

Outstanding objections and evidence subject to limitations under the Evidence Act 1995 (Cth)

Second Affidavit of Sean Costello dated 4 August 2023

Objecting Party	Paragraph/ Part of Paragraph	Objection	Response	Resolution / ruling required
Applicant	All	Relevance	The Applicant suggests that a ruling on this objection would be appropriate when judgement is delivered because the effect of historical extinguishment is a matter in issue between the parties.	Ruling required.



Second Affidavit of Sean Nelson Costello

WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

Affidavit of: **Sean Costello**

Address: c/ Fortescue Metals Group, Level 2, 87 Adelaide Terrace, East Perth WA
6004

Occupation: Geospatial Analyst

Date: 4 August 2023

Filed on behalf of (name & role of party)

Prepared by (name of person/lawyer)

Law firm (if applicable)

Tel (08) 6315 5900

Email mark.vanbrakel@allenoverly.com

Address for service

(include state and postcode)

FMG Pilbara Pty Ltd, Pilbara Energy (Generation) Pty Ltd, Pilbara Energy
Company Pty Ltd, Pilbara Gas Pipeline Pty Ltd and The Pilbara Infrastructure
Pty Ltd

Mark van Brakel

Allen & Overy

Fax (08) 6315 5999

Level 12, Exchange Tower, 2 The Esplanade

PERTH, Western Australia, 6000

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I, Sean Nelson Costello, c/- Fortescue Metals Group, Level 2, 87 Adelaide Terrace, East Perth WA 6004, geospatial analyst, make oath and say as follows:

1. I am currently employed by Fortescue Metals Group Ltd (**FMGL**) as Lead Geospatial Analyst. FMGL is the holding company of a number of related companies including the 2nd to 6th respondents (**FMG Respondents**) in this case (together **FMG**).
2. I am authorised to make this affidavit on behalf of the FMG Respondents.
3. Unless otherwise stated, the facts contained in this affidavit are within my own knowledge and are true.
4. This affidavit is supplementary to my affidavit sworn 30 June 2023, and the facts contained in that affidavit remain true to the best of my knowledge, unless otherwise stated.

Access to Historical Tenure Information

5. Allen & Overy, the solicitors for the FMG Respondents have provided FMG with a copy of an electronic folder entitled Annexure XPM4. I am informed by Adam Taylor of Allen & Overy and believe that Annexure XPM4 is the folder contained on a USB that was annexed to the affidavit of Xavier Peter Marszal affirmed 3 February 2023 and filed by the First Respondent in these proceedings. That folder contained spatial data that I could view and analyse using the ArcMap platform as explained in paragraph 9 of my first affidavit.

Supplementary Maps

Pastoral Lease Maps

6. On 22 March 2023, I produced a map entitled 'Pastoral Leases Within Yindjibarndi Determination Area'. This map shows the disturbance footprint for the Solomon Hub and overlays the:
 - (a) outer boundaries of the Yindjibarndi Determination area / compensation application area, shown by a blue outline; and
 - (b) boundary of the pastoral leases known as Coolawanyah Station, Mt Florance Station, Hooley Station and Mulga Downs Station (together, **Current Pastoral**

Leases). The Current Pastoral Leases' respective areas are each shaded in a different colour as depicted in the legend to the map. I obtained the spatial data for the Current Pastoral Leases from FMG's database. That data was originally sourced from Landgate, but has been modified by FMG so as to create a simple outline of the lease boundary. This is done to make the map more understandable to the viewer.

A copy of that map is attached and marked **SNC-7**.

7. On 4 August 2023, I produced a map entitled 'Historical Pastoral Leases Within Yindjibarndi Determination Area'. This map shows the disturbance footprint for the Solomon Hub (as explained in my first affidavit and as represented in exhibit SNC-5 thereof) and I have then overlaid the:
- (a) outer boundary of the Yindjibarndi Determination area / compensation application area, shown by a blue outline; and
 - (b) boundaries of spatial data for the historic pastoral leases that I obtained from a file entitled 'Hist_Land_Tenure_asat_20130801' within Annexure XPM4 (together, **Historic Pastoral Leases**). The Historic Pastoral Leases' respective areas are shown in a dark grey outline.

