

Vote Bulletin: Fortescue Metals Group Ltd.

Company	Fortescue Metals Group Ltd. (ASX: FMG)
Market and Sector	Australia, Materials
Meeting Date	9 November 2021
Key Resolutions ¹	Item 7: Special resolution to amend the Company’s constitution Item 8: Support for Improvement to Western Australian Cultural Heritage Protection Law
Key Topics	Company impacts on people; political activities and lobbying
Board Recommendation	The board recommended voting AGAINST items 7 and 8
BlackRock Vote	BlackRock voted AGAINST items 7 and 8

Overview

Established in 2003, Fortescue Metals Group Ltd. (Fortescue) is an Australia-based materials company that specializes in iron ore production. The company employs more than 10,000 people and operates three mining hubs in Western Australia.² The company’s iron ore business comprises a robust mining, rail, shipping, and marketing network, allowing it to export over 180 million tonnes of iron ore annually.³

BlackRock Investment Stewardship (BIS) regularly reviews the company’s risk profile and engages with company leadership to discuss corporate governance and sustainability risks and opportunities that we believe can contribute to long-term value creation. Our discussions with Fortescue’s board members and management team have touched on governance issues such as long-term corporate strategy and executive compensation. BIS has also engaged with Fortescue’s management – including its team dedicated to Native Title and Heritage matters– to understand its approach to managing and mitigating material environmental and social risks, including the potential impact of the company’s activities on the communities in which it operates.

Fortescue had on the agenda for this year’s annual general meeting a shareholder resolution asking the company’s support in calling for the Western Australian Government to improve cultural heritage protection laws and, as a result, to pause the enactment of the draft Aboriginal Cultural Heritage Bill (“the Bill”) in its current form. Given that the Bill was first enacted in 1972, in 2018 the Government of Western Australia started a reform process to update it with the objective of improving how Aboriginal cultural heritage is identified, managed, and conserved in the present era. The updated Bill aims to deliver greater protection of Aboriginal cultural heritage as

¹ Fortescue Metals Group Ltd. “[Notice of Annual General Meeting FY21.](#)” October 4, 2021.

² Fortescue Metals Group Ltd. “[Annual Report FY21.](#)” Page 7.

³ Fortescue Metals Group Ltd. “[Annual Report FY21.](#)” Page 19.

well as take into consideration a series of measures to prevent the destruction of cultural sites and avoid events like those that occurred at the Juukan Gorge.^{4,5}

Rationale for BlackRock's Vote

Item 7: Special resolution to amend the Company's constitution

BIS voted AGAINST the resolution to amend Fortescue's constitution. The full resolution reads as follows:⁶

To consider and, if thought fit, to pass the following as a special resolution:

"To insert into our Company's constitution the following new clause 7.8: Member resolutions at general meeting. The members in general meeting may by ordinary resolution express an opinion or request information about the way in which a power of the Company partially or exclusively vested in the directors has been or should be exercised. However, such a resolution must relate to an issue of material relevance to the Company or the Company's business and cannot either advocate action which would violate any law or relate to any personal claim or grievance. Such a resolution is advisory only and does not bind the directors or the Company."

As required under the Australia Corporations Act 2001, a resolution calling for an amendment to the company's constitution is first necessary to allow for the subsequent ordinary resolution (in this case item 8). A group of shareholders owning 5% of voting shares or 100 shareholders (with no minimum holding size or length of holding period) may file a resolution. BIS is generally not supportive of constitutional amendment resolutions. Our concern is that the relative ease of filing introduces the risk of potentially distracting and time-consuming resolutions being submitted by shareholders whose interests are not necessarily aligned with those of the broader shareholder base.

Item 8: Support for Improvement to Western Australian Cultural Heritage Protection Law

BIS voted AGAINST the three-part resolution as the different requests, taken in their entirety, risk becoming overly prescriptive. Specifically, BIS maintains company management and the board are best positioned to determine whether making public comment on legislation will serve long-term shareholders' economic interests. BIS is also concerned that the proponents ask shareholders to set the company's position on specific policy matters. Regarding industry associations, BIS maintains the ultimate decision again lies with company management, with appropriate review and oversight by the board. The full resolution reads as follows:⁷

Subject to and conditional on Resolution 7 being passed by the requisite majority, to consider and, if thought fit, to pass the following as an ordinary resolution:

"To promote the long-term success of our Company, and noting:

- *the findings and recommendations of the Interim Report of the Joint Parliamentary Committee on Northern Australia's interim report entitled Never Again published on 9 December 2020 ('Interim Report');*

⁴ BIS recognizes that matters of First Nations rights, historical and cultural preservation, as well as consent have significant importance in Australia's unique cultural history and its corresponding reconciliation process; we understand this process will continue to evolve. The issues addressed in this Vote Bulletin correspond to our Climate and Natural Capital and Company Impacts on People [engagement priorities](#) and are also addressed in our [proxy voting guidelines](#) for Australian securities.

⁵ The updated bill was introduced into the Parliament of Western Australia on November 17, 2021. For status updates on the Bill, refer to "Parliament of Western Australia." To learn more, also refer to "Short Summary of the Aboriginal Cultural Heritage Bill" and "How the Bill prevents another Juukan Gorge event" at the Government of Western Australia's Aboriginal Cultural Heritage Bill 2021 [website](#).

⁶ Fortescue Metals Group Ltd. "Notice of Annual General Meeting FY21." October 4, 2021. Page 10.

⁷ Fortescue Metals Group Ltd. "Notice of Annual General Meeting FY21." October 4, 2021. Page 10.

