



Affidavit

WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC

Applicant

STATE OF WESTERN AUSTRALIA and others

Respondents

Affidavit of: **SIMON ALAN MOORE**
Address: c/- Department of Mines, Industry Regulation and Safety
100 Plain Street East Perth WA
Occupation: General Manager- Resource Tenure Division
Date: 26 October 2023

Filed on behalf of: State of Western Australia
Prepared by: Alicia Warren / Emma Owen
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Address for service: David Malcolm Justice Centre, 28 Barrack St, Perth WA 6000

Alicia Warren JP30240

[Signature]

I, SIMON ALAN MOORE, Public Servant, care of the Department of Mines, Industry Regulation and Safety, 100 Plain Street, East Perth in the State of Western Australia, declare and affirm:

1. I am currently employed as the General Manager of Resource Access within the Resource Tenure Division of the Department of Mines, Industry Regulation and Safety (**DMIRS**) within Western Australia.
2. I have worked at DMIRS since 27 April 2022.
3. Prior to working at DMIRS, I worked as an Advisor, Legal and Policy, in the Aboriginal Engagement Directorate within the Department of the Premier and Cabinet (**DPC**). I held that position from January 2014 until I commenced at DMIRS in April 2022.
4. DMIRS is, amongst other things, the department responsible for managing Western Australia's mining, petroleum and geothermal industries and maintains the State's official register of mining, petroleum and geothermal titles. DMIRS is also responsible for the administration of the future act compliance processes contained in Part 2, Division 3 of the *Native Title Act 1993* (Cth) (**NTA**) with respect to the grant of **mining tenements** (as defined in section 8 of the *Mining Act 1978* (WA) (**Mining Act**)).
5. In this affidavit, I include in any reference to DMIRS, reference to DMIRS's predecessors, including the Department of Mines, the Department of Minerals and Energy, the Department of Mineral and Petroleum Resources, the Department of Industry and Resources and the Department of Mines and Petroleum.
6. In my role as General Manager of Resource Access within the Resource Tenure Division, I provide strategic leadership to a team responsible for administering the future act compliance processes for the grant of mining and petroleum tenure in Western Australia under the NTA.
7. Unless stated otherwise I affirm this affidavit on the basis of facts which have come to my knowledge, including facts which have come to my knowledge from my examination of records maintained by DMIRS and, where specified, information provided by other State government departments. Where I rely on facts outside my personal knowledge, I have identified the source of those facts and believe them to be true.

ROLE OF DMIRS IN SUBDIVISION P OF PART 2, DIVISION 3 OF THE NTA

8. Where the grant of a mining tenement attracts the operation of Subdivision P of Part 2, Division 3 of the NTA (**Subdivision P**), DMIRS is responsible for giving the notice required by section 29 of the NTA. DMIRS is also responsible for determining whether the notice provided under section



29 of the NTA includes a statement that the Government Party considers that the grant of the mining tenement is an act attracting the expedited procedure pursuant to section 29(7) of the NTA.

9. Typically, a notice is not issued by DMIRS pursuant to section 29 of the NTA until the application for the relevant mining tenement is otherwise deemed by DMIRS to be compliant with the *Mining Act*. In some instances, the applicant for a mining tenement may request that the procedures for compliance under the *Mining Act* be processed in parallel with the procedures required by the NTA. These requests are not made regularly and, absent such a request, DMIRS will not undertake notification under the NTA until the mining tenement is *Mining Act* compliant.
10. In respect of exploration licences, retention licences, mining leases or general purpose leases, the tenement would be considered *Mining Act* compliant by DMIRS when, following a recommendation from the mining registrar or warden (as the case may be) that the tenement should be granted, the Minister for Mines and Petroleum (or their delegate) determines that the tenement application could proceed to grant, subject to satisfaction of the process required by the NTA. In respect of prospecting licences or miscellaneous licences the tenement would be considered *Mining Act* compliant by DMIRS when DMIRS or the warden (as the case may be) determines that the application could proceed to grant, subject to satisfaction of the process required by the NTA.
11. In respect of those mining tenements to which section 31 of the NTA applies (i.e. those mining tenements to which the **right to negotiate** applies), the following is a summary of the role of DMIRS with respect to the right to negotiate processes.
12. Within ten days from the “*notification day*” (as defined in section 29(4)(a) of the NTA), DMIRS will send a letter to the **grantee party** (as defined in section 29(2)(c) of the NTA) requesting the contact details of the person(s) who will be negotiating on their behalf. On receipt of the contact details, DMIRS will send a letter to the grantee party and the **native title party** (as defined in section 29(2) and 30 of the NTA). That letter will contain:
 - (a) confirmation of contact details for each of the parties;
 - (b) a copy of the mining tenement application, together with relevant maps or plans of the tenement;
 - (c) a copy of information from the Register of Aboriginal Sites in respect of the area of the mining tenement;
 - (d) advice stating that all of the negotiation parties have an equal obligation to negotiate in good faith with each other, together with an extract of section 39(1) of the NTA, a summary of how to negotiate in good faith and a copy of the State’s Negotiation Protocol;



