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First Respondent's Amended Points of Response

WAD 37 of 2022

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

YINDJIBARNDI NGURRA ABORIGINAL CORPORATION RNTBC (ICN 8721)

Applicant

STATE OF WESTERN AUSTRALIA and others

Respondents

Filed on behalf of:	State of Western Australia	Date	<u>14 July 2023</u>
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A. Introduction

A1 DEFINITIONS

1. Unless the context suggests otherwise, terms used in this document have the same meaning as in the NTA.
2. In this document:
 - (a) **AHA** means the *Aboriginal Heritage Act 1972 (WA)*;
 - (b) **Applicant** means the applicant in the Application which is Yindjibarndi Ngurra Aboriginal Corporation RNTBC (ICN 8721);
 - (c) **Application** means native title compensation application WAD 37 of 2022 as amended (or as proposed to be amended) at the date of this document;
 - (d) **Application Area** means the area covered by the Application, being all of those land and waters described in Schedule B of the Application;
 - (e) **Claimed Compensable Acts** means the acts identified at paragraph [8] of the POC;
 - (f) **Determination Area** means the area as defined in paragraph 11 of the Yindjibarndi Determination;
 - (g) **DMIRS** means the Department of Mines, Industry Regulation and Safety;
 - (h) **Exclusive Area** means the area as defined in paragraph 11 of the Yindjibarndi Determination;
 - (i) **Exclusive Native Title** has the meaning given in paragraph [11(a)] below;
 - (j) **FMG Infrastructure Material** means the document entitled *FMG Respondents' mining tenements and infrastructure (provided in compliance with the Court's order 3 of 11 October 2022)* filed by the FMG Respondents in the Federal Court on 13 February 2023;
 - (k) **FMG Respondents** means FMG Pilbara Pty Ltd, Pilbara Energy (Generation) Pty Ltd, Pilbara Energy Company Pty Ltd, Pilbara Gas Pipeline Pty Ltd and Pilbara Infrastructure Pty Ltd;
 - (l) **Griffiths** means *Northern Territory v Griffiths* [2019] HCA 7; (2019) 269 CLR 1;
 - (m) **MINEDEX** means the "*Mines and Mineral Deposits of Western Australia*" database which is a spatial and textual database maintained by DMIRS providing data on mining and exploration sites and projects in Western Australia;

- (n) **Mining Act** means the *Mining Act 1978* (WA);
- (na) **NNTT means the National Native Title Tribunal;**
- (o) **Non-Exclusive Area** means the Determination Area, but excluding the Exclusive Area;
- (p) **Non-Exclusive Native Title** has the meaning given in paragraph [13(a)] below;
- (q) **NTA** means the *Native Title Act 1993* (Cth);
- (r) **POC** means the document entitled *Applicant's Further Amended Points of Claim* filed by the Applicant in the Federal Court on 5 July 2023 (pursuant to order 3 made on 27 June 2023) 5-December 2022;
- (s) **RDA** means the *Racial Discrimination Act 1975* (Cth);
- (t) **State Tenure Material** means Annexure XPM4 to the Affidavit of Xavier Peter Marszal affirmed on 3 February 2023 and filed by the First Respondent in the Federal Court on 6 February 2023;
- (u) **Warrie** means *Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia* [2017] FCA 803;
- (ua) **Yindjibarndi #1 claimant means the applicants to the Yindjibarndi Claim;**
- (v) **Yindjibarndi Claim** means native title determination application WAD 6005 of 2003;
- (w) **Yindjibarndi Determination** means the determination of native title made by the Federal Court in the Yindjibarndi Claim on 13 November 2017, being *Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia (No.2)* [2017] FCA 1299; and
- (x) **Yindjibarndi People** means the persons described in Schedule 6 to the Yindjibarndi Determination.

A2 BACKGROUND

3. This document seeks, to the extent possible, to respond specifically to each paragraph of the POC. As a matter of consistency, the First Respondent has sought to provide its response in the same order as the POC where it is appropriate to do so.
4. However, in respect of some parts of the POC, the First Respondent disagrees fundamentally with the Applicant's contentions such that its response generally proceeds by way of setting out the First Respondent's contentions about the applicable principles before responding specifically to the POC.

5. Further, to more readily identify the issues in the proceeding, the First Respondent has divided this response into a number of parts, each addressing a separate aspect of the proceeding. In summary:
 - (a) Part A of this document provides relevant definitions and background;
 - (b) Part B of this document addresses the existence of native title in the Application Area and the Applicant's entitlement to bring the Application;
 - (c) Part C of this document addresses the particular Claimed Compensable Acts;
 - (d) Part D of the document addresses the basis upon which the Applicant pleads it is entitled to compensation for each of the Claimed Compensable Acts;
 - (e) Part E of this document addresses who the Applicant says is liable to pay the compensation for each of the Claimed Compensable Acts; and
 - (f) Part F of this document addresses the principles, criteria or methodology by which by Applicant says compensation for each of the Claimed Compensable Acts should be determined.
6. There are some facts contained in the POC which are not known to the First Respondent. Where this may be material, it is noted in the document. Accordingly, this response proceeds on certain understandings of the Claimed Compensable Acts based on the Yindjibarndi Determination, *Warrie* and/or facts known to, or contended by, the First Respondent.
7. To the extent necessary the First Respondent may seek to amend or supplement this pleading following the pleadings of the FMG Respondents and/or the informal discovery process contemplated by item 8 of the timetable attached to the orders of the Court dated 14 December 2022.

B. The Native Title and Entitlement to Bring the Application

B1 ENTITLEMENT TO MAKE THE APPLICATION

8. In respect of paragraphs [1] and [2] of the POC, the First Respondent admits that:
- (a) the Applicant is, by order 2 of the Federal Court dated 13 November 2017 made in the Yindjibarndi Claim, determined pursuant to section 55 and 56 of the NTA to hold the native title rights and interests comprising the native title determined by the Yindjibarndi Determination, in trust for the Yindjibarndi People; and
 - (b) the Applicant is “*a registered native title body corporate*” as defined in section 253 of the NTA for the Yindjibarndi Determination and, as such, may bring the Application as trustee for the Yindjibarndi People in accordance with sections 50(2) and 61(1) of the NTA.
9. Save for a formatting error in respect of Attachment B1 of the Application (whereby rows 4 to 7 (inclusive) of the table on page 15 should be inserted on page 16 at the end of the first paragraph on that page following the words “*through the following co-ordinate positions*”), the First Respondent admits paragraph [3] of the POC.
10. The First Respondent does not know and therefore cannot admit paragraph [4] of the POC.

B2 THE NATIVE TITLE

11. In respect of paragraph [5] of the POC, the First Respondent:
- (a) admits that in the Exclusive Area the nature and extent of the native title rights and interests (**Exclusive Native Title**) is as described in paragraph 4 of the Yindjibarndi Determination, being the right to possession, occupation, use and enjoyment of that area to the exclusion of all others; and
 - (b) says further that the Exclusive Native Title:
 - (i) is subject to the qualifications contained in paragraph 5 of the Yindjibarndi Determination including, in particular, that the Exclusive Native Title does not confer:
 - (A) exclusive rights in relation to water in any watercourse, wetland or underground water source as is defined in the *Rights in Water and Irrigation Act 1914* (WA) as at the date of the Yindjibarndi Determination;

- (B) any rights in relation to:
 - (1) minerals as defined in the *Mining Act 1904* (WA) (repealed) or the *Mining Act*;
 - (2) petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and in the *Petroleum and Geothermal Energy Resources Act 1967* (WA);
 - (3) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA); and
- (ii) has the relationship with the “*Other Interests*” (as defined in paragraph 11 of the Yindjibarndi Determination) set out in paragraph 9 of the Yindjibarndi Determination.

12. The First Respondent denies paragraph [6] of the POC and says that:

- (a) section 47B of the NTA was found by the Court to apply in relation to the Exclusive Area with the result that:
 - (i) in accordance with section 47B(2) of the NTA, for all purposes under the NTA in relation to the Yindjibarndi Claim, any extinguishment of native title by the creation of any prior interest in relation to the Exclusive Area was disregarded;
 - (ii) in accordance with section 47B(3)(a) of the NTA, the determination of the Exclusive Native Title does not affect:
 - (A) the validity of the creation of any prior interest in relation to the Exclusive Area, being any interest created prior to the making of the Yindjibarndi Claim the subject of the Yindjibarndi Determination; or
 - (B) any interest of the Crown in any capacity, or of any statutory authority, in any public works on the Exclusive Native Title Area; and
 - (iii) in accordance with section 47B(3)(b) of the NTA, the non-extinguishment principle applies to the creation of any prior interest in relation to the Exclusive Area, being an interest created prior to the making of the Yindjibarndi Claim; and
- (b) by reason of paragraph [12(a)] above, the Exclusive Native Title was determined to exist in relation to the Exclusive Area on and from the date of the Yindjibarndi Determination.

13. In respect of paragraph [7] of the POC, the First Respondent:

- (a) admits that in the Non-Exclusive Area the nature and extent of the native title rights and interests (**Non-Exclusive Native Title**) is as described in paragraph 3 of the Yindjibarndi Determination (and is replicated at paragraph [7(a) – (k)] of the POC);
- (b) says further that the Non-Exclusive Native Title:
 - (i) does not, in accordance with paragraph 6 of the Yindjibarndi Determination, confer on the Yindjibarndi People in the Non-Exclusive Area:
 - (A) any right to the possession, occupation, use and enjoyment to the exclusion of all others; or
 - (B) a right to control the access to, or use of, the land and waters or its resources;
 - (ii) is subject to the qualifications contained in paragraph 5 of the Yindjibarndi Determination; and
 - (iii) has the relationship with the “*Other Interests*” (as defined in paragraph 11 of the Yindjibarndi Determination) set out in paragraph 9 of the Yindjibarndi Determination.

C. The Claimed Compensable Acts

C1 THE CLAIMED COMPENSABLE ACTS

14. In respect of paragraph [8] of the POC the First Respondent:

- (a) admits that the grant of the mining tenements listed are the acts for which compensation is sought by the Applicants in the Application;
- (b) says that the renewal or extension of term of any of the mining tenements listed are not acts for which compensation is sought by the Applicants in the Application ~~or paragraph [8] of the POC;~~
- (c) says that, to the extent that there is an inconsistency between the tenements listed in paragraph [8] of the POC and Schedule I (Attachment I) of the Application, the First Respondent understands that the POC prevails and that the Application is to be amended consistent with paragraph [8] of the POC subsequent to the filing of this document;
- (d) admits that the mining tenements listed:
 - (i) were granted on the relevant date referred to in paragraph [8] of the POC; and
 - (ii) are, as at the date of this document, held by the entity referred to in paragraph [8] of the POC; and
- (e) sets out at Parts C1.1 – C1.4 below further contentions with respect to each of the Claimed Compensable Acts.

C1.1 Mining Leases

C1.1.1 M 47/1409-I

15. M 47/1409-I:

- (a) was applied for by the holder of E 47/1334-I in respect of part of the land the subject of that exploration licence pursuant to section 67 of the *Mining Act*;
- (b) is a mining lease granted pursuant to Part IV, Division 3 of the *Mining Act* for a term of 21 years commencing on 26 November 2010, with a current expiry date of 25 November 2031;
- (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to work and mine the land in respect of which M 47/1409-I was granted for iron; and

- (d) was surveyed on or about 18 September 2011 as having an area of approximately 6,865.5 hectares.
16. M 47/1409-I is included as an 'other interest' at Schedule 5, item 4(a)(i) of the Yindjibarndi Determination.
17. M 47/1409-I is located:
- (a) partly within the Application Area (with a current encroachment of approximately 73.9%, being an area of approximately 5069.7533 hectares);
 - (b) to the extent that it is within the Application Area, partly within the Non-Exclusive Area (with a current encroachment of approximately 19.71%) and partly within the Exclusive Area (with an current encroachment of approximately 80.24%); and
 - (c) to the extent that it is within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
18. In addition to the Claimed Compensable Act referred to in paragraph [15(a)] above, the following Claimed Compensable Acts have also been granted over at least part of the same area as M 47/1409-I:
- (a) L 1SA with a current encroachment of approximately 13.52%¹ (being an area of overlap of approximately 927.3027 hectares);
 - (b) L 47/801 with a current encroachment of approximately 2.81% (being an area of overlap of approximately 192.742 hectares);
 - (c) L 47/813 with a current encroachment of approximately 8.42% (being an area of overlap of approximately 577.6326 hectares);
 - (d) L 47/814 with a current encroachment of approximately 3.9% (being an area of overlap of approximately 267.6983 hectares); and
 - (e) L 47/919 with a current encroachment of approximately 3.9% (being an area of overlap of approximately 267.6983 hectares).

¹ A reference in this Part C1 to the current encroachment percentage is, for the avoidance of doubt, a reference to the percentage of the area of the relevant tenement (i.e. M47/1409-I) which is overlapped by another Claimed Compensable Act (i.e. L 1SA). Not all areas of overlap between the Claimed Compensable Acts may occur within the Application Area.

19. MINEDEX records that the following sites are operating, or are under development, within the area of M 47/1409-I:
- (a) Borrow Pit 1 – Solomon (Site Code S0226070): Mine (Burrow Pit) – Operational;
 - (b) Borrow Pit 2 – Solomon (Site Code S022606): Mine (Burrow Pit) – Operational;
 - (c) Kings Crushing Hub 1 (Site Code S0226072): Infrastructure (Processing Plant) – Operational;
 - (d) Kings Satellite Coarse and Fine DID OPF 1 (Site Code S0231632): Infrastructure (Processing Plant) – Under Development;
 - (e) Kings Satellite Coarse and Fine DID OPF 2 (Site Code S0231633): Infrastructure (Processing Plant) – Under Development;
 - (f) Kings Waste Dump (Site Code S0231401): Infrastructure (Dump (Waste)) – Operational;
 - (g) Kings-Solomon (Site Code S0023559): Mine (Openpit) – Operational;
 - (h) Queens Crushing and Conveyor Facility (Site Code S0225304): Infrastructure (Handling / Loading / Storage) – Operational;
 - (i) ROM Pad Borrow Pit - Solomon (Site Code S0226071): Mine (Burrow Pit) – Operational;
 - (j) Solomon East Communications Tower (Site Code S0232301): Infrastructure (Other) – Operational;
 - (k) Solomon East Tailings Storage Facility West TSF1 (Site Code S0225310): Infrastructure (Tailings Storage Facility) – Operational;
 - (l) Trinity – Solomon (Site Code S0223838): Mine (Openpit) – Operational; and
 - (m) Trinity 01 Waste Dump (Site Code S0232556): Infrastructure (Dump (Waste)) – Operational.
20. Not all of the sites listed in paragraph [19] above are within, or wholly within, the Application Area and/or the area of M 47/1409-I. The extent to which any particular site is within the Application Area or the area of M 47/1409-I is detailed in the FMG Infrastructure Material.

20A. In respect of the application of Part 2, Division 3 of the NTA to the grant of M 47/1409-I:

- (a) on 19 December 2007, the First Respondent gave notice under section 29 of the NTA of its intention to grant M 47/1409-I to FMG Pilbara Pty Ltd;

- (b) on 23 January 2009, FMG Pilbara Pty Ltd made an application to the NNTT pursuant to section 35 of the NTA for a future act determination under section 38 of the NTA (Application No. WF09/01). The application was made on the basis that the negotiation parties (as defined in section 30A of the NTA) had not been able to reach agreement within six months of the First Respondent giving notice of its intention to grant M 47/1409-I;
- (c) on 16 February 2009, the Yindjibarndi #1 claimant advised the NNTT that it intended to allege that FMG Pilbara Pty Ltd and the First Respondent had not negotiated in good faith in accordance with section 31(1)(b) of the NTA and, accordingly, pursuant to section 36(2) of the NTA the NNTT did not have the power to make the future act determination requested by FMG Pilbara Pty Ltd;
- (d) on 23 June 2009, the NNTT determined that both the First Respondent and FMG Pilbara Pty Ltd had negotiated in good faith with the Yindjibarndi #1 claimant: see *FMG Pilbara Pty Ltd/ Wintawari Guruma Aboriginal Corporation; Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2009] NNTTA 63;
- (e) on 27 August 2009, the NNTT determined that the grant of M 47/1409-I may be done, subject to the imposition of those extra conditions contained in paragraph [18] of the NNTT's decision: see *FMG Pilbara Pty Ltd/ Wintawari Guruma Aboriginal Corporation/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2009] NNTTA 99;
- (f) on 23 September 2009, the Yindjibarndi #1 claimant appealed to the Federal Court pursuant to section 169 of the NTA from the determination made by the NNTT in WF09/01 (WAD 168 of 2009). That appeal was heard together with an appeal made by the Yindjibarndi #1 claimant from a determination made by the NNTT in WF08/31 (WAD 161 of 2009);
- (g) on 2 July 2010, the Federal Court (constituted by McKerracher J) made orders in WAD 161 of 2009 and WAD 168 of 2009 dismissing the appeals: see *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2010] FCA 690;
- (h) on 20 July 2010, the Yindjibarndi #1 claimant appealed to the Full Court of the Federal Court in respect of the orders made by McKerracher J in WAD 168 of 2009 (WAD 193 of 2010). That appeal was heard together with an appeal made by the Yindjibarndi #1 claimant from the orders made by McKerracher J in WAD 161 of 2009 (WAD 192 of 2010);
- (i) on 12 August 2011, the Full Court of the Federal Court (constituted by North, Mansfield and Gilmour JJ) made orders in WAD 192 of 2010 and WAD 193 of 2010 dismissing the appeals: see *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011] FCAFC 100;

(j) on 16 September 2001, the Yindjibarndi #1 claimant applied to the High Court for special leave to appeal from the judgement of the Full Court of the Federal Court in WAD 193 of 2010 (P 40 of 2011); and

(k) on 14 October 2011, special leave application P 40 of 2011 was deemed abandoned by the High Court in accordance with Rule 41.10.4 of the High Court Rules 2004.

