mining and Industry) in an Instrument of Delegation signed by the former Minister for Indigenous Affairs on 19 November 2013 ([Attachment E](#) refers).

The power to make a determination under paragraph 47(3)(b) of the Land Rights Act, about any related national interest issues, is reserved to the Australian Government Minister.

Those determinations can operate to prevent the grant of a mining interest or cancel a mining interest that has been granted.

Subsection 47(4) of the Land Rights Act provides that:

- (4) *If the Minister determines that he or she is satisfied of the matters in paragraphs (3)(a) and (b):*
- (a) *the Minister must inform the Land Council and the intending miner; and*
 - (b) *if the mining interest applied for has not yet been granted—the application must not be granted; and*
 - (c) *if the mining interest has been granted—the interest is cancelled under this subsection.*

As both paragraph 47(3)(a) and paragraph 47(3)(b) need to be satisfied to prevent the grant of a mining interest, we recommend that you consider your determination under paragraph 47(3)(b) of the Land Rights Act after receiving a copy of the determination by the NT Minister for Mining and Industry under paragraph 47(3)(a) of the Land Rights Act.

The determination by the NT Minister for Mining and Industry at Attachment D does not prevent the grant of the proposed Mineral Lease. Therefore, your determination under paragraph 47(3)(b) of the Land Rights Act will not serve to prevent the grant of the mining interest.

NATIONAL INDIGENOUS AUSTRALIANS AGENCY
MINISTERIAL SUBMISSION

NIAA
CEO
Ms Hope
Mr Bulman
Mr Mudaliar

NIAA Executive
Coordination

MO
s47F

To: Minister for Indigenous Australians

SECTIONS 45(B) AND 27(3) LAND RIGHTS ACT - CONSENT TO THE GRANT OF
A MINERAL LEASE TO WINCHELSEA MINING PTY LTD AND APPROVAL TO
ENTER INTO A RELATED AGREEMENT

Recommendations - that you:

- 1. Agree you are satisfied the Anindilyakwa Land Council (ALC) has complied with its statutory obligations under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act) in seeking the following consent and approval.

 Agreed / Not Agreed

- 2. Agree to consent, under subsection 45(b) of the Land Rights Act to the grant of a Mineral Lease pursuant to Mineral Lease Application 32704 to Winchelsea Mining Pty Ltd (Winchelsea Mining).

 Agreed / Not Agreed

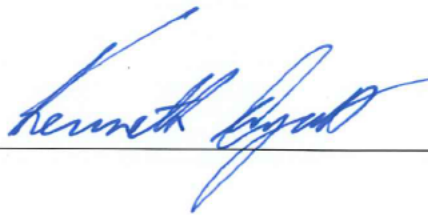
- 3. Agree to approve, under subsection 27(3) of the Land Rights Act, the ALC entering into the related Mining Agreement at Attachment E with Winchelsea Mining that will involve the receipt of more than \$1 million in payments.

 Agreed / Not Agreed

- 4. Sign the letters to the ALC, the Northern Territory (NT) Minister for Mining and Industry, the Hon Nicole Manison MLA and Winchelsea Mining at Attachments A-C advising of your decisions.

 Signed / Not Signed

KEN WYATT



Date: 2 August 2021

Comments:

Key Points:

OFFICIAL

1. The Anindilyakwa Land Council (ALC) wrote to you on 1 July 2021 seeking your consent to the grant of a Mineral Lease to Winchelsea Mining and approval to enter into the related Mining Agreement (Attachments D and E refer).
2. Winchelsea Mining has applied for Mineral Lease (ML) 32704 to extract manganese ore bodies on Winchelsea Island on the Groote Archipelago on land held by the Anindilyakwa Aboriginal Land Trust. Maps of Winchelsea Island demarcating the area of the Mineral Lease Application 32704 are appended to the Mining Agreement at Attachment E. The mine is expected to have a life of around seven years.
3. The previous Minister for Indigenous Affairs, the Hon Nigel Scullion gave consent to the grant of Exploration Licence (EL) 27521 at Winchelsea Island on 12 October 2018.
4. Winchelsea Mining is owned under a joint venture arrangement between Anindilyakwa Advancement Aboriginal Corporation s47G and Aus China International Mining Pty Ltd s47G. Details about the joint venture is provided at Additional Information at Attachment G.
5. If the mining operation goes ahead, Winchelsea Mining will be the second mining company with shareholders who are traditional owners of the mined area to commence operations in the NT, the first being the Gulkula bauxite mine on the Gove Peninsula in Arnhem Land.
6. In the Mining Agreement at Attachment E and Submission about Traditional Ownership and Consultations (Submission) at Attachment F, the ALC warrants that it has complied with its statutory obligations under subsections 23(3) and 46(4) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act) and that:
 - a. the traditional Aboriginal owners of Winchelsea Island understand the nature and purpose of the terms and conditions of the proposed Mining Agreement and consent to them;
 - b. other Aboriginal communities or groups that may be affected by the grant of the mining interest have had an adequate opportunity to express their views to the ALC about those terms and conditions; and
 - c. those terms and conditions are reasonable.