- (e) DMIRS's proposals in relation to the mining tenement;
 - (f) a request that the grantee party provide, within two weeks of the letter, a submission to DMIRS (copied to the native title party) regarding the grant of the mining tenement in accordance with section 31(1)(a) of the NTA. It is requested that the submission contain the following information to assist the native title party:
 - (i) an outline of proposed work program for the mining tenement area;
 - (ii) the Annual Report of the grantee party (if available);
 - (iii) information regarding any completed or proposed Aboriginal heritage surveys within the mining tenement area;
 - (iv) any company policies or information of the grantee party, which might be relevant to the native title party; and
 - (v) a copy of a project map (if applicable); and
 - (g) a request that the native title party provide, within seven weeks of the letter, a submission to DMIRS regarding the grant of the mining tenement in accordance with section 31(1)(a) of the NTA. The native title party is requested that any correspondence be copied to all parties.
13. Where no submission is received from a grantee party or a native title party within the 2 or 7 week timeframe of DMIRS's initial letter, DMIRS will forward a reminder letter to the grantee party or the native title party (copied to the other affected party). With respect to the grantee party, the letter currently advises that if no submission is received within 2 weeks of the date of that letter, action may be taken to put the application before the Minister for Mines and Petroleum with a recommendation that it be considered for refusal under section 111A of the *Mining Act*. These letters also indicate that any party may refer the case to the National Native Title Tribunal (NNTT) for mediation assistance.
14. During the six month negotiation period contemplated by section 35(1)(a) of the NTA, DMIRS does not typically participate in meetings or discussions between the grantee party and the native title party as, consistent with section 31(1A) of the NTA, those discussions are generally about matters which do not affect the State. Rather, DMIRS monitors the progress of negotiation meetings and discussions between the native title party and the grantee party and requests that regular contact with DMIRS be maintained (as and when agreed by those parties). Where the grantee party and native title party wish for DMIRS representatives to attend any meetings, DMIRS will do so. However, this does not occur often.



15. If the native title party or the grantee party refer the matter to the NNTT for mediation assistance pursuant to section 31(3) of the NTA, DMIRS will participate in any mediation conference organised by the NNTT unless the other mediation parties deem it to be unnecessary.
16. Where the grantee party and the native title party reach an agreement of the kind described in section 31(1)(b) of the NTA to the grant of a mining tenement, they will approach DMIRS to execute a **State Deed**. The State Deed is a standard form agreement provided by the State (a copy of which is located on DMIRS's website (at <http://www.dmp.wa.gov.au/Minerals/Native-Title-Act-Process-5548.aspx>) that must be executed by the grantee party, the native title party and the Minister for Mines and Petroleum (or his representative).
17. Two standard form State Deeds for the grant of mining tenements are published by DMIRS. The first applies in circumstances where the native title party is a registered native title claimant and the second applies where the native title party is a registered native title body corporate. Save for amendments required by the identity of the native title party, the State Deeds are relevantly identical. Annexed thereto and marked "**SAM1**" is a copy of the State Deed (for a registered native title body corporate) and instructions provided by DMIRS for its completion.
18. Once executed the State Deed is lodged by the State in the NNTT in accordance with section 41A of the NTA.
19. The Minister for Mines and Petroleum (or his representative) will only execute the State Deed in the form supplied to the parties by DMIRS and after execution by all other parties to the State Deed. In exceptional circumstances, if the parties need to alter the basic document, they may discuss the desired alterations with DMIRS but such alterations are rare.
20. Between 1 January 2017 and 23 October 2023 the Minister for Mines and Petroleum (or his representative) has entered into approximately 316 State Deeds with native title and grantee parties in respect of the grant of mining tenements.
21. The State Deed is, in summary, limited in scope and operation to the following matters:
 - (a) recording the agreement of the native party to the grant of the mining tenement and that the deed is an agreement for the purposes of section 28(1)(f) and section 31(1)(b) of the NTA;
 - (b) evidencing the agreement of the native title party and the grantee party that the State is not liable for any compensation that the native title party may be entitled to in respect of the grant of the mining tenement; and
 - (c) providing authority to the State to give a copy of the deed to the NNTT and advise the relevant Minister of the making of the deed as required by section 41A(1) of the NTA.