C1.1.2 M 47/1411-I

21. M 47/1411-I:

- (a) was applied for by the holder of E 47/1333-I and E 47/1334-I in respect of part of the land the subject of those exploration licences pursuant to section 67 of the *Mining Act*;
- (b) is a mining lease granted pursuant to Part IV, Division 3 of the *Mining Act* for a term of 21 years commencing on 26 November 2010, with a current expiry date of 25 November 2031;
- (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to work and mine the land in respect of which M 47/1411-I was granted for iron; and
- (d) was surveyed on or about 18 September 2011 as having an area of approximately 3,512.5 hectares.

22. M 47/1411-I is included as an 'other interest' at Schedule 5, item 4(a)(i) of the Yindjibarndi Determination.

23. M 47/1411-I is located:

- (a) partly within the Application Area (with a current encroachment of approximately 5.07%, being an area of approximately 177.9263 hectares);
- (b) to the extent that it is within the Application Area, wholly within the Exclusive Area; and
- (c) to the extent that it is within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

24. MINEDEX records that the following sites are operating within the area of M 47/1411-I:

- (a) Kings-Solomon (Site Code S0023559): Mine (Openpit);
- (b) Queens (Site Code S0223837): Mine (Openpit); and

- (c) Queens Crushing and Conveyor Facility (Site Code S0225304): Infrastructure (Handling / Loading / Storage).

25. Not all of the sites listed in paragraph [24] above are within, or wholly within, the Application Area and/or the area of M 47/1411-I. The extent to which any particular site is within the Application Area or the area of M 47/1411-I is detailed in the FMG Infrastructure Material.

25A. In respect of the application of Part 2, Division 3 of the NTA to the grant of M 47/1411-I:

- (a) on 30 January 2008, the First Respondent gave notice under section 29 of the NTA of its intention to grant M 47/1411-I to FMG Pilbara Pty Ltd;
- (b) on 23 January 2009, FMG Pilbara Pty Ltd made an application to the NNTT pursuant to section 35 of the NTA for a future act determination under section 38 of the NTA (Application No. WF09/01). The application was made on the basis that the negotiation parties (as defined in section 30A of the NTA) had not been able to reach agreement within six months of the First Respondent giving notice of its intention to grant M 47/1411-I;
- (c) on 16 February 2009, the Yindjibarndi #1 claimant advised the NNTT that it intended to allege that FMG Pilbara Pty Ltd and the First Respondent had not negotiated in good faith in accordance with section 31(1)(b) of the NTA and, accordingly, pursuant to section 36(2) of the NTA the NNTT did not have the power to make the future act determination requested by FMG Pilbara Pty Ltd;
- (d) on 23 June 2009, the NNTT determined that both the First Respondent and FMG Pilbara Pty Ltd had negotiated in good faith with the Yindjibarndi #1 claimant: see *FMG Pilbara Pty Ltd/ Wintawari Guruma Aboriginal Corporation; Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2009] NNTTA 63;
- (e) on 27 August 2009, the NNTT determined that the grant of M 47/1411-I may be done, subject to the imposition of those extra conditions contained in paragraph [18] of the NNTT's decision: see *FMG Pilbara Pty Ltd/ Wintawari Guruma Aboriginal Corporation/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2009] NNTTA 99;
- (f) on 23 September 2009, the Yindjibarndi #1 claimant appealed to the Federal Court pursuant to section 169 of the NTA from the determination made by the NNTT in WF09/01 (WAD 168 of 2009). That appeal was heard together with an appeal made by the Yindjibarndi #1 claimant from a determination made by the NNTT in WF08/31 (WAD 161 of 2009);

- (g) on 2 July 2010, the Federal Court (constituted by McKerracher J) made orders in WAD 161 of 2009 and WAD 168 of 2009 dismissing the appeals: see *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2010] FCA 690;
- (h) on 20 July 2010, the Yindjibarndi #1 claimant appealed to the Full Court of the Federal Court in respect of the orders made by McKerracher J in WAD 168 of 2009 (WAD 193 of 2010). That appeal was heard together with an appeal made by the Yindjibarndi #1 claimant from the orders made by McKerracher J in WAD 161 of 2009 (WAD 192 of 2010);
- (i) on 12 August 2011, the Full Court of the Federal Court (constituted by North, Mansfield and Gilmour JJ) made orders in WAD 192 of 2010 and WAD 193 of 2010 dismissing the appeals: see *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011] FCAFC 100;
- (j) on 16 September 2011, the Yindjibarndi #1 claimant applied to the High Court for special leave to appeal from the judgement of the Full Court of the Federal Court in WAD 193 of 2010 (P 41 of 2011); and
- (k) on 14 October 2011, special leave application P 41 of 2011 was deemed abandoned by the High Court in accordance with Rule 41.10.4 of the *High Court Rules 2004*.

C1.1.3 M 47/1413-I

26. M 47/1413-I:

- (a) was applied for by the holder of E 47/1447-I and E 47/1334-I in respect of part of the land the subject of those exploration licences pursuant to section 67 of the *Mining Act*;
- (b) is a mining lease granted pursuant to Part IV, Division 3 of the *Mining Act* for a term of 21 years commencing on 26 November 2010, with a current expiry date of 25 November 2031;
- (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to work and mine the land in respect of which M 47/1413-I was granted for iron; and
- (d) was surveyed on or about 17 September 2011 as having an area of approximately 1,044.5 hectares.

27. M 47/1413-I is included as an 'other interest' at Schedule 5, item 4(a)(i) of the Yindjibarndi Determination.

28. M 47/1413-I is located:
- (a) wholly within the Application Area;
 - (b) wholly within the Exclusive Area; and
 - (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
29. In addition to the Claimed Compensable Acts referred to in paragraph [26(a)] above, the following Claimed Compensable Act has also been granted over at least part of the same area as M 47/1413-I:
- (a) L 47/362 with a current encroachment of approximately 100%.
30. MINEDEX records that the following sites are operating within the area of M 47/1413-I:
- (a) Firetail Conveyor (Site Code S0225302): Infrastructure (Handling / Loading / Storage);
 - (b) Firetail Large Borrow Pit – Solomon (Site Code S0226075): Mine (Borrow Pit);
 - (c) Firetail North (Site Code S0023644): Mine (Openpit); and
 - (d) Solomon East Tailings Storage Facility West TSF1 (Site Code S0225310): Infrastructure (Tailings Storage Facility).
31. Not all of the sites listed in paragraph [30] above are wholly within the area of M 47/1413-I. The extent to which any particular site is within the area of M 47/1413-I is detailed in the FMG Infrastructure Material.

31A. In respect of the application of Part 2, Division 3 of the NTA to the grant of M 47/1413-I:

- (a) on 23 April 2008, the First Respondent gave notice under section 29 of the NTA of its intention to grant M 47/1413-I to FMG Pilbara Pty Ltd;
- (b) on 28 November 2008, FMG Pilbara Pty Ltd made an application to the NNTT pursuant to section 35 of the NTA for a future act determination under section 38 of the NTA (Application No. WF08/31). The application was made on the basis that the negotiation parties (as defined in section 30A of the NTA) had not been able to reach agreement within six months of the First Respondent giving notice of its intention to grant M 47/1413-I;
- (c) on 15 December 2008, the Yindjibarndi #1 claimant advised the NNTT that it intended to allege that FMG Pilbara Pty Ltd and the First Respondent had not negotiated in good faith in accordance with section 31(1)(b) of the NTA and, accordingly, pursuant to section 36(2)

- of the NTA the NNTT did not have the power to make the future act determination requested by FMG Pilbara Pty Ltd;
- (d) on 24 April 2009, the NNTT determined that both the First Respondent and FMG Pilbara Pty Ltd had negotiated in good faith with the Yindjibarndi #1 claimant: see *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia*, [2009] NNTTA 38;
- (e) on 13 August 2009, the NNTT determined that the grant of M 47/1413-I may be done, subject to the imposition of those extra conditions contained in paragraph [32] of the NNTT's decision: see *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2009] NNTTA 91;
- (f) on 11 September 2009, the Yindjibarndi #1 claimant appealed to the Federal Court pursuant to section 169 of the NTA from the determination made by the NNTT in WF08/31 (WAD 161 of 2009). That appeal was heard together with an appeal made by the Yindjibarndi #1 claimant from a determination made by the NNTT in WF09/01 (WAD 168 of 2009);
- (g) on 2 July 2010, the Federal Court (constituted by McKerracher J) made orders in WAD 161 of 2009 and WAD 168 of 2009 dismissing the appeals: see *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2010] FCA 690;
- (h) on 20 July 2010, the Yindjibarndi #1 claimant appealed to the Full Court of the Federal Court in respect of the orders made by McKerracher J in WAD 161 of 2009 (WAD 192 of 2010). That appeal was heard together with an appeal made by the Yindjibarndi #1 claimant from the orders made by McKerracher J in WAD 168 of 2009 (WAD 193 of 2010);
- (i) on 12 August 2011, the Full Court of the Federal Court (constituted by North, Mansfield and Gilmour JJ) made orders in WAD 192 of 2010 and WAD 193 of 2010 dismissing the appeals: see *Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011] FCAFC 100;
- (j) on 16 September 2011, the Yindjibarndi #1 claimant applied to the High Court for special leave to appeal from the judgement of the Full Court of the Federal Court in WAD 192 of 2010 (P 40 of 2011); and
- (k) on 14 October 2011, special leave application P 40 of 2011 was deemed abandoned by the High Court in accordance with Rule 41.10.4 of the *High Court Rules 2004*.

C1.1.4 M 47/1431-I

32. M 47/1431-I:
- (a) was applied for by the holder of E 47/1447-I and E 47/1334-I in respect of part of the land the subject of those exploration licences pursuant to section 67 of the *Mining Act*;
 - (b) is a mining lease granted pursuant to Part IV, Division 3 of the *Mining Act* for a term of 21 years commencing on 8 July 2011, with a current expiry date of 7 July 2032;
 - (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to work and mine the land in respect of which M 47/1431-I was granted for iron; and
 - (d) was surveyed on or about 17 September 2011 as having an area of approximately 2,961.5 hectares.
33. M 47/1431-I is included as an 'other interest' at Schedule 5, item 4(a)(i) of the Yindjibarndi Determination.
34. M 47/1431-I is located:
- (a) wholly within the Application Area;
 - (b) partly within the Non-Exclusive Area (with a current encroachment of approximately 26.94%) and partly within the Exclusive Area (with an current encroachment of approximately 73.06%); and
 - (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
35. In addition to the Claimed Compensable Acts referred to in paragraph [32(a)] above, the following Claimed Compensable Acts have also been granted over at least part of the same area as M 47/1431-I:
- (a) L 1SA with a current encroachment of approximately 7.96% (being an area of overlap of approximately 235.4467 hectares);
 - (b) L 47/302 with a current encroachment of approximately 8.08% (being an area of overlap of approximately 238.9899 hectares);
 - (c) L 47/361 with a current encroachment of approximately 27.49% (being an area of overlap of approximately 813.4244 hectares);

- (d) L 47/362 with a current encroachment of approximately 72.05% (being an area of overlap of approximately 2132.1391 hectares);
 - (e) L 47/697 with a current encroachment of approximately 0.36% (being an area of overlap of approximately 10.7695 hectares);
 - (f) L 47/814 with a current encroachment of approximately 6.49% (being an area of overlap of approximately 192.0093 hectares);
 - (g) L 47/859 with a current encroachment of approximately 0.2% (being an area of overlap of approximately 5.9723 hectares);
 - (h) L 47/901 with a current encroachment of approximately 0.36% (being an area of overlap of approximately 10.5629 hectares);
 - (i) L 47/914 with a current encroachment of approximately 0.53% (being an area of overlap of approximately 15.7493 hectares); and
 - (j) L 47/919 with a current encroachment of approximately 6.49% (being an area of overlap of approximately 192.0094 hectares).
36. MINEDEX records that the following sites are operating, or are under development, within the area of M 47/1431-I:
- (a) Firetail Conveyor (Site Code S0225302): Infrastructure (Handling / Loading / Storage) - Operational;
 - (b) Firetail Crushing Hub 3 (Site Code S0226074): Infrastructure (Processing Plant) – Operational;
 - (c) Firetail Large Borrow Pit – Solomon (Site Code S0226075): Mine (Burrow Pit) – Operational;
 - (d) Firetail South (Site Code S0224200): Mine (Openpit) – Operational;
 - (e) Firetail South Satellite Fine BID OPF (Site Code S0231631): Infrastructure (Processing Plant) – Under Development;
 - (f) Kings Crushing Hub 1 (Site Code S0226072): Infrastructure (Processing Plant) – Operational;
 - (g) Kings Waste Dump (Site Code S0231401): Infrastructure (Dump (Waste)) – Operational;
 - (h) Kings-Solomon (Site Code S0023559): Mine (Openpit) – Operational;

- (i) Queens Crushing and Conveyor Facility (Site Code S0225304): Infrastructure (Handling / Loading / Storage) – Operational;
 - (j) Solomon East Power Station and Fortescue River Gas Pipeline (Site Code S0225306): Infrastructure (Power Plant) – Operational;
 - (k) Solomon East Stockyards and Rail Loop (Site Code S0225305): Infrastructure (Handling / Loading / Storage) – Operational;
 - (l) Solomon East Tailings Storage Facility West TSF1 (Site Code S0225310): Infrastructure (Tailings Storage Facility) – Operational; and
 - (m) Stockyards Landfill (Site Code S0233133): Infrastructure (Dump (unspecified)) – Under Development.
37. Not all of the sites listed in paragraph [36] above are wholly within the area of M 47/1431-I. The extent to which any particular site is within the area of M 47/1431-I is detailed in the FMG Infrastructure Material.

37A. In respect of the application of Part 2, Division 3 of the NTA to the grant of M 47/1431-I:

- (a) on 26 August 2009, the First Respondent gave notice under section 29 of the NTA of its intention to grant M 47/1431-I to FMG Pilbara Pty Ltd;
- (b) on 25 August 2010, FMG Pilbara Pty Ltd made an application to the NNTT pursuant to section 35 of the NTA for a future act determination under section 38 of the NTA (Application No. WF10/19). The application was made on the basis that the negotiation parties (as defined in section 30A of the NTA) had not been able to reach agreement within six months of the First Respondent giving notice of its intention to grant M 47/1431-I;
- (c) on or around 10 September 2010, the Yindjibarndi #1 claimant advised the NNTT that it intended to allege that FMG Pilbara Pty Ltd and the First Respondent had not negotiated in good faith in accordance with section 31(1)(b) of the NTA and, accordingly, pursuant to section 36(2) of the NTA the NNTT did not have the power to make the future act determination requested by FMG Pilbara Pty Ltd;
- (d) on 18 November 2010, the Yindjibarndi #1 claimant withdrew its assertion of a failure to negotiate in good faith against FMG Pilbara Pty Ltd and the First Respondent;
- (e) in early January 2011, the Yindjibarndi #1 claimant reasserted the allegation that FMG Pilbara Pty Ltd had not negotiated in good faith in accordance with section 31(1)(b) of the NTA; and

(f) on 9 July 2011, the NNTT determined that:

(i) FMG Pilbara Pty Ltd had negotiated in good faith with the Yindjibarndi #1 claimant;
and

(ii) the grant of M 47/1431-I may be done, subject to the imposition of those extra
conditions contained in paragraphs [43] and [119] of the NNTT's decision

see FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/
Western Australia [2011] NNTTA 107.

C1.1.5 M 47/1453-I

38. M 47/1453-I:

- (a) was applied for by the holder of E 47/1334-I in respect of part of the land the subject of that exploration licence pursuant to section 67 of the *Mining Act*;
- (b) is a mining lease granted pursuant to Part IV, Division 3 of the *Mining Act* for a term of 21 years commencing on 17 January 2013, with a current expiry date of 16 January 2034;
- (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to work and mine the land in respect of which M 47/1453-I was granted for iron; and
- (d) was surveyed on or about 21 June 2014 as having an area of approximately 727 hectares.

39. M 47/1453-I is included as an 'other interest' at Schedule 5, item 4(a)(i) of the Yindjibarndi Determination.

40. M 47/1453-I is located:

- (a) wholly within the Application Area;
- (b) wholly within the Exclusive Area; and
- (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

41. In addition to the Claimed Compensable Act referred to in paragraph [38(a)] above, the following Claimed Compensable Acts have also been granted over at least part of the same area as M 47/1453-I:

- (a) L 47/363 with a current encroachment of approximately 100%;

- (b) L 47/814 with a current encroachment of approximately 0.02% (being an area of overlap of approximately 0.1308 hectares); and
 - (c) L 47/919 with a current encroachment of approximately 0.029% (being an area of overlap of approximately 0.1308 hectares).
42. MINEDEX records that the following sites are operating within the area of M 47/1453-I:
- (a) Firetail South (Site Code S0224200): Mine (Openpit);
 - (b) Kings Waste Dump (Site Code S0231401): Infrastructure (Dump (Waste)); and
 - (c) Kings-Solomon (Site Code S0023559): Mine (Openpit).
43. Not all of the sites listed in paragraph [42] above are wholly within the area of M 47/1453-I. The extent to which any particular site is within the area of M 47/1453-I is detailed in the FMG Infrastructure Material.

43A. In respect of the application of Part 2, Division 3 of the NTA to the grant of M 47/1453-I:

- (a) on 12 January 2011, the First Respondent gave notice under section 29 of the NTA of its intention to grant M 47/1453-I to FMG Pilbara Pty Ltd;
- (b) on 30 July 2012, FMG Pilbara Pty Ltd made an application to the NNTT pursuant to section 35 of the NTA for a future act determination under section 38 of the NTA (Application No. WF12/22). The application was made on the basis that the negotiation parties (as defined in section 30A of the NTA) had not been able to reach agreement within six months of the First Respondent giving notice of its intention to grant M 47/1453-I; and
- (c) on 19 December 2012, the NNTT determined that the grant of M 47/1453-I may be done, subject to the imposition of those extra conditions contained in paragraphs [21] and [62] of the NNTT's decision: see *FMG Pilbara Pty Ltd/NC (deceased) and Others on behalf of the Yindjibarndi People/ Western Australia* [2012] NNTTA 142.

