

BNTAC meets with WA Minister for Lands- more answers to come.

Senior Banjima Elder Maitland Parker and Banjima Native Title Aboriginal Corporation (BNTAC) met with Hon John Carey MLA, Minister for Lands this week to discuss the clean-up of the asbestos contamination of Ngambigunha (Wittenoom Gorge).

Minister Carey, on behalf of State Government is taking the lead role in reconstituting the Wittenoom Steering Committee which BNTAC have been told will be a “multi agency” committee. The Minister also confirmed (as he had previously publicly stated) that Banjima will be part of the Steering Committee and will have input into the terms of reference as to how it operates and outcomes.

What follows is a series of political statements and questions put to the Minister prior to the meeting which BNTAC hoped would be addressed.

The Minister said they would respond only to questions within his current portfolio via written correspondence. BNTAC has requested that the questions that fall outside of his portfolio be passed onto the other relevant government agencies to address as soon as possible.

In addition to the statements and questions, BNTAC very recently received the attached schedule of Asbestos Management Plans for activities taking place on Banjima Country. These documents are held by the Department of Mines, Industry Regulation and Safety and have been released now following a Freedom of Information application.

BNTAC expects to receive all documents listed in the schedule by 9 August 2022. The documents relate specifically to the Iron Ore (Wittenoom) Agreement Act and those granted mining tenements, exploration licenses and associated activities in the Asbestos Management Area (the Wittenoom Asbestos Contaminated Area).

Banjima Elder Maitland Parker said it is disappointing that mining tenements and operations are permitted by government departments in the contaminated area right now, yet Traditional Owners are not permitted to exercise their native title rights because there has been no action to make the area safe.

“Ngambigunha is special to Banjima, and also to so many others and we must not forget that. It is culturally important to all the groups around Banjima Country to visit, and for all our future generations. We do not want our kids and grandkids to get the diseases from those gorges that I have. I don’t want other mobs to get mesothelioma or asbestosis from the mess that is spreading out of the gorges and out of our country,” Maitland said.

“We want a way forward, and we don’t want any more time wasted with talk and finger pointing, we want action and everyone working together to make it safe.”

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About BNTAC

Incorporated in 2013 and with offices in Perth and Tom Price, [Banjima Native Title Aboriginal Corporation RNTBC](#) (BNTAC) is the Registered Native Title Body Corporate for the Banjima People.

The following was sent to the Minister for Lands on 25 July 2022:

Briefing document including questions sent to Hon John Carey BA MLA, Minister for Housing; Lands; Homelessness; Local Government, prior to a scheduled meeting with Banjima Native Title Aboriginal Corporation on Wednesday, 3 August 2022. Wittenoam 'potted history'.

The Hamersley Range crocidolite (blue) asbestos field was officially known by the Government of the day and the Western Australia Department of Mines as far back as 1915. But at £25 a tonne there was no future in mining blue asbestos in the area. Occasionally there was demand for small parcels.

In 1937, the market soared to £70 a tonne and there was a rush to the Hamersley Ranges of miners and speculators.

There were many hundreds of leases taken out in the area of Wittenoam under the Mining Act 1904. The first (digitised) recorded was on 30/10/1931ⁱ, these were Mineral Lease's, Prospecting Area's, Mineral Claim's, Temporary Reserve's, Residence Lease's, Business Area's, Tailings Lease's and Quarrying Area's.

By 1943 some milled crocidolite fibre was being produced by West Australian Blue Asbestos Fibres Ltd. and Mr L.G. Hancock in Yampire and Wittenoam Gorges. The former company closed down in 1941. Hancock and Wright's interests were taken over in 1943 by Australian Blue Asbestos Ltd. (ABA). In 1943, the Yampire Mine was opened and by 1946 production from mining was estimated at 15,000 tonnes of ore for about 300 tonnes of crocidolite fibre.ⁱⁱ

In 1948 CSR Ltd. took over the project as the parent company of ABA. Progressively new mines and mills were opened and nearby, the town of Wittenoam was established. The mining operation continued until 1966. Total production between 1943 and 1966 was some 161,000 tonnes of crocidolite fibre. ABA has since changed names and is referred to as MIDALCO.ⁱⁱⁱ

A total of 3,265,000 tonnes of rock was mined leaving behind 3,104,000 tonnes of contaminated crocidolite tailings.