22. Given the scope and operation of the State Deed, where a native title party and a grantee party have reached agreement with respect to the grant of a mining tenement they will typically enter into an ancillary agreement. The ancillary agreement will include other matters not dealt with in the State Deed. These matters will depend on the type of grantee party and the extent of the project but may include heritage protection protocols, the manner in which activities are to be conducted on the mining tenement and any benefits payable to the native title party. DMIRS is not provided with a copy of any ancillary agreement and is not a party to it. DMIRS's knowledge with respect to the ancillary agreement is generally limited to the details entered in item 5 of the Schedule to the State Deed (being the parties to the ancillary agreement and the date upon which it was entered).
23. Where, instead of an agreement under section 31(1)(b) of the NTA, a native title party and a grantee party enter into an indigenous land use agreement (**ILUA**) with respect to the grant of a mining tenement(s), DMIRS will not be a party to the ILUA and is not typically provided with a copy of it. To the extent that DMIRS may be given access to extracts of such ILUAs by the grantee party and the native title party, the information provided to DMIRS is often similar in content to the extract of the ILUA from the Register of Indigenous Land Use Agreements maintained by the NNTT and is limited, primarily, to the statements of the kind mentioned in section 24EB(1) or 24EBA(1) or (4) of the NTA.
24. Where the proposed grant of a mining tenement is covered by the provisions of a pre-existing ILUA, DMIRS will typically require a statutory declaration or affidavit from the grantee party and/or native title party confirming that the proposed grant of the mining tenement by DMIRS is validated by the provisions of the ILUA (so as to allow DMIRS to confirm that it does not have to comply with any other future act regime procedure prior to granting the tenement).

ROLE OF DMIRS UNDER SECTION 24MD OF THE NTA

25. Where the grant of a mining tenement attracts the operation of sections 24MD(6A) and (6B) (as opposed to Subdivision P), DMIRS is responsible for giving the notice required by those provisions. As described at paragraphs [9] – [10] above, typically, a notice is not issued by DMIRS until the application for the relevant mining tenement is otherwise deemed by DMIRS to be compliant with the *Mining Act*.
26. Where a registered native title claimant or body corporate makes an objection to the grant of the mining tenement within the two month time period contemplated by section 24MD(6B)(d) of the NTA, DMIRS will provide the mining tenement applicant with:
- (a) a copy of the objection;

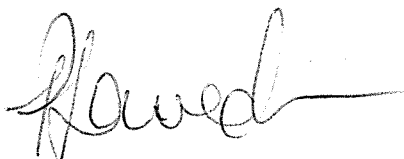


- (b) instructions that, pursuant to section 24MD(6B)(e) of the NTA, the tenement applicant must undertake consultations with the native title claimant or body corporate about ways of minimising the impact of the grant of the mining tenement on the native title rights and interests and, if relevant, any access to the land or waters or the way in which anything authorised by the mining tenement might be done; and
- (c) a request that the mining tenement applicant advise DMIRS of the consultation that has occurred with the registered native title claimant or body corporate within thirty days.
27. DMIRS will also provide a letter to the registered native title claimant or body corporate acknowledging that the objection has been referred to the mining tenement applicant. The letter also requests that, if a satisfactory outcome following consultation is achieved, the registered native title claimant or body corporate must submit a withdrawal of the objection in writing to DMIRS.
28. DMIRS does not participate in the consultation contemplated by section 24MD(6B) as, consistent with section 24MD(6B)(e)(ii) of the NTA, the obligation to consult with the registered native title claimant or body corporate is placed upon the mining tenement applicant. DMIRS does, however, request that the mining tenement applicant advise DMIRS of the consultation that has occurred between it and the registered native title claimant or body corporate.
29. In the event that an agreement is reached between the mining tenement applicant and the registered native title claimant or body corporate following consultation, DMIRS is not provided with a copy of any such agreement. Rather, it is only provided with a letter from the registered native title claimant or body corporate withdrawing the objection.
30. Since the amendments made to section 24MD(6B) of the NTA by the *Native Title Legislation Amendment Act 2021* (Cth), in the event that a registered native title claimant or body corporate does not submit a withdrawal of the objection in the eight month period contemplated by section 24MD(6B)(f)(ii) of the NTA, DMIRS will write to the parties informing them that the State intends to refer the objection to the independent person. In Western Australia, the independent person is presently the Chief Magistrate of the Magistrate's Court. The letter also requests that if the registered native title claimant or body corporate wishes to withdraw their objection or provide any comment on the letter they do so within twenty-eight days.
31. In the event that the objection is not withdrawn within the time period specified, DMIRS will write to the State Solicitor's Office (SSO), requesting that they refer the matter to the independent person. SSO is then responsible for the referral of the objection to the independent person and will inform the parties of the referral and any relevant details with respect to the referral.