Consent to the grant of Mineral Lease

7. The ALC has requested your consent pursuant to subsection 45(b) of the Land Rights Act to enable the grant of a mining title by the NT Government Minister for Mining and Industry under the *Mineral Titles Act 2010* (NT).
8. The Agency consulted with the NT Department of Industry, Tourism and Trade's Mineral Titles section which did not have any comments relevant to this matter.
9. The Agency is not aware of any reason not to consent to the grant of the Mineral Lease pursuant to subsection 45(b) of the Land Rights Act.
10. Notwithstanding your consent under subsection 45(b), Winchelsea Mining is also required to satisfy the regulatory framework under the *Mineral Titles Act 2020* (NT) and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) before it can proceed with mining activities.

OFFICIAL

OFFICIAL

- a. On 7 June 2021 the Agency responded to a referral from Commonwealth Department of Agriculture, Water and the Environment regarding the EPBC Act.

Approval to enter into the Mining Agreement

11. Subsection 27(3) of the Land Rights Act requires a Land Council to obtain the Minister's approval before entering into an agreement that will involve the receipt of an amount exceeding \$1 million.

s47G

12. The Mining Agreement was approved by the ALC Full Council on 31 March 2021. The Agency is aware that Winchelsea Mining has already signed the Mining Agreement and the ALC will enter into the Mining Agreement subject to your approval under section 27(3) of the Land Rights Act.
13. There are potential conflicts of interest relating to this matter arising from the dual roles held by people in key positions. ALC Chair s47F and ALC Chief Executive Officer (CEO) Mr Mark Hewitt are also directors of Winchelsea Mining. Mr Hewitt is also a Co-CEO of Winchelsea Mining. In the Submission at Attachment F, the ALC has outlined the steps taken to mitigate conflict of interest, including but not limited to:
- a. Presentation of comprehensive disclosure to the full ALC Board which approved Mr Hewitt's appointment as Co-CEO and Director of Winchelsea Mining and s47F appointment as Chair of Winchelsea Mining. The ALC Board was provided with relevant information about the legal framework outlined in the *Public Governance Performance and Accountability Act 2013* (Cth) and the *Public Governance Performance and Accountability Rule 2014* (Cth).
 - b. Mr Hewitt and s47F did not participate in ALC decisions involving Winchelsea Mining. s47F, the ALC Mining Manager and the remaining ALC Board assumed responsibility for ALC decisions about Winchelsea Mining.
 - c. The parties have obtained separate legal representation.
 - d. Mr Hewitt and s47F attended meetings as representatives of Winchelsea Mining and on each occasion left the meetings when the traditional Aboriginal owners wanted to discuss the presentation materials.
14. A representative from the Agency attended some consultations conducted by the ALC in March 2021 and observed the ALC clearly explained to attendees Mr Hewitt's and s47F role as representatives of Winchelsea Mining. It was reported Mr Hewitt

OFFICIAL

OFFICIAL

wore an ALC branded shirt during the consultation and there was some discussion of ALC business throughout the Winchelsea Mining presentation.

15. These incidents are unfortunate and could involve a lack of diligence in the conduct of ALC business. However, in the light of other factors (such as the making of disclosures, observance of requirements for non-participation in decision-making and the appointment of independent legal advisers), we consider it is unlikely that these lapses in judgement have undermined the quality of the consent given by the traditional Aboriginal owners.
16. Additional information, including the operation of relevant provisions of the Land Rights Act is provided at Attachment G.