C1.1.6 M 47/1473-I

44. M 47/1473-I:
- (a) was applied for by the holder of E 47/1447-I and E 47/1334-I in respect of part of the land the subject of those exploration licences pursuant to section 67 of the *Mining Act*;
 - (b) is a mining lease granted pursuant to Part IV, Division 3 of the *Mining Act* for a term of 21 years commencing on 29 August 2014, with a current expiry date of 28 August 2035;

- (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to work and mine the land in respect of which M 47/1473-I was granted for iron; and
 - (d) was granted over an area of approximately 472 hectares.
45. M 47/1473-I is included as an 'other interest' at Schedule 5, item 4(a)(i) of the Yindjibarndi Determination.
46. M 47/1473-I is located:
- (a) wholly within the Application Area;
 - (b) wholly within the Exclusive Area; and
 - (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
47. In addition to the Claimed Compensable Acts referred to in paragraph [44(a)] above, the following Claimed Compensable Act has also been granted over at least part of the same area as M 47/1473-I:
- (a) L 47/362 with a current encroachment of approximately 38.49% (being an area of overlap of approximately 186.7266 hectares).
48. MINEDEX records that the following site is operating within the area of M 47/1473-I:
- (a) Firetail North (Site Code S0023644): Mine (Openpit).
49. Not all of the site listed in paragraph [48] is wholly within the area of M 47/1473-I. The extent to which any particular site is within the area of M 47/1473-I is detailed in the FMG Infrastructure Material.

49A. In respect of the application of Part 2, Division 3 of the NTA to the grant of M 47/1473-I:

- (a) on 19 September 2012, the First Respondent gave notice under section 29 of the NTA of its intention to grant M 47/1473-I to FMG Pilbara Pty Ltd;
- (b) on 11 October 2013, FMG Pilbara Pty Ltd made an application to the NNTT pursuant to section 35 of the NTA for a future act determination under section 38 of the NTA (Application No. WF13/15). The application was made on the basis that the negotiation parties (as defined in section 30A of the NTA) had not been able to reach agreement within six months of the First Respondent giving notice of its intention to grant M 47/1473-I;

- (c) on 1 November 2013, the Yindjibarndi #1 claimant advised the NNTT that it did not intend to submit that FMG Pilbara Pty Ltd or the First Respondent had not negotiated in good faith in accordance with section 31(1)(b) of the NTA; and
- (d) on 31 July 2014, the NNTT determined that the grant of M 47/1473-I may be done, subject to the imposition of those extra conditions contained in paragraphs [50], [51] and [202] of the NNTT's decision: see *FMG Pilbara Pty Ltd and Another v Yindjibarndi #1* [2014] NNTTA 79.

C1.1.7 M 47/1475-I

50. M 47/1475-I:

- (a) was applied for by the holder of E 47/1334-I in respect of part of the land the subject of E 47/1334-I pursuant to section 67 of the *Mining Act*;
- (b) is a mining lease granted pursuant to Part IV, Division 3 of the *Mining Act* for a term of 21 years commencing on 29 August 2014, with a current expiry date of 28 August 2035;
- (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to work and mine the land in respect of which M 47/1475-I was granted for iron; and
- (d) was granted over an area of approximately 525.2705 hectares.

51. M 47/1475-I is included as an 'other interest' at Schedule 5, item 4(a)(i) of the Yindjibarndi Determination.

52. M 47/1475-I is located:

- (a) wholly within the Application Area;
- (b) wholly within the Exclusive Area; and
- (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

53. In addition to the Claimed Compensable Act referred to in paragraph [50(a)] above, the following Claimed Compensable Act has also been granted over at least part of the same area as M 47/1475-I:

- (a) L 47/396 with a current encroachment of approximately 41.11% (being an area of overlap of approximately 216.0089 hectares).

54. MINEDEX records that the following sites are operating within the area of M 47/1473-I:
- (a) Firetail North (Site Code S0023644): Mine (Openpit);
 - (b) Trinity – Solomon (Site Code S0223838): Mine (Openpit); and
 - (c) Trinity 01 Waste Dump (Site Code S0232556): Infrastructure (Dump (Waste)).
55. Not all of the sites listed in paragraph [54] are wholly within the area of M 47/1475-I. The extent to which any particular site is within the area of M 47/1475-I is detailed in the FMG Infrastructure Material.

55A. In respect of the application of Part 2, Division 3 of the NTA to the grant of M 47/1475-I:

- (a) on 11 July 2012, the First Respondent gave notice under section 29 of the NTA of its intention to grant M 47/1475-I to FMG Pilbara Pty Ltd;
- (b) on 11 October 2013, FMG Pilbara Pty Ltd made an application to the NNTT pursuant to section 35 of the NTA for a future act determination under section 38 of the NTA (Application No. WF13/16). The application was made on the basis that the negotiation parties (as defined in section 30A of the NTA) had not been able to reach agreement within six months of the First Respondent giving notice of its intention to grant M 47/1475-I;
- (c) on 1 November 2013, the Yindjibarndi #1 claimant advised the NNTT that it did not intend to submit that FMG Pilbara Pty Ltd or the First Respondent had not negotiated in good faith in accordance with section 31(1)(b) of the NTA; and
- (d) on 31 July 2014, the NNTT determined that the grant of M 47/1475-I may be done, subject to the imposition of those extra conditions contained in paragraphs [50], [51] and [202] of the NNTT's decision: see *FMG Pilbara Pty Ltd and Another v Yindjibarndi #1* [2014] NNTTA 79.

C1.1.8 M 47/1513-I

56. M 47/1513-I:
- (a) was applied for by the holder of E 47/1334-I in respect of part of the land the subject of that exploration licence pursuant to section 67 of the *Mining Act*;
 - (b) was a mining lease granted pursuant to Part IV, Division 3 of the *Mining Act* for a term of 21 years commencing on 3 December 2018;
 - (c) was the subject of an application to surrender, conditional upon the application for M 47/1570 being granted, on 28 February 2020;

- (d) was surrendered on 31 March 2020 in favour of the grant of M 47/1570;
 - (e) was endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to work and mine the land in respect of which M 47/1513-I was granted for iron; and
 - (f) was surveyed on or about 12 March 2019 as having an area of approximately 700.55 hectares.
57. M 47/1513-I was granted after the making of the Yindjibarndi Determination.
58. M 47/1513-I was located:
- (a) wholly within the Application Area;
 - (b) partly within the Non-Exclusive Area (with a current encroachment of approximately 63.76%) and partly within the Exclusive Area (with a current encroachment of approximately 36.24%); and
 - (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
59. In addition to the Claimed Compensable Acts referred to in paragraph [56], the following Claimed Compensable Acts have also been granted over at least part of the same area as M 47/1513-I:
- (a) M 47/1570 with a current encroachment of approximately 100%;
 - (b) L 47/361 with a current encroachment of approximately 3.48% (being an area of overlap of approximately 24.3722 hectares);
 - (c) L 47/367 with a current encroachment of approximately 100%;
 - (d) L 47/472 with a current encroachment of approximately 12.74% (being an area of overlap of approximately 89.1633 hectares);
 - (e) L 47/814 with a current encroachment of approximately 63.88% (being an area of overlap of approximately 447.2346 hectares); and
 - (f) L 47/919 with a current encroachment of approximately 63.88% (being an area of overlap of approximately 447.2347 hectares).
60. MINEDEX does not record any sites that operated within the area of M 47/1513-I.

60A. In respect of the application of Part 2, Division 3 of the NTA to the grant of M 47/1513-I:

- (a) on 5 August 2016, the First Respondent gave notice under section 29 of the NTA of its intention to grant M 47/1513-I to FMG Pilbara Pty Ltd;
- (b) on 25 August 2017, FMG Pilbara Pty Ltd made an application to the NNTT pursuant to section 35 of the NTA for a future act determination under section 38 of the NTA (Application No. WF17/18). The application was made on the basis that the negotiation parties (as defined in section 30A of the NTA) had not been able to reach agreement within six months of the First Respondent giving notice of its intention to grant M 47/1513-I;
- (c) on 25 October 2017, the Yindjibarndi #1 claimant advised the NNTT that it intended to allege that FMG Pilbara Pty Ltd and the First Respondent had not negotiated in good faith in accordance with section 31(1)(b) of the NTA and, accordingly, pursuant to section 36(2) of the NTA the NNTT did not have the power to make the future act determination requested by FMG Pilbara Pty Ltd;
- (d) on 30 November 2017, the Applicant withdrew its assertion of a failure to negotiate in good faith against FMG Pilbara Pty Ltd and the First Respondent; and
- (e) on 25 October 2018, the NNTT determined that the grant of M 47/1513-I may be done, subject to the imposition of those extra conditions contained in paragraph [94] of the NNTT's decision: see *FMG Pilbara Pty Ltd v Yindjibarndi Ngurra Aboriginal Corporation RNTBC and Another* [2018] NNTTA 64.

C1.1.9 M 47/1570

61. M 47/1570:

- (a) was applied for by the holder of E 47/1334-I and E 47/1398-I in respect of part of the land the subject of those exploration licences pursuant to section 67 of the *Mining Act*;
- (b) was applied for over an area that wholly included the area of M 47/1513-I (such that M 47/1513-I was surrendered in favour of the grant of M 47/1570);
- (c) is a mining lease granted pursuant to Part IV, Division 3 of the *Mining Act* for a term of 21 years commencing on 31 March 2020, with a current expiry date of 30 March 2041; and
- (d) was surveyed on or about 18 June 2020 as having an area of approximately 1,033 hectares.

62. M 47/1570 was granted after the making of the Yindjibarndi Determination.

63. M 47/1570 is located:

- (a) wholly within the Application Area;
 - (b) partly within the Non-Exclusive Area (with a current encroachment of approximately 75.42%) and partly within the Exclusive Area (with an encroachment of approximately 24.58%); and
 - (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
64. In addition to the Claimed Compensable Acts referred to in paragraph [61] above, the following Claimed Compensable Acts have also been granted over at least part of the same area as M 47/1570:
- (a) L 1SA with a current encroachment of approximately 1.53% (being an area of overlap of approximately 15.8172 hectares);
 - (b) L 47/361 with a current encroachment of approximately 8.97% (being an area of overlap of approximately 92.5969 hectares);
 - (c) L 47/367 with a current encroachment of approximately 100%;
 - (d) L 47/472 with a current encroachment of approximately 28.98% (being an area of overlap of approximately 299.2099 hectares);
 - (e) L 47/697 with a current encroachment of approximately 0.5% (being an area of overlap of approximately 5.1772 hectares);
 - (f) L 47/814 with a current encroachment of approximately 45.64% (being an area of overlap of approximately 471.205 hectares);
 - (g) L 47/914 with a current encroachment of approximately 0.66% (being an area of overlap of approximately 6.8449 hectares); and
 - (h) L 47/919 with a current encroachment of approximately 45.64% (being an area of overlap of approximately 471.2051 hectares).
65. MINEDEX does not record any sites that currently operate within the area of M 47/1570.

65A. In respect of the application of Part 2, Division 3 of the NTA to the grant of M 47/1570:

- (a) on 25 January 2019, the First Respondent gave notice under section 29 of the NTA of its intention to grant M 47/1570 to FMG Pilbara Pty Ltd;
- (b) on 31 July 2019, FMG Pilbara Pty Ltd made an application to the NNTT pursuant to section 35 of the NTA for a future act determination under section 38 of the NTA (Application No.

WF19/04). The application was made on the basis that the negotiation parties (as defined in section 30A of the NTA) had not been able to reach agreement within six months of the First Respondent giving notice of its intention to grant M 47/1570;

(c) the Applicant subsequently advised the NNTT that it did not intend to submit that FMG Pilbara Pty Ltd or the First Respondent had not negotiated in good faith in accordance with section 31(1)(b) of the NTA; and

(d) on 5 February 2020, the NNTT determined that the grant of M 47/1570 may be done, subject to the imposition of those extra conditions contained in paragraph [99] of the NNTT's decision: see *FMG Pilbara Pty Ltd v Yindjibarndi Ngurra Aboriginal Corporation RNTBC and Another* [2020] NNTTA 8.

C1.2 Miscellaneous Licences

C1.2.1 L 1SA

66. On a date prior to August 2006, Pilbara Infrastructure Pty Ltd applied to the First Respondent for the “*Special Railway Licence*” as defined in clause 1 of the agreement scheduled to, and ratified by, the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* (WA)) (the **Pilbara Infrastructure Agreement**). The area the subject of the proposed Special Railway Licence was given the designation “*File Notation Area 7330*” (**FNA 7330**) by the First Respondent.
67. On 29 November 2006, in accordance with clause 14(1)(a) Pilbara Infrastructure Agreement, the First Respondent granted a miscellaneous licence in respect of the area covered by FNA 7330. That miscellaneous licence was given the tenement identification “*AL700001 (L 1SA)*”.
68. As granted, L 1SA did not include any land or waters within the Application Area.
69. On 19 April 2011, Pilbara Infrastructure Pty Ltd applied, pursuant to clause 12 of the Pilbara Infrastructure Agreement, for an extension to the area of L 1SA to allow for the construction of a spur line connecting the Solomon mine with the existing Special Railway.
70. The area the subject of the proposed Solomon spur line was given the designation “*File Notation Area 8923*” (**FNA 8923**) by the First Respondent. Part of the area of FNA 8923 included a portion of the Application Area.

71. On 10 August 2011, pursuant to clause 14(6) of the Pilbara Infrastructure Agreement, the Minister for Mines and Petroleum included the area of the proposed Solomon spur line (FN 8923) into the area of L 1SA by endorsement.
72. Prior to 10 August 2011, the area of L 1SA did not include any land and waters within the Application Area. Approximately 5.28% (being an area of overlap of approximately 2310.1198 hectares) of the area of L 1SA is within the Application Area.
73. L 1SA is included as an 'other interest' at Schedule 5, item 4(c) of the Yindjibarndi Determination.
74. To the extent that it is within the Application Area, L 1SA is located:
 - (a) partly within the Non-Exclusive Area (with a current encroachment of approximately 81.93%) and partly over the Exclusive Area (with a current encroachment of approximately 14.79%); and
 - (b) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
75. To the extent that L 1SA is within the Application Area, the following Claimed Compensable Acts have also been granted over at least part of the same area as L 1SA:
 - (a) E 47/1334-I with a current encroachment of approximately 11.28%² (being an area of overlap of approximately 260.6873 hectares);
 - (b) E 47/1398-I with a current encroachment of approximately 44.99% (being an area of overlap of approximately 1039.2915 hectares);
 - (c) E 47/1399-I with a current encroachment of approximately 0.93% (being an area of overlap of approximately 21.5253 hectares);
 - (d) L 47/361 with a current encroachment of approximately 58.49% (being an area of overlap of approximately 1351.14 hectares);
 - (e) L 47/367 with a current encroachment of approximately 0.87% (being an area of overlap of approximately 20.0961 hectares);

² A reference in this paragraph to the current encroachment percentage is, for the avoidance of doubt, a reference to the percentage of the area of the L 1SA within the Application Area that is overlapped by another Claimed Compensable Act (i.e. it does not refer to not the percentage of the total area of L 1SA overlapped by another Claimed Compensable Act).

- (f) L 47/801 with a current encroachment of approximately 24.25% (being an area of overlap of approximately 560.2985 hectares);
- (g) L 47/813 with a current encroachment of approximately 15.99% (being an area of overlap of approximately 369.3941 hectares);
- (h) L 47/814 with a current encroachment of approximately 3.04% (being an area of overlap of approximately 70.1368 hectares);
- (i) L 47/914 with a current encroachment of approximately 8.36% (being an area of overlap of approximately 193.1631 hectares);
- (j) L 47/919 with a current encroachment of approximately 3.04% (being an area of overlap of approximately 70.1368 hectares);
- (k) M 47/1409-I with a current encroachment of approximately 23.69% (being an area of overlap of approximately 547.3434 hectares);
- (l) M 47/1431-I with a current encroachment of approximately 10.19% (being an area of overlap of approximately 235.4467 hectares);
- (m) M 47/1570 with a current encroachment of approximately 0.68% (being an area of overlap of approximately 15.8172 hectares);
- (n) P 47/1945 with a current encroachment of approximately 0.07% (being an area of overlap of approximately 1.6668 hectares);
- (o) P 47/1946 with a current encroachment of approximately 0.14% (being an area of overlap of approximately 3.3403 hectares); and
- (p) P 47/1947 with a current encroachment of approximately 0.23% (being an area of overlap of approximately 5.2073 hectares).

75A. In respect of the application of Part 2, Division 3 of the NTA to that part of L 1SA within the Application Area:

- (a) on or about 28 February 2011, the First Respondent gave notice under section 24MD(6B)(c) of the NTA of its intention to include the area of the proposed Solomon spur line (FN 8923) into the area of L 1SA. The notice indicated that the notification period for the purpose of section 24MD(6B)(d) of the NTA expired on 28 April 2011; and
- (b) no objection was made by the Yindjibarndi #1 claimant with respect to the inclusion of the area of the proposed Solomon spur line (FN 8923) into the area of L 1SA pursuant to section 24MD(6B)(d) of the NTA.

C1.2.2 L 47/302

76. L 47/302 was:

- (a) a miscellaneous licence granted pursuant to Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 5 June 2009;
- (b) granted for the purposes of road, power line, pipeline, taking water, and a conveyor system;
- (c) surrendered on 7 January 2013; and
- (d) granted over an area of approximately 247 hectares.

77. L 47/302 was surrendered prior to the making of the Yindjibarndi Determination.

78. L 47/302 was located:

- (a) wholly within the Application Area;
- (b) wholly within Exclusive Area; and
- (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

79. The following Claimed Compensable Acts have also been granted over at least part of the same area as L 47/302:

- (a) M 47/1431-I with a current encroachment of approximately 100%; and
- (b) L 47/362 with a current encroachment of approximately 100%.

