



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: **XAVIER PETER MARSZAL**
Address: c/- Landgate
1 Midland Square, Midland, Western Australia 6056
Occupation: Spatial Consultant
Date: 3 February 2023

Filed on behalf of: State of Western Australia
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A handwritten signature in blue ink, appearing to be 'Xavier Peter Marszal'.

A handwritten signature in blue ink, appearing to be 'Alicia Warren & Rachel Eaton'.

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I, XAVIER PETER MARSZAL, Public Servant, care of Landgate, 1 Midland Square, Midland in the State of Western Australia, affirm as follows:

1. I am a Spatial Consultant of the Geospatial team within the Location Services section of the Western Australian Land Information Authority (a body corporate established under section 5 of the *Land Information Authority Act 2006* (WA)), trading as Landgate (**Landgate**).
2. Landgate is, amongst other things, the statutory authority responsible for managing Western Australia's land and property information and maintains the State's official register of land ownership and survey information.
3. I am a qualified cartographer, having obtained a Diploma in Cartography in 1999. I have been employed by Landgate since 2007 and have been involved in the capture and mapping of native title application boundaries and supplying current and historical tenure, technical descriptions and maps for native title applications and determinations since 2009.
4. I am authorised by the First Respondent, the State of Western Australia (the **State**), to affirm this affidavit on its behalf in WAD 37 of 2022 (**Yindjibarndi Compensation application**).
5. 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 Landgate 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.




BACKGROUND TO GEOSPATIAL

6. Geospatial is, amongst other things, responsible for capturing and mapping native title claim boundaries, collating information provided by other government agencies and supplying current and historical tenure for native title applications (**native title tenure information**). Geospatial is the successor of the Native Title Spatial Services and the Graphic Services sections of Landgate and was created following a re-structure of Location Services in 2022.
7. Geospatial prepares native title tenure information at the request of the State Solicitor's Office (**SSO**), the Aboriginal Engagement directorate within the Department of the Premier and Cabinet and other government departments, as well as the National Native Title Tribunal, Land Councils and other bodies who are involved in native title applications.
8. The provision of native title tenure information within Geospatial is divided broadly into two tasks: project delivery and mapping. Project delivery is concerned with supplying current and historical tenure to the State for use in either the litigation or mediation of native title claims. Mapping is concerned with providing customised maps to the State and other private individuals for native title purposes.

YINDJIBARNDI #1 PROCEEDINGS (WAD 6005 OF 2003)

9. On 23 August 2013, Landgate received a request from SSO to identify, and spatially depict the location of, certain current and historical non-native title rights and interests which had been granted within the land and waters of the Yindjibarndi #1 native title determination application (WAD 6005 of 2003) (**Yindjibarndi #1 application**).
10. The process undertaken by Landgate to produce the information requested (the **tenure search**) was detailed in paragraphs [15] – [33] of the affidavit of Lee Rex Morgan sworn on 19 November 2014 and filed in the Yindjibarndi #1 proceedings on 20 November 2014 (**Morgan Affidavit**).
11. The results of the tenure search were recorded electronically via a GIS computer software program that allowed the user to view and share electronic maps and associated information. (**Yindjibarndi #1 Tenure Project**). A copy of the Yindjibarndi #1 Tenure Project was contained on a DVD and annexed to the Morgan Affidavit as "LRM4".
12. A copy of the Morgan Affidavit (excluding annexures) is annexed to this affidavit and marked "**XPM1**".

YINDJIBARNDI COMPENSATION APPLICATION

13. On 1 December 2022, Landgate received a letter from SSO requesting that, following receipt of additional information from the Department of Mines, Industry Regulation and Safety (**DMIRS**), Landgate create an updated version of the Yindjibarndi #1 Tenure Project.
14. A copy of the letter received from SSO on 1 December 2022 is annexed to this affidavit and marked "**XPM2**".
15. On 5 December 2022, SSO informed Landgate that the applicant for the Yindjibarndi Compensation application intended to amend the compensable acts claimed and provided Landgate with an updated list of compensable acts to replace Annexure A of the letter annexed at XPM2. A copy of this updated list is annexed to this affidavit and marked "**XPM3**".
16. On 9 December 2022, DMIRS provided Landgate with the information requested by SSO on 1 December 2022. The data provided by DMIRS included the geographical location of the requested mining tenements (as .shp (shape) files), the source documents supporting the grant of those tenements (as .pdf files) and summary spreadsheets (as .xlsx (excel) files).
17. On 19 January 2023, SSO informed Landgate that, following review of material produced by DMIRS in respect of the request made on 1 December 2022, SSO had requested that DMIRS provide some further information for inclusion in an updated version of the Yindjibarndi #1 Tenure Project.
18. On 23 January 2023, DMIRS provided Landgate with the additional information requested by SSO. The data provided by DMIRS included the geographical location of the requested mining tenements (as .shp (shape) files), the source documents supporting the grant of those tenements in .pdf form (to the extent that material had not already been provided on 9 December 2022) and summary spreadsheets (as .xlsx (excel) files).
19. The spatial information and supporting documents were then incorporated by Landgate into the original Yindjibarndi #1 Tenure Project to create a new tenure project (**Yindjibarndi Compensation Tenure Project**). Whilst the data provided by DMIRS on 9 December and 23 January has been integrated with other information and images held by Landgate, the spatial information and documents themselves have not been altered since receipt by Landgate.
20. A copy of the Yindjibarndi Compensation Tenure Project (contained on a USB) is annexed to this affidavit and marked "**XPM4**".