NOTIFICATION OF MISCELLANEOUS LICENCES UNDER SECTION 24HA NTA

32. As described in the affidavit of David Crabtree affirmed on 16 June 2023 (at paragraphs [67]-[68], [73]-[74], [96]-[97] and [102]-[103]), four miscellaneous licences the subject of this proceeding (namely L 47/472, L 47/697, L 47/914 and L 47/919) were notified pursuant to both section 24HA(7) and section 24MD(6A) and (6B) of the NTA (the **dual notification**).
33. The dual notification given by DMIRS with respect to these miscellaneous licences is the result of a policy developed by DMIRS following the decision by the NNTT in *FMG Pilbara Pty Ltd / NC (deceased) and others on behalf of the Yindjibarndi People / Western Australia* [2012] NNTTA 103 on 3 October 2012 (*FMG Pilbara [2012]*).
34. Relevantly, in *FMG Pilbara [2012]* the NNTT appeared to accept that the grant of a single miscellaneous licence may be partly validated by Subdivision H and partly validated by Subdivision M. Following that NNTT decision, to avoid any potential future invalidity under section 24OA of the NTA, DMIRS decided, as a matter of policy, to provide the dual notification.
35. The dual notification was given by DMIRS in circumstances where the purpose for which the miscellaneous licence was applied for included “*taking water*” or “*a search for groundwater*” and also included another purpose(s) within the meaning of section 24MD(6B)(b) of the NTA (being “*the creation or variation of a right to mine for the sole purpose of the construction of an infrastructure facility associated with mining*”). A miscellaneous licence applied for solely for the purpose of “*search for groundwater*” or for “*taking water*” was processed by DMIRS only under the provisions of section 24HA of the NTA.
36. The dual notification policy was suspended by DMIRS for a period following the first instance decision of the Federal Court in *Narrier v State of Western Australia* [2016] FCA 1519 (in which the Court found that miscellaneous licences applied for solely for the purpose of “*search for groundwater*” were not validated by the provisions of section 24HA of the NTA). The dual notification policy was recommenced by DMIRS following the decision of the Full Federal Court in *BHP Billiton Nickel West Pty Ltd v KN (Deceased)* [2018] FCAFC 8 (which upheld an appeal from the Court's findings in *Narrier* on the section 24HA NTA point).
37. Given that the dual notification was not given by DMIRS prior to 2013 (and the policy also ceased to be applied for a period between 2016 – 2018), a number of miscellaneous licences the subject of this proceeding whose purposes include “*taking water*” or “*a search for groundwater*” and also include another purpose(s) within the meaning of section 24MD(6B)(b) of the NTA, were only

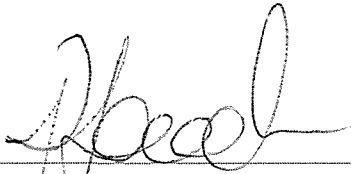


notified under section 24MD(6A) and (6B) of the NTA. These include L 47/302, L 47/361, L 47/362, L 47/363, L 47/367, L 47/396, L 47/801, L47/813 and L 47/814.

