

Juukan Gorge destruction

July 2020



The Puutu Kunti Kurrama and Pinikura Aboriginal Corporation (PKKP) revealed on the 24th of May 2020 that Rio Tinto (RIO) had destroyed two caves of significant heritage in the Juukan Gorge in Western Australia's Pilbara region as part the expansion of its Brockman Iron Ore mine. These sites bore evidence of human habitation as far back as 46,000 years ago. The timing of such a revelation could not be worse, coinciding with the global and emotionally tense Black Lives Matter movement. It put a spotlight on how miners and the State treat indigenous heritage.

RIO justifies the 'disruption' of these sites by pointing towards a comprehensive native title and heritage agreement signed in 2011 with the PKKP allowing it to mine in exchange for financial and non-financial benefits. "The mining activity conducted in May 2020 was undertaken in accordance with all necessary approvals", states RIO. "It was preceded by a ministerial consent under Section 18 of the Aboriginal Heritage Act. This was obtained in 2013 after detailed consultation with the PKKP people over a decade that included research investigation in 2008 ... Following the consent of Section 18 extensive heritage preservation and salvage work was undertaken in 2014, all with PKKP involvement".

This triggers many questions:

- First and foremost, how can RIO morally accept destroying a 46,000-year-old site? How can the governance structures of the company have supported that decision?
- Can the Aboriginal community forcefully and effectively protect its (and our) heritage?
- If an agreement was made seven years ago, how did it only come to the surface now? Why was the PKKP surprised? Where did the communication break down?
- Is this just the tip of the iceberg? Are more sites of high heritage value being destroyed by the miners in the Pilbara without the rest of the world being made aware of this destruction?
- What happens next? What are the lessons from this destruction? What should we expect RIO and the government to do differently in this pursuit of mining?
- As investors, should we divest our holdings of RIO shares?

We have had two discussions with RIO's chairman, Simon Thompson, and have also consulted with experts in native title law and Aboriginal engagement between the communities, miners and the government in matters of heritage preservation.

RIO portrays itself as one of the miners taking Aboriginal engagement with communities the most to heart, and the experts we've consulted tend to agree that it is one of the more considerate miners, but while practices have much improved from 30 years ago, it appears that Aboriginal people still have very little power to protect their heritage. Under the Aboriginal heritage laws, companies with mining extraction rights can apply for Government approval to destroy a site, and this authorisation appears to get granted most of the time as mining is seen as good for the State. It is surprising that traditional landowners do not have the right to appeal an approval in relation to decisions about their cultural heritage.

The law aside, RIO claims it wants to respect the Aboriginal communities and heritage. Engagement with their leaders is therefore crucial and apparently takes place every six months to review the previous period and the plans for the period ahead. In the case of the Juukan Caves communication clearly broke down. What happened? Leaders changed on both sides since the agreement was signed, but discussions with experts highlight that the Aboriginal community feels it has no power to obstruct site destruction, and at times may not even understand what is truly at stake. The legal documents and maps proposed by the miner's lawyers would be complex to understand without a high level of technical expertise. It is difficult to believe that any Aboriginal leader would have provided consent to the destruction of such a site had they really understood what was at stake. When the stakes became clear, it was too late: the site had blasting set in place and removing it would have been unsafe. There was only one way forward at that stage.

There is no way to repair the damage, but what can be done to prevent future events like these? It's a complex question which independent reviews by the RIO board and a Government enquiry will try to answer. Clearly the answers proposed should include (among others) laws providing more empowerment and clearer forms of communication to the Aboriginal communities affected and a more rigorous authorisation and appeal process which truly values heritage. This should be not only at the Government level but also within the Executive Committees of the Miners. Hopefully, some soul-searching of what heritage truly means will be on the agenda. It is too easy to write in a Sustainability Report that one values and respects the Aboriginal communities and then blow up a part of them that is sacred. Lastly that same soul searching will also hopefully take place by investors, probing the miners more deeply in the future about the consequences of their mining plans.

Prior to this event Alphinity held a small position in RIO as we expected positive earnings surprise. In the Alphinity Sustainable Share Fund (the Fund), we were considering lifting that position as a consequence of excluding BHP from the Fund due to its exposure to fossil fuels. We have tried to understand what happened in this instance through discussions with the company and independent experts in Aboriginal heritage protection, and what this means going forward. At this point we are maintaining a small position in RIO but are not increasing it. Our view is that RIO has been truly shaken at its top level by the realisation of what it did and is taking the appropriate measures to review its processes and decision philosophy. We want to keep a seat at the table to exercise whatever influence we might have in this review. The outcome of the review will drive us to re-assess our position one way or another. In the meantime, we keep engaging with not only RIO but also the other large miners operating in the Pilbara: BHP and Fortescue Metals.

Important information

This material has been prepared by Alphinity Investment Management ABN 12 140 833 709 AFSL 356 895, the investment manager of the Alphinity Sustainable Share Fund (the Fund). Fidante Partners Limited ABN 94 002 835 592 AFSL 234668 (Fidante), is the responsible entity of the Fund. Other than information which is identified as sourced from Fidante in relation to the Fund, Fidante is not responsible for the information in this material, including any statements of opinion. It is general information only and is not intended to provide you with financial advice or take into account your objectives, financial situation or needs. You should consider, with a financial adviser, whether the information is suitable for your circumstances. To the extent permitted by law, no liability is accepted for any loss or damage as a result of any reliance on this information. The PDS for the Fund, issued by Fidante, should be considered before deciding whether to acquire or hold units in the Fund. The PDS can be obtained by calling 13 51 53 or visiting our website www.fidante.com. Neither Fidante or any of its respective related bodies corporate guarantees the performance of the Fund or the returns of an investor's capital. Past performance is not indicative of future performance.

Alphinity's address is Level 12, 179 Elizabeth Street, Sydney NSW 2000. Fidante's address is Level 2, 5 Martin Place, Sydney NSW 2000. Alphinity, Fidante, their related bodies corporate, their directors and employees and associates of each may receive remuneration in respect of advice and other financial services provided by Alphinity or Fidante. Alphinity and Fidante have entered into arrangements in connection with the distribution and administration of financial products to which this article relates. In connection with those arrangements, Alphinity and Fidante may receive remuneration or other benefits in respect of financial services provided by the parties.