YINDJIBARNDI COMPENSATION TENURE PROJECT

Summary of the contents of the Yindjibarndi Compensation Tenure Project

21. The Yindjibarndi Compensation Tenure Project contains the following four folders:
- (a) "*Indexes*": This folder contains files which are formatted to be compatible with Microsoft Excel software. The files are each spreadsheets. Each spreadsheet lists the tenure that exists (or existed) in the land and waters of the Yindjibarndi #1 application in relation to the particular category to which the spreadsheet applies;
 - (b) "*Maps*": this folder contains a .pdf version of the maps referred to at paragraph [25] below;
 - (c) "*Software*": This folder contains a copy of the GIS software program (called MapInfo ProViewer) that allows the user to view and use the Yindjibarndi Compensation Tenure Project. Instructions for the installation and use of MapInfo Proviewer are also included in this folder; and
 - (d) "*Tables*": this folder hosts all of the relevant tenure files and documents for the Yindjibarndi Compensation Tenure Project. The "*Tables*" subfolder contains two subfolders entitled "*pdf*" and "*Res*". The "*pdf*" subfolder contains images of source documents for all tenures apart from Crown reserves, including source documents for mining tenure, petroleum titles, roads, leases, special leases, freehold titles, and Crown land titles for unallocated Crown land. The "*Res*" folder contains, for each current or historical Crown reserve within the Yindjibarndi #1 application, a copy of the Reserve Enquiry Detail for that reserve which lists the various dealings in respect of the reserve (such as its creation, vesting or change in area or purpose) and includes a reference to the relevant page of the Western Australia Government Gazette or document registered with Landgate where the dealing was recorded. Copies of those Government Gazettes or Landgate documents may also be included with the Reserve Enquiry Detail. The "*Tables*" subfolder also contains a number of files that end in ".*dat*", ".*id*", ".*map*" and ".*tab*". These are the technical files which make the Yindjibarndi Compensation Tenure Project work.
22. In addition to the four folders, the Yindjibarndi Compensation Tenure Project also contains three files which end in ".*wor*". The files are known as MapInfo Workspaces. A Workspace contains all the information that is relevant to its specific 'theme', such as land tenure, roads or mining tenements. These Workspaces can be accessed via the MapInfo ProViewer software.



23. A general summary of these Workspaces is as follows:
- (a) "*As_at_Lodgement.wor*": this Workspace consists of the compensable acts, all current and historical land, road, mining and petroleum tenures, in addition to a specific layer detailing the mining tenure current as at the date of the lodgement of the Yindjibarndi #1 application;
 - (b) "*Current_and_Historical_Land_Mining_and_Petroleum_Tenure.wor*": this Workspace consists of the compensable acts, all current and historical land, road, mining and petroleum tenures within the Yindjibarndi #1 application; and
 - (c) "*Current_and_Historical_Land_Tenure.wor*": this Workspace consists of the compensable acts and all current and historical land and road tenures within the Yindjibarndi #1 application. Save for the compensable acts it does not contain any mining tenements or petroleum titles.

Changes made to the original Yindjibarndi #1 Tenure Project

24. In producing the Yindjibarndi Compensation Tenure Project, the following changes were made by Landgate to the original Yindjibarndi #1 Tenure Project:

- (a) the "*Indexes*" folder was amended by:
 - (i) adding the following additional excel spreadsheets:
 - (A) *Compensable_Tenements_asat_20221209.xlsx*;
 - (B) *Compensable_Tenements_asat_Grant.xlsx*;
 - (C) *Mining_Tenements_Granted_19751101_19931231.xlsx*;
 - (D) *Mining_Tenements_Granted_19940101_20230123.xlsx*; and
 - (E) *Mining_Tenements_Granted_Pre_19751031.xlsx*.

These spreadsheets correspond with additional layers added to the original Yindjibarndi #1 Tenure Project (as set out in paragraphs [24(b)] and [24(c)(i)] below); and

- (ii) removing spreadsheets where the spreadsheet's corresponding layer was removed from the original Yindjibarndi #1 Tenure Project (see paragraph [24(c)] below);
- (b) the following additional layers were added to each of the three workspaces detailed in paragraph [23] above:
 - (i) *Compensable_Ten_asat_Grant* showing the area of the compensable acts as at grant;
 - (ii) *Compensable_Ten_asat_20221209* showing the area of the compensable acts as at 9 December 2022; and