Background

17. The Mining Agreement includes provisions for the benefit of traditional owners and other Aboriginal people in the ALC region, such as:
 - a. preferential employment and engagement of Aboriginal people and businesses and regular reporting about this to the ALC;
 - b. safeguards for protecting Aboriginal sacred sites and cultural heritage; and
 - c. environmental protections, monitoring and management.
18. The ALC has been approved \$13.3 million in funding under the NT Indigenous Economic Stimulus Package from the Aboriginals Benefit Account in the 2020-21 and 2021-22 financial years. The Agency has noted a number of the funded projects have relevance to the Winchelsea Mining project:
 - a. \$1,981,000 for Little Paradise Logistics Base to support mining, aquaculture and tourism ventures.
 - b. \$1,658,500 for extension of two jetties and one new ramp to support the proposed logistics base and construction of Anindilyakwa Boarding School on Bickerton Island.
 - c. \$1,115,280 for a marine company owned by traditional owners for the transportation of goods and personnel to service Winchelsea mining operations and the construction of Anindilyakwa Boarding School.
19. Noting that Aus China Mining International Pty Ltd has a significant shareholding in the joint venture, the Commonwealth Department of Foreign Affairs and Trade provided advice that the Foreign Arrangements Scheme does not apply to this arrangement. The Foreign Arrangements Scheme's purpose is to ensure that arrangements between state or territory governments (and their entities) and foreign entities do not adversely affect Australia's foreign relations and are not inconsistent with Australia's foreign policy.

John Litchfield
Acting Branch Manager
Land Branch
20 July 2021

Policy Officer: s22
Phone no: s22
Consultation: Arnhem Land Groote
Eylandt, Central Group, Legal Services
Branch, Department of Foreign Affairs
and Trade, Anindilyakwa Land Council

OFFICIAL

OFFICIAL

ATTACHMENTS

**ATTACHMENT A DRAFT RESPONSE TO s47F [REDACTED], ALC MINING
MANAGER**

**ATTACHMENT B DRAFT CORRESPONDENCE TO NT MINISTER FOR MINING
AND INDUSTRY**

ATTACHMENT C DRAFT CORRESPONDENCE TO WINCHELSEA MINING

ATTACHMENT D INCOMING CORRESPONDENCE

ATTACHMENT E MINING AGREEMENT

ATTACHMENT F ALC SUBMISSION

ATTACHMENT G ADDITIONAL INFORMATION

OFFICIAL

ATTACHMENT G**Additional Information**Grant of a Mineral Lease on Aboriginal land

The Anindilyakwa Land Council (ALC) has requested your consent, under section 45(b) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act), to the grant of a Mineral Lease to Winchelsea Mining Pty Ltd pursuant to Mineral Lease Application 32704.

Section 45 of the Land Rights Act provides that:

A mining interest shall not be granted to an intending miner in respect of Aboriginal land unless:

- (a) the relevant Land Council and the intending miner have entered into an agreement under section 46 as to the terms and conditions to which the grant of the mining interest will be subject; and*
- (b) the Minister has consented, in writing, to the grant of that mining interest.*

Section 46 of the Land Rights Act provides for the negotiation of terms and conditions to which a proposed grant of a mining interest will be subject and the associated procedures by which those terms and conditions are decided. Sections 46(4) and 46(5) of the Land Rights Act provide the statutory obligations of a Land Council, for the purpose of reaching agreement on the terms and conditions of a proposed grant of a mining interest:

- (4) Subject to subsections (7) to (11), inclusive, the Land Council shall not agree upon the terms and conditions unless:*
 - (a) it has, as far as practicable, consulted the traditional Aboriginal owners (if any) of the land concerning the terms and conditions and it is satisfied that they understand the nature and purpose of the terms and conditions and, as a group, consent to them;*
 - (b) it has, as far as practicable, consulted any other Aboriginal community or group that may be affected by the grant of the mining interest concerning the terms and conditions and it is satisfied that the community or group has had an adequate opportunity to express its view to the Land Council; and*
 - (c) it is satisfied that the terms and conditions are reasonable.*
- (5) In order to facilitate consultation between the Land Council and the traditional Aboriginal owners:*
 - (a) the Land Council shall convene such meetings with them as it considers necessary to consider the intending miner's mining proposals and discuss the terms and conditions;*
 - (b) the Land Council shall give reasonable notice to the applicant and the Minister before each meeting which the applicant and the Minister are entitled to attend;*
 - (c) the representatives of the intending miner may attend so much of the first meeting as is appropriate in order to present and explain the intending miner's mining proposals and to outline the intending miner's views concerning the terms and conditions; and*
 - (d) except where the traditional Aboriginal owners as a group decide, and, through the Land Council, notify the intending miner that the representatives of the intending miner may not attend a subsequent meeting that is so convened-the representatives may attend so much of that subsequent meeting as is appropriate*

in order further to explain those mining proposals or further to discuss the terms and conditions.