Affirmed by the deponent)
at Perth in the State of Western Australia)
on 26 October 2023)
Before me:)



Signature of deponent



Signature of witness

Ruth Lavender

Name

Ruth Sarah Lavender JP
Justice of the Peace
Western Australian Reg. No: 30240

Affidavit

WAD 37 of 2022

Federal Court of Australia
District Registry: Western Australia
Division: General

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC
Applicant

STATE OF WESTERN AUSTRALIA and others
Respondents

ANNEXURE SAM1

State Deed and Instructions for Completion



GUIDELINES FOR COMPLETION OF STATE DEED (DEED FOR GRANT OF MINING TENEMENT)

BY NATIVE TITLE PARTIES AND GRANTEE PARTIES

Please read these guidelines before attempting to complete the Deed as errors may render the Deed invalid or may result in the Government party declining to execute the Deed

- The Minister for Mines and Petroleum (or his representative) will execute the Deed only in the form as supplied to the parties by the Department of Mines, Industry Regulation and Safety (DMIRS) and after execution by all other parties to the Deed. In exceptional circumstances, if the parties need to alter the basic document, then they should discuss the desired alterations with DMIRS before altering or signing the Deed.
- Multiple native title claimants or tenements can be entered on the schedule to the Deed.
- The Deed must be signed by:
 1. The applicant or applicants for the mining tenement (the grantee party):
 2. The registered native title claimant or claimants (RNTC), whether signed the Deed via:
 - (a) A majority of persons comprising the RNTC: or
 - (b) If conditions under Section 251B of the *Native Title Act 1993(Cth)* (NTA) on the authority of the RNTC provide for such person – those persons:
and
 3. Those people duly authorised by a power of attorney to sign the Deed.
- All parties must sign in accordance with their governing Articles of Association, except for individuals, who must follow the directions contained within the Deed.
- The National Native Title Tribunal, Client Services Branch (08 9425 1000) can provide advice on the details of the registered claimants and any conditions under Section 251B of the NTA as at the end of the Section 29 *Native Title Act 1993 (Cth)* advertising period and the date the claim was entered on the Register of Native Title Claims. In the case of combined claims it is suggested that you contact DMIRS Resource Tenure Branch. (See below)
- All signatures must be witnessed by an independent party to the document.
- Do not fill in the date on the front cover page nor in clause 1 of the schedule. This will be filled in with the date on which the Minister for Mines and Petroleum (or his representative) signs the Deed.
- Any changes or alterations must be initialled by all parties to the Deed.
- This proforma Deed itself, has been designed to be submitted as an original document, but in the event of this Deed being re-typed, every care should be taken to avoid errors.
- It is important to forward the Deed to the DMIRS, Resource Tenure Branch, for execution as soon as possible after all other parties have signed it as the Deed is not operative until it is executed by the Minister for Mines and Petroleum (or his representative).

- Forward at least one single unbound signed Deed to:

Department of Mines, Industry Regulation and Safety
Resource Tenure Branch
Locked Bag 100
East Perth WA 6892

If you have any queries in relation to the completion of this Deed or require further copies please contact Resource Tenure Branch on telephone (08) 9222 3333.

Prepared by the
Department of Mines, Industry Regulation and Safety
Resource Tenure Branch

CHECKLIST FOR STATE DEED

HAVE YOU ENSURED THAT:

1. THE SCHEDULE HAS BEEN COMPLETED

2. THE GRANTEE PARTY HAS SIGNED THE DOCUMENT AND WHERE APPROPRIATE THE COMPANY SEAL HAS BEEN INCLUDED

3. THE GRANTEE PARTY SIGNATURE HAS BEEN WITNESSED

4. SIGNATURES OF THE CORRECT NUMBER OF REGISTERED CLAIMANTS REQUIRED TO SIGN THE STATE DEED HAVE BEEN OBTAINED

5. THE REGISTERED CLAIMANT SIGNATURES HAVE EACH BEEN WITNESSED BY AN INDEPENDENT PARTY

6. ANY CHANGES OR ALTERATIONS TO THE DEED HAVE BEEN INITIALLED BY ALL PARTIES

Deed Number: _____
[for office use only]

DATED _____ day of _____ 20____
(to be filled in by the Minister only)

THE STATE OF WESTERN AUSTRALIA

and

THE MINISTER FOR MINES AND PETROLEUM

and

[INSERT DETAILS OF THE REGISTERED NATIVE TITLE BODY CORPORATE]

and

[INSERT DETAILS OF THE GRANTEE PARTY]

DEED FOR GRANT OF MINING TENEMENT (DETERMINED NTP)
Native Title Act 1993 (Cth) - Sections 28(1)(f) and 31(1)(b)