- (iii) *WAD37_2022_Bdy_asat20230123* showing the area of the Yindjibarndi Compensation application; and
- (c) for enhanced usability, and to reduce the replication of tenures in multiple layers, the following other changes were made:
 - (i) in the "*Current_and_Historical_Land_Mining_and_Petroleum_Tenure*" workspace three layers relating to historical grants of mining tenements (namely *Mining_asat_20140716*, *Historical_Mining_prior_19751031* and *Historical_Mining_prior_19940101*) have been replaced with three new layers provided by DMIRS on 23 January 2023, being:
 - (A) *Mining_Grant_Pre_19751031*;
 - (B) *Mining_Grant_19940101_20230123*; and
 - (C) *Mining_Grant_19750111_19931231*; and
 - (ii) in the "*As_at_Lodgement*" workspace two layers relating to historical grants of mining tenements (namely *Historical_Mining_prior_19751031* and *Historical_Mining_prior_19940101*) have been replaced with the three new layers provided by DMIRS on 23 January 2023 (as listed at paragraph [24(c)(i)] above).

MAPS

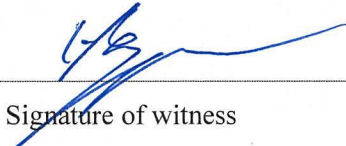
25. In addition to the production of the Yindjibarndi Compensation Tenure Project, SSO also requested that Landgate produce maps for the purpose of the Yindjibarndi Compensation application. Copies of the maps requested (in .pdf form) are located in the folder entitled "*Maps*" of Annexure XPM4.

Affirmed by the deponent
at Perth in the State of Western Australia
on 3 February 2023
Before me:

)
)
)



Signature of deponent



Signature of witness

IAN ALEXANDER REPPER

Name

Experienced Legal Practitioner
as defined in section 8 of the *Oaths, Affidavits and
Statutory Declarations Act 2005* (WA)

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 XPM1

Affidavit of Lee Rex Morgan sworn 19 November 2014



Form 59
Rule 29.02(1)

Affidavit

WAD 6005 of 2003

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

THOMAS JACOB and others


Applicant

STATE OF WESTERN AUSTRALIA and others

Respondents

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Occupation: Cartographer
Date: 19 November 2014

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Lee Morgan

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Lee Morgan

I, LEE REX MORGAN, Public Servant, care of 1 Midland Square, Midland in the State of Western Australia, having been duly sworn make oath and say as follows:

1. I am the Senior Geographic Information System Consultant ("**Senior GIS Consultant**") of the Native Title Spatial Services ("**NTSS**") section of the Western Australian Land Information Authority (a body corporate established under section 5 of the *Land Information Authority Act 2006* (WA)), trading as Landgate ("**Landgate**").
2. Landgate is, among other things, the statutory authority responsible for Western Australia's land and property information and maintains the State's official register of land ownership and survey information. In this statement I include in any reference to Landgate, reference to Landgate and to its predecessors, including the Department of Land Information and the Department of Land Administration.
3. I commenced employment as an entry level officer with Landgate in February 1991 after completing an Office\Clerical traineeship. In 2001 I attained a Diploma in Cartography, and so qualified as a Cartographer. I have been the Senior GIS Consultant of NTSS since January 2008.
4. I am aware of the Yindjibarndi #1 native title determination application (WAD 6005 of 2003) and the geographical areas of the application ("**the Yindjibarndi Claim Area**").
5. As Senior GIS Consultant of NTSS, I was responsible for data management in respect of the compilation of the Tenure DVD (see paragraph [14] below for a description of the Tenure DVD). This involved sourcing, extracting, value adding to land parcel attributes and distributing and storing data from both Landgate and the Department of Mines and Petroleum ("**DMP**"). These tasks were undertaken under the supervision of the Manager, and then Acting Manager, of NTSS.
6. I am authorised by the First Respondent, the State of Western Australia (the "State"), to swear this affidavit for the purpose of providing tenure information in respect of the current and historical non-native title rights and interests that have been granted in the land and waters of the Yindjibarndi Claim Area.
7. Unless stated otherwise, I swear this affidavit on the basis of facts within my personal knowledge, including facts which have come to my knowledge from my



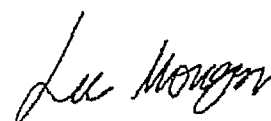
examination of records maintained by Landgate and, where specified, information provided by other State government departments. Where I rely on facts outside my personal knowledge, I have identified the source of those facts and believe them to be true.

BACKGROUND TO NTSS

8. NTSS has been in existence in various guises and within various State government departments since 1993.
9. NTSS is responsible for capturing and mapping native title claim boundaries, collating information provided by other government agencies and supplying current and historical tenure. NTSS prepares work at the request of the State Solicitor's Office ("SSO"), the Native Title Unit within the Department of the Premier and Cabinet and other government departments, as well as the National Native Title Tribunal, Land Councils and other bodies involved in native title claims.
10. NTSS is divided broadly into two teams: a project team and a mapping team. The project team is responsible for supplying current and historical tenure to the State for use in either the litigation or mediation of native title claims. The mapping team has responsibility for providing customised maps to the State and other private individuals for native title purposes.

