

Juukan Gorge: Rio Tinto hired lawyers for potential injunction against blasting of Aboriginal site

Minutes show iron ore boss Chris Salisbury was told rock shelters were 'directly below the blast holes and would be completely damaged'



Protesters outside the Rio Tinto office in Perth. The mining company blew up ancient Aboriginal rock shelters in Juukan Gorge.

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Rio Tinto hired lawyers to prepare for a potential injunction against the destruction of ancient rock shelters in Juukan Gorge three days before it was destroyed in a mining blast, according to meeting notes released to a parliamentary inquiry.

The minutes of two meetings held on Thursday 21 May and Friday 22 May were released by the mining company on Friday evening as part of a batch of documents and 85 pages of responses to questions on notice provided to a parliamentary inquiry on the destruction of the significant Aboriginal heritage site. The rock shelters, dubbed Juukan 1 and Juukan 2, were blown up on 24 May to expand the Brockman 4 iron ore mine in the Pilbara region of Western Australia.

The company had permission under WA's outdated Aboriginal heritage laws to destroy the sites. According to the minutes of a meeting on 21 May, attended by senior managers including iron ore boss Chris Salisbury, the company was more concerned about the possible impact to new potential Aboriginal heritage sites, which they did not have permission to damage, than the impact on the rock shelters.

Minutes of the meeting say that Salisbury asked about the risk of an injunction, and Rio's legal counsel, Nic Tole, "advised preparations were underway and external law firm Ashursts (a multinational corporate firm) is instructed".

Salisbury was told that the rock shelters "were directly below the blast holes and would be completely damaged with no preventative action possible", and said that the blast could proceed provided that all necessary due diligence was done to prevent damage to the new potential sites.

"N Tole confirmed that Rio Tinto is legally covered in respect of the Juukan rock shelters under the existing s.18 consent," the minutes say.

The meeting was called after the Puutu Kunti Kurrama and Pinikura (PKKP) traditional owners asked Rio Tinto to delay the blasting and named the rock shelter as a significant heritage site. The minutes say the PKKP advised Rio Tinto that it planned to issue a press statement, and that its legal team had spoken to lawyers for the PKKP.

"Our position is that our participation agreement includes a non-disparagement clause," the minutes said. "A reactive media statement will be prepared if required."

The next day, the same group of senior managers held another 30-minute teleconference and agreed to delay the blast until Sunday to allow a suction truck to be brought in to remove the explosives from the drill holes closest to the potential new sites. The minutes also note that the PKKP provided a report explaining why they consider the site important, but the significance of the site was not discussed.

Salisbury lost his \$1.1m annual bonus over the destruction of the caves, which caused great distress to the PKKP and made global headlines, prompting a drubbing from some of the mining giant's major shareholders. Global chief executive Jean-Sébastien Jacques lost almost \$5m in bonuses. He told an Australian parliamentary inquiry last month that he was not aware of the significance of the site until after it was destroyed. An internal company review blamed the destruction of the site, which occurred despite the company having received several reports in the past two years highlighting its extreme significance, to "systemic failures in the cultural heritage management system".

Rio Tinto would not release the full details of its partnership agreement with the PKKP. But it said that, had the company chosen a design for its Brockman 4 mine pit, which placed a 65m buffer around the gorge, it would have forgone 8.1mt in high grade iron ore, which would be worth \$4.7m in benefits payable to the PKKP Aboriginal corporation.

The PKKP was not told that Rio Tinto had considered three options for designing the mine pit that would have preserved the rock shelters, before the option that ensured their destruction. Rio Tinto denied a suggestion that information was deliberately withheld.

It said the value to the company of destroying the sites, versus a 65m buffer, was US\$135m. But it said that after the destruction of the rock shelters it had paused all operations in the Juukan Gorge area, which meant that neither Rio Tinto nor the PKKP received any financial benefit from the site.

It would not say whether it was discussing compensation with the PKKP, only that it was “in ongoing discussions with the PKKP about how to move forward and rebuild a relationship of trust”.

The company suggested that had another option been chosen that avoided damaging the site, its full archeological significance would not have been known. Consent to destroy the site would not have been sought and the salvage operation in 2014, which dated the Juukan 2 rock shelter at 46,000 years old and identified a 4,000-year-old plaited band of hair which showed a direct genetic link to PKKP people living today, would not have occurred.

The partnership agreement between the PKKP and Rio Tinto is 714 pages long. Rio said the agreement does not release them from complying with any laws, but that “the form of consent provided by the PKKP includes that the PKKP agreed to restrict, or exercise in a certain way or subject to certain conditions, rights that they otherwise would have under various laws”.

“For example, PKKP agreed not to object to or challenge Rio Tinto’s operations. This includes not commencing any claim, proceeding or action under any law to object to or challenge ‘agreed acts’ or Rio Tinto’s iron ore business.”

Since the blast, Rio Tinto said it had reviewed more than 400 of the 1,780 Aboriginal heritage sites which it currently has approval, under s.18 of the Aboriginal Heritage Act WA (1972), to destroy.

An investigation by Guardian Australia found that more than 100 sites in the Pilbara are currently at risk of destruction. A draft of the new WA heritage laws was released this week.