A copy of that map is attached and marked **SNC-8**.

Petroleum Interest Maps

8. On 2 August 2023, I produced several maps showing the disturbance footprint for the Solomon Hub (as explained in my first affidavit and as represented in exhibit SNC-5 thereof) and the outer boundaries of the Yindjibarndi Determination area / compensation application area, shown by a blue outline, overlaid with:
- (a) the tenure Oil Prospecting Area OPA-20H, and entitled 'Historical Oil Prospecting Area OPA-20H'. I obtained the spatial data for that oil prospecting area from Annexure XPM4. A copy of that map is attached and marked **SNC-9**;




- (b) Oil Prospecting Area OPA-201H, and entitled ‘Historical Oil Prospecting Area OPA-201H’. I obtained the spatial data for that oil prospecting area from Annexure XPM4. A copy of that map is attached and marked **SNC-10**;
- (c) Oil Prospecting Area PE-23H, and entitled ‘Historical Oil Prospecting Area PE-23H’. I obtained the spatial data for that oil prospecting area from Annexure XPM4, A copy of that map is attached and marked **SNC-11**; and
- (d) the spatial data for each of the areas referred to in paragraphs 8(a)-(c) above, and entitled ‘Historic Oil Prospecting Areas Prior to 31/10/1975’. Each of the Oil Prospecting Areas are shown in a different coloured outline as depicted on the map legend. A copy of that map is attached and marked **SNC-12**.

Sworn by Sean Nelson Costello
 At East Perth
 in the State of Western Australia
 on 4 August 2023

)
)
)
)
)

Signature of deponent

Before me:

Signature of witness

Hamish Hamilton Robertson

a legal practitioner who has held
 a practice certificate for at least
 2 years and who holds a current
 practice certificate.

“SNC-7”

WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General


YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

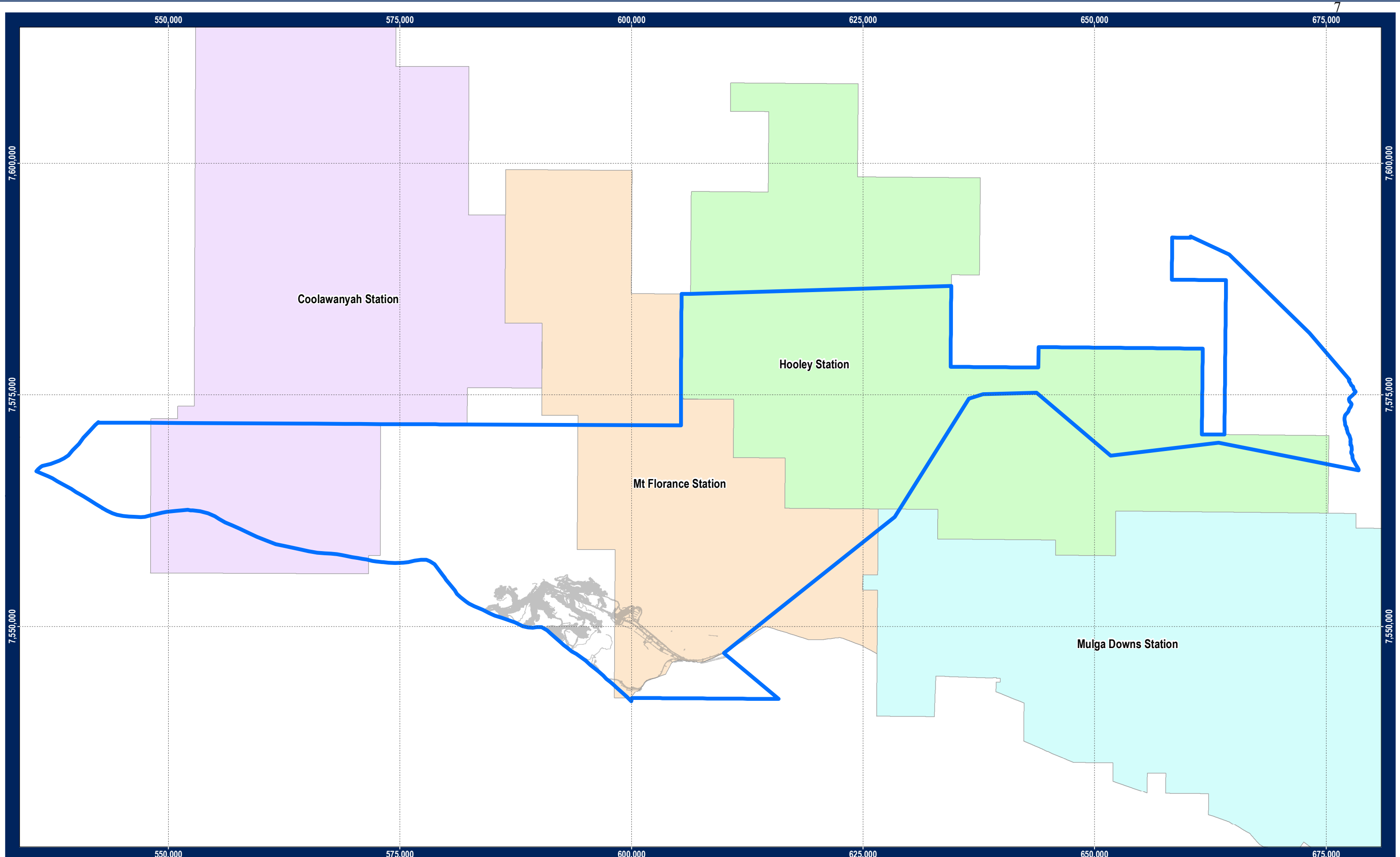
This is the annexure marked **SNC-7** referred to in the affidavit of Sean Nelson Costello sworn on 4 August 2023.



Signature of witness



a legal practitioner who has held
a practice certificate for at least
2 years and who holds a current
practice certificate.



LEGEND

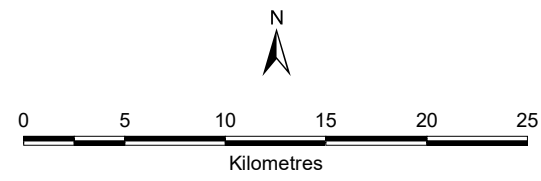
Pastoral Leases Yindjibarndi Determination Area

Coolawanyah Solomon Disturbed Areas

Hooley

Mt Florance

Mulga Downs



Requested By: T. Matic
 Drawn By: S. Costello
 Revised By: scostello
 Approved By: S. Costello
 Scale: 1:375,000
 Coordinate System: GDA 1994 MGA Zone 50
 Document Name: 100_MP_OP_0159_023_r0

INTERNAL USE ONLY

Date: 22/03/2023
 Size: A3L
 Revision: 0
 Confidentiality: 1

GDA94

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**Pastoral Leases Within
Yindjibarndi Determination Area**

Fortescue

“SNC-8”

WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC

Applicant


STATE OF WESTERN AUSTRALIA & ORS

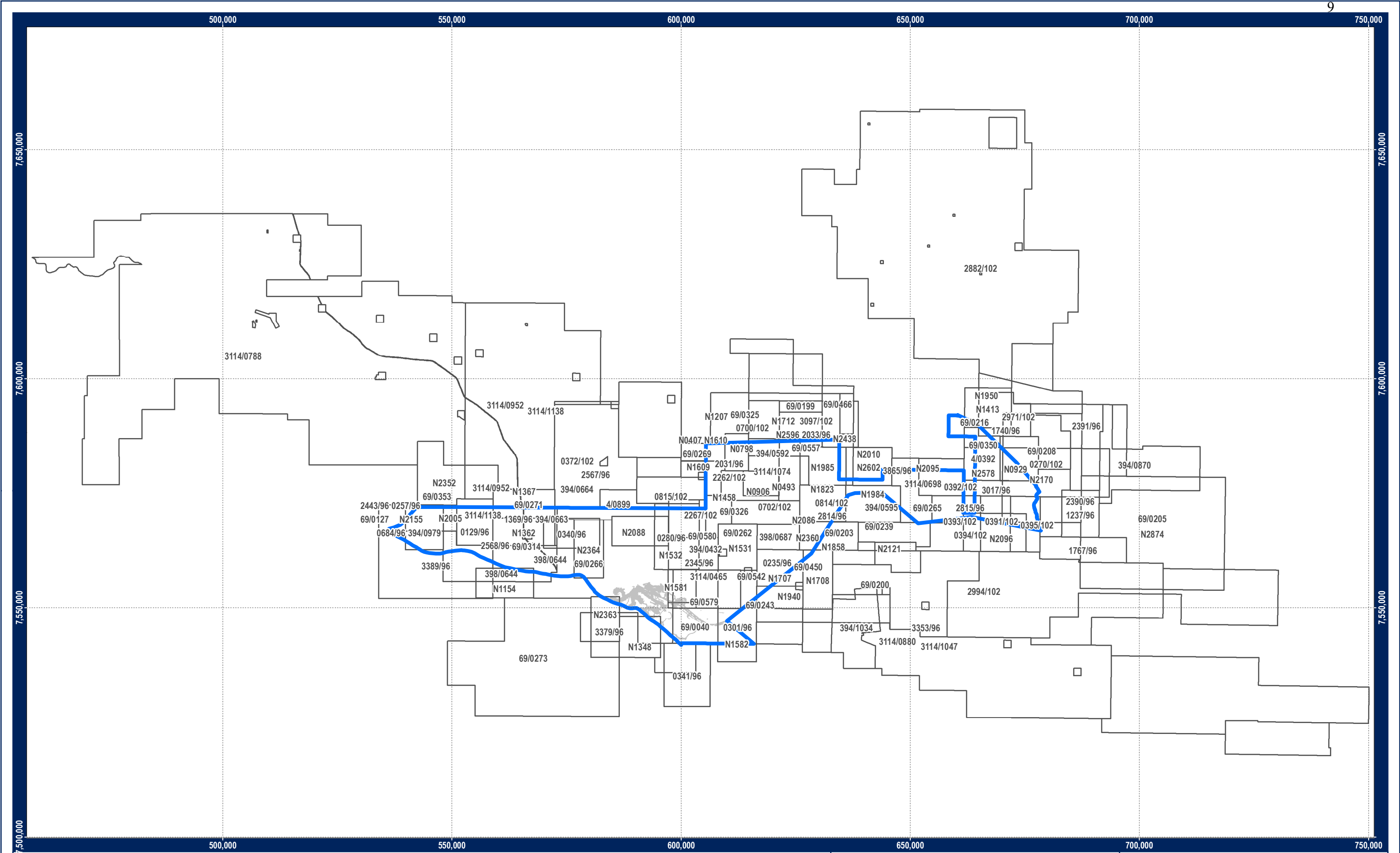
Respondents

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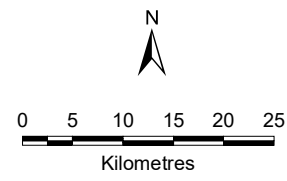


Signature of witness


a legal practitioner who has held
a practice certificate for at least
2 years and who holds a current
practice certificate.



- LEGEND**
- Yindjibarndi Determination Area
 - Historical Pastoral Leases
 - Solomon Disturbed Areas



Scale: 1:750,000
 Coordinate System: GDA 1994 MGA Zone 50
 Document Name: 100_MP_OP_0159_049_r0

Date: 4/08/2023
 Size: A3L

**Historical Pastoral Leases Within
 Yindjibarndi Determination Area**

“SNC-9”

WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

This is the annexure marked **SNC-9** referred to in the affidavit of Sean Nelson Costello sworn on 4 August 2023.