THE PRESENT PROCEEDINGS

11. On 23 August 2013 NTSS received a request from SSO to provide information from the records of Landgate in respect of any current and historical non-native title rights and interests which had been granted within the land and waters of the Yindjibarndi Claim Area.
12. I am aware that NTSS staff used Landgate's records to ascertain, to the extent possible, the precise boundaries of the Yindjibarndi Claim Area based upon the technical description contained in the native title determination claimant application ('Form 1') filed in WAD 6005 of 2003. A copy of the technical description of the boundaries of the Yindjibarndi Claim Area is annexed to this affidavit and marked "LRM1".
13. After ascertaining the boundaries of the Yindjibarndi Claim Area, the process described in paragraphs [15] – [33] below was undertaken to identify all current and



historical land, mining and petroleum rights and interests in relation to the land and waters within the Yindjibarndi Claim Area (the "tenure search"). The tenure search was undertaken by NTSS and DMP staff between September 2013 and July 2014.

14. The results of the tenure search have been recorded electronically on a DVD ("Tenure DVD") which is annexed to this affidavit and marked "LRM4". A description of the information recorded on the Tenure DVD and its manner of operation is annexed to this affidavit and marked "LRM3".

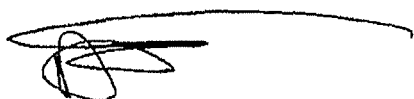
PROCESS FOR CONDUCTING THE TENURE SEARCH

Background

15. The tenure search undertaken by NTSS for the present proceeding consisted of two parts:
- (a) a current tenure search which identified all current rights and interests in land which had been granted by the State or government agencies and which were currently registered with Landgate; and
 - (b) a historical tenure search which identified all historical (i.e. no longer existent) rights and interests in land which were granted by the State or government agencies and which were previously registered with Landgate.

These searches included, for example, identifying any current and historical grants of freehold interests in land as well as any other instruments by which the State or government agencies had created leases (such as pastoral leases, special leases, conditional purchase leases and perpetual leases) and other interests in land (such as crown reserves, roads, and easements). This process is described further below.

16. The results of NTSS's tenure searches were then recorded electronically via a computer software program that allows the user to view and share electronic maps and associated information (such as supporting tenure documents) ("GIS program").
17. In addition to recording and processing data drawn from records of Landgate, NTSS also recorded information provided by DMP in the GIS program. The data received from DMP comprised (as at the date of extract) current and historical mining tenements and petroleum titles which had been granted by the State in the Yindjibarndi Claim Area. These were provided to NTSS electronically from a computer program used by DMP called TENGRAPH. TENGRAPH displays the

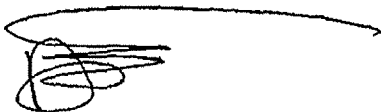


position of Western Australian mining tenements and petroleum titles in relation to other land information and provides an easy means of determining land available for mineral exploration. The data provided to NTSS by DMP included both the geographical location of the current and historical mining tenements and petroleum titles within the Yindjibarndi Claim Area and the source documents supporting the grant of those tenements and titles. This spatial information and supporting images were then incorporated by NTSS into the GIS program.

18. In the present case, the current and historical mining tenements were delivered to NTSS on 17 July 2014 while the petroleum titles were delivered on 7 July 2014. An additional document (the lease instrument for mineral lease S.A. 4/70) was provided to NTSS by the State Solicitor's Office on 12 November 2014. The data provided to NTSS have been integrated with other information and images held by NTSS but the information and images themselves have not been altered since receipt by NTSS.

Capture of Current Land Tenure

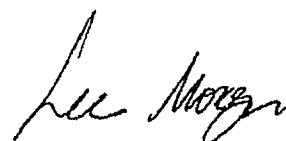
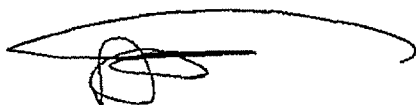
19. The following is a description of the processes that were undertaken for the capture of current land tenure within the Yindjibarndi Claim Area, the documents that were processed and the form in which information from those documents is made available. Additional processes were undertaken for the capture of historical tenure data and these are described below.
20. NTSS acquires current tenure data internally from Landgate's Spatial Cadastral Database ("SCDB"). The SCDB is a computer program which spatially depicts the current status and location of all the State's cadastre. It essentially comprises a computerised image of the earth's surface on which any given point can be identified by precise co-ordinates of latitude and longitude. The SCDB is the frame of reference against which the location and position of areas affected by particular dealings are identified. Access to the SCDB for viewing and querying cadastral data as well as for data maintenance is through a single integrated application environment known as SmartPlan. In the present proceeding NTSS took an extract of the SCDB that covered the Yindjibarndi Claim Area and imported it into the GIS program. This creates a time slice of the current tenure as at a certain date and it became the current tenure layer in the GIS program.