79A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/302:

- (a) on 28 July 2008, the First Respondent gave notice under section 24MD(6B)(c) of the NTA of its intention to grant L 47/302 to FMG Pilbara Pty Ltd. The notice indicated that the notification period for the purpose of section 24MD(6B)(d) of the NTA expired on 4 October 2008; and
- (b) no objection was made by the Yindjibarndi #1 claimant with respect to the grant of L 47/302 pursuant to section 24MD(6B)(d) of the NTA.

C1.2.3 L 47/361

80. L 47/361:

- (a) is a miscellaneous licence granted pursuant to Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 11 October 2011, with a current expiry of 10 October 2032;
- (b) was granted for the purposes of pipeline, power line, road, taking water, communication facility, bore field, aerial rope way, aerodrome, conveyor system, power generation, transmission facility and storage or transportation facility for minerals or mineral concentrate; and
- (c) was granted over an area of approximately 4,447 hectares.

81. L 47/361 is included as an 'other interest' at Schedule 5, item 4(a)(ii) of the Yindjibarndi Determination.

82. L 47/361 is located:

- (a) wholly within the Application Area;
- (b) partly within the Non-Exclusive Area (with a current encroachment of approximately 92.2%) and partly over the Exclusive Area (with a current encroachment of approximately 7.47%); and
- (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

83. The following Claimed Compensable Acts have also been granted over at least part of the same area as L 47/361:

- (a) M 47/1431-I with a current encroachment of approximately 18.37% (being an area of overlap of approximately 813.4244 hectares);
- (b) M 47/1513-I with a current encroachment of approximately 0.55% (being an area of overlap of approximately 24.3722 hectares);
- (c) M 47/1570 with a current encroachment of approximately 2.09% (being an area of overlap of approximately 92.5969 hectares);
- (d) L 1SA with a current encroachment of approximately 33.29% (being an area of overlap of approximately 1474.569 hectares);

- (e) L 47/367 with a current encroachment of approximately 2.48% (being an area of overlap of approximately 109.6658 hectares);
- (f) L 47/472 with a current encroachment of approximately 11.13% (being an area of overlap of approximately 493.035 hectares);
- (g) L 47/697 with a current encroachment of approximately 2.17% (being an area of overlap of approximately 96.0071 hectares);
- (h) L 47/814 with a current encroachment of approximately 4.01% (being an area of overlap of approximately 177.6014 hectares);
- (i) L 47/859 with a current encroachment of approximately 0.13% (being an area of overlap of approximately 5.9723 hectares);
- (j) L 47/901 with a current encroachment of approximately 0.24% (being an area of overlap of approximately 10.5629 hectares);
- (k) L 47/914 with a current encroachment of approximately 5% (being an area of overlap of approximately 221.5558 hectares);
- (l) L 47/919 with a current encroachment of approximately 4.01% (being an area of overlap of approximately 177.6014 hectares);
- (m) E 47/1334-I with a current encroachment of approximately 0.3% (being an area of overlap of approximately 13.2601 hectares);
- (n) E 47/1398-I with a current encroachment of approximately 66.4% (being an area of overlap of approximately 2940.9851 hectares);
- (o) E 47/1399-I with a current encroachment of approximately 4.88% (being an area of overlap of approximately 216.0947 hectares);
- (p) E 47/1447-I with a current encroachment of approximately 7.08% (being an area of overlap of approximately 313.4386 hectares); and
- (q) E 47/3464-I with a current encroachment of approximately 0.88% (being an area of overlap of approximately 39.1336 hectares).

83A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/361:

- (a) on 20 March 2010, the First Respondent gave notice under section 24MD(6B)(c) of the NTA of its intention to grant L 47/361 to FMG Pilbara Pty Ltd. The notice indicated that the notification period for the purpose of section 24MD(6B)(d) of the NTA expired on 25 May 2010;

- (b) on 25 May 2010, the First Respondent received an objection made by the Yindjibarndi #1 claimant with respect to the grant of L 47/361 pursuant to section 24MD(6B)(d) of the NTA;
- (c) on 12 November 2010, the First Respondent wrote to the Yindjibarndi #1 claimant indicating that FMG Pilbara Pty Ltd had advised the First Respondent that it considered it had consulted with the Yindjibarndi #1 claimant as required by 24MD(6B)(e) of the NTA and was requesting that L 47/361 be granted. The letter asked that the Yindjibarndi #1 claimant indicate, within 30 days, whether it wanted the objection to the grant of L 47/361 referred to the Independent Person pursuant to section 24MD(6B)(f) of the NTA;
- (d) on 9 December 2010, the Yindjibarndi #1 claimant requested that the objection to the grant of L 47/361 be heard by the Independent Person. The objection (together with objections to associated applications L 47/362 and L 47/363) was referred to the Independent Person on 18 January 2011 (IND 1/11); and
- (e) on 15 April 2011, the Independent Person made orders dismissing the objection on the basis that the Yindjibarndi #1 claimant had failed to:

 - (i) file and serve certain documents required by directions made on 4 February 2011; and
 - (ii) appear on 15 April 2011 to respond to FMG Pilbara Pty Ltd's application for dismissal of the objection.

C1.2.4 L 47/362

84. L 47/362:

- (a) is a miscellaneous licence granted pursuant to Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 3 May 2011, with a current expiry of 2 May 2032;
- (b) was granted for the purposes of pipeline, power line, road, taking water, communication facility, water management facility, bore field, aerial rope way, conveyor system and storage or transportation facility for minerals or mineral concentrate; and
- (c) was granted over an area of approximately 3,494 hectares.

85. L 47/362 is included as an 'other interest' at Schedule 5, item 4(a)(ii) of the Yindjibarndi Determination.

86. L 47/362 is located:
- (a) wholly within the Application Area;
 - (b) wholly within the Exclusive Area; and
 - (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
87. The following Claimed Compensable Acts have also been granted over at least part of the same area as L 47/362:
- (a) M 47/1413-I with a current encroachment of approximately 29.86% (being an area of overlap of approximately 1043.6889 hectares);
 - (b) M 47/1431-I with a current encroachment of approximately 60.99% (being an area of overlap of approximately 2132.1391 hectares);
 - (c) M 47/1473-I with a current encroachment of approximately 5.34% (being an area of overlap of approximately 186.7266 hectares);
 - (d) L 47/302 with a current encroachment of approximately 6.84% (being an area of overlap of approximately 238.9899 hectares);
 - (e) L 47/814 with a current encroachment of approximately 1.4% (being an area of overlap of approximately 49.0128 hectares);
 - (f) L 47/919 with a current encroachment of approximately 1.4% (being an area of overlap of approximately 49.0129 hectares);
 - (g) E 47/1334-I with a current encroachment of approximately 0.03% (being an area of overlap of approximately 1.0113 hectares); and
 - (h) E 47/1447-I with a current encroachment of approximately 3.78% (being an area of overlap of approximately 132.126 hectares).

87A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/362:

- (a) on 20 March 2010, the First Respondent gave notice under section 24MD(6B)(c) of the NTA of its intention to grant L 47/362 to FMG Pilbara Pty Ltd. The notice indicated that the notification period for the purpose of section 24MD(6B)(d) of the NTA expired on 25 May 2010;

- (b) on 25 May 2010, the First Respondent received an objection made by the Yindjibarndi #1 claimant with respect to the grant of L 47/362 pursuant to section 24MD(6B)(d) of the NTA;
- (c) on 12 November 2010, the First Respondent wrote to the Yindjibarndi #1 claimant indicating that FMG Pilbara Pty Ltd had advised the First Respondent that it considered it had consulted with the Yindjibarndi #1 claimant as required by 24MD(6B)(e) of the NTA and was requesting that L 47/362 be granted. The letter asked that the Yindjibarndi #1 claimant indicate, within 30 days, whether it wanted the objection to the grant of L 47/362 referred to the Independent Person pursuant to section 24MD(6B)(f) of the NTA;
- (d) on 9 December 2010, the Yindjibarndi #1 claimant requested that the objection to the grant of L 47/362 be heard by the Independent Person. The objection (together with objections to associated applications L 47/361 and L 47/363) was referred to the Independent Person on 18 January 2011 (IND 1/11); and
- (e) on 15 April 2011, the Independent Person made orders dismissing the objection on the basis that the Yindjibarndi #1 claimant had failed to:

 - (i) file and serve certain documents required by directions made on 4 February 2011; and
 - (ii) appear on 15 April 2011 to respond to FMG Pilbara Pty Ltd's application for dismissal of the objection.

C1.2.5 L 47/363

88. L 47/363:

- (a) is a miscellaneous licence granted pursuant to Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 3 May 2011, with a current expiry of 2 May 2032;
- (b) was granted for the purposes of pipeline, power line, road, taking water, communication facility, bore field, aerial rope way, aerodrome, conveyor system, power generation, transmission facility and storage or transportation facility for minerals or mineral concentrate; and
- (c) was granted over an area of approximately 721 hectares.

89. L 47/363 is included as an 'other interest' at Schedule 5, item 4(a)(ii) of the Yindjibarndi Determination.

90. L 47/363 is located:
- (a) wholly within the Application Area;
 - (b) wholly within the Exclusive Area; and
 - (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
91. The following Claimed Compensable Acts have also been granted over at least part of the same area as L 47/363:
- (a) M 47/1453-I with a current encroachment of approximately 100%;
 - (b) L 47/814 with a current encroachment of approximately 0.02% (being an area of overlap of approximately 0.1308 hectares); and
 - (c) L 47/919 with a current encroachment of approximately 0.02% (being an area of overlap of approximately 0.1308 hectares).

91A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/363:

- (a) on 20 March 2010, the First Respondent gave notice under section 24MD(6B)(c) of the NTA of its intention to grant L 47/363 to FMG Pilbara Pty Ltd. The notice indicated that the notification period for the purpose of section 24MD(6B)(d) of the NTA expired on 25 May 2010;
- (b) on 25 May 2010, the First Respondent received an objection made by the Yindjibarndi #1 claimant with respect to the grant of L 47/363 pursuant to section 24MD(6B)(d) of the NTA;
- (c) on 12 November 2010, the First Respondent wrote to the Yindjibarndi #1 claimant indicating that FMG Pilbara Pty Ltd had advised the First Respondent that it considered it had consulted with the Yindjibarndi #1 claimant as required by 24MD(6B)(e) of the NTA and was requesting that L 47/363 be granted. The letter asked that the Yindjibarndi #1 claimant indicate, within 30 days, whether it wanted the objection to the grant of L 47/363 referred to the Independent Person pursuant to section 24MD(6B)(f) of the NTA;
- (d) on 9 December 2010, the Yindjibarndi #1 claimant requested that the objection to the grant of L 47/363 be heard by the Independent Person. The objection (together with objections to associated applications L 47/361 and L 47/362) was referred to the Independent Person on 18 January 2011 (IND 1/11); and

(e) on 15 April 2011, the Independent Person made orders dismissing the objection on the basis that Yindjibarndi #1 claimant had failed to:

(i) file and serve certain documents required by directions made on 4 February 2011; and

(ii) appear on 15 April 2011 to respond to FMG Pilbara Pty Ltd's application for dismissal of the objection.

C1.2.6 L 47/367

92. L 47/367:

- (a) is a miscellaneous licence granted pursuant to Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 2 March 2012, with a current expiry of 1 March 2033;
- (b) was granted for the purposes of road, power line, pipeline, taking water, communication facility, water management facility, aerial rope way, conveyor system, and storage or transportation facility for minerals or mineral concentrate; and
- (c) was granted over an area of approximately 1,229 hectares.

93. L 47/367 is included as an 'other interest' at Schedule 5, item 4(a)(ii) of the Yindjibarndi Determination.

94. L 47/367 is located:

- (a) wholly within the Application Area;
- (b) partly within the Non-Exclusive Area (with a current encroachment of approximately 79.15%) and partly over the Exclusive Area (with a current encroachment of approximately 20.85%); and
- (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

95. The following Claimed Compensable Acts have also been granted over at least part of the same area as L 47/367:

- (a) M 47/1513-I with a current encroachment of approximately 57.52% (being an area of overlap of approximately 700.0668 hectares);
- (b) M 47/1570 with a current encroachment of approximately 84.83% (being an area of overlap of approximately 1032.4092 hectares);

- (c) L 1SA with a current encroachment of approximately 1.65% (being an area of overlap of approximately 20.0961 hectares);
- (d) L 47/361 with a current encroachment of approximately 9.01% (being an area of overlap of approximately 109.6658 hectares);
- (e) L 47/472 with a current encroachment of approximately 33.92% (being an area of overlap of approximately 412.8712 hectares);
- (f) L 47/697 with a current encroachment of approximately 0.54% (being an area of overlap of approximately 6.5766 hectares);
- (g) L 47/814 with a current encroachment of approximately 38.72% (being an area of overlap of approximately 471.205 hectares);
- (h) L 47/914 with a current encroachment of approximately 0.69% (being an area of overlap of approximately 8.3856 hectares);
- (i) L 47/919 with a current encroachment of approximately 38.72% (being an area of overlap of approximately 471.2051 hectares);
- (j) E 47/1334-I with a current encroachment of approximately 13.46% (being an area of overlap of approximately 163.8042 hectares); and
- (k) E 47/1398-I with a current encroachment of approximately 1.71% (being an area of overlap of approximately 20.8616 hectares).

95A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/367:

- (a) on 14 May 2010, the First Respondent gave notice under section 24MD(6B)(c) of the NTA of its intention to grant L 47/367 to FMG Pilbara Pty Ltd. The notice indicated that the notification period for the purpose of section 24MD(6B)(d) of the NTA expired on 19 July 2010;
- (b) no objection was made by the Yindjibarndi #1 claimant with respect to the grant of L 47/367 pursuant to section 24MD(6B)(d) of the NTA on or before 19 July 2010; and
- (c) on 23 July 2010, the First Respondent received an objection to the grant of L 47/367 made by the Yindjibarndi #1 claimant pursuant to section 24MD(6B)(d) of the NTA. The objection was received after the notification period for L 47/367 expired and was not considered.

C1.2.7 L 47/396

96. L 47/396 was:
- (a) a miscellaneous licence granted pursuant to Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 23 May 2012;
 - (b) surrendered on 7 January 2013;
 - (c) was granted for the purposes of road, pipeline, power line, taking water, communication facility, water management facility, bore field and bore; and
 - (d) was granted over an area of approximately 216 hectares.
97. L 47/396 was surrendered prior to the making of the Yindjibarndi Determination.
98. L 47/396 was located:
- (a) wholly within the Application Area;
 - (b) wholly within the Exclusive Area; and
 - (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
99. The following Claimed Compensable Act has also been granted over at least part of the same area as L 47/396:
- (a) M 47/1475-I with a current encroachment of approximately 100%.

99A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/396:

- (a) on 18 November 2010, the First Respondent gave notice under section 24MD(6B)(c) of the NTA of its intention to grant L 47/396 to FMG Pilbara Pty Ltd. The notice indicated that the notification period for the purpose of section 24MD(6B)(d) of the NTA expired on 25 January 2011;
- (b) on 24 January 2011, the First Respondent received an objection made by the Yindjibarndi #1 claimant with respect to the grant of L 47/396 pursuant to section 24MD(6B)(d) of the NTA;
- (c) on 12 March 2012, the First Respondent wrote to the Yindjibarndi #1 claimant indicating that FMG Pilbara Pty Ltd had advised the First Respondent that it considered it had consulted with the Yindjibarndi #1 claimant as required by 24MD(6B)(e) of the NTA and was requesting that L 47/396 be granted. The letter asked that the Yindjibarndi #1 claimant

- indicate, within 30 days, whether it wanted the objection to the grant of L 47/396 referred to the Independent Person pursuant to section 24MD(6B)(f) of the NTA; and
- (d) the Yindjibarndi #1 claimant did not respond to the First Respondent's letter of 12 March 2012 and L 47/396 proceeded to grant.

C1.2.8 L 47/472

100. L 47/472:

- (a) is a miscellaneous licence granted pursuant to Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 18 July 2014, with a current expiry of 17 July 2035;
- (b) was granted for the purposes of a road, a bore field, a power line, a pipeline, taking water, a communications facility, a water management facility and a minesite accommodation facility; and
- (c) was granted over an area of approximately 965 hectares.

101. L 47/472 is included as an 'other interest' at Schedule 5, item 4(a)(ii) of the Yindjibarndi Determination.

102. L 47/472 is located:

- (a) wholly within the Application Area;
- (b) wholly within the Non-Exclusive Area; and
- (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

103. The following Claimed Compensable Acts have also been granted over at least part of the same area as L 47/472:

- (a) M 47/1513-I with a current encroachment of approximately 9.26% (being an area of overlap of approximately 89.1633 hectares);
- (b) M 47/1570 with a current encroachment of approximately 31.09% (being an area of overlap of approximately 299.2099 hectares);
- (c) L 1SA with a current encroachment of approximately 33.88% (being an area of overlap of approximately 326.0361 hectares);
- (d) L 47/361 with a current encroachment of approximately 51.23% (being an area of overlap of approximately 493.035 hectares);

- (e) L 47/367 with a current encroachment of approximately 42.9% (being an area of overlap of approximately 412.8712 hectares);
- (f) L 47/697 with a current encroachment of approximately 2.78% (being an area of overlap of approximately 26.7694 hectares);
- (g) L 47/814 with a current encroachment of approximately 11.75% (being an area of overlap of approximately 113.0747 hectares);
- (h) L 47/914 with a current encroachment of approximately 3.85% (being an area of overlap of approximately 37.0295 hectares);
- (i) L 47/919 with a current encroachment of approximately 11.75% (being an area of overlap of approximately 113.0747 hectares);
- (j) E 47/1334-I with a current encroachment of approximately 14.99% (being an area of overlap of approximately 144.2911 hectares); and
- (k) E 47/1398-I with a current encroachment of approximately 53.92% (being an area of overlap of approximately 518.9484 hectares).