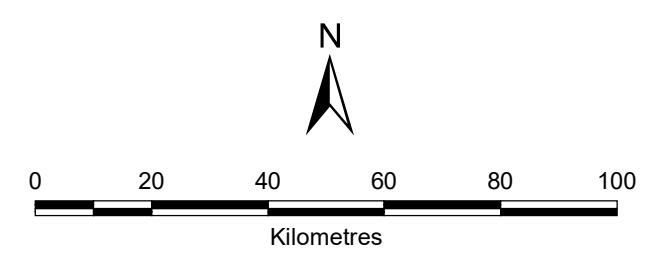
Signature of witness



a legal practitioner who has held a practice certificate for at least 2 years and who holds a current practice certificate.



- LEGEND**
-  Yindjibarndi Determination Area
 -  Historical Oil Prospecting Area OPA-20H
 -  Solomon Disturbed Areas



Scale: 1:1,300,000
Coordinate System: GCS GDA 1994
Document Name: 100_MP_OP_0159_039_r0

Date: 2/08/2023
Size: A2L

**Historical Oil Prospecting Area
OPA-20H**

“SNC-10”

WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

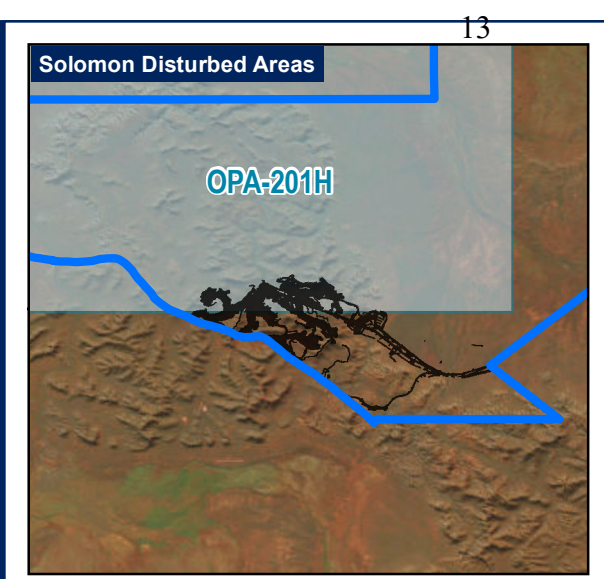
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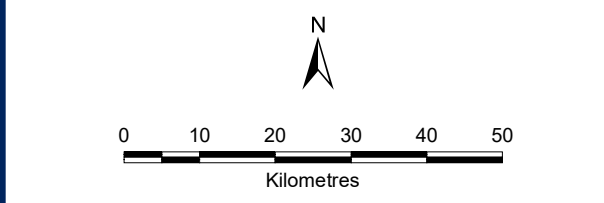
Signature of witness



a legal practitioner who has held a practice certificate for at least 2 years and who holds a current practice certificate.



- LEGEND**
-  Yindjibarndi Determination Area
 -  Solomon Disturbed Areas
 -  Historical Oil Prospecting Area OPA-201H



Historical Oil Prospecting Area OPA-201H

Scale: 1:1,000,000
Coordinate System: GCS GDA 1994
Document Name: 100_MP_OP_0159_044_r0

Date: 02/08/2023
Size: A3L

“SNC-11”

WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

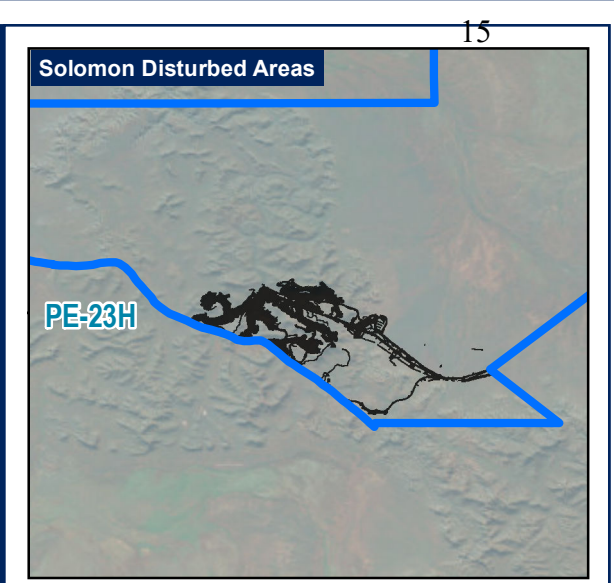
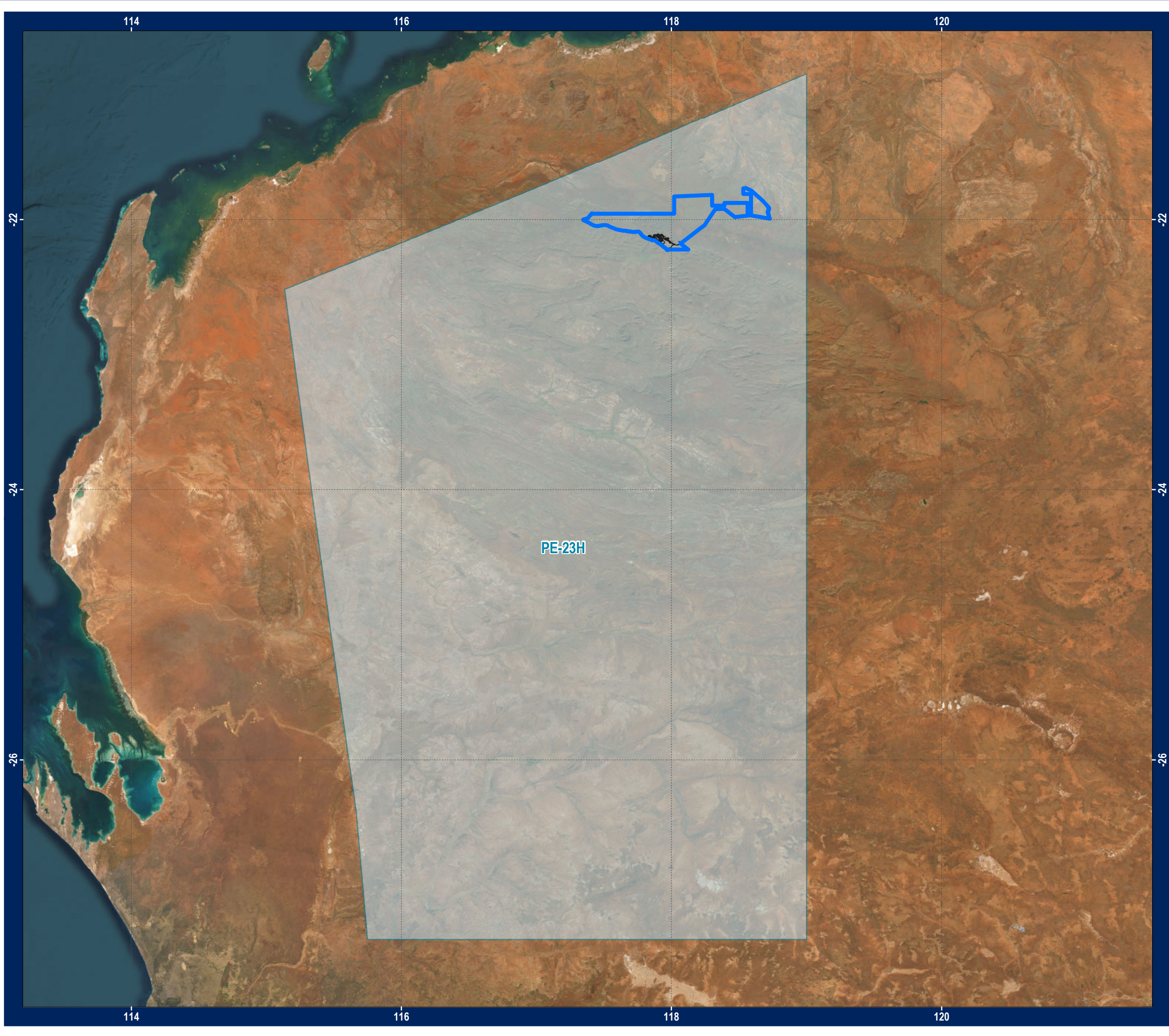
This is the annexure marked **SC-11** referred to in the affidavit of Sean Nelson Costello sworn on 4 August 2023.