21. The current tenure data obtained from the SCBD did not have any land tenure documents physically attached to it. Accordingly, it was necessary for NTSS to obtain copies of the source documents which record, or give rise to, the tenure interest and import them into the GIS program so that the spatial depiction of any particular tenure is linked with an image of its source documentation.
22. Initially a list of all required current land tenure documents was compiled and as many of those as possible were retrieved in bulk from Landgate's Image Viewer System program ("IVS"). While there are many different types of land tenure documents that can be ordered in bulk from IVS not all source documents supporting current land tenures could be obtained from IVS. For those tenures whose supporting documentation could not be retrieved from IVS, NTSS was required to manually search Landgate's files and records for relevant records.
23. Further, the source documentation for Crown reserves is not held within IVS and had to be retrieved online via the MyLandgate Land Enquiry – General Enquiry web page. Each Crown reserve was entered into the General Enquiry web page and a print was generated (a "Reserve Enquiry Detail") in Portable Document Format (PDF). The Reserve Enquiry Detail lists the various dealings in respect of the reserve (such as its creation, any vesting or change in area or purpose) and includes a reference to the relevant page or pages of the *Western Australia Government Gazette* or Landgate document where the dealing was recorded. SSO was then responsible for locating, and providing to NTSS, any and all relevant documents to accompany the Reserve Enquiry Detail for those Crown reserves identified within the Yindjibarndi Claim Area.

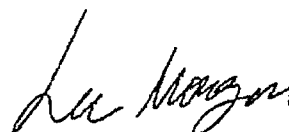
Capture of Historical Land Tenure

24. The following is a description of the processes that were undertaken for the capture of historical land tenure within the Yindjibarndi Claim Area, the documents that were processed and the form in which information from those documents is made available.
25. Landgate did not start capturing the land tenure of the State digitally until 1982 and the full State was not completed until the early 1990s. Prior to this, Landgate historically prepared Public Plans which were large, hardcopy, diagrammatic representations of areas within the State. These were produced for public viewing



(hence the name 'Public Plan') and were prepared to reflect the current location, status and configuration of land tenure in the State. Therefore, these Public Plans were continually in a process of being amended, updated, or corrected. Depending on the physical state, age or the number of amendments made to the Public Plan, a new plan was drawn and the superseded Public Plan was labelled 'cancelled' and referred to as a Cancelled Public Plan ("CPP"). When a Public Plan was cancelled the historical land tenure shown on that plan was 'frozen' at the time it was cancelled.

26. Public Plans were eventually phased out in 2002 when the SmartPlan system came online. However, SmartPlan retains only a very limited historical land tenure layer that goes back to 2002 and for any earlier historical land grants it is necessary to consult the CPPs.
27. All CPPs that include land within Yindjibarndi Claim Area were identified by NTSS and all editions of all such plans were examined. On each edition of each CPP every reference to a grant, issue of a lease, reservation or dedication of land was noted and recorded.
28. NTSS also utilised a number of other historical source materials to complete the historical tenure search. Several sources were invariably needed to ensure a full tenure history for the Yindjibarndi Claim Area as none of the sources, by themselves, contained a complete history of land tenures in the Yindjibarndi Claim Area.
29. The historical source materials searched by NTSS included State Imperial and Metric Indexes, the Mali Catalogue, Pastoral Lease Plans, Pastoral Appraisalment Plans, Survey Index Plans, Keysheets, Road Plans, Resumption Plans, Field Books, the Register of Resumptions, Acquisitions and Purchases for Public Works, the Dedicated Road and Closures Database, the Crown Allotment Database, the Reserves Register, the State Forests Register, the Timber Reserves Register, the Railway Index LTO, the Deeds System and Landgate and Regional Development and Lands correspondence files. NTSS generally searched all relevant sources until evidence of a tenure impacting upon native title could be located or substantiated for any particular area within the Yindjibarndi Claim Area.
30. While some of these sources are stored on microfilm or in a digital form, most of the sources are in hardcopy (analogue) form. As the vast majority of historical sources

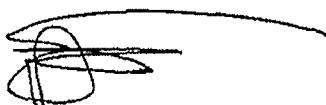


are not in digital form these analogue tenure records had to be scanned into a PDF to be used in the GIS program.

31. Each historical grant, instrument or other affectation of land which has been noted and recorded during the research process described above was then mapped into the GIS program by NTSS. Specialised software is used to effectively 'match up' known points on a CPP or other historical record with known cadastral points within the current land tenure layer, thereby establishing a 'best fit' geographic position of the CPP or historical record. Once the CPP or historical record has been referenced to the current land tenure, NTSS began digitising boundaries of the relevant historical parcels of land depicted on the CPP or historical record. For example, in the case of a rectangular area that is the subject of a historical freehold, the co-ordinates that identify the location of each of the four corners of the historical freehold must first be established. Once that information is obtained, the boundaries are recorded in the GIS program as lines that trace the four sides of the rectangle. The outlines recorded trace the boundary of the relevant parcel of land (or polygon).
32. Each polygon created in the above manner is assigned a distinguishing number within the GIS program and particulars of the grant or instrument relating to the area represented by the relevant polygon are recorded.
33. Wherever possible, copies of the original Landgate transaction document that recorded or gave rise to the grant or instrument are located in Landgate's records by ascertaining the reference details featured on the CPP or historical record. Those source documents are cross-checked for consistency with the information appearing on the relevant CPP or other record. Where copies of the source documents of this kind were available in relation to a particular grant or instrument the entry in the GIS program was linked to an image of the relevant document.

