

## “Never Again”—what does a promise by Rio Tinto mean?

“On 24 May 2020, Rio Tinto conducted a blast as part of its extension of the Brockman 4 iron ore mine. The blast devastated Aboriginal heritage sites at Juukan Gorge, including two rock shelters of great cultural, ethnographic and archaeological significance. Indeed, one of these shelters had provided evidence of continuous occupation going back some 46,000 years, making it a site of national and international significance. For the Puutu Kunti Kurrama and Pinikura (PKKP) peoples, it was something even worse – the theft of a vital part of their living culture.”<sup>1</sup>

In spite of their archaeological and cultural significance, Rio Tinto had the legal right to destroy these rock shelters. That was granted by Ministerial Consent in 2013, before the full significance of the rock shelters was known. The PKKP people had asked Rio Tinto to not destroy the rock shelters five days before they did so. Rio Tinto destroyed them anyway, leading to an inquiry by the Australian Parliament.

“On 11 June 2020, the Senate referred to the Joint Standing Committee on Northern Australia (JSCNA) the inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia...The inquiry is not only examining the immediate circumstances of the tragedy at Juukan Gorge, but the wider context surrounding the destruction of Indigenous heritage in Western Australia and nationally. *Indeed, some of the evidence received by the Committee has emphasised that this tragedy has international dimensions – other Indigenous peoples face the same threat to their culture and heritage from the same corporations operating in the Pilbara...*The inquiry has (to date) received 142 submissions, received numerous supplementary submissions and other documents, and held 11 public hearings.”<sup>2</sup>

The initial result of the inquiry was suspension of Rio Tinto bonuses to three top executives – Jean Sebastian Jacques, Rio Tinto CEO, Chris Salisbury, Chief Executive of Iron Ore, and Group Executive Simone Niven. Rio Tinto investors decried this and Rio Tinto’s apology as inadequate punishment by Rio Tinto, and subsequently the executives were forced to resign. Rio Tinto Board Chairman, Simon Thompson declared that Rio Tinto would “never again” do this. “Rio Tinto today reiterated its determination to ensure that the destruction of heritage sites of exceptional archaeological and cultural significance, such as the Juukan rockshelters, never occurs again.”<sup>3</sup>

Never again, taken at face value, seems simple enough to understand – but what does Rio Tinto mean by that? The statement above, referencing “other Indigenous peoples facing the same threat to their culture and heritage from the same corporations” (Rio Tinto) refers precisely to what is happening at Oak Flat in Arizona. The parallels between what

<sup>1</sup> [“Never Again: Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia – Interim Report”](#), Joint Standing Committee on Northern Australia, Parliament of the Commonwealth of Australia (December 2020).

<sup>2</sup> See FN 1.

<sup>3</sup> Press Release: [“Rio Tinto publishes submission to Parliamentary Inquiry on Juukan Gorge”](#) (August 4, 2020).

Rio Tinto recently did in the Juukan Gorge in Australia, and what they have been planning to do at Oak Flat for fifteen years are remarkably similar.

First, a little background on Oak Flat. Rio Tinto, majority owner of Resolution Copper, has been planning a vast copper mine outside Superior, AZ at a site known as Oak Flat. By executive order, and to protect the area from mining, Oak Flat was withdrawn from mineral exploration and mining activity during the Eisenhower administration in 1956.

For ten years running, Rio Tinto attempted to get a land exchange bill passed through the United States Congress that would give them ownership of the Forest Service land at Oak Flat. And for ten years, each of these bills failed to pass through Congress on their own merits. Then, in the waning days of the 113<sup>th</sup> Congress, in December 2014, Senator John McCain used his political influence to get the Resolution land exchange bill included in a public lands package attached to the Fiscal year 2015 National Defense Authorization Act (NDAA), an annual piece of “must pass” legislation. Thus, the Resolution Copper land exchange, giving Rio Tinto ownership of Oak Flat became law.

Under that law, conveyance of the USFS land at Oak Flat to Rio Tinto could not take place until a Final Environmental Impact Statement was published. So today, Oak Flat remains public land, administered by the Forest Service. The point, and similarity between the destruction of the Juukan rock shelters and Oak Flat, is that should the land at Oak Flat convey to Rio Tinto, it will vacate the mining withdrawal and Rio Tinto will legally be able to destroy the remarkable archaeological and cultural sites there—just as they did in Australia.

## Juukan Gorge

“Substantial evidence was provided to Rio Tinto over many years about the cultural importance of the rock shelters at Juukan Gorge to the Puutu Kunti Kurrama and Pinikura (PKKP) people and indeed its global significance as a site of human occupation over 46,000 years. Excavations of the rock shelters had identified thousands of artefacts, including fragments of an ancient hair belt dated to 4000 years ago and a grinding stone dated to 30,000 years ago.”<sup>4</sup>

## Oak Flat

The programmatic agreement (required by Section 106 of the National Historic Preservation Act) contained in the draft environmental impact statement for the Resolution Copper mine states that:

“721 archeological sites (both prehistoric and historic), one traditional cultural property (TCP), and 11 places of traditional religious and cultural significance have been identified to date within the direct APE (area of potential effect), with surveys ongoing.”<sup>5</sup>

The document goes on to say: “the Tribes have declared that they consider adverse effects from the undertaking to be unmitigable.”<sup>6</sup>

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<sup>4</sup> See FN 1.