Clause 2.1 of the Mining Agreement at Attachment E warrants the ALC is satisfied it has complied with its statutory obligations under section 46(4) of the Land Rights Act. Related background information on consultations is provided in the ALC's correspondence at Attachment D and submission at Attachment F including reference to anthropological reports, a detailed schedule of meetings and a copy of the presentation.

Representatives of Winchelsea and the National Indigenous Australians Agency attended the consultation meeting with traditional Aboriginal owners on 23-24 March 2021.

The Full ALC Board gave its consent to the grant of Mineral Lease and the approval of the Mining Agreement at a meeting held on 31 March 2021.

Approval to enter into agreements involving the payment or receipt of more than \$1,000,000

The ALC seeks your approval under section 27(3) of the Land Rights Act to enter into the Mining Agreement because it is expected to involve the receipt of more than \$1 million over its term.

Section 27(3) of the Land Rights Act provides that:

A Land Council shall not, without the approval of the Minister, enter into, or permit a Land Trust holding land in its area to enter into, a contract involving the payment or receipt of an amount exceeding \$1,000,000, or, if a higher amount is prescribed, that higher amount.

Under section 27(4) of the Land Rights Act, you shall not give an approval under section 27(3) unless you are satisfied the Land Council concerned has complied with any duty imposed on it by section 23(3).

Section 23(3) of the Land Rights Act provides:

In carrying out its functions with respect to any Aboriginal land in its area, a Land Council shall have regard to the interests of, and shall consult with, the traditional Aboriginal owners (if any) of the land and any other Aboriginals interested in the land and, in particular, shall not take any action, including, but not limited to, the giving of consent or the withholding of consent, in any matter in connexion with land held by a Land Trust, unless the Land Council is satisfied that:

- (a) the traditional Aboriginal owners (if any) of that land understand the nature and purpose of the proposed action and, as a group, consent to it; and*
- (b) any Aboriginal community or group that may be affected by the proposed action has been consulted and has had adequate opportunity to express its view to the Land Council.*

Section 23(3) of the Land Rights Act is expressed in similar terms to section 46(4). As noted above, clause 8(c) of the Agreement warrants the ALC is satisfied it has complied with its statutory obligations under section 46(4) of the Land Rights Act, including comparable consultation requirements.

Proposed arrangements for the receipt and distribution of mining income

Pursuant to section 35(3) of the Land Rights Act, if an exploration or mining agreement makes no explicit provision for the application of income received under the agreement as compensation for damage or disturbance to the land, the relevant Land Council is required to distribute that income to any ATSI corporations whose members are affected by the exploration or mining activity, in such proportions as the Land Council determines.

In this case, the Mining Agreement prescribes at clause 6 the arrangements for the disbursement of income paid for the benefit of the traditional Aboriginal owners:

s47G

s47G statutory royalty equivalents that may become payable to the ALC by the Commonwealth from the Aboriginals Benefit Account under section 64(3) of the Land Rights Act.

Proposed arrangements for the payment of administration and services costs to the ALC

s47G

Joint venture arrangement

Winchelsea Mining is a joint venture in which Anindilyakwa Advancement Aboriginal Corporation (AAAC) is the majority shareholder with **s47G** shareholding.

- a) AAAC is incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.
- b) The primary objectives of AAAC are to provide for and assist with the education and the economic, social and cultural advancement of the traditional Aboriginal owners of the ALC region.
- c) While the AAAC is established for the benefit of all ALC traditional Aboriginal owners, only traditional Aboriginal owners of Winchelsea Island are eligible to be directors.
- d) The rule book requires 5 per cent of profits that AAAC receives from Winchelsea Island to be directed to charitable projects that benefit the traditional Aboriginal owners of Winchelsea Island, to be overseen by a sub-committee.

The other joint venture party with **s47G** shareholding is Aus China Mining International Pty Ltd.