DEPARTMENT OF MINES, INDUSTRY REGULATION AND SAFETY
Locked Bag 100
EAST PERTH WA 6892
TEL: (08) 9222 3333

SCHEDULE

1. DATE OF DEED (to be entered by Minister only)	
2. MINING TENEMENT(S)	
a) Application number(s)	
b) Type of tenement	
3. REGISTERED NATIVE TITLE BODY CORPORATE DETAILS	
a) Names of the registered native title body corporate (Include ICN)	
b) Address	
c) Determination	The determination of native title made by the Federal Court on [insert date] in [insert judgment case details] and being NNTT Determination Number WCD [insert NNTT reference number].
4. GRANTEE PARTY DETAILS	
a) Name(s) (include ACN if grantee party is a company)	
b) Address	
5. ANCILLARY AGREEMENT	
a) Native Title Party	
b) Other party/parties	
c) Date of ancillary agreement	

THIS DEED is made on the date specified in item 1 of the schedule

BETWEEN

The **STATE OF WESTERN AUSTRALIA** and the **MINISTER FOR MINES AND PETROLEUM**, as the Minister responsible for the administration of the Mining Act (together the **Government Party**)

and

The **NATIVE TITLE PARTY** described in item 3(a) of the schedule [**Registered Native Title Body Corporate**], acting for and on behalf of themselves and all of the common law holders under the Determination

and

The **GRANTEE PARTY** described in item 4 of the schedule (**Grantee Party**)

RECITALS

- a) The Grantee Party has made an application pursuant to the Mining Act for the Tenement(s) over the Subject Area.
- b) A determination of native title has been made over the Determination Area pursuant to the Determination and the Native Title Party is the registered native title body corporate that holds the native title either on trust for OR as agent for the common law holders under the Determination.
- c) The Determination Area affects land and waters that includes part or all of the Subject Area.
- d) The Government Party has given notice of its intention to grant the Tenement(s) in accordance with section 29 of the Native Title Act.
- e) If the grant of the Tenement(s) affects native title it will be a future act which passes the freehold test in Part 2 Division 3 Subdivision M of the Native Title Act and the right to negotiate provisions in Subdivision P apply in accordance with section 26(1)(c)(i) of the Native Title Act.
- f) In accordance with the Right to Negotiate Procedure, negotiations in good faith in respect of the grant of the Title have been conducted by the Government Party, the Grantee Party and the Native Title Party.
- g) The Native Title Party agrees to the grant of the Title and this deed is an agreement of the kind referred to in section 31(1)(b) of the Native Title Act and is entered into for the purpose of ensuring the validity of the Title under the Native Title Act.

The parties covenant and agree as follows:

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed unless the contrary intention appears:

Act means an Act of the Parliament of the Commonwealth or of the State of Western Australia.

Ancillary Agreement means the agreement described in item 5 of the schedule or any other agreement made between the Native Title Party and the Grantee Party or any other person in connection with the grant of the Tenement(s) and/or the Grantee Party exercising its rights and discharging its obligations under the Tenement(s).

Arbitral body, common law holders, determination of native title, future act, native title, native title rights and interests, registered native title body corporate, and relevant Minister have the same meanings as they have in the Native Title Act.

Compensation means compensation for any loss, diminution, impairment or other effect on any native title rights and interests whether arising under the Native Title Act, the Mining Act, any other Act, at equity, at law or otherwise.

Details means the details of a Party specified in Item 3 and 4 of the Schedule.

Determination means the determination described in item 3 the schedule.

Determination Area means the land and waters described in the Determination in relation to which native title has been determined to exist.

Government Party means the Party named in this deed as the Government Party and, for the purposes of clauses 4, 5 and 6 includes any State government department, agency, instrumentality, Minister and any body whether corporate or unincorporated that is established or continued for a public purpose by, or under, an Act of the State (including body corporate Ministers) and any employee, agent or contractor of the aforementioned persons.

Mining Act means the *Mining Act 1978* (WA).

Native Title Act means the *Native Title Act 1993* (Cth).

Party means a party to this deed and **Parties** means the Government Party, the Native Title Party and the Grantee Party, collectively.

Right to Negotiate Procedure means the procedure under Subdivision P of Division 3, Part 2 of the Native Title Act.

Schedule means the schedule to this deed.

Subject Area means the land and waters (if applicable) the subject of the application for the Tenement(s) described in item 2 of the Schedule.

Tenement(s) means the mining tenement(s) described in items 2(a) and 2(b) of the schedule to be granted under the Mining Act over part or all of the Subject Area.