<sup>5</sup> Resolution Copper Project and Land Exchange, Draft Environmental Impact Statement (August 2019), Appendix O, page 4.

<sup>6</sup> See FN 5.

Indeed, the “one traditional cultural property” mentioned in the programmatic agreement refers to the Chí’chil Biłdagoteel Historic District which is listed in the United States National Register of Historic Places, specifically because of its cultural significance to Native American tribes in Arizona. The parallel with the significance of the Juukan rock shelters in Australia could not be clearer.

It was prescient of the Australian Parliament to include in its interim report on the Juukan Gorge debacle that “other Indigenous peoples face the same threat to their culture and heritage from the same corporations operating in the Pilbara...” While beyond their immediate purview, the Joint Standing Committee on Northern Australia recognized that mining companies (in this case Rio Tinto), have demonstrated a pattern of disregarding the interests of indigenous people in favor of corporate profit.

## Juukan Gorge

“Despite this knowledge (of cultural significance to indigenous people), Rio Tinto made a deliberate decision to choose the only one of four mine expansion options that required the destruction of the rock shelters on the basis that it would maximize the company’s access to the lucrative iron ore body located in the area.”<sup>7</sup>

## Oak Flat

A mining technique called panel caving, which will necessarily cause all of Oak Flat to collapse into a 1,000 foot deep crater, is what Rio Tinto plans to use at Oak Flat for their copper mine.

“While there are other underground stoping (mining) techniques that could be physically applied to the Resolution copper deposit, each of the alternative underground mining methods assessed was found to have higher operational costs than panel caving.”<sup>8</sup>

Thus, once again, and in spite of their vow to “never again” destroy heritage sites of exceptional archaeological and cultural significance, Rio Tinto is today planning to do exactly that same thing again in Arizona – for the same reason – because doing so will maximize their profits.

Unless the current law is changed, the destruction Rio Tinto will do at Oak Flat will be within the letter of the law – as it was in Australia regarding the Juukan Gorge destruction. Yet, because of the huge public outcry (particularly from their large institutional investors), the CEO and two other high ranking Rio Tinto executives were fired over what happened in the Juukan Gorge, Rio Tinto has apologized for the act profusely, and Rio Tinto has promised, in JSCNA testimony and media releases, that what happened at Juukan Gorge will “never again” happen.

That all sounds good, except for the fact that, as of today, Rio Tinto has not altered their plan in any way to destroy the unique archaeological and cultural treasures at Oak Flat. So, what exactly does “never again” really mean to Rio Tinto? Since the focus of the JSCNA hearings is mining in Western Australia, perhaps Rio Tinto only means they will “never again” destroy sites of exceptional archaeological and cultural significance in that region? Or, perhaps alternatively, when Rio Tinto says they will “never again” destroy sites of exceptional archaeological and cultural significance, it doesn’t really mean anything at all.

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<sup>7</sup> See FN 1.

<sup>8</sup> See FN 5.

<b>Juukan Gorge Rock Shelters</b> Pilbara Region, Western Australia		<b>Oak Flat (Chi'chil Bitdagoteel Historic District)</b> Eastern Arizona, United States
<b>Significant <u>Prehistoric</u> Site</b>	✓	<b>Significant <u>Prehistoric</u> Site</b>
<b>Significant <u>Archaeological</u> Site</b>	✓	<b>Significant <u>Archaeological</u> Site</b>
<b>Significant <u>Sacred Site to Indigenous People</u></b> Sacred site to the Puutu Kunti Kurrama and Pinikura (Biinigura) people	✓	<b>Significant <u>Sacred Site to Indigenous People</u></b> Sacred site to the Western Apache and others
<b>Significance of Area Recognized by the Australian Government</b>	✓	<b>Significance Recognized by the United States Government</b>
<b>Rio Tinto Aware of Significance of Area</b>  Most destructive mining technique knowingly chosen anyway to access higher volumes of higher-grade ore.	✓	<b>Rio Tinto Aware of Significance of Area</b>  Most destructive mining technique knowingly chosen anyway to access higher volumes of higher-grade ore.
<b>Rio Tinto Aware of Protest by Indigenous People to Site Destruction</b>  Plans for destruction proceeded anyway.	✓	<b>Rio Tinto Aware of Protest by Indigenous People to Site Destruction</b>  Plans for destruction proceeding anyway.
<b>Destroyed by Rio Tinto as part of its Brockman 4 Iron Mine</b>		<b><u>TO BE</u> Destroyed by Rio Tinto as part of its Resolution Copper Mine</b>
<b>Australian Parliamentary Inquiry Begun</b> Investigation still ongoing. Need for major reforms recognized & underway. Rio Tinto apologizes, three top executives are fired.  Says Chairman Simon Thompson: <u>"As a business, we are committed to learning from this event to ensure the destruction of heritage sites of such exceptional archaeological and cultural significance never occurs again."</u> <sup>1</sup>		<p style="text-align: center;">?</p>

<sup>1</sup> <https://www.riotinto.com/news/releases/2020/Rio-Tinto-acknowledges-interim-report-from-Australian-Parliamentary-Committee>