Capture of unallocated Crown land and mining tenure as at the date the claim was filed


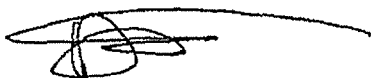
34. SSO additionally requested NTSS to produce maps and a spreadsheet showing areas of unallocated Crown land within the Yindjibarndi Claim Area as at the date the Yindjibarndi claim was filed in the Federal Court of Australia, which I understand to be 9 July 2003. NTSS was asked to include mining and petroleum tenure information as at 9 July 2003 in these maps and spreadsheet.



35. Though I did not produce these maps or the spreadsheet personally (see [39] below), I understand the unallocated Crown land identified on these documents was produced by comparing a time-slice of the cadastre current as at 2002 with the current land tenure captured as described above (see [19]-[23] above). I am informed by Mr Kieran Stack who produced these particular maps and spreadsheet that through this comparison it was confirmed that the areas of unallocated Crown land within the Yindjibarndi Claim Area did not change between 2002 and 2014 and so were unallocated Crown land as at 9 July 2003.
36. I am further informed that NTSS also checked each individual tenure parcel within the Yindjibarndi #1 claim boundary to confirm whether the tenure creation date predated 9 July 2003, so therefore could not have been the unallocated Crown land at the lodgement date, and also checked for any other historic tenure changes which may have resulted in additional areas of unallocated Crown land existing as at 9 July 2003. This process did not identify any such areas.
37. A copy of a spreadsheet identifying areas of unallocated Crown land within the Yindjibarndi Claim Area as at 9 July 2003 with corresponding mining and petroleum tenements as applicable is annexed to this affidavit and marked "LRM2". The corresponding maps are described below.

Limitations of the Tenure Information

38. There are some respects in which the information contained in the GIS program may be incomplete or imperfect. These are as follows:
- (a) Maps created from the SCDB represent the best interpretation of the information available. The accuracy may depend upon the accuracy of the boundary description and many boundaries have been derived without the benefit of an on-site cadastral survey. The cadastral positional accuracy may vary depending on the original Landgate map source prior to the SCDB, being CPPs at metric scales varying from 1:500 to 1:500,000
 - (b) The completeness of Landgate records is limited by the extent to which notification of the occurrence of events and/or of the existence of rights or interests in land has been provided to Landgate. It is not uncommon for dealings to have been entered into by State government departments or agencies in circumstances where notice of that dealing does not reach Landgate.



- (c) Further, Landgate and NTSS do not have complete records as to the location of all roads and tracks within the State. Accordingly, there may be roads and tracks within the Yindjibarndi Claim Area which have not been dedicated and so have not been recorded by Landgate. NTSS has not investigated the existence of these roads and tracks for the Yindjibarndi Claim Area.
- (d) It was, until recent years, the practice of Landgate in relation to leases to record details of each lease in a register book at, or soon after, the time of issue. In some cases formal lease instruments appear not to have been issued or are no longer available. I am aware from observation of past practices within Landgate that short term leases and leases that were to be amalgamated with other holdings were often not issued. It is also possible that records of some leases have been lost or destroyed. In these instances the information concerning the relevant leases contained on the CPPs has formed the primary source of information as to the grant. In addition, in these cases, a copy of the relevant entry in Landgate's register, rather than a copy of the lease instrument, is included in the database of source documents.
- (e) There are, on occasions, minor discrepancies between the location, area or shape of a parcel of land as shown on a CPP and the corresponding description contained in the source document that created or describes the relevant grant, dealing or affectation. For example, pastoral lease instruments created prior to about 1900 contained sketches that were not drawn to scale and thus often did not correspond accurately with CPPs. Any differences of this kind have been resolved, in the process of electronically recording information, by adopting the course that, having regard to the circumstances (including the position of abutting parcels, topographic features and subsequent boundary descriptions), seems the most probable.
- (f) The records of Landgate are subject to constant change. Information in relation to the present proceeding is current only to 1 August 2013 in respect of current land tenure, 16 July 2014 in respect of current mining tenements and 4 July 2014 in respect of current petroleum interests. Further events affecting land within the Yindjibarndi Claim Area may have occurred subsequent to that date.

TECHNICAL DESCRIPTION AND MAPS IN THE PRESENT PROCEEDING

39. I am aware that at the request of SSO, NTSS staff produced the following technical description and maps for the purpose of these proceedings. I was not personally involved in the production of these maps or technical description:

- (a) A Technical description of the Yindjibarndi Claim Area describing the external boundary of native title determination application WAD 6005 of 2003. This description appears as Document 1 which is annexed to this affidavit and marked "LRM1".
- (b) A current tenure map of the Yindjibarndi Claim Area showing the boundaries of native title determination application WAD 6005 of 2003. This map appears as Document 1 in the maps of the Yindjibarndi Claim Area which are annexed to this affidavit and marked "LRM3".
- (c) A topographic map of the Yindjibarndi Claim Area showing the boundaries of native title determination application WAD 6005 of 2003. This map appears as Document 2 in the maps of the Yindjibarndi Claim Area which are annexed to this affidavit and marked "LRM3".
- (d) An aerial photograph of the Yindjibarndi Claim Area showing the boundaries of native title determination application WAD 6005 of 2003. This map appears as Document 3 in the maps of the Yindjibarndi Claim Area which are annexed to this affidavit and marked "LRM3".
- (e) A map of the Yindjibarndi Claim Area showing current tenure and areas of unallocated Crown land as at 9 July 2003, which I understand to be the date when the Yindjibarndi claim was filed in the Federal Court of Australia. This map appears as Document 4 in the maps of the Yindjibarndi Claim Area which are annexed to this affidavit and marked "LRM3".
- (f) Three maps which are enlargements of different parts of the map appearing as Document 4 in LRMS. These three maps appear as Documents 4A, 4B and 4C respectively in the maps of the Yindjibarndi Claim Area which are annexed to this affidavit and marked "LRM3".

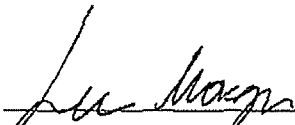


- (g) A map of the Yindjibarndi Claim Area showing current tenure and areas of unallocated Crown land as at 9 July 2003, with mining tenure current as at 9 July 2003 superimposed. This map appears as Document 5 in the maps of the Yindjibarndi Claim Area which are annexed to this affidavit and marked "LRM3". I understand that the boundaries of mineral lease AML7000004 on this map and on Documents 5A, 5B and 5C (see below) were printed in a different colour at the request of the SSO.
- (h) Three maps which are enlargements of different parts of the map appearing as Document 5 in LRMS. These three maps appear as Documents 5A, 5B and 5C respectively in the maps of the Yindjibarndi Claim Area which are annexed to this affidavit and marked "LRM3".

40. Electronic versions of each of the maps referred to in [39] are included in a DVD annexed to this affidavit and marked "LRM6". I did not prepare this DVD.

Sworn by the deponent
 at Perth
 in the State of Western Australia
 on 19 November 2014
 Before me:

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)
)
)



 Signature of deponent



Signature of witness
BRAD PRENTICE
 Experienced Legal Practitioner
 as defined in s8 of the Oaths,
 Affidavits and Statutory Declarations Act 2005
 Name and Qualification of Witness

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 XPM2

Letter from the State Solicitor's Office to Landgate dated 1 December 2022





David Malcolm Justice Centre
28 Barrack Street
Perth, Western Australia 6000

GPO Box B83 Perth WA 6838
Telephone (08) 9264 1888
Fax (08) 9264 1440
Email sso@sso.wa.gov.au
DX 175

STATE SOLICITOR'S OFFICE

SSO Ref: 668/22
Enquiries: E. Owen | (08) 9264 9669 | e.owen@sso.wa.gov.au

Department of Mines, Industry Regulation and Safety 100 Plain Street EAST PERTH WA 6005 Attention: Amanda Roscoe (by email)	Graphic Services Landgate 1 Midland Square MIDLAND WA 6056 Attention: Xavier Marszal (by email)
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Date: 1 December 2022

WAD 37/2022 YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC (ICN 8721) AND STATE OF WESTERN AUSTRALIA & ORS

1. I refer to our previous discussions on and around 12 October 2022 in relation to the above compensation application.
2. Pursuant to orders made by the Federal Court on 11 October 2022, the State (First Respondent) is required to file and serve, by 6 February 2023, a fresh affidavit containing a version of Annexure LRM5 to the affidavit of Lee Rex Morgan sworn 19 November 2014 in WAD 6005 of 2003 which has been updated to include:
 - the compensable acts (listed in *Attachment A*); and
 - any additional historical mining tenure not originally included.
3. To enable the State to comply with the abovementioned order, can you please provide, by no later than 13 January 2023, the following:

MAPS

4. Could Landgate please provide maps of the application area depicting:
 - (a) current tenure;
 - (b) topography; and
 - (c) the compensable acts as at the date of grant.

MINING TENURE SEARCH

5. I would be grateful if the Department of Mines, Industry Regulation and Safety ("**DMIRS**") could please do the following:
 - (a) check all mining tenure layers previously captured in the existing Yindjibarndi #1 (WAD 6005 of 2003) Mapinfo project are complete;

- (b) capture (for inclusion as two new layers in an updated version of the Yindjibarndi #1 Mapinfo project) the:
 - (i) boundary of each compensable act as at date of grant; and
 - (ii) current boundary of each compensable act;
 - (c) in respect of each of the compensable acts, provide a spreadsheet setting out the history of any compulsory or voluntary drop-offs; and
 - (d) capture all historical mining tenure in the period 31/10/1975 – 16/7/2014 for inclusion in an updated version of the Yindjibarndi #1 Mapinfo project. Boundaries of tenements (which are not compensable acts) only need to be captured as at date of grant.
6. Each of the tenement categories in the Mining Tenure Search should be provided by DMIRS to Landgate in a separate spreadsheet or other document.
7. Upon receipt of this material from DMIRS, it would be appreciated if Landgate could please create an updated version of the Yindjibarndi #1 Mapinfo project which:
- (a) contains a different layer for each category of mining tenure identified in paragraphs 5(b)(i), 5(b)(ii) and 5(d) above; and
 - (b) amend, to the extent necessary, mining tenure layers previously captured in the event that DMIRS identifies any incomplete material in accordance with paragraph 5(a) above.