1.2 Interpretation

In this deed, unless the contrary intention appears:

- (a) a reference to a clause, schedule or addendum is a reference to a clause of, or a schedule or addendum to, this deed and a reference to this deed includes any recital, schedule or addendum;
- (b) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word 'person' includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (f) a reference to a person, statutory authority, government body (corporate or unincorporated) established under any Act includes a reference to any person (corporate or unincorporated) established or continuing to perform the same or a substantially similar function;
- (g) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (h) a reference to any thing is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- (i) headings are inserted for convenience and do not affect the interpretation of this deed; and
- (j) the word "including" is to be read as if it were followed by, "but not limited to".

2. AUTHORITY TO ENTER INTO DEED

The Native Title Party represents and warrants that all necessary authorisations have been obtained to enter into this deed and this deed is valid and binding and enforceable in accordance with its terms against the Native Title Party and the common law holders under the Determination.

3. AGREEMENT TO GRANT OF TENEMENT

The Native Title Party:

- a) acknowledges that it has had the opportunity to make submissions to the Government Party pursuant to section 31(1)(a) of the Native Title Act.
- b) agrees that this deed is an agreement for the purposes of section 28(1)(f) and section 31(1)(b) of the Native Title Act.
- c) agrees to the grant of the Tenement(s) and to the Grantee Party exercising its rights and discharging its obligations under the Tenement(s).

4. COMPENSATION

4.1 Government Party not liable for Compensation

The Native Title Party and the Grantee Party agree that the Government Party is not liable for any Compensation that the Native Title Party, members of the Native Title Claim Group or any persons determined to be common law holders of native title in relation to the Subject Area may be entitled to in respect of the grant by the Government Party of the Tenement(s) or the exercise of its rights and discharge of obligations under the Tenement(s) by the Grantee Party.

4.2 Deed may be pleaded

- (a) The Native Title Party agrees that it will not make any claim for Compensation nor will it authorise any other person to bring such a claim against the Government Party in respect of the effects of, or the exercise of any right or discharge of any obligation created by, the grant of the Tenement(s) on any native title in relation to the Subject Area.
- (b) If the Native Title Party or the common law holders under the Determination make a claim for Compensation against the Government Party, the Government Party may plead the terms of this deed in bar of that claim.

5. GOVERNMENT PARTY NOT LIABLE FOR ANCILLARY AGREEMENT

The Native Title Party and the Grantee Party acknowledge that the Government Party does not have any obligations or liability whatsoever in connection with the rights and obligations of the Native Title Party or the Grantee Party under the Ancillary Agreement.

6. POSITION OF THE GOVERNMENT PARTY

- (a) Nothing in this deed or the Ancillary Agreement shall fetter, act as an estoppel or an agreement in any way about:
 - (i) the exercise by any person (including a Minister of the Crown) of a statutory power or a discretion otherwise than in accordance with the Act under which the power or discretion is granted; or
 - (ii) the exercise by any person (including a Minister of the Crown) of a decision making power including in respect of any decision of the Government Party.

7. CONDITIONS FOR THE PURPOSES OF SECTIONS 41(1) OF THE NATIVE TITLE ACT

- (a) Clauses 4.1 and 4.2 of this deed constitute conditions to be complied with by the Parties for the purposes of section 41(1) of the Native Title Act.
- (b) The terms of this deed and the Ancillary Agreement, are neither conditions precedent nor conditions subsequent to the agreement of the Native Title Party to the grant of the Tenement(s) or to the Grantee Party exercising its rights and discharging its obligations under the Tenement(s).
- (c) The provisions of this deed and the Ancillary Agreement are not conditions of the Tenement(s) when granted under the Mining Act.

8. DEED PREVAILS

The Grantee Party and the Native Title Party agree that the provisions of this deed prevail over the provisions of the Ancillary Agreement to the extent of any inconsistency between this deed and the Ancillary Agreement.

9. DETERMINATION BY ARBITRAL BODY AND COPY OF DEED TO ARBITRAL BODY AND RELEVANT MINISTER

- (a) If a determination under section 38 of the Native Title Act is applied for in relation to the Tenement(s), the Parties consent to the arbitral body making a determination to the effect that the Tenement(s) may be granted subject only to the conditions in subclauses 4.1 and 4.2.
- (b) The Grantee Party and the Native Title Party authorise the Government Party, and the Government Party agrees, to give a copy of this deed to the arbitral body and to advise the relevant Minister in writing of the making of this deed as required by section 41A(1) of the Native Title Act.

10. COSTS AND DUTIES**10.1 Costs**

Subject to clause 10.2, each Party shall bear their own costs including legal costs in connection with the preparation and completion of this deed.