103A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/472:

- (a) on 9 May 2014, the First Respondent gave notice of its intention to grant L 47/472 to FMG Pilbara Pty Ltd pursuant to section 24MD(6B)(c) of the NTA with respect to the purposes of “borefield, pipeline, powerline, road, water management facility.” The notice indicated that the notification period for L 47/472 expired on 16 July 2014;
- (b) on 9 May 2014, the First Respondent also gave notice of its intention to grant L 47/472 to FMG Pilbara Pty Ltd pursuant to section 24HA(7) of the NTA with respect to the purposes of “taking water” and invited comments by 20 June 2014; and
- (c) no objection was made by the Yindjibarndi #1 claimant with respect to the grant of L 47/472 pursuant to section 24MD(6B)(d) of the NTA.

C1.2.9 L 47/697

104. L 47/697:

- (a) is a miscellaneous licence granted pursuant Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 2 December 2013, with a current expiry of 1 December 2034;
- (b) was granted for the purposes of a bore, a bore field, a communications facility, a pipeline, a pump station, a road, a tunnel, a workshop and storage facility and taking water; and

- (c) was granted over an area of approximately 96.01 hectares.
105. L 47/697 is included as an 'other interest' at Schedule 5, item 4(a)(ii) of the Yindjibarndi Determination.
106. L 47/697 is located:
- (a) partly within the Application Area (with a current encroachment of approximately 98.9%, being an area of approximately 94.9478 hectares);
 - (b) to the extent that it is within the Application Area, wholly within the Non-Exclusive Area; and
 - (c) to the extent that it is within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
107. The following Claimed Compensable Acts have also been granted over at least part of the same area as L 47/697:
- (a) M 47/1431-I with a current encroachment of approximately 11.22% (being an area of overlap of approximately 10.7695 hectares);
 - (b) M 47/1570 with a current encroachment of approximately 5.39% (being an area of overlap of approximately 5.1772 hectares);
 - (c) L 1SA with a current encroachment of approximately 94.19% (being an area of overlap of approximately 90.4249 hectares);
 - (d) L 47/361 with a current encroachment of approximately 100%;
 - (e) L 47/367 with a current encroachment of approximately 6.85% (being an area of overlap of approximately 6.5766 hectares);
 - (f) L 47/472 with a current encroachment of approximately 27.88% (being an area of overlap of approximately 26.7694 hectares);
 - (g) L 47/814 with a current encroachment of approximately 1.96% (being an area of overlap of approximately 1.8834 hectares);
 - (h) L 47/901 with a current encroachment of approximately 0.19% (being an area of overlap of approximately 0.1782 hectares);
 - (i) L 47/914 with a current encroachment of approximately 31.72% (being an area of overlap of approximately 30.4573 hectares);

- (j) L 47/919 with a current encroachment of approximately 1.96% (being an area of overlap of approximately 1.8834 hectares);
- (k) E 47/1398-I with a current encroachment of approximately 81.11% (being an area of overlap of approximately 77.8736 hectares); and
- (l) E 47/1399-I with a current encroachment of approximately 2.28% (being an area of overlap of approximately 2.1866 hectares).

107A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/697:

- (a) on 24 May 2013, the First Respondent gave notice of its intention to grant L 47/697 to Pilbara Gas Pipeline Pty Ltd pursuant to section 24MD(6B)(c) of the NTA with respect to the purposes of “a bore, a bore field, a communications facility, a pipeline, a pump station, a road, a tunnel, a workshop and storage facility.” The notice indicated that the notification period for L 47/697 expired on 31 July 2013;
- (b) on 24 May 2013, the First Respondent also gave notice of its intention to grant L 47/697 to Pilbara Gas Pipeline Pty Ltd pursuant to section 24HA(7) of the NTA with respect to the purposes of “taking water” and invited comments by 5 July 2013;
- (c) on 31 July 2013, the First Respondent received an objection made by the Yindjibarndi #1 claimant with respect to the grant of L 47/697 pursuant to section 24MD(6B)(d) of the NTA;
- (d) on 17 October 2013, the First Respondent wrote to the Yindjibarndi #1 claimant indicating that Pilbara Gas Pipeline Pty Ltd had advised the First Respondent that it considered it had consulted with the Yindjibarndi #1 claimant as required by 24MD(6B)(e) of the NTA and was requesting that L 47/697 be granted. The letter asked that the Yindjibarndi #1 claimant indicate, within 30 days, whether it wanted the objection to the grant of L 47/697 referred to the Independent Person pursuant to section 24MD(6B)(f) of the NTA; and
- (e) the Yindjibarndi #1 claimant did not respond to the First Respondent's letter of 17 October 2013 and L 47/697 proceeded to grant.

C1.2.10 L 47/801

108. L 47/801:

- (a) is a miscellaneous licence granted pursuant to Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 24 May 2019, with a current expiry of 23 May 2040;

- (b) was granted for the purposes of a bore, a bore field, a communications facility, a pipeline, a power line, a pump station, a road, a workshop and storage facility, taking water and a water management facility; and
 - (c) was granted over an area of approximately 652 hectares.
109. L 47/801 was granted after the making of the Yindjibarndi Determination.
110. L 47/801 is located:
- (a) partly within the Application Area (with a current encroachment of approximately 87.54%, being an area of approximately 570.4104 hectares);
 - (b) to the extent that it is within the Application Area, partly within the Non-Exclusive Area (with a current encroachment of approximately 96.61%) and partly over the Exclusive Area (with a current encroachment of approximately 1.84%); and
 - (c) to the extent that it is within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
111. The following Claimed Compensable Acts have also been granted over at least part of the same area as L 47/801:
- (a) M 47/1409-I with a current encroachment of approximately 29.58% (being an area of overlap of approximately 192.742 hectares);
 - (b) L 1SA with a current encroachment of approximately 98.4% (being an area of overlap of approximately 641.2256 hectares);
 - (c) L 47/361 with a current encroachment of approximately 0.02% (being an area of overlap of approximately 0.1371 hectares);
 - (d) E 47/1334-I with a current encroachment of approximately 43.21% (being an area of overlap of approximately 281.5577 hectares);
 - (e) E 47/1398-I with a current encroachment of approximately 0.03% (being an area of overlap of approximately 0.2104 hectares);
 - (f) E 47/3464-I with a current encroachment of approximately 26.49% (being an area of overlap of approximately 172.6382 hectares); and
 - (g) P 47/1945 with a current encroachment of approximately 0.69% (being an area of overlap of approximately 4.4889 hectares).

111A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/801:

- (a) on 16 June 2017, the First Respondent gave notice under section 24MD(6B)(c) of the NTA of its intention to grant L 47/801 to The Pilbara Infrastructure Pty Ltd. The notice indicated that the notification period for the purpose of section 24MD(6B)(d) of the NTA expired on 23 August 2017; and
- (b) no objection was made by the Yindjibarndi #1 claimant with respect to the grant of L 47/801 pursuant to section 24MD(6B)(d) of the NTA.

C1.2.11 L 47/813

112. L 47/813:

- (a) is a miscellaneous licence granted pursuant to Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 6 April 2018, with a current expiry of 5 April 2039;
- (b) was granted for the purposes of a bore, a bore field, a communications facility, a pipeline, a power line, a pump station, a road, a water management facility, a workshop and storage facility and taking water; and
- (c) was granted over an area of approximately 578 hectares.

113. L 47/813 was granted after the making of the Yindjibarndi Determination.

114. L 47/813 is located:

- (a) partly within the Application Area (with a current encroachment of approximately 74.23%, being an area of approximately 428.7899 hectares);
- (b) to the extent that it is within the Application Area, partly within the Non-Exclusive Area (with a current encroachment of approximately 33.88%) and partly over the Exclusive Area (with a current encroachment of approximately 66.12%); and
- (c) to the extent that it is within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

115. The following Claimed Compensable Acts have also been granted over at least part of the same area as L 47/813:

- (a) M 47/1409-I with a current encroachment of approximately 100%;
- (b) L 1SA with a current encroachment of approximately 89.07% (being an area of overlap of approximately 514.4938hectares);

- (c) L 47/814 with a current encroachment of approximately 22.81% (being an area of overlap of approximately 131.7326 hectares); and
- (d) L 47/919 with a current encroachment of approximately 22.81% (being an area of overlap of approximately 131.7325 hectares).

115A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/813:

- (a) on 12 January 2018, the First Respondent gave notice under section 24MD(6B)(c) of the NTA of its intention to grant L 47/813 to The Pilbara Infrastructure Pty Ltd. The notice indicated that the notification period for the purpose of section 24MD(6B)(d) of the NTA expired on 19 March 2018; and
- (b) no objection was made by the Applicant with respect to the grant of L 47/813 pursuant to section 24MD(6B)(d) of the NTA.

C1.2.12 L 47/814

116. L 47/814:

- (a) is a miscellaneous licence granted pursuant to Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 6 April 2018, with a current expiry of 5 April 2039;
- (b) was granted for the purposes of a bore, a bore field, a communications facility, a pipeline, a power line, a pump station, a road, a water management facility, a workshop and storage facility and taking water; and
- (c) was granted over an area of approximately 932 hectares.

117. L 47/814 was granted after the making of the Yindjibarndi Determination.

118. L 47/814 is located:

- (a) partly within the Application Area (with a current encroachment of approximately 94.07%, being an area of approximately 875.8355 hectares);
- (b) to the extent that it is within the Application Area, partly within the Non-Exclusive Area (with an encroachment of approximately 54.39%) and partly over the Exclusive Area (with an encroachment of approximately 45.61%); and
- (c) to the extent that it is within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

119. The following Claimed Compensable Acts have also been granted over at least part of the same area as L 47/814:

- (a) M 47/1409-I with a current encroachment of approximately 28.75% (being an area of overlap of approximately 267.6983 hectares);
- (b) M 47/1431-I with a current encroachment of approximately 20.62% (being an area of overlap of approximately 192.0093 hectares);
- (c) M 47/1453-I with a current encroachment of approximately 0.01% (being an area of overlap of approximately 0.1308 hectares);
- (d) M 47/1513-I with a current encroachment of approximately 48.04% (being an area of overlap of approximately 447.2346 hectares);
- (e) M 47/1570 with a current encroachment of approximately 50.61% (being an area of overlap of approximately 471.205 hectares);
- (f) L 1SA with a current encroachment of approximately 13.31% (being an area of overlap of approximately 123.8961 hectares);
- (g) L 47/361 with a current encroachment of approximately 19.08% (being an area of overlap of approximately 177.6014 hectares);
- (h) L 47/362 with a current encroachment of approximately 5.26% (being an area of overlap of approximately 49.0128 hectares);
- (i) L 47/363 with a current encroachment of approximately 0.01% (being an area of overlap of approximately 0.1308 hectares);
- (j) L 47/367 with a current encroachment of approximately 50.61% (being an area of overlap of approximately 471.205 hectares);
- (k) L 47/472 with a current encroachment of approximately 12.14% (being an area of overlap of approximately 113.0747 hectares);
- (l) L 47/697 with a current encroachment of approximately 0.2% (being an area of overlap of approximately 1.8834 hectares);
- (m) L 47/813 with a current encroachment of approximately 14.15% (being an area of overlap of approximately 131.7326 hectares);
- (n) L 47/859 with a current encroachment of approximately 0.64% (being an area of overlap of approximately 5.9723 hectares);

- (o) L 47/901 with a current encroachment of approximately 1.13% (being an area of overlap of approximately 10.5629 hectares);
- (p) L 47/914 with a current encroachment of approximately 1.13% (being an area of overlap of approximately 10.5434 hectares); and
- (q) L 47/919 with a current encroachment of approximately 100%.

119A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/814:

- (a) on 12 January 2018, the First Respondent gave notice under section 24MD(6B)(c) of the NTA of its intention to grant L 47/814 to The Pilbara Infrastructure Pty Ltd. The notice indicated that the notification period for the purpose of section 24MD(6B)(d) of the NTA expired on 19 March 2018; and
- (b) no objection was made by the Applicant with respect to the grant of L 47/814 pursuant to section 24MD(6B)(d) of the NTA.

C1.2.13 L 47/859

120. L 47/859:

- (a) is a miscellaneous licence granted pursuant to Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 6 February 2019, with a current expiry of 5 February 2040;
- (b) was granted for the purposes of a power generation and transmission facility; and
- (c) was granted over an area of approximately 6 hectares.

121. L 47/859 was granted after the making of the Yindjibarndi Determination.

122. L 47/859 is located:

- (a) wholly within the Application Area;
- (b) wholly within the Non-Exclusive Area; and
- (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

123. The following Claimed Compensable Acts have also been granted over at least part of the same area as L 47/859:

- (a) M 47/1431-I with a current encroachment of approximately 100%;

- (b) L 47/361 with a current encroachment of approximately 100%;
- (c) L 47/814 with a current encroachment of approximately 100%;
- (d) L 47/901 with a current encroachment of approximately 11.29% (being an area of overlap of approximately 0.6741 hectares); and
- (e) L 47/919 with a current encroachment of approximately 100%.

123A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/859:

- (a) on 16 November 2018, the First Respondent gave notice under section 24MD(6B)(c) of the NTA of its intention to grant L 47/859 to Pilbara Energy Company Pty Ltd. The notice indicated that the notification period for the purpose of section 24MD(6B)(d) of the NTA expired on 23 January 2019; and
- (b) no objection was made by the Applicant with respect to the grant of L 47/859 pursuant to section 24MD(6B)(d) of the NTA.

C1.2.14 L 47/901

124. L 47/901:

- (a) is a miscellaneous licence granted pursuant to Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 26 June 2019, with a current expiry of 25 June 2040;
- (b) was granted for the purposes of a power generation and transmission facility; and
- (c) was granted over an area of approximately 11 hectares.

125. L 47/901 was granted after the making of the Yindjibarndi Determination.

126. L 47/901 is located:

- (a) wholly within the Application Area;
- (b) wholly within the Non-Exclusive Area; and
- (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

127. The following Claimed Compensable Acts have also been granted over at least part of the same area as L 47/901:

- (a) M 47/1431-I with a current encroachment of approximately 100%;
- (b) L 47/361 with a current encroachment of approximately 100%;

- (c) L 47/697 with a current encroachment of approximately 1.69% (being an area of overlap of approximately 0.1782 hectares);
- (d) L 47/814 with a current encroachment of approximately 100%;
- (e) L 47/859 with a current encroachment of approximately 6.38% (being an area of overlap of approximately 0.6741 hectares); and
- (f) L 47/919 with a current encroachment of approximately 100%.

127A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/901:

- (a) on 29 March 2019, the First Respondent gave notice under section 24MD(6B)(c) of the NTA of its intention to grant L 47/901 to Pilbara Energy (Generation) Pty Ltd. The notice indicated that the notification period for the purpose of section 24MD(6B)(d) of the NTA expired on 5 June 2019; and
- (b) no objection was made by the Applicant with respect to the grant of L 47/901 pursuant to section 24MD(6B)(d) of the NTA.

C1.2.15 L 47/914

128. L 47/914:

- (a) is a miscellaneous licence granted pursuant to Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 15 November 2019, with a current expiry of 14 November 2040;
- (b) was granted for the purposes of a bore, a bore field, a communications facility, a pipeline, a power line, a road, a search for groundwater and taking water; and
- (c) was granted over an area of approximately 294.92734 hectares.

129. L 47/914 was granted after the making of the Yindjibarndi Determination.

130. L 47/914 is located:

- (a) partly within the Application Area (with a current encroachment of approximately 71.01%, being an area of approximately 209.416 hectares);
- (b) to the extent that it is within the Application Area, partly within the Non-Exclusive Area (with a current encroachment of approximately 94.29%) and partly over the Exclusive Area (with a current encroachment of approximately 5.08%); and

- (c) to the extent that it is within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

131. The following Claimed Compensable Acts have also been granted over at least part of the same area as L 47/914:

- (a) M 47/1431-I with a current encroachment of approximately 5.34% (being an area of overlap of approximately 15.7493 hectares);
- (b) M 47/1570 with a current encroachment of approximately 2.32% (being an area of overlap of approximately 6.8449 hectares);
- (c) L 1SA with a current encroachment of approximately 90.95% (being an area of overlap of approximately 268.2452 hectares);
- (d) L 47/361 with a current encroachment of approximately 75.12% (being an area of overlap of approximately 221.5558 hectares);
- (e) L 47/367 with a current encroachment of approximately 2.84% (being an area of overlap of approximately 8.3856 hectares);
- (f) L 47/472 with a current encroachment of approximately 12.56% (being an area of overlap of approximately 37.0295 hectares);
- (g) L 47/697 with a current encroachment of approximately 10.33% (being an area of overlap of approximately 30.4573 hectares);
- (h) L 47/814 with a current encroachment of approximately 3.57% (being an area of overlap of approximately 10.5434 hectares);
- (i) L 47/919 with a current encroachment of approximately 3.57% (being an area of overlap of approximately 10.5434 hectares);
- (j) E 47/1398-I with a current encroachment of approximately 64.36% (being an area of overlap of approximately 189.81 hectares); and
- (k) E 47/1399-I with a current encroachment of approximately 15.68% (being an area of overlap of approximately 46.2564 hectares).

131A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/914:

- (a) on 30 August 2019, the First Respondent gave notice of its intention to grant L 47/914 to Pilbara Energy Pty Ltd pursuant to section 24MD(6B)(c) of the NTA with respect to the purposes of "a bore, a bore field, a communications facility, a pipeline, a power line, a

road.” The notice indicated that the notification period for L 47/914 expired on 6 November 2019;

(b) on 30 August 2019, the First Respondent also gave notice of its intention to grant L 47/914 to Pilbara Energy Pty Ltd pursuant to section 24HA(7) of the NTA with respect to the purposes of “taking water and search for ground water” and invited comments by 11 October 2019; and

(c) no objection was made by the Applicant with respect to the grant of L 47/914 pursuant to section 24MD(6B)(d) of the NTA.

C1.2.16 L 47/919

132. L 47/919:

- (a) is a miscellaneous licence granted pursuant to Part IV, Division 5 of the *Mining Act* for a term of 21 years commencing on 10 January 2020, with a current expiry of 9 January 2041;
- (b) was granted for the purposes of a bore, a bore field, a communications facility, a pipeline, a power line, a pump station, a road, a search for groundwater, a water management facility, a workshop and storage facility and taking water; and
- (c) was granted over an area of approximately 931.04347 hectares.