Wittenoam Gorge was named after the pastoralist and politician Sir Edward Horne Wittenoam by George Hancock, Langley Frederick George "Lang" Hancock's father. Prior to the establishment of the Wittenoam blue asbestos (crocidolite) mine, white asbestos (chrysotile) was being mined by Lang Hancock at the Nunyerry Asbestos Mine.

In December 1959 Heads of Agreement had been signed between Rio Tinto Australian Exploration Pty Ltd and Hancock and Wright covering manganese, blue and white asbestos and iron ore. Rio eventually excluded iron ore but remained interested in crocidolite.^{iv}

There was a problem, the State government had provided CSR a monopoly via a 10-year protection period. Though this CSR agreement had long expired, the protection continued.

The areas of interest to Rio Tinto were the two crocidolite tailings leases, No1 and No2.

These areas are now included in Temporary Reserve TR 70/5615 "Iron Ore (Wittenoam) Agreement Act 1972", and are under the control of Central Pilbara North Iron Ore Pty Ltd C/- Hancock Prospecting Pty Ltd.^v

On 16th June 1972 the “*Iron Ore (Wittenoom) Agreement Act 1972*” was given royal assent. This was established over the Wittenoom area between the State of Western Australia, Hamersley Iron Pty. Ltd, Australian Mining & Smelting Limited, Hancock Prospecting Pty. Ltd. and Wright Prospecting Pty. Ltd.^{vi}

To fulfill Hancock’s previous agreement with Rio, on 27th Oct 1978 Hancock Prospecting Pty Ltd and Wright Prospecting Pty Ltd attempted to transfer tailings leases, No1 and No2 to Mount Bruce Mining Pty Ltd (Rio Tinto). This was rejected by the WA Department of Mines, for what reason we don’t know.^{vii}

The following year, in August 1979 the Department of Mines reverted tailings leases, No1 and No2 to Vacant Crown Land, sighting forfeiture of those leases for non-payment of rent.^{viii}

When the other tenements were finally surrendered in 1984, the tailings became the property of the State under section 111 subsection (2) of the 1904 Mining Act. Some of the claims were surrendered on 18 January 1979 and some were surrendered on 20 January 1984.^{ix}

In 1992 International Mining Technical Consultants (IMTC) for and on behalf of Hancock Resources Limited (HRL) put forward a proposal to the EPA to mine iron ore on the plateau of the Hamersley Range in compliance with the Iron Ore (Wittenoom) Agreement Act 1972.^x This was, for what ever reason not progressed.

Costs of the clean up of the Colonial and Wittenoom Mines

In July 1985 O. B. Hawthorne & Associates Pty. Ltd. produced a “Preliminary Report on Methods of Reducing the hazards associated with the presence on the surface of asbestos bearing wastes at Wittenoom gorge W.A.” for WA Department of Mines.^{xi}

The Budget estimate by O. B. Hawthorne & Associates for Colonial Mine and Wittenoom Mine clean-up of tailings was \$25.67 million, and the method was to be by Hydraulic Slurry Stowage in the old mine workings.

The Mineral Environment Liaison Committee (MELC), now renamed the Mining Industry Liaison Committee (MILC) was established in 1987 at the request of the then Minister for Minerals and Energy. The inaugural meeting was held on 28 January 1987.

In 1998 a taskforce within MELC was set up comprised of Hugh Jones – Department of Mines and Energy Chairman, Robin Chapple - Australian Conservation Foundation, Jane Aberdeen - Chamber of Minerals and Energy and Ian Harvey - Department of Environmental Protection to carry out an environmental review to:

- determine the current tailings disposal outcomes
- review the current database for tailings disposal in WA
- review current operational and management practice (both industry and government); and
- make recommendations, as required, with regard to operational and management practices to achieve the desired outcomes.^{xii}

As part of its deliberation, this MELC committee canvassed what to do with the asbestos tailing’s piles near the Settlement in Wittenoom Gorge. Whilst no recommendations were made in this regard, the preferred option put forward by the Department of Mines was to use a technology similar to that of Kaltails in Kalgoorlie. This involved remotely controlled hydraulic mining of the asbestos tailings, adding a flocculant and pumping the slurried material back down the innumerable shafts around the asbestos mining operations. Each shaft mouth could then be plugged with several metres of concrete

thereby stabilising the contaminated material for many thousands of years at which time geologically there would be a mineral re-formation of the deposited material.