Signature of witness



a legal practitioner who has held a practice certificate for at least 2 years and who holds a current practice certificate.



LEGEND

-  Yindjibarndi Determination Area
-  Solomon Disturbed Areas
-  Historical Oil Prospecting Area PE-23H



Historical Oil Prospecting Area PE-23H

Scale: 1:3,000,000
Coordinate System: GCS GDA 1994
Document Name: 100_MP_OP_0159_043_r0

Date: 02/08/2023
Size: A3L

“SNC-12”

WAD 37 of 2022

Federal Court of Australia

District Registry: Western Australia

Division: General

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC

Applicant

STATE OF WESTERN AUSTRALIA & ORS

Respondents

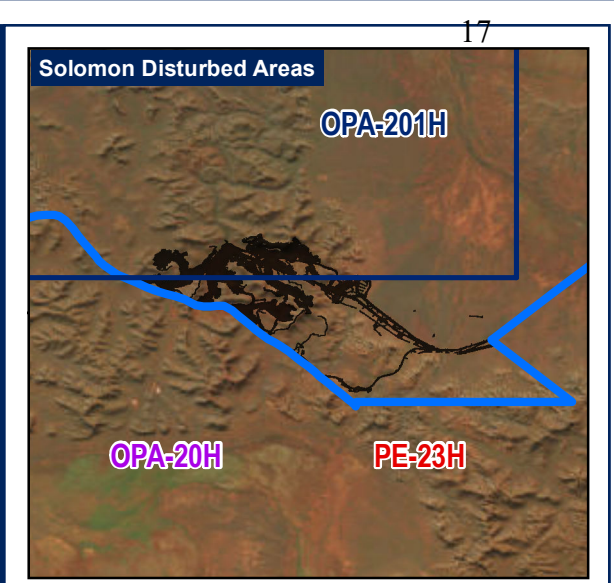
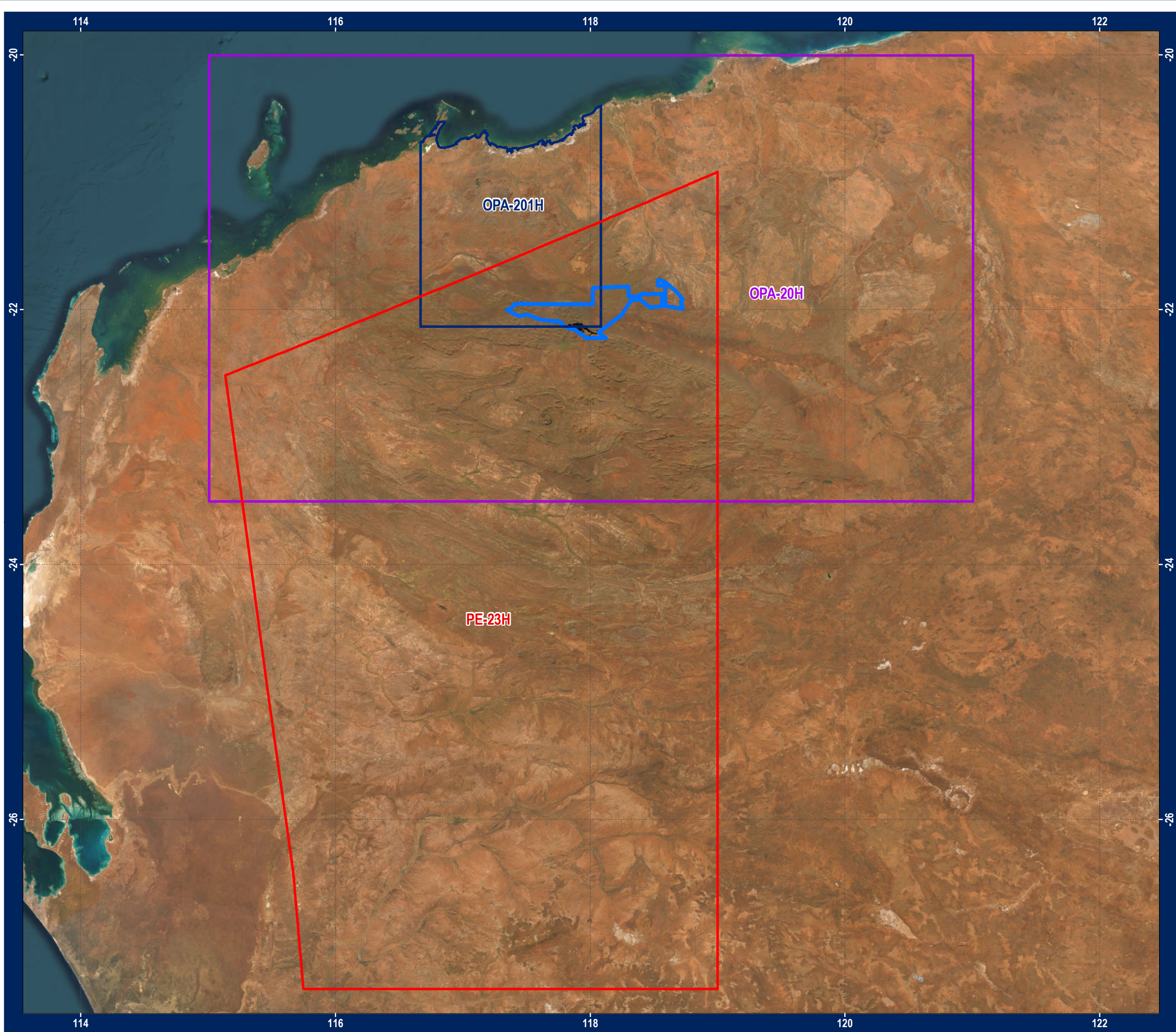
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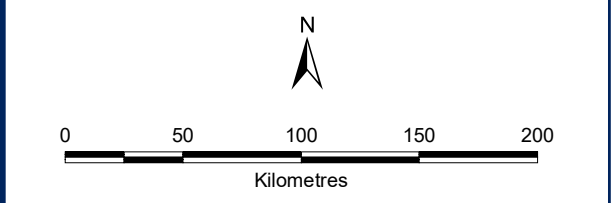
Signature of witness

Hamish Hamilton Robertson

a legal practitioner who has held a practice certificate for at least 2 years and who holds a current practice certificate.



- LEGEND**
- Yindjibarndi Determination Area
 - Solomon Disturbed Areas
 - Historical Oil Prospecting Areas - Prior to 31/10/1975**
 - OPA-201H
 - OPA-20H
 - PE-23H



**Historical Oil Prospecting Areas
Prior to 31/10/1975**

Scale: 1:3,200,000 Date: 02/08/2023
 Coordinate System: GCS GDA 1994 Size: A3L
 Document Name: 100_MP_OP_0159_041_r0

NOTICE OF FILING

Details of Filing

Document Lodged: Affidavit - Form 59 - Rule 29.02(1)
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Date of Lodgment: 4/08/2023 4:11:15 PM AWST
Date Accepted for Filing: 4/08/2023 4:11:23 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.