- *the importance of adequate cultural heritage protection laws in mitigating social, reputational and financial risks to our Company;*
- *the acknowledged inadequacy of existing cultural heritage protection law and the need for fit-for-purpose cultural heritage protection laws in Western Australia and nationally; and*
- *the objection of WA First peoples and organisations to the Aboriginal Cultural Heritage Bill 2020 (WA) ('ACH Bill') in its current form, shareholders request that our Company:*
 - a) *publicly support part of Recommendation 2 of the Juukan Inquiry Interim Report, namely: That the Western Australian Government replace the Aboriginal Heritage Act 1972 with stronger heritage protections as a matter of priority, noting the progress already made in consultation on the draft Aboriginal Cultural Heritage Bill 2020. Any new legislation must as a minimum ensure Aboriginal people have meaningful involvement in and control over heritage decision making, in line with the internationally recognised principles of free, prior and informed consent, including relevant Registered Native Title Bodies Corporate under the Native Title Act...;*
 - b) *publicly support the WA Aboriginal peoples calls on the Western Australian Government to pause the enactment of the ACH Bill in its current form and to enter into an engagement in good faith with WA Aboriginal Traditional Owners and their representative organisations to co-design the new WA cultural heritage protection law and regulations; and*
 - c) *ensure that the advocacy of trade associations of which the Company is a member (including the Western Australian Chamber of Minerals and Energy and the Minerals Council of Australia) is consistent with the terms of this resolution, and if not, review to ensure consistency.*

Nothing in this resolution should be read as limiting the Board's discretion to take decisions in the best interests of our Company, or the Board's ability to limit the disclosure of commercial in-confidence information."

BIS recognizes the critical importance of enacting adequate laws to protect Australia's unique cultural heritage, advance the interests of Aboriginal peoples, and limit social, reputational, and financial risks to companies operating in Western Australia. To that end, BIS **engages** with companies to understand their approach to impacts inherent in their businesses, including if and how they engage with affected stakeholders and provide access to remedy to address actual adverse impacts. BIS also engages to learn whether companies obtain (and maintain) the free, prior, and informed consent of Indigenous peoples for business decisions that affect their rights; protect cultural heritage sites; and provide access to resources and/or compensation in the event of displacement or destruction.

However, as currently structured, the three-part resolution effectively risks unduly constraining management's ability to make basic business decisions. Further, it asks the company to "ensure that the advocacy of trade associations of which the Company is a member is consistent with the terms of this resolution, and if not, review to ensure consistency." In our view, it is problematic to hold a company accountable to ensure something that is potentially out of its control. As management and the board are ultimately best placed to determine when public comment on legislation serves long-term shareholders' economic interests, BIS is also concerned the proposal would ask shareholders to set the company's public comment on policy matters.

BIS **believes** that company engagement in political activities and industry associations can allow companies to remain informed and involved in the political and regulatory processes that may impact their businesses. On the other hand, we fully acknowledge that these activities may also create risks particularly if policy advocacy does not align with the company's stated position on strategic policy issues.⁸ However, BIS does not consider it appropriate for shareholders to restrict a company's industry associations membership, as this resolution seems to propose. This is a decision that lies with the company's management team, with appropriate oversight by the board.

⁸ To learn more, please refer to our commentary "[BIS' perspective on corporate political activities.](#)"

Lastly, BIS acknowledges Fortescue’s public support of “part of Recommendation 2 of the Juukan Inquiry Interim Report” and encourages the company to continue to be responsive to shareholder concerns.⁹ On behalf of clients, BIS will continue to engage to understand how Fortescue’s activities and disclosures, including its current policies in place to involve and obtain consent from the Western Australia Aboriginal Traditional Owners and their representative organizations, are consistent with the company’s overall strategy and long-term shareholder value creation.

⁹ Fortescue Metals Group Ltd. “[Notice of Annual General Meeting FY21.](#)” October 4, 2021. Page 23.

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BlackRock Investment Stewardship (BIS) plays a key role in BlackRock's fiduciary approach. As an essential component of our responsibility to our clients, BIS engages with companies to advocate for the sound corporate governance and business models that drive the sustainable, long-term financial returns that enable our clients to meet their investing goals.

Our approach is from the perspective of long-term, minority shareholders in public companies on behalf of our clients. We look to boards and executive management to serve the interests of long-term shareholders and other stakeholders. Our active and ongoing dialogue with the leaders of these companies gives us a valuable perspective on their long-term strategies, financial performance, and the business challenges they face.

As stewards of our clients' assets we have a responsibility to make sure companies are adequately managing and disclosing environmental, social and governance (ESG) risks and opportunities that can impact their ability to generate long-term financial performance – and to hold them accountable if they are not. Engaging with companies is how BIS builds an understanding of a company's approach to governance and sustainable business operations, how we communicate our views, and how we ensure companies understand our expectations. If a company falls short of our expectations and we have been given the authority to vote the company's shares, we would hold them accountable by voting in the best long-term economic interests of those clients that have given us proxy voting authority. As detailed in our [Global Principles](#), proxy voting involves logistical issues which can affect BlackRock's ability to vote such proxies, as well as the desirability of voting such proxies. As a consequence, BlackRock votes proxies on a "best-efforts" basis.

We are committed to transparency in our stewardship practices. Our vote bulletins provide detailed explanations of key votes relating to a range of business issues including ESG matters that we consider, based on our [Global Principles](#), [market-level voting guidelines](#), and [engagement priorities](#), material to a company's sustainable long-term financial performance. We publish select vote bulletins after the shareholder meeting to provide transparency for clients and other stakeholders into our approach to the votes that we believe require more detailed explanation.

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