In December of 1988 Jeff Carr MLA, Minister for Mines advised Hon Tom Stephens MLC by letter: "Responsibility for the tailings dumps could rest with the State Government", "whether they should be stowed back down the mine shafts or flooded by damming of the Gorges at an appropriate site." Both options and combinations of each were costed, at that time, to be in excess of \$20 million.^{xiii}

In January 2008, 175 parcel(s) of land were declared a contaminated site. These parcels cover all the areas of the Wittenoom/Joffre Creek areas outside the Karijini National Park, extending into the Mulga Downs Station Area.^{xiv}

In February 2008, Parliament was advised that the company [Central Pilbara North Iron Ore, (Hancock)] had submitted an asbestos management plan for Temporary Reserve TR 70/5616.^{xv}

In January 2016 an email was sent to McMahon Services by the Contaminated Sites branch of the Department of Lands attaching the GHD report "153351_ Wittenoom_Phase_2_Report.pdf". The report contained the projected cost and noted that *"this report is confidential and should not be circulated outside of McMahon's. As you may or may not have been aware, in WA recently, Wittenoom has again become a big talking point with the media and remaining residents in the last month or so and is continuing (in fact the Minister is being interviewed again today by journalists). Please do not speak with journalist about this report or the site in general and defer them back to Lands"*.^{xvi}

An FOI for the GHD report been denied.

Questions and statements

The continuing presence of un-contained asbestos tailings on the land of the Banjima people gives rise to a continuing trespass upon the land use rights of the Banjima People. Asbestos tailings comprise a dangerous substance. Its existence on land under the ownership, occupation or control of the State gives rise to an obligation in the State to exercise a high standard of care in avoiding the foreseeable harm to Banjima people which the spread and dispersal of asbestos tailings poses.

- 1 Does the government appreciate and understand the pain and suffering of the Banjima people by having 468.4 Square Kilometres ostensibly removed from their native title award in *Banjima People v State of Western Australia & Ors* on the 14 March 2014?
- 2 Does the State, through the Minister for Lands, have an obligation to prevent and abate the dispersal of asbestos tailings and remediate the lands comprising, and in the vicinity of, the lands the subject of the Banjima People's interests?
- 3 Does a failure to do so comprise a continuing loss of the amenity of lands and a loss of the use of the lands by the Banjima People and loss to their lifestyle, which is an accruing compensable loss and susceptible to appropriate forms of judicial relief?
- 4 Does the State Government acknowledge that it is in breach of the UN Declaration on the Rights of Indigenous Peoples, Article 29, which states "The State shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free prior and informed consent." If no, why?
If yes, what does the State Government intend to do to rectify the current situation?

Wittenoom Steering Committee:

- 5 In December 2002, the State Government established the Wittenoom Steering Committee under the chairmanship of Hon J Ford. Why and when did it cease to operate and why was it reconvened in December 2012?
Have any minutes of its meetings been recorded, and will the Minister table them?
- 6 Chief of Staff, Minister for Transport; Planning; Lands stated on 11 June 2018 that Wittenoom Asbestos Management Area (WAMA) can only commence once all freehold land is reverted in the State and all residents have left the former townsite. Why when the contamination of the mine sites of the Colonial and Wittenoom mines has nothing to do with freehold title being some 11 kilometres from the town of Wittenoom?
- 7 Why has the WAMA committee only met five times since 2013? (Hansard)
- 8 In answer to questions on notice to a hearing of the Standing Committee on Estimates and Financial Operations in the LC on 2021-10-05, it was stated:
“The State Government is still to determine the most appropriate way forward with regards to potential remediation and/or management of asbestos contamination associated with the Wittenoom Asbestos Management Area. An appropriate strategy for this complex issue will need to be developed by the State with appropriate input from the Wittenoom Steering Committee which includes the traditional owners and other key stakeholders.”
Are the Banjima part of the Wittenoom Steering Committee?
- 9 2022-04-04 Hon Reece Whitby MLA Minister for Environment; Climate Action said in relation to Petition No. 030 – Asbestos contamination in Wittenoom, Eastern Gorge and Yampire that “The State intends to reconvene the Wittenoom Steering Committee”. When will this take place?