10.2 Duties

The Grantee Party is to pay all duty (including fines or penalties) payable on or with respect to this deed pursuant to the Duties Act 2008 (WA).

11. GENERAL**11.1 Severability**

If any provision of this deed is void, voidable by any Party, unenforceable or illegal according to the law in force in the State of Western Australia, it shall be read down so as to be valid and enforceable or if it cannot be so read down, the provision (or where possible the offending words), shall be severed from this deed without affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this deed which will continue in full force and effect.

11.2 Further action

Each Party must at its own expense use its best efforts to do all things necessary or desirable to give full effect to this deed and the matters contemplated by it.

11.3 Governing law and jurisdiction

- (a) This deed is governed by the laws applicable in the State of Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

11.4 Counterparts

- (a) This deed may be executed in a number of counterparts and all counterparts taken together constitute one instrument.

- (b) If this deed is to be executed in counterparts, the Parties must agree this ahead of the deed being prepared in final form so that sufficient copies can be prepared and executed by each Party to enable each Party to have one complete instrument (as constituted by the counterparts).

EXECUTION PROVISIONS

GOVERNMENT PARTY

SIGNED for and on behalf of the **STATE OF WESTERN AUSTRALIA** acting through the **MINISTER FOR MINES AND PETROLEUM** by an authorised officer with the Department of Mines, Industry Regulation and Safety in the presence of:

SIGNED BY:

Name of Authorised person in full

Position of Authorised person

Signature of Authorised person

Date

In the presence of:

Full name of witness

Address of witness

Signature of witness

Date

EXECUTION PROVISIONS

GRANTEE PARTY

IF AN INDIVIDUAL

SIGNED by:

Name of person in full

Position of Authorised person

Signature of Authorised person

Date

In the presence of:

Full name of witness

Address of witness

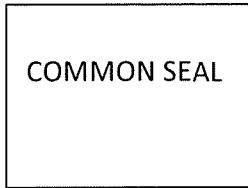
Signature of witness

Date

OR IF THE GRANTEE IS A COMPANY

Note: The deed must be executed by the affixing the common seal of the company to the deed in the presence of two directors, or one director and the company secretary. Alternatively, under section 127(1) of the Corporations Act 2001, a company can execute a document without using a common seal if the document is signed by two directors, or a director and a company secretary or for a proprietary company that has a sole director who is also the company secretary – that director.

EXECUTION PROVISIONS



GRANTEE PARTY

IF A COMPANY [WITH COMMON SEAL]

The **COMMON SEAL** of [insert company name] ACN [insert ACN] was affixed to this deed in the presence of:

Signature of Director

Signature of Director/Secretary (delete whichever is not applicable)

Name of person in full

Name of person in full

Date

Date

IF A COMPANY [WITHOUT COMMON SEAL]

SIGNED for [insert company name] ACN [insert ACN] in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director/Secretary (delete whichever is not applicable)

Name of person in full

Name of person in full

Date

Date

EXECUTION PROVISIONS

GRANTEE PARTY

IF A SOLE PROPRIETOR

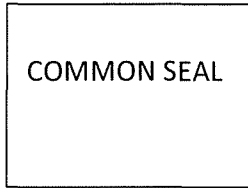
SIGNED for [insert company name] ACN [insert ACN] in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Director (as Sole Director and Secretary)

Name of person in full

Date

EXECUTION PROVISIONS



NATIVE TITLE PARTY¹

WITH COMMON SEAL

The **COMMON SEAL** of [insert RNTBC name] RNTBC ICN [insert ICN] was affixed to this deed in accordance with its rules and section 99.5(2) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) in the presence of:

Signature of Director

Signature of Director/Secretary (delete whichever is not applicable)

Name of person in full

Name of person in full

Date

Date

IF A COMPANY [WITHOUT COMMON SEAL]

SIGNED for [insert RNTBC name] RNTBC ICN [insert ICN] in accordance with its rules and section 99.5(1) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) in the presence of:

Signature of Director

Signature of Director/Secretary (delete whichever is not applicable)

Name of person in full

Name of person in full

Date

Date

¹ By executing this deed the signatories represent and warrant that they are authorised to execute this deed on behalf of the Native Title Party and all common law holders under the Determination.

NOTICE OF FILING

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 26/10/2023 2:07:13 PM AWST
Date Accepted for Filing: 26/10/2023 2:07:16 PM AWST
File Number: WAD37/2022
File Title: YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC ICN
8721 AND STATE OF WESTERN AUSTRALIA & ORS
Registry: WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.