

— Exclusive

# BHP's \$9.6b copper play suffers setback amid native title split

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BHP's \$9.6 billion plan to consolidate [\[https://www.afr.com/companies/mining/bhp-lands-oz-minerals-buyout-with-higher-9-6b-offer-20221118-p5bzcg\]](https://www.afr.com/companies/mining/bhp-lands-oz-minerals-buyout-with-higher-9-6b-offer-20221118-p5bzcg) and expand the South Australian copper industry has hit turbulence after police and regulators launched investigations into a power struggle within the group that controls the native title at its [Olympic Dam](https://www.afr.com/companies/mining/can-a-new-mine-save-bhp-s-loss-making-olympic-dam-20201026-p568sn) [\[https://www.afr.com/companies/mining/can-a-new-mine-save-bhp-s-loss-making-olympic-dam-20201026-p568sn\]](https://www.afr.com/companies/mining/can-a-new-mine-save-bhp-s-loss-making-olympic-dam-20201026-p568sn) and OZ Minerals' Carrapateena mines.

Efforts by BHP to strike [a lucrative new land use agreement for Olympic Dam](https://www.afr.com/companies/mining/heritage-spat-slows-bhp-at-olympic-dam-and-oak-dam-20210426-p57mdn) [\[https://www.afr.com/companies/mining/heritage-spat-slows-bhp-at-olympic-dam-and-oak-dam-20210426-p57mdn\]](https://www.afr.com/companies/mining/heritage-spat-slows-bhp-at-olympic-dam-and-oak-dam-20210426-p57mdn) and nearby copper prospects are in limbo amid organisational chaos within the Kokatha Aboriginal Corporation arising from a controversial annual meeting of the native title group last month.



BHP has significant growth aspirations for its South Australian business, including at Olympic Dam. **Bloomberg**

The mining giant's \$9.6 billion bid for OZ Minerals has secured the unanimous approval of the smaller group's directors and independent experts. BHP hoped the

assets could help it improve performance at Olympic Dam, which has recorded poor returns in the 17 years that it has owned it after a takeover of WMC in 2005.

Two different groups have emerged from that meeting with claims to be the rightful board of directors of the corporation, after a controversial petition was tabled and triggered a motion to spill the board. Rival factions of the Kokatha community are at odds over the validity of the petition and SA Police are investigating the manner in which signatures were obtained.

“Police are working with [the federal governments Office of the Registrar of Indigenous Corporations] in relation to recent board elections and governance. Police will not be providing any further comment at this time,” an SA Police spokesman said.

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The KAC has since told members it is unable to publish the results of the elections until their validity is clarified.

The battle for control and organisational paralysis comes at a critical moment for both KAC and BHP; the two groups are well advanced on talks for a lucrative new compensation agreement for mining at Olympic Dam.

The February meeting was supposed to formalise an agreement for BHP to make an early release of \$1.5 million into a fund as a show of good faith before the finalisation of a new Olympic Dam deal later this year.

## How Kokatha Lands host Australia's top copper mines



Consent from KAC will also be required before BHP can start mining the Oak Dam copper prospect, and the two groups were scheduled to start work on “negotiation protocols” this month as a first step towards a potentially lucrative Oak Dam agreement.

BHP’s proposed acquisition, which OZ Minerals shareholders will vote on next month, would most notably hand it control of the Carrapateena mine

[<https://www.afr.com/companies/mining/costlier-carrapateena-more-valuable-says-oz-20200129-p53vn9>].

While KAC can’t block the formalisation of the takeover, ongoing dysfunction within the native title group could slow BHP’s ability to achieve efficiencies by combining those South Australian copper assets with its own.

A working relationship with KAC is also important for the daily operation of Olympic Dam and Carrapateena mine, given many low-profile works around site require the KAC to conduct heritage surveys and approve plans before they are implemented.

ORIC was reluctant to name the rightful KAC directors when asked by *The Australian Financial Review*. A spokeswoman for the federal regulator said the ORIC register of KAC directors had not been updated since the February meeting. “ORIC has no powers to determine or decide who the validly appointed directors were ... only a court can do this,” she added.

## Return to sender

ORIC said it had received but rejected an application to change the register of directors after the meeting.

“ORIC confirms that we have received a form to change corporation officers’ details; however, it has been returned to the person who lodged it because the form was incomplete,” she said. “The public register reflects that the current directors of the corporation are those appointed before the general meeting held 25-26 February 2023.”

ORIC declined to provide names of which members it considered to be the directors, but an extract from its database suggests they are Elaine Moosha, Tenna Frankiw, Tania Gill, Paul Lucas, Sabrina Starkey and Tanya Swales.

Ms Moosha was named as the chairman in the KAC’s latest annual report, published on the corporation’s website on March 6. Attempts to contact Ms Moosha and KAC on Friday and at the weekend were unsuccessful.

BHP’s efforts to strike a lucrative new agreement with the KAC stems from the fact the existing Olympic Dam agreement was struck in 2008 before a native title claim had been successfully lodged over the area. With no exclusive titleholder to deal with, BHP designed the 2008 Olympic Dam agreement to funnel money to three groups: the Kokatha, the Kuyani and the Barngarla.

But the three-way arrangement was complicated in 2014 when the Kokatha were declared to have exclusive native title over the land that covers Olympic Dam, Oak Dam, Carrapateena and other copper targets such as Fremantle Doctor and Khamsin.

That ruling has forced BHP into years of negotiations over a new exclusive arrangement for the Kokatha. BHP intends to strike individual agreements with the Kuyani and the Barngarla, partly to reflect a historical link to Olympic Dam, and to recognise the fact that some infrastructure for the mine may run through their lands in future.

BHP is moving to capture opportunities in copper, as demand for electric cars, trucks, transmission lines and solar farms is expected to surge over the next two decades. Forecasts by S&P in July, meanwhile, estimated demand for the metal will double to 50 million tonnes in 2035 from 25 million tonnes in 2021, and says a supply shortfall of 9.9 million tonnes will emerge by 2025.

At a financial update in February, BHP chief executive Mike Henry told investors that continued positive exploration results at the Oak Dam mine would also provide growth at the company’s South Australian copper business.



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