Contaminated Site CS ID No 11860

- 10 On 2000-05-24 Environment Minister Cheryl Edwardes stated in respect of Contaminated Sites Legislation: the State Government had a commitment to cleaning up contaminated sites. “In the past few years alone this Government has allocated more than \$50 million to clean up at least 27 contaminated sites.” Why were no funds committed to the remediation of the Colonial or Wittenoom Mines?
- 11 2009-06-07 Environment Minister Donna Faragher said the funds, from the Contaminated Sites Management Account would be used to investigate and remediate known and potentially contaminated sites where the State or a State agency was the responsible party. Have or will any of the funds from the Contaminated Sites Management Account be used to remediate Asbestos contamination at the Wittenoom and Colonial mine sites?
- 12 2019-03-20 Press Release “McGowan Government to finalise closure of Wittenoom” and comments attributed to Lands Minister Ben Wyatt:
“While the area is one of natural beauty it is tragically also deadly, and even if the State committed billions of dollars to a clean-up project it is virtually impossible that the area will ever be safe for human habitation.”
Given that Banjima may not be allowed to go back to their country, will compensation for this denial be liable and if so from whom?
- 13 Banjima have native title over the contaminated site area. Does this mean that due to the presence of asbestos in soils, the department requires that Banjima create a site-specific

health and safety plan to be developed to address the health risks associated with asbestos impact at the site?

- 14 Are Banjima as the landowners required (on the prescribed Form 6) to advise of the site's contaminated status to any potential mining lessee at least 14 days before the completion of the transaction/application?
- 15 Are Banjima, due to the presence of asbestos in soils, required that a site-specific health and safety plan be developed by them to address the health risks associated with asbestos impact at the site on the Banjima, Guruma, Yindjibarndi, Ngarluma, Yinhawangka, Nyaparli and Palyku peoples who regularly visit the area for cultural purposes. If no who is responsible?
- 16 Are Banjima as the landowners required to ensure that all access to Site 11860 be prevented as per the Contaminated Sites Act 2003 reports over the area?

Mining Rehabilitation Fund

- 17 2012-10-17 In an Extract from Hansard on the Mining Rehabilitation Fund in committee of the whole (a legal interpretation), Minister for Mines the Hon Norman Moore stated when questioned as to whether the fund would be used for asbestos contamination in the Wittenoom area the Minister stated:
"Yes. The bill provides that the fund can be used for affected land. If we look at clause 3, "Terms used" — affected land, in relation to an abandoned mine site, means land outside the site that has been affected by mining operations carried out in, on or under the site; Basically, the issue the member raised is covered by that. Clause 8 also refers to "any affected land relating to those sites". If land is outside a mining tenement, but it has been affected by the tenement, the legacy interest fund can be used to rehabilitate that site."
Will or has the Mining Rehabilitation Fund been used to rehabilitate the Wittenoom and Colonial mine sites?
If yes, when?
If no, why not?
- 18 2021- 05-14 Hon Dr Tony Buti MLA In a letter to Roe Legal services representing Banjima Native Title Aboriginal Corporation (BNTAC) stated: "In relation to the potential use of the Mining Rehabilitation Fund (Fund) in the rehabilitation of Wittenoom Gorge asbestos mine, I have passed on your letter to the Minister for Mines, the Hon Bill Johnston MLA, for review as the Minister responsible for the Fund. The Department of Mines, Industry Regulation and Safety is a current member of the Steering Committee and will also be able to consider this request as part of the deliberations of the Steering Committee".
Has or will this issue be addressed by the Wittenoom Steering Committee?

Who is liable for the asbestos contamination?