Guidelines for the provision of Mapinfo data can be found in the document entitled "*Provision of Mapinfo data*".

8. Please do not hesitate to contact me if you have any queries in relation to the foregoing.

Yours sincerely



Emma Owen
SENIOR ASSISTANT STATE SOLICITOR

Attachment 1: Compensable Acts

1. Mining lease M47/1409-I
2. Mining lease M47/1411-I
3. Mining lease M47/1413-I
4. Mining lease M47/1431-I
5. Mining lease M47/1453-I
6. Mining lease M47/1473-I
7. Mining lease M47/1475-I
8. Mining lease M47/1513-I
9. Mining lease M47/1570
10. Miscellaneous licence (State Agreement) L1SA
11. Miscellaneous licence L47/302
12. Miscellaneous licence L47/361
13. Miscellaneous licence L47/362
14. Miscellaneous licence L47/363
15. Miscellaneous licence L47/367
16. Miscellaneous licence L47/396
17. Miscellaneous licence L47/472
18. Miscellaneous licence L47/697
19. Miscellaneous licence L47/801
20. Miscellaneous licence L47/813
21. Miscellaneous licence L47/814
22. Miscellaneous licence L47/859
23. Miscellaneous licence L47/901
24. Miscellaneous licence L47/914
25. Miscellaneous licence L47/919
26. Exploration licence E45/2842-I
27. Exploration licence E45/2844-I
28. Exploration licence E47/1319-I
29. Exploration licence E47/1333-I
30. Exploration licence E47/1334-I
31. Exploration licence E47/1349-I
32. Exploration licence E47/1361-I
33. Exploration licence E47/1384-I
34. Exploration licence E47/1397-I
35. Exploration licence E47/1398-I
36. Exploration licence E47/1399-I
37. Exploration licence E47/1447-I
38. Exploration licence E47/1611-I
39. Exploration licence E47/1669-I
40. Exploration licence E47/1670-I
41. Exploration licence E47/1673-I
42. Exploration licence E47/1674-I

43. Exploration licence E47/2574-I
44. Exploration licence E47/3205-I
45. Exploration licence E47/3397-I
46. Exploration licence E47/3464-I
47. Exploration licence E47/3483-I
48. Prospecting licence P47/1945
49. Prospecting licence P47/1946
50. Prospecting licence P47/1947

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 XPM3
Amended List of Compensable Acts



Attachment 1: Compensable Acts (as amended by Applicant on 5/5/2022)

1. Mining lease M47/1409-I
2. Mining lease M47/1411-I
3. Mining lease M47/1413-I
4. Mining lease M47/1431-I
5. Mining lease M47/1453-I
6. Mining lease M47/1473-I
7. Mining lease M47/1475-I
8. Mining lease M47/1513-I
9. Mining lease M47/1570
10. Miscellaneous licence (State Agreement) L1SA
11. Miscellaneous licence L47/302
12. Miscellaneous licence L47/361
13. Miscellaneous licence L47/362
14. Miscellaneous licence L47/363
15. Miscellaneous licence L47/367
16. Miscellaneous licence L47/396
17. Miscellaneous licence L47/472
18. Miscellaneous licence L47/697
19. Miscellaneous licence L47/801
20. Miscellaneous licence L47/813
21. Miscellaneous licence L47/814
22. Miscellaneous licence L47/859
23. Miscellaneous licence L47/901
24. Miscellaneous licence L47/914
25. Miscellaneous licence L47/919
- ~~26. Exploration licence E45/2842-I~~
- ~~27. Exploration licence E45/2844-I~~
28. Exploration licence E47/1319-I
29. Exploration licence E47/1333-I
30. Exploration licence E47/1334-I
- ~~31. Exploration licence E47/1349-I~~
- ~~32. Exploration licence E47/1361-I~~
- ~~33. Exploration licence E47/1384-I~~
- ~~34. Exploration licence E47/1397-I~~
35. Exploration licence E47/1398-I
36. Exploration licence E47/1399-I
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- ~~40. Exploration licence E47/1670-I~~
- ~~41. Exploration licence E47/1673-I~~
- ~~42. Exploration licence E47/1674-I~~

- ~~43. Exploration licence E47/2574-I~~
44. Exploration licence E47/3205-I
- ~~45. Exploration licence E47/3397-I~~
46. Exploration licence E47/3464-I
- ~~47. Exploration licence E47/3483-I~~
48. Prospecting licence P47/1945
49. Prospecting licence P47/1946
50. Prospecting licence P47/1947

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 XPM4

Yindjibarndi Compensation Tenure Project



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: 6/02/2023 12:40:05 PM AWST
Date Accepted for Filing: 6/02/2023 12:40:11 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.