133. L 47/910 was granted after the making of the Yindjibarndi Determination.

134. L 47/919 is located:

- (a) partly within the Application Area (with a current encroachment of approximately 94.07%, being an area of approximately 875.8355 hectares);
- (b) to the extent that it is within the Application Area, partly within the Non-Exclusive Area (with a current encroachment of approximately 54.39%) and partly over the Exclusive Area (with a current encroachment of approximately 45.61%); and
- (c) to the extent that it is within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

135. The following Claimed Compensable Acts have also been granted over at least part of the same area as L 47/919:

- (a) M 47/1409-I with a current encroachment of approximately 28.75% (being an area of overlap of approximately 267.6982 hectares);

- (b) M 47/1431-I with a current encroachment of approximately 20.62% (being an area of overlap of approximately 192.0094 hectares);
- (c) M 47/1453-I with a current encroachment of approximately 0.01% (being an area of overlap of approximately 0.1308 hectares);
- (d) M 47/1513-I with a current encroachment of approximately 48.04% (being an area of overlap of approximately 447.2347 hectares);
- (e) M 47/1570 with a current encroachment of approximately 50.61% (being an area of overlap of approximately 471.2051 hectares);
- (f) L 1SA with a current encroachment of approximately 13.31% (being an area of overlap of approximately 123.8961 hectares);
- (g) L 47/361 with a current encroachment of approximately 19.08% (being an area of overlap of approximately 177.6014 hectares);
- (h) L 47/362 with a current encroachment of approximately 5.26% (being an area of overlap of approximately 49.0129 hectares);
- (i) L 47/363 with a current encroachment of approximately 0.01% (being an area of overlap of approximately 0.1308 hectares);
- (j) L 47/367 with a current encroachment of approximately 50.61% (being an area of overlap of approximately 471.2051 hectares);
- (k) L 47/472 with a current encroachment of approximately 12.14% (being an area of overlap of approximately 113.0747 hectares);
- (l) L 47/697 with a current encroachment of approximately 0.2% (being an area of overlap of approximately 1.8834 hectares);
- (m) L 47/813 with a current encroachment of approximately 14.15% (being an area of overlap of approximately 131.7325 hectares);
- (n) L 47/814 with a current encroachment of approximately 100%;
- (o) L 47/859 with a current encroachment of approximately 0.64% (being an area of overlap of approximately 5.9723 hectares);
- (p) L 47/901 with a current encroachment of approximately 1.13% (being an area of overlap of approximately 10.5629 hectares); and
- (q) L 47/914 with a current encroachment of approximately 1.13% (being an area of overlap of approximately 10.5434 hectares).

135A. In respect of the application of Part 2, Division 3 of the NTA to the grant of L 47/919:

- (a) on 25 October 2019, the First Respondent gave notice of its intention to grant L 47/919 to FMG Pilbara Pty Ltd pursuant to section 24MD(6B)(c) of the NTA with respect to the purposes of “a bore, a bore field, a communications facility, a pipeline, a power line, a pump station, a road, a water management facility, a workshop and storage facility.” The notice indicated that the notification period for L 47/919 expired on 1 January 2020;
- (b) on 25 October 2019, the First Respondent also gave notice of its intention to grant L 47/919 to FMG Pilbara Pty Ltd pursuant to section 24HA(7) of the NTA with respect to the purposes of “taking water, search for ground water” and invited comments by 20 December 2019; and
- (c) no objection was made by the Applicant with respect to the grant of L 47/919 pursuant to section 24MD(6B)(d) of the NTA.

C1.3 Exploration Licences

C1.3.1 E 47/1319-I

136. E 47/1319-I:

- (a) is an exploration licence granted pursuant to Part IV, Division 2 of the *Mining Act* for a term of 5 years commencing on 16 March 2012;
- (b) was extended for a further term:
 - (i) on 8 June 2017 for 2 years, ending on 15 March 2019;
 - (ii) on 15 May 2019 for 2 years, ending on 15 March 2021;
 - (iii) on 14 May 2021 for 1 year, ending on 15 March 2022; and
 - (iv) on 3 May 2022 for 1 year, ending on 15 March 2023; and
- (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to explore for iron on the land the subject of E 47/1319-I.

137. The applicant for E 47/1319-I was Fortescue Metals Group Ltd. On 19 July 2012 the application for E 47/1319-I was transferred to FMG Pilbara Pty Ltd.

138. E 47/1319-I was granted over 21 blocks³ but did not include the areas affected by E 47/475 and E 47/585.

³ As described in section 56C of the *Mining Act*. A block is approximately 3 square kilometres.

139. E 47/1319-I is included as an 'other interest' at Schedule 5, item 4(a)(iii) of the Yindjibarndi Determination.

140. E 47/1319-I is located:

- (a) wholly within the Application Area;
- (b) wholly within the Exclusive Area; and
- (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

140A. In respect of the application of Part 2, Division 3 of the NTA to the grant of E 47/1319-I:

- (a) on 23 April 2008, the First Respondent gave notice under section 29 of the NTA of its intention to grant E 47/1319-I to Fortescue Metals Group Ltd;
- (b) on 9 January 2010, Fortescue Metals Group Ltd sought mediation assistance from the NNTT pursuant to section 31(3) of the NTA in respect of the proposed grant of E 47/1319-I (NNTT File No. WM10/13);
- (c) between 25 May 2010 and 5 April 2011, seven mediation conferences were convened by the NNTT between the First Respondent, Fortescue Metals Group Ltd and the Yindjibarndi #1 claimant. On 15 April 2011 the mediation was terminated by the NNTT for non-participation of the Yindjibarndi #1 claimant;
- (d) on 27 June 2011, Fortescue Metals Group Ltd made an application to the NNTT pursuant to section 35 of the NTA for a future act determination under section 38 of the NTA (Application No. WF11/10). The application was made on the basis that the negotiation parties (as defined in section 30A of the NTA) had not been able to reach agreement within six months of the First Respondent giving notice of its intention to grant E 47/1319-I; and
- (e) on 7 February 2012, the NNTT determined that:
 - (i) there was no material provided which could justify a finding of a lack of good faith against Fortescue Metals Group Ltd; and
 - (ii) the grant of E 47/1319-I may be done, subject to the imposition of those extra conditions contained in paragraphs [42] and [63] of the NNTT's decision
see *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2012] NNTTA 11.

C1.3.2 E 47/1333-I

141. E 47/1333-I:

- (a) is an exploration licence granted pursuant to Part IV, Division 2 of the *Mining Act* for a term of 5 years commencing on 28 July 2007;
- (b) was extended for a further term:
 - (i) on 21 August 2012 for 2 years, ending on 27 July 2014;
 - (ii) on 17 July 2014 for 2 years, ending on 27 July 2016;
 - (iii) on 3 October 2016 for 1 year, ending on 27 July 2017;
 - (iv) on 12 October 2017 for 1 year, ending on 27 July 2018;
 - (v) on 28 September 2018 for 1 year, ending on 27 July 2019;
 - (vi) on 2 August 2019 for 1 year, ending on 27 July 2020;
 - (vii) on 27 July 2020 for 1 years, ending on 27 July 2021;
 - (viii) on 27 August 2021 for 1 year, ending on 27 July 2022; and
 - (ix) on 24 August 2022 for 1 year, ending on 27 July 2023; and
- (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to explore for iron on the land the subject of E 47/1333-I.

142. The applicant for E 47/1333-I was Fortescue Metals Group Ltd. On 19 November 2007 E 47/1333-I was transferred to FMG Pilbara Pty Ltd.

143. E 47/1333-I was:

- (a) granted over 58 blocks but did not include the areas affected by mineral lease 4SA, special lease 3116/4011, general lease I195323 (to a depth of 30m), E 47/475, E 47/536, E 47/731 and E 47/1011;
- (b) reduced to 54 blocks on 26 November 2010 following the commencement of the term of M 47/1411-I (applied for by the holder of E 47/1333-I pursuant to section 67 of the *Mining Act*);
- (c) reduced to 53 blocks on 3 February 2011 following the commencement of the term of M 47/1410-I (applied for by the holder of E 47/1333-I pursuant to section 67 of the *Mining Act*). M 47/1410-I is not located in the Application Area;

- (d) reduced to 50 blocks on 29 November 2021 following the commencement of the term of M 47/1573 (applied for by the holder of E 47/1333-I pursuant to section 67 of the *Mining Act*). M 47/1573 is not located in the Application Area; and
 - (e) reduced on 10 December 2021 following the commencement of the term of M 47/1577 (applied for by the holder of E 47/1333-I pursuant to section 67 of the *Mining Act*). M 47/1577 is not located in the Application Area.
144. E 47/1333-I is included as an 'other interest' at Schedule 5, item 4(a)(iii) of the Yindjibarndi Determination.
145. E 47/1333-I is located:
- (a) partly within the Application Area (with a current encroachment of approximately 9.83%, being an area of approximately 1134.7712 hectares);
 - (b) to the extent that it is within the Application Area, wholly within the Exclusive Area; and
 - (c) to the extent that it is within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
146. The following Claimed Compensable Act has also been granted over at least part of the same area as E 47/1333-I:
- (a) L 1SA with a current encroachment of approximately 0.63% (being an area of overlap of approximately 73.1041 hectares).

146A. In respect of the application of Part 2, Division 3 of the NTA to the grant of E 47/1333-I:

- (a) on 20 December 2006, the First Respondent gave notice under section 29 of the NTA of its intention to grant E 47/1333-I to Fortescue Metals Group Ltd. That notice included a statement pursuant to section 29(7) of the NTA that the First Respondent considered that the grant of E 47/1333-I was an act attracting the expedited procedure (**expedited procedure statement**). The notice indicated that the four month period given by section 32(3) of the NTA in which to lodge an objection against the inclusion of the expedited procedure statement ended on 20 April 2007;
- (b) on 20 April 2007, the Yindjibarndi #1 claimant made an application to the NNTT pursuant to section 32(3) of the NTA objecting to the inclusion of the expedited procedure statement in respect of E 47/1333-I (Application No. WO07/288); and

(c) on 3 July 2007, expedited procedure objection WO07/288 was withdrawn by the Yindjibarndi #1 claimant.

C1.3.3 E 47/1334-I

147. E 47/1334-I:

- (a) is an exploration licence granted pursuant to Part IV, Division 2 of the *Mining Act* for a term of 5 years commencing on 2 June 2007;
- (b) was extended for a further term:
 - (i) on 28 May 2012 for 2 years, ending on 1 June 2014;
 - (ii) on 3 June 2014 for 2 years, ending on 1 June 2016;
 - (iii) on 9 September 2016 for 1 year, ending on 1 June 2017;
 - (iv) on 25 August 2017 for 1 year, ending on 1 June 2018;
 - (v) on 30 July 2018 for 1 year, ending on 1 June 2019;
 - (vi) on 30 July 2019 for 1 year, ending on 1 June 2020;
 - (vii) on 2 June 2020 for 1 year, ending on 1 June 2021;
 - (viii) on 1 June 2021 for 1 year, ending on 1 June 2022; and
 - (ix) on 31 May 2022 for 1 year, ending on 1 June 2023; and
- (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to explore for iron on the land the subject of E 47/1334-I.

148. The applicant for E 47/1334-I was Fortescue Metals Group Ltd. On 19 November 2007 E 47/1334-I was transferred to FMG Pilbara Pty Ltd.

149. E 47/1334-I was:

- (a) granted over 61 blocks but did not include the areas affected by mineral lease 4SA, E 47/475, E 47/731 and E 47/1011;
- (b) reduced to 53 blocks on 26 November 2010 following the commencement of the term of M 47/1409-I (applied for by the holder of E 47/1334-I pursuant to section 67 of the *Mining Act*);
- (c) reduced to 51 blocks on 8 July 2011 following the commencement of the term of M 47/1431-I (applied for by the holder of E 47/1334-I pursuant to section 67 of the *Mining Act*);

- (d) reduced to 40 blocks on 22 November 2012;
 - (e) reduced to 34 blocks on 17 January 2013 following the commencement of the term of M 47/1453-I (applied for by the holder of E 47/1334-I pursuant to section 67 of the *Mining Act*);
 - (f) reduced to 32 blocks on 29 August 2014 following the commencement of the term of M 47/1475-I (applied for by the holder of E 47/1334-I pursuant to section 67 of the *Mining Act*); and
 - (g) reduced to 27 blocks on 3 December 2018 following the commencement of the term of M 47/1513-I (applied for by the holder of E 47/1334-I pursuant to section 67 of the *Mining Act*).
150. E 47/1334-I is included as an 'other interest' at Schedule 5, item 4(a)(iii) of the Yindjibarndi Determination.
151. E 47/1334-I is located:
- (a) partly within the Application Area (with a current encroachment of approximately 37.42%, being an area of approximately 1632.3127 hectares);
 - (b) to the extent that it is within the Application Area, partly within the Non-Exclusive Area (with a current encroachment of approximately 37.51%) and partly over the Exclusive Area (with a current encroachment of approximately 48.78%); and
 - (c) to the extent that it is within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
152. The following Claimed Compensable Acts have also been granted over at least part of the same area as E 47/1334-I:
- (a) L 1SA with a current encroachment of approximately 8.19% (being an area of overlap of approximately 357.1405 hectares);
 - (b) L 47/361 with a current encroachment of approximately 0.3% (being an area of overlap of approximately 13.2601 hectares);
 - (c) L 47/362 with a current encroachment of approximately 0.02% (being an area of overlap of approximately 1.0113 hectares);
 - (d) L 47/367 with a current encroachment of approximately 3.76% (being an area of overlap of approximately 163.8042 hectares);

- (e) L 47/472 with a current encroachment of approximately 3.31% (being an area of overlap of approximately 144.2911 hectares);
- (f) L 47/801 with a current encroachment of approximately 6.46% (being an area of overlap of approximately 281.5577 hectares); and
- (g) P 47/1947 with a current encroachment of approximately 0.44% (being an area of overlap of approximately 19.3622 hectares).

152A. In respect of the application of Part 2, Division 3 of the NTA to the grant of E 47/1334-I:

- (a) on or about 8 November 2006, the First Respondent gave notice under section 29 of the NTA of its intention to grant E 47/1334-I to Fortescue Metals Group Ltd. That notice included a statement pursuant to section 29(7) of the NTA that the First Respondent considered that the grant of E 47/1334-I was an act attracting the expedited procedure. The notice indicated that the four month period given by section 32(3) of the NTA in which to lodge an objection against the inclusion of the expedited procedure statement ended on 8 March 2007;
- (b) on 8 March 2007, the Yindjibarndi #1 claimant made an application to the NNTT pursuant to section 32(3) of the NTA objecting to the inclusion of the expedited procedure statement in respect of E 47/1334-I (Application No. WO07/166); and
- (c) on 4 May 2007, expedited procedure objection WO07/166 was withdrawn by the Yindjibarndi #1 claimant.

C1.3.4 E 47/1398-I

153. E 47/1398-I:

- (a) is an exploration licence granted pursuant to Part IV, Division 2 of the *Mining Act* for a term of 5 years commencing on 8 July 2011;
- (b) was extended for a further term:
 - (i) on 14 September 2016 for 2 years, ending on 7 July 2018;
 - (ii) on 14 September 2018 for 2 years, ending on 7 July 2020;
 - (iii) on 31 August 2020 for 1 year, ending on 7 July 2021;
 - (iv) on 10 September 2021 for 1 year, ending on 7 July 2022; and
 - (v) on 7 September 2022 for 1 year, ending on 7 July 2023; and

- (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to explore for iron on the land the subject of E 47/1398-I.
154. E 47/1398-I was granted over 69 blocks but did not include the areas affected by M 47/1431.
155. E 47/1398-I is included as an 'other interest' at Schedule 5, item 4(a)(iii) of the Yindjibarndi Determination.
156. E 47/1398-I is located:
- (a) partly within the Application Area (with a current encroachment of approximately 99.5%, being an area of approximately 21390.0631 hectares);
 - (b) to the extent that it is within the Application Area, partly within the Non-Exclusive Area (with a current encroachment of approximately 91.01%) and partly over the Exclusive Area (with a current encroachment of approximately 8.92%); and
 - (c) to the extent that it is within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
157. The following Claimed Compensable Acts have also been granted over at least part of the same area as E 47/1398-I:
- (a) L 1SA with a current encroachment of approximately 5.33% (being an area of overlap of approximately 1146.7851 hectares);
 - (b) L 47/361 with a current encroachment of approximately 13.68% (being an area of overlap of approximately 2940.9851 hectares);
 - (c) L 47/367 with a current encroachment of approximately 0.1% (being an area of overlap of approximately 20.8616 hectares);
 - (d) L 47/472 with a current encroachment of approximately 2.41% (being an area of overlap of approximately 518.9484 hectares); and
 - (e) L 47/914 with a current encroachment of approximately 0.88% (being an area of overlap of approximately 189.81 hectares).

157A. In respect of the application of Part 2, Division 3 of the NTA to the grant of E 47/1398-I:

- (a) on 12 January 2005, the First Respondent gave notice under section 29 of the NTA of its intention to grant E 47/1398-I to FMG Pilbara Pty Ltd;

- (b) on 25 August 2010, FMG Pilbara Pty Ltd made an application to the NNTT pursuant to section 35 of the NTA for a future act determination under section 38 of the NTA (Application No. WF10/19). The application was made on the basis that the negotiation parties (as defined in section 30A of the NTA) had not been able to reach agreement within six months of the First Respondent giving notice of its intention to grant E 47/1398-I;
- (c) on or around 10 September 2010, the Yindjibarndi #1 claimant advised the NNTT that it intended to allege that FMG Pilbara Pty Ltd and the First Respondent had not negotiated in good faith in accordance with section 31(1)(b) of the NTA and, accordingly, pursuant to section 36(2) of the NTA the NNTT did not have the power to make the future act determination requested by FMG Pilbara Pty Ltd;
- (d) on 18 November 2010, the Yindjibarndi #1 claimant withdrew its assertion of a failure to negotiate in good faith against FMG Pilbara Pty Ltd and the First Respondent;
- (e) in early January 2011, the Yindjibarndi #1 claimant reasserted the allegation that FMG Pilbara Pty Ltd had not negotiated in good faith in accordance with section 31(1)(b) of the NTA; and
- (f) on 9 July 2011, the NNTT determined that:

 - (i) FMG Pilbara Pty Ltd had negotiated in good faith with the Yindjibarndi #1 claimant; and
 - (ii) the grant of E 47/1398-I may be done, subject to the imposition of those extra conditions contained in paragraphs [43] and [44] of the NNTT's decision
see FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia [2011] NNTTA 107.