- 19 In August 1979 the Mines Department reverted tailings leases, No1 and No2 to Vacant Crown Land sighting forfeiture of those leases from Hancock and Wright for non-payment of rent. Does this mean that the state is liable for the remediation of the tailings piles at the Colonial and Wittenoom mines?
- 20 If not to 19.) are the recommendations of the Select Committee appointed to enquire into Wittenoom tabled in 1994 that:
"The committee considers that the companies responsible should clean up the widespread contamination that they caused in the gorges and recommends that the state government

take instant and determined action to ensure that this will occur. The CSR and Hancock and Wright group of companies be required to clean up their contamination in the gorges around Wittenoom.” Is this still the preferred strategy of the Government?

Colonial and Wittenoom Mines Remediation Plans

21 In 1985 O. B. Hawthorne & Associates Pty. Ltd. produced a “Preliminary Report on Methods of Reducing the hazards associated with the presence on the surface of asbestos bearing wastes at Wittenoom gorge W.A.” for Mines Department of Western Australia. The report including designs and costings.^{xvii} No action to carry out the works were undertaken why?

22 In March 2013, the Department of Lands awarded a contract to GHD for determining the most preferred strategy, including preliminary design and cost estimations, for remediation/management of the three highest risk sites at Wittenoom. The three sites deemed the highest risk are:

- Wittenoom Mine and Eastern Gorge Tailings;
- Colonial Mine Tailings; and
- The Wittenoom Gorge itself

The Department of Lands released the GHD - Wittenoom Remediation Strategy - Tailings Remediation Geotechnical Investigation Report in October 2015

In January 2016 an email was sent to McMahon Services by the Contaminated Sites branch of the Department of Lands attaching the GHD report "153351_Wittenoom_Phase_2_Report.pdf".

Why has the government denied Banjima access to this Phase 2 report (FOI)?

Why has the recommendations and design of the rehabilitation of the Colonial Mine Tailings Wittenoom Mine and Eastern Gorge Tailings in Phase 2 not been implemented in the last 6 years?

Why was there no mention or evaluation of previous engineering plans and costings raised in a number of reports commencing in 1985 in the GHD reports?

GHD's preferred strategy was to relocate and encapsulate the tailings on higher ground within the gorge. Why did they not assess the previous options of placing the tailings back in the numerous shafts of the asbestos working?

23 2021-08-17 in answer provided by senior media advisor for Lands Minister Tony Buti to the media inquiries - acting on behalf of whole of Govt including Environment/Aboriginal Affairs Minister it stated: “*No detailed work has been done on estimating the cost of clean-up given the scale of the issue and the fact that the fibres are naturally occurring.*” Why was such a misleading statement provided to the media?

24 2019 -10-16 Wittenoom Steering Committee. The minutes cover “Post Bill actions”, these included:

“State needs to further investigate the issue of tailings near flood plain/where water flows. DPLH will be seeking advice from environmental/mining experts on targeted remediation of “mobile” tailings.

Paul Foley Dept. Mines, Industry Regulation and Safety “suggested slurry mining may be the safest way to go as it is a wet process and can pump to back-fill shafts. As shaft entrances too small for trucks this would be a legitimate option. Noted no lack of water for this process.”

It has been nearly three years since this meeting which covered concerns of “mobile” tailings and safe methods of remediation. The slurry process was originally put forward to

the Department of Mines by the Mineral Environment Liaison Committee (MELC) taskforce in 1998.

Have any costings been done? If not, why not?

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- ⁱ Mines Department digitised records
 - ⁱⁱ 1994-08-03 Report of the Select Committee into Wittenoom
 - ⁱⁱⁱ 1994-08-03 Report of the Select Committee into Wittenoom
 - ^{iv} 1973 Book - HANCOCK and WRIGHT
 - ^v Mining Tenement Summary Report, Department of Mines, Industry Regulation and Safety. Minerals Titles
 - ^{vii} Iron Ore (Wittenoom) Agreement Act 1972
 - ^{viii} Paper copies of Goldfields tailings leases No1 and No2
 - ^{ix} 1993-12-14 Select Committee on Wittenoom - transcript of evidence given by Hugh Jones
 - ^x March 1992 Fortescue Scree Project Proposed' Iron Ore Mine - International Mining Technical Consultants ERMP
 - ^{xi} O. B. Hawthorne & Associates Pty. Ltd un-tabled report held by the Speaker of the Legislative Assembly and can be released under Standing Order 30 of the LA Standing Orders
 - ^{xii} MELC 1998 - a taskforce into tailings.
 - ^{xiii} Letter 9-12-1988 Min for Mines to T Stephens
 - ^{xiv} Contaminated Sites Act 2003 - Basic Summary of Records Search Response
 - ^{xv} Hansard
 - ^{xvi} 2016-01-11 email from contaminated sites dep to McMahon Services Australia _Redacted
 - ^{xvii} O. B. Hawthorne & Associates Pty. Ltd un-tabled report held by the Speaker of the Legislative Assembly and can be released under Standing Order 30 of the LA Standing Orders

Please see overleaf for the Freedom of Information Schedule of documents as of 2 August 2022.

FREEDOM OF INFORMATION: SCHEDULE OF DOCUMENTS
FOI NO 21/22-99 FILE NO: DMS0449/2022

Schedule as of 2 August 2022

ITEM NO.	FILE/PAGE/ DOCUMENT NO.	DATE	DESCRIPTION	TO BE COMPLETED BY FOI COORDINATOR	
				ACCESS DECISION	REASON FOR DECISION
1	File T4847/200501 PP 3-6	Dec. 2003	"Standard Operating Procedure – Asbestos Management" (submitted in support of Ground Disturbing Approval Application Exploration for TR5616 dated 28/10/2005)	TBA	
3	File EARS-POW- 73797 Doc. 5736084	10/3/2008	"Asbestos Management Plan – Risk Assessment and Management of Natural Occurring and Residual Asbestos within HPPL's Tenements" (submitted in support of Programme of Work ('POW') 73797 for E47/1315 – 2018)	TBA	
4	File EARS- POW-78444 Doc. 6665720	22/08/2018	"Fibrous Minerals Management Plan Mulga Downs Project" (submitted in support of POW 78444 for E47/1315 – 2019)	TBA	
5	File EARS- POW-81159 Doc. 6846250	15/11/2018	"Fibrous Minerals Management Plan Mulga Downs Project" (submitted in support of POW 81159 for E47/1315 - 2019)	TBA	
6	File EARS- POW-81568 Doc. 6899381	22/8/2018	"Fibrous Minerals Management Plan Mulga Downs Project" Submitted in support of POW 81568 for E47/1315 – 2019)	Same as Doc 4	-
7	File EARS- POW-34703 Doc. 1788961	-	Asbestos Management Plan – Cover letter – Summary of Plans (submitted in support of POW 34703 for E47/1490 – 2012)	TBA	
7A	File EARS- POW-34703 Doc. 1788961	13/12/2006	"Occupational Hygiene Manual" (only relevant sections) (submitted in support of POW 34703 for E47/1490 – 2012)	Access	

7B	File EARS-POW-34703 Doc. 1788961	12/2/2008	"Safe Working Procedure for Drillhole Intersection of Fibrous Minerals" (submitted in support of POW 34703 for E47/1490 – 2012)	Access	
7C	File EARS-POW-34703 Doc. 1788961	05/03/2008	"Waste Management Procedure" (submitted in support of POW 34703 for E47/1490 – 2012)	TBA	
8	File EARS-POW-37955 Doc. 2197375	14/12/2009	"Rio Tinto Iron Ore (WA) Fibrous Minerals Management Plan" (submitted in support of POW 37955 for E47/1490 – 2013)	Access	
9	File EARS-POW-72445 Doc. 5581353	-	"Rio Tinto – Work Instruction: Asbestos Response Procedure – AAR – Australia" (submitted in support of POW 72445 for E47/1490 – 2018)	Access	
9A	File EARS-POW-72445 Doc. 5581353	11/6/2012	"Rio Tinto – Exploration – Procedure: Asbestos – AAR – Australia" (submitted in support of POW 72445 for E47/1490 – 2018)	Access	
10	File EARS-POW-72905 Doc. 5633180	-	"Rio Tinto – Work Instruction: Asbestos Response Procedure – AAR – Australia" (submitted in support of POW 72905 for E47/1490 – 2018)	Same as Doc 9	-

ENDS