C1.3.5 E 47/1399-I

158. E 47/1399-I:

- (a) is an exploration licence granted pursuant to Part IV, Division 2 of the *Mining Act* for a term of 5 years commencing on 8 July 2011;
- (b) was extended for a further term:

 - (i) on 14 September 2016 for 2 years, ending on 7 July 2018;
 - (ii) on 14 September 2018 for 2 years, ending on 7 July 2020;
 - (iii) on 31 August 2020 for 1 year, ending on 7 July 2021;

- (iv) on 9 September 2021 for 1 year, ending on 7 July 2022; and
 - (v) on 7 September 2022 for 1 year, ending on 7 July 2023; and
 - (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to explore for iron on the land the subject of E 47/1399-I.
- 159. E 47/1399-I was:
 - (a) granted over 68 blocks; and
 - (b) reduced to 64 blocks on 15 August 2019 following the commencement of the term of M 47/1481-I (applied for by the holder of E 47/1399-I pursuant to section 67 of the *Mining Act*). M 47/1481-I is not located in the Application Area.
- 160. E 47/1399-I is included as an 'other interest' at Schedule 5, item 4(a)(iii) of the Yindjibarndi Determination.
- 161. E 47/1399-I is located:
 - (a) partly within the Application Area (with a current encroachment of approximately 31.49%, being an area of approximately 6204.1413 hectares);
 - (b) to the extent that it is within the Application Area, partly within the Non-Exclusive Area (with a current encroachment of approximately 94.06%) and partly over the Exclusive Area (with a current encroachment of approximately 5.94%); and
 - (c) to the extent that it is within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
- 162. The following Claimed Compensable Acts have also been granted over at least part of the same area as E 47/1399-I:
 - (a) L 1SA with a current encroachment of approximately 5.28% (being an area of overlap of approximately 1039.8453 hectares);
 - (b) L 47/361 with a current encroachment of approximately 1.1% (being an area of overlap of approximately 216.0947 hectares); and
 - (c) L 47/914 with a current encroachment of approximately 0.23% (being an area of overlap of approximately 46.2564 hectares).

162A. In respect of the application of Part 2, Division 3 of the NTA to the grant of E 47/1399-I:

- (a) on 18 January 2006, the First Respondent gave notice under section 29 of the NTA of its intention to grant E 47/1399-I to FMG Pilbara Pty Ltd;
- (b) on 25 August 2010, FMG Pilbara Pty Ltd made an application to the NNTT pursuant to section 35 of the NTA for a future act determination under section 38 of the NTA (Application No. WF10/19). The application was made on the basis that the negotiation parties (as defined in section 30A of the NTA) had not been able to reach agreement within six months of the First Respondent giving notice of its intention to grant E 47/1399-I;
- (c) on or around 10 September 2010, the Yindjibarndi #1 claimant advised the NNTT that it intended to allege that FMG Pilbara Pty Ltd and the First Respondent had not negotiated in good faith in accordance with section 31(1)(b) of the NTA and, accordingly, pursuant to section 36(2) of the NTA the NNTT did not have the power to make the future act determination requested by FMG Pilbara Pty Ltd;
- (d) on 18 November 2010, the Yindjibarndi #1 claimant withdrew its assertion of a failure to negotiate in good faith against FMG Pilbara Pty Ltd and the First Respondent;
- (e) in early January 2011, the Yindjibarndi #1 claimant reasserted the allegation that FMG Pilbara Pty Ltd had not negotiated in good faith in accordance with section 31(1)(b) of the NTA; and
- (f) on 9 July 2011, the NNTT determined that:
 - (i) FMG Pilbara Pty Ltd had negotiated in good faith with the Yindjibarndi #1 claimant; and
 - (ii) the grant of E 47/1399-I may be done, subject to the imposition of those extra conditions contained in paragraphs [43] and [44] of the NNTT's decision
see *FMG Pilbara Pty Ltd/ Ned Cheedy and Others on behalf of the Yindjibarndi People/ Western Australia* [2011] NNTTA 107.

C1.3.6 E 47/1447-I

163. E 47/1447-I:

- (a) is an exploration licence granted pursuant to Part IV, Division 2 of the *Mining Act* for a term of 5 years commencing on 2 June 2007;
- (b) was extended for a further term:
 - (i) on 28 May 2012 for 2 years, ending on 1 June 2014;

- (ii) on 29 May 2014 for 2 years, ending on 1 June 2016;
 - (iii) on 9 September 2016 for 1 year, ending on 1 June 2017;
 - (iv) on 25 August 2017 for 1 year, ending on 1 June 2018;
 - (v) on 30 July 2018 for 1 year, ending on 1 June 2019;
 - (vi) on 23 July 2019 for 1 year, ending on 1 June 2020;
 - (vii) on 1 July 2020 for 1 year, ending on 1 June 2021;
 - (viii) on 1 July 2021 for 1 year, ending on 1 June 2022; and
 - (ix) on 3 August 2022 for 1 year, ending on 1 June 2023; and
- (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to explore for iron on the land the subject of E 47/1447-I.
164. E 47/1447-I was:
- (a) granted over 32 blocks, but did not include the areas affected by E 47/585;
 - (b) reduced to 29 blocks on 8 July 2011 following the commencement of the term of M 47/1431-I (applied for by the holder of E 47/1447-I pursuant to section 67 of the *Mining Act*); and
 - (c) reduced to 28 blocks on 29 August 2014 following the commencement of the term of M 47/1473-I (applied for by the holder of E 47/1447-I pursuant to section 67 of the *Mining Act*).
165. E 47/1447-I is included as an 'other interest' at Schedule 5, item 4(a)(iii) of the Yindjibarndi Determination.
166. E 47/1447-I is located:
- (a) wholly within the Application Area;
 - (b) partly within the Non-Exclusive Area (with a current encroachment of approximately 31.54%) and partly over the Exclusive Area (with a current encroachment of approximately 68.46%); and
 - (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
167. The following Claimed Compensable Acts have also been granted over at least part of the same area as E 47/1447-I:

- (a) L 47/361 with a current encroachment of approximately 4.12% (being an area of overlap of approximately 313.4386 hectares); and
- (b) L 47/362 with a current encroachment of approximately 1.74% (being an area of overlap of approximately 132.126 hectares).

167A. In respect of the application of Part 2, Division 3 of the NTA to the grant of E 47/1447-I:

- (a) on 27 September 2006, the First Respondent gave notice under section 29 of the NTA of its intention to grant E 47/1447-I to FMG Pilbara Pty Ltd. That notice included a statement pursuant to section 29(7) of the NTA that the First Respondent considered that the grant of E 47/1447-I was an act attracting the expedited procedure. The notice indicated that the four month period given by section 32(3) of the NTA in which to lodge an objection against the inclusion of the expedited procedure statement ended on 27 January 2007;
- (b) on 23 January 2007, the Yindjibarndi #1 claimant made an application to the NNTT pursuant to section 32(3) of the NTA objecting to the inclusion of the expedited procedure statement in respect of E 47/1447-I (Application No. WO07/28); and
- (c) on 4 May 2007 expedited procedure objection WO07/28 was withdrawn by the Yindjibarndi #1 claimant.

C1.3.7 E 47/3205-I

168. E 47/3205-I:

- (a) is an exploration licence granted pursuant to Part IV, Division 2 of the *Mining Act* for a term of 5 years commencing on 21 September 2016;
- (b) was extended for a further term on 19 November 2021 for 5 years, ending on 20 September 2026; and
- (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to explore for iron on the land the subject of E 47/3205-I.

169. E 47/3205-I was:

- (a) granted over 20 blocks, but did not include the areas affected by L 47/47, general lease I195323 and general lease H954583; and
- (b) was partially voluntarily surrendered on 11 September 2020 leaving an area of 5 blocks.

170. E 47/3205-I is included as an 'other interest' at Schedule 5, item 4(a)(iii) of the Yindjibarndi Determination.

171. E 47/3205-I is located:

- (a) wholly within the Application Area;
- (b) partly within the Non-Exclusive Area (with a current encroachment of approximately 93.67%) and partly over the Exclusive Area (with a current encroachment of approximately 6.27%); and
- (c) over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

171A. In respect of the application of Part 2, Division 3 of the NTA to the grant of E 47/3205-I:

- (a) on 29 April 2016, the First Respondent gave notice under section 29 of the NTA of its intention to grant E 47/3205-I to FMG Pilbara Pty Ltd. That notice included a statement pursuant to section 29(7) of the NTA that the First Respondent considered that the grant of E 47/3205-I was an act attracting the expedited procedure. The notice indicated that the four month period given by section 32(3) of the NTA in which to lodge an objection against the inclusion of the expedited procedure statement ended on 4 September 2016; and
- (b) no objection was made by the Yindjibarndi #1 claimant with respect to the grant of E 47/3205-I pursuant to section 32(3) of the NTA.

C1.3.8 E 47/3464-I

172. E 47/3464-I:

- (a) is an exploration licence granted pursuant to Part IV, Division 2 of the *Mining Act* for a term of 5 years commencing on 24 February 2017;
- (b) was extended for a further term on 27 April 2022 for 5 years, ending 23 February 2027; and
- (c) is endorsed with an authority given by the Minister for Mines under section 111 of the *Mining Act* to explore for iron on the land the subject of E 47/3464-I.

173. E 47/3464-I was granted over 10 blocks, but did not include the areas affected by L 1SA, mineral lease 4SA and that portion of land designated “S19/230” in TENGRAPH⁴ which was declared exempt from occupation as a mining tenement on 7 December 2005 and published in the Government Gazette dated 15 November 2013.

⁴ The official electronic plan of the location of mining tenements in the State maintained by DMIRS.

174. E 47/3464-I is included as an 'other interest' at Schedule 5, item 4(a)(iii) of the Yindjibarndi Determination.
175. E 47/3464-I is located:
- (a) partly within the Application Area (with a current encroachment of approximately 42.33%, being an area of approximately 903.2545 hectares);
 - (b) to the extent that it is within the Application Area, partly within the Non-Exclusive Area (with a current encroachment of approximately 43.63%) and partly over the Exclusive Area (with a current encroachment of approximately 55.53%); and
 - (c) to the extent that it is within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.
176. The following Claimed Compensable Acts have also been granted over at least part of the same area as E 47/3464-I:
- (a) L 1SA with a current encroachment of approximately 9.96% (being an area of overlap of approximately 212.5768 hectares);
 - (b) L 47/361 with a current encroachment of approximately 1.83% (being an area of overlap of approximately 39.1336 hectares);
 - (c) L 47/801 with a current encroachment of approximately 8.09% (being an area of overlap of approximately 172.6382 hectares);
 - (d) L 47/914 with a current encroachment of approximately 0.24% (being an area of overlap of approximately 5.194 hectares);
 - (e) P 47/1946 with a current encroachment of approximately 0.33% (being an area of overlap of approximately 6.9948 hectares); and
 - (f) P 47/1947 with a current encroachment of approximately 6.08% (being an area of overlap of approximately 129.8045 hectares).

176A. In respect of the application of Part 2, Division 3 of the NTA to the grant of E 47/3464-I:

- (a) on 5 October 2016, the First Respondent gave notice under section 29 of the NTA of its intention to grant E 47/3464-I to FMG Pilbara Pty Ltd. That notice included a statement pursuant to section 29(7) of the NTA that the First Respondent considered that the grant of E 47/3464-I was an act attracting the expedited procedure. The notice indicated that the

four month period given by section 32(3) of the NTA in which to lodge an objection against the inclusion of the expedited procedure statement ended on 5 February 2017; and

(b) no objection was made by the Yindjibarndi #1 claimant with respect to the grant of E 47/3464-I pursuant to section 32(3) of the NTA.

C1.4 Prospecting Licences

C1.4.1 P 47/1945

177. P 47/1945 is a prospecting licence granted pursuant to Part IV, Division 1 of the *Mining Act* for a term of 4 years commencing on 11 August 2021, with a current expiry date of 10 August 2025.

178. P 47/1945 was:

- (a) granted over an area of approximately 166.01308 hectares; and
- (b) to the extent that it was located within the external boundary of E 47/1334-I, amalgamated into E 47/1334-I pursuant to section 67A of the *Mining Act* on 14 March 2022, with its area being reduced to approximately 4.48885 hectares.

179. P 47/1945 was granted after the making of the Yindjibarndi Determination.

180. P 47/1945 is located:

- (a) partly within the Application Area (with a current encroachment of approximately 37.13%, being an area of approximately 1.6668 hectares);
- (b) to the extent that it is within the Application Area, wholly within the Non-Exclusive Area; and
- (c) to the extent that it is within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

181. In addition to paragraph [178(b)] above, the following Claimed Compensable Acts have also been granted over at least part of the same area as P 47/1945:

- (a) L 1SA with a current encroachment of approximately 100%; and
- (b) L 47/801 with a current encroachment of approximately 100%.

181A. In respect of the application of Part 2, Division 3 of the NTA to the grant of P 47/1945:

- (a) on 5 February 2021, the First Respondent gave notice under section 29 of the NTA of its intention to grant P 47/1945 to FMG Pilbara Pty Ltd. That notice included a statement pursuant to section 29(7) of the NTA that the First Respondent considered that the grant of P 47/1945 was an act attracting the expedited procedure. The four month period given by section 32(3) of the NTA in which to lodge an objection against the inclusion of the expedited procedure statement ended on 8 June 2021; and
- (b) no objection was made by the Applicant with respect to the grant of P 47/1945 pursuant to section 32(3) of the NTA.

C1.4.2 P 47/1946

182. P 47/1946 was:

- (a) a prospecting licence granted pursuant to Part IV, Division 2 of the *Mining Act* for a term of 4 years commencing on 11 August 2021;
- (b) granted over an area of approximately 165.86914 hectares; and
- (c) wholly amalgamated into E 47/1334-I and E 47/3464-I pursuant to section 67A of the *Mining Act* on 14 March 2022 and, accordingly, expired on that date.

183. P 47/1946 was granted after the making of the Yindjibarndi Determination.

184. P 47/1946 was located:

- (a) partly within the Application Area (with an encroachment at grant of approximately 98.51%, being an area of approximately 163.3976 hectares);
- (b) to the extent that it was within the Application Area, wholly within the Non-Exclusive Area; and
- (c) to the extent that it was within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

185. In addition to the Claimed Compensable Acts referred to in paragraph [182(c)] above, the following Claimed Compensable Acts have also been granted over at least part of the same area as P 47/1946:

- (a) L 1SA with a current encroachment of approximately 95.65% (being an area of overlap of approximately 6.6906 hectares); and

- (b) L 47/801 with a current encroachment of approximately 96.65% (being an area of overlap of approximately 6.7605 hectares).

185A. In respect of the application of Part 2, Division 3 of the NTA to the grant of P 47/1946:

- (a) on 5 February 2021, the First Respondent gave notice under section 29 of the NTA of its intention to grant P 47/1946 to FMG Pilbara Pty Ltd. That notice included a statement pursuant to section 29(7) of the NTA that the First Respondent considered that the grant of P 47/1946 was an act attracting the expedited procedure. The four month period given by section 32(3) of the NTA in which to lodge an objection against the inclusion of the expedited procedure statement ended on 8 June 2021; and
- (b) no objection was made by the Applicant with respect to the grant of P 47/1946 pursuant to section 32(3) of the NTA.

C1.4.3 P 47/1947

186. P 47/1946 was:

- (a) a prospecting licence granted pursuant to Part IV, Division 2 of the *Mining Act* for a term of 4 years commencing on 11 August 2021;
- (b) granted over an area of approximately 149.16669 hectares; and
- (c) wholly amalgamated into E 47/1334-I and E 47/3464-I pursuant to section 67A of the *Mining Act* on 14 March 2022 and, accordingly, expired on that date.

187. P 47/1947 was granted after the making of the Yindjibarndi Determination.

188. P 47/1947 was located:

- (a) partly within the Application Area (with an encroachment at grant of approximately 97.38%, being an area of approximately 145.2534 hectares);
- (b) to the extent that it was within the Application Area, wholly within the Non-Exclusive Area; and
- (c) to the extent that it was within the Application Area, over the area of those current and/or historical land and mining interests depicted in the State Tenure Material and summarised at Attachment A of this document.

189. In addition to the Claimed Compensable Acts referred to in paragraph [186(c)] above, the following Claimed Compensable Acts have also been granted over at least part of the same area as P 47/1947:

- (a) L 1SA with a current encroachment of approximately 6.07% (being an area of overlap of approximately 9.0474 hectares); and
- (b) L 47/801 with a current encroachment of approximately 6.5% (being an area of overlap of approximately 9.6947 hectares).

189A. In respect of the application of Part 2, Division 3 of the NTA to the grant of P 47/1947:

- (a) on 5 February 2021, the First Respondent gave notice under section 29 of the NTA of its intention to grant P 47/1947 to FMG Pilbara Pty Ltd. That notice included a statement pursuant to section 29(7) of the NTA that the First Respondent considered that the grant of P 47/1947 was an act attracting the expedited procedure. The four month period given by section 32(3) of the NTA in which to lodge an objection against the inclusion of the expedited procedure statement ended on 8 June 2021; and
- (b) no objection was made by the Applicant with respect to the grant of P 47/1947 pursuant to section 32(3) of the NTA.

C2 THE SOLOMON HUB PROJECT

190. In respect of paragraph [9] of the POC, the First Respondent:

- (a) does not know what the Applicant means when it refers to “*FMG’s Solomon Hub mine*” but says that:
 - (i) the “*Solomon Hub*” is the “*short name*” given by DMIRS to a mining project entitled “*Solomon – Greater Solomon*” with a DMIRS assigned project code of “*J01646*”. Project J01646 (**Solomon Project (J01646)**) was previously known as “*Solomon (Mt Sheila / FMG)*” for the purpose of DMIRS’s systems; and
 - (ii) for the purposes of DMIRS’s environmental reporting requirements, Solomon Project J01646 is associated with two Environmental Group Sites (**EGS**): “*Solomon East Environmental Group*” (EGS Code S0225312) and the “*Solomon Infrastructure Environmental Group*” (EGS Code S0237712);
- (b) says that the Claimed Compensable Acts do not comprise the entirety of the Solomon Project (J01646). MINDEX records that the Solomon Project (J01646) is associated with 97 mining tenements, being: 57 current (live) mining tenements; 24 expired / deceased

mining tenements; and 16 pending applications for mining tenements. Not all mining tenements associated with the Solomon Project (J01646) are located within the Application Area. Attached at Annexure B to this document is a list of the current and deceased tenements associated with the Solomon Project (J01646), together with their location in relation to the Application Area;

- (c) says that not all of the Claimed Compensable Acts are recorded by MINEDEX as being associated with the Solomon Project (J01646). In particular, the following Claimed Compensable Acts are not recorded as being part of the Solomon Project (J01646):
- (i) E 47/3205-I;
 - (ii) E 47/3464-I;
 - (iii) L 1SA (recorded by MINEDEX as being associated with the East Pilbara Iron Ore / FMG project (Project Code J01407);
 - (iv) L 47/396;
 - (v) L 47/472;
 - (vi) L 47/697;
 - (vii) L 47/813;
 - (viii) L 47/814;
 - (ix) L 47/859 (recorded by MINEDEX as being associated with the Pilbara Energy Transmission Project (Project Code J05605);
 - (x) L 47/901 (recorded by MINEDEX as being associated with the Pilbara Energy Transmission Project (Project Code J05605);
 - (xi) L 47/914 (recorded by MINEDEX as being associated with the Pilbara Energy Transmission Project (Project Code J05605);
 - (xii) L 47/919;
 - (xiii) P 47/1945;
 - (xiv) P 47/1946; and
 - (xv) P 47/1947;
- (d) says that MINEDEX records that the Solomon Project comprises 47 individual sites which are currently operational or under development, including a number of mines. Not all sites associated with the Solomon Project and recorded by MINEDEX fall within the

Application Area and/or the area of the Claimed Compensable Acts. Those sites which are located within the Claimed Compensable mining leases are detailed in Part C1.1 above and further detailed in the FMG Infrastructure Material;

- (e) understands that, on the basis of Exhibit A (Site Map) tendered in the Yindjibarndi Claim, Bangkangarra (Satellite Spring) is:
 - (i) located on or near Kangeenarina Creek within the area of E 47/1319-I; and
 - (ii) is the same place as Other Heritage Place No. 35776 (Kangeenari (Satellite Springs)) recorded in the Aboriginal Heritage Inquiry System maintained by the First Respondent; and
- (f) otherwise does not know and therefore cannot admit paragraph [9] of the POC.

191. In respect of paragraph [10] of the POC, save to note that mining proposal 93518 submitted by the holders of those mining tenements comprising the Solomon East Environmental Group (EGS Code S0225312) on 29 January 2021 (approved on 22 April 2022) records that:

- (a) *“Since 2011, Fortescue Metals Group (Fortescue) has been implementing the Solomon Iron Ore Project”*; and
- (b) *the “mine has...a 30+-year life span”*

the First Respondent does not know and therefore cannot admit paragraph [10] of the POC.

192. Save that the First Respondent admits that it receives payments of rent and/or royalties under the provisions of the Mining Act and Mining Regulations 1981 (WA) in respect of the Claimed Compensable Acts, ~~¶~~the First Respondent does not know and therefore cannot admit paragraph [11] of the POC.

C3 AGREEMENT TO THE GRANT OF THE CLAIMED COMPENSABLE ACTS

193. The First Respondent admits paragraph [12] of the POC.

194. The First Respondent does not know and therefore cannot admit paragraphs [13] ~~and [14]~~ of the POC.

194A. In respect of paragraphs [13A] and [13B] of the POC, the First Respondent:

- (a) says that the following Claimed Compensable Acts were notified under section 29 of the NTA and that a subsequent application was made in respect of them by the grantee party (as that term is defined in section 29(2)(c) of the NTA) pursuant to section 35 of the NTA for a future act determination under section 38 of the NTA:

(i) M 47/1409-I;

(ii) M 47/1411-I;

(iii) M 47/1413-I;

(iv) M 47/1431-I;

(v) M 47/1453-I;

(vi) M 47/1473-I;

(vii) M 47/1475-I;

(viii) M 47/1513-I;

(ix) M 47/1570;

(x) E 47/1319-I;

(xi) E 47/1398-I; and

(xii) E 47/1399-I;

(b) says that the following Claimed Compensable Acts were notified under section 24MD(6B)(c) of the NTA and that no objection was made by the Yindjibarndi #1 claimant or the Applicant (as applicable) pursuant to section 24MD(6B)(d) of the NTA:

(i) L 1SA;

(ii) L 47/302;

(iii) L 47/367;

(iv) L 47/472;

(v) L 47/801;

(vi) L 47/813;

(vii) L 47/814;

(viii) L 47/859;

(ix) L 47/901;

(x) L 47/914; and

(xi) L 47/919;

(c) says that the following Claimed Compensable Acts were notified under section 24MD(6B)(c) of the NTA and that an objection was made by the Yindjibarndi #1 claimant

pursuant to section 24MD(6B)(d) of the NTA but that the Yindjibarndi #1 claimant did not request to have the matter referred to the Independent Person pursuant to section 24MD(6B)(f) of the NTA:

(i) L 47/396; and

(ii) L 47/697;

(d) says that the following Claimed Compensable Acts were notified under section 24MD(6B)(c) of the NTA and that an objection was made by the Yindjibarndi #1 claimant pursuant to section 24MD(6B)(d) of the NTA. The objections were referred to the Independent Person pursuant to section 24MD(6B)(f) of the NTA but were ultimately dismissed by the Independent Person due to the failure of the Yindjibarndi #1 claimant to file and serve required documents and appear at hearings:

(i) L 47/361;

(ii) L 47/362; and

(iii) L 47/363;

(e) says that the following Claimed Compensable Acts were notified under section 29 of the NTA with a statement pursuant to section 29(7) that the First Respondent considered the grant to be an act attracting the expedited procedure. The Yindjibarndi #1 claimant made an application to the NNTT pursuant to section 32(3) of the NTA objecting to the inclusion of the expedited procedure statement but that the objection was subsequently withdrawn by the Yindjibarndi #1 claimant:

(i) E 47/1333-I;

(ii) E 47/1334-I; and

(iii) E 47/1447-I;

(f) says that the following Claimed Compensable Acts were notified under section 29 of the NTA with a statement pursuant to section 29(7) that the First Respondent considered the grant to be an act attracting the expedited procedure. No objection was made by the Yindjibarndi #1 claimant or the Applicant (as applicable) pursuant to section 32(3) of the NTA:

(i) E 47/3205-I;

(ii) E 47/3464-I;

(iii) P 47/1945;

(vi) P 47/1946; and

(v) P 47/1947;

(g) repeats paragraphs [20A], [25A], [31A], [37A], [43A], [49A], [55A], [60A], [65A], [75A], [79A], [83A], [87A], [91A], [95A], [99A], [103A], [107A], [111A], [115A]; [119A], [123A], [127A], [131A], [135A], [140A], [146A], [152A], [157A], [162A], [167A], [171A], [176A], [181A], [185A] and [189A] above; and

(h) otherwise does not know and therefore cannot admit paragraphs [13A] and [13B] of the POC.

194B. The First Respondent does not know and therefore cannot admit paragraph [14] of the POC.

195. In respect of paragraph [15] of the POC, the First Respondent:

- (a) relies on correspondence dated 14 November 2022 from the Applicant which states that the Applicant “*is not presently aware of any acts that have occurred within the application area and for which it may have an entitlement to compensation, other than those which are the subject of the present application*”;
- (b) says that, by virtue of Annexure LRM5 to the affidavit of Lee Rex Morgan sworn 19 November 2014 in the Yindjibarndi Claim, together with the State Tenure Material, the Applicant has been provided with all information upon which it can ascertain whether any other acts have occurred in the Application Area in respect of which the Applicant may have an entitlement to compensation under the NTA;
- (c) on the basis of paragraph [195(b)] above, understands the statement referred to in paragraph [195(a)] above to be a concession that there are no other acts which have occurred in the Application Area in respect of which the Applicant may have an entitlement to compensation under the NTA; and
- (d) says that, in respect of those exploration licences for which the Applicant is no longer pressing a claim for compensation (being those exploration licences that were removed from paragraph [8(c)] of the POC but which, as at the date of this document, remain in Schedule I of the Application), the First Respondent understands this to be a concession that those acts are not acts for which the Applicant may have an entitlement to compensation under the NTA.

D. Entitlement to Compensation

D1 SUMMARY OF FIRST RESPONDENT'S RESPONSE

196. Paragraphs [16] to [26] of the POC are largely or wholly comprised of contentions about the entitlement to compensation with respect to the Claimed Compensable Acts.

197. For the assistance of the parties and the Court, this Part D1 sets out the First Respondent's contentions with respect to any entitlement to compensation and generally identifies where it agrees, or disagrees, with the contentions made by the Applicant. Part D2 provides a specific response to the POC.

D1.1 Claimed Compensable Acts are future acts

198. The First Respondent agrees with the Applicant that each of the Claimed Compensable Acts is a "*future act*" within the meaning of section 233 of the NTA.

199. As each of the Claimed Compensable Acts:

- (a) relates to an "*onshore place*" within the meaning of section 240(a) of the NTA;
- (b) could be done in relation to the land in the Application Area if the Yindjibarndi People instead held ordinary title to it; and
- (c) the AHA is a law of the State that makes provision of the kind referred to in section 24MB(1)(c) NTA,

the First Respondent agrees with the Applicant that, in accordance with section 24MB of the NTA, Part 2, Division 3, Subdivision M of the NTA applies to each of the Claimed Compensable Acts.

200. The First Respondent says that by reason of section 24MD(1) of the NTA, each of the Claimed Compensable Acts is valid.

201. Further, as none of the Claimed Compensable Acts was a compulsory acquisition covered by sections 24MD(2) or (2A) of the NTA pursuant to section 24MD(3)(a) NTA, the First Respondent says that the "*non-extinguishment principle*" (as defined in section 238 of the NTA) applies to each of the Claimed Compensable Acts.

D1.2 Section 24MD(3)(b) NTA

202. Section 24MD(3)(b) relevantly provides that if:

- (a) the “*similar compensable interest test*” (as defined in section 240 of the NTA) is satisfied in relation to the act (section 24MD(3)(b)(i)); and
- (b) the law mentioned in section 240 of the NTA does not provide for compensation to the native title holders for the act (section 24MD(3)(b)(ii)),

the native title holders are entitled to compensation for the act in accordance with Part 2, Division 5 of the NTA.

203. The First Respondent and the Applicant agree that the condition in section 24MD(3)(b)(i) of the NTA is satisfied in respect of the Claimed Compensable Acts but disagree as to whether the condition in section 24MD(3)(b)(ii) is satisfied. The First Respondent says that it is not.

D1.2.1 “*Similar compensable interest test*” satisfied (section 24MD(3)(b)(i))

204. Each Claimed Compensable Act relates to an “*onshore place*” within the meaning of section 240(a) of the NTA.

205. If the Applicant held ordinary title to the land the subject of each Claimed Compensable Act, then they would:

- (a) by reason of the matters set out in paragraph [210] below, be an “*owner*” or “*occupier*” of the land the subject of each Claimed Compensable Act within the meaning of those terms as defined in section 8 of the *Mining Act*; and
- (b) as such, be entitled to compensation under section 123 of the *Mining Act* for all loss and damage suffered or likely to be suffered by them resulting or arising from the mining on that land (whether lawfully carried out or not).

206. The entitlement to compensation referred to in paragraph [205] above constitutes compensation “*for the act*” within the meaning of section 240(b) of the NTA.

207. Accordingly, by reason of the matters set out in paragraphs [204] – [206] above, the First Respondent agrees with the Applicant that the “*similar compensable interest test*” (as defined in section 240 NTA) is satisfied in relation to each Claimed Compensable Act within the meaning of section 24MD(3)(b)(i) of the NTA.

D1.2.2 Mining Act provides compensation to the Applicant (section 24MD(3)(b)(ii))

208. For the purpose of section 24MD(3)(b)(ii), the “*law mentioned in section 240*” is the *Mining Act*.

209. Contrary to the Applicant's contentions, the First Respondent says that the *Mining Act* provides compensation to the Yindjibarndi People on the basis that they are “*owners*” or “*occupiers*” of the land the subject of each of the Claimed Compensable Acts, within the meaning of those terms as defined in section 8 the *Mining Act*.

210. In particular, the First Respondent says that the Yindjibarndi People are:

(a) to the extent that the relevant Claimed Compensable Act is located within the Exclusive Area, the “*owners*” of the land the subject of the following Claimed Compensable Acts:

(i) M 47/1513;

(ii) M 47/1570;

(iii) L 47/801;

(iv) L 47/813;

(v) L 47/814;

(vi) L47/914; and

(vii) L47/919

being those Claimed Compensable Acts granted over the Exclusive Area after (but not before) the Yindjibarndi Determination (see paragraph [12(b)] above); and

(b) “*occupiers*” of land the subject of all other Claimed Compensable Acts, regardless of when they were granted (this is on the basis that, both before and after the making of the Yindjibarndi Determination, the Yindjibarndi People have a right to access (including to enter, to travel over and remain) in relation to the Determination Area).

211. As the *Mining Act* provides compensation to the Applicant for each Claimed Compensable Act, the First Respondent says that the condition in section 24MD(3)(b)(ii) of the NTA is not satisfied and the entitlement to compensation for each Claimed Compensable Act arises under the *Mining Act* and not the NTA.

D1.2.3 In the alternative, if the Mining Act does not provide compensation to the Applicant

212. If, which is denied, the condition in section 24MD(3)(b)(ii) of the NTA is satisfied in respect of any Claimed Compensable Act, the First Respondent says that compensation is to be determined

in accordance with Part 2, Division 5 of the NTA. In particular, the First Respondent says that section 51(3) of the NTA applies in relation to the Claimed Compensable Act (see Part F below).

D1.3 No entitlement to compensation under the RDA

213. If the Yindjibarndi People are “owners” or “occupiers” of the land the subject of any of the Claimed Compensable Acts under the *Mining Act*, the First Respondent disagrees with the Applicant that section 10 of the RDA and section 45 of the NTA are engaged such that compensation for the Claimed Compensable Act is to be determined under section 50 of the NTA.

214. In particular, the First Respondent:

- (a) says that, generally, the RDA is only engaged to confer a right to compensation on native title holders where a State law confers a right to compensation on the holders of equivalent non-native title interests but fails to confer that right on native title holders;
- (b) says that, by reason of the matters set out in paragraph [210] above, the Yindjibarndi People are entitled to compensation under section 123 of the *Mining Act* as either “owners” or “occupiers”;
- (c) says that there is no disparity of treatment between native title rights and interests and the equivalent non-native title rights and interests under section 123 of the *Mining Act* and that, as such, section 10 of the RDA and section 45 of the NTA are not engaged; and
- (d) accordingly, says that compensation for any Claimed Compensable Act is not to be determined in accordance with section 50 the NTA as if the entitlement to compensation arose under the NTA .

215. If, which is denied, section 10 of the RDA and section 45 of the NTA are engaged in respect of any Claimed Compensable Act, the First Respondent says that, in accordance with section 50 of the NTA, compensation is to be determined in accordance with Part 2, Division 5 of the NTA. In particular, the First Respondent says that section 51(3) of the NTA applies in relation to the Claimed Compensable Acts (see Part F below).

D1.4 No application of section 53(1) NTA

216. Section 53(1) of the NTA provides for an additional entitlement to compensation where the doing of a future act or the application of any provision of the NTA would result in a “*paragraph 51(xxxi) acquisition of property*” other than on “*paragraph 51(xxxi) just terms*”. The term “*paragraph 51(xxxi) acquisition of property*” is defined in section 253 of the NTA as “*an acquisition of property within the meaning of section 51(xxxi) of the Constitution*”, and

“paragraph 51(xxxi) just terms” is defined as *“just terms within the meaning of section 51(xxxi) of the Constitution”*.

217. The First Respondent disagrees with the Applicant that the grant of any of the Claimed Compensable Acts resulted in a *“paragraph 51(xxxi) acquisition of property”*. The First Respondent says that there was not a relevant *“paragraph 51(xxxi) acquisition of property”*, including because the grant of each of the Claimed Compensable Acts is a future act to which the non-extinguishment principle applies.
218. Also, if, which is denied, the grant of any of the Claimed Compensable Acts resulted in a *“paragraph 51(xxxi) acquisition of property”*, the First Respondent says that any such acquisition was on *“paragraph 51(xxxi) just terms”*.
219. Accordingly, in either case, the First Respondent denies that section 53(1) of the NTA is engaged in respect of any of the Claimed Compensable Acts.

D2 RESPONSE TO POC

220. The First Respondent denies paragraph [16] of the POC and repeats paragraphs [202] – [219] above.

D2.1 An entitlement to compensation under NTA: section 24MD(3)(b) NTA

221. In respect of paragraph [17] of the POC, the First Respondent admits that each Claimed Compensable Act is a *“future act”* within the meaning of section 233 of the NTA and otherwise repeats paragraph [199] above.
222. In respect of paragraph [18] of the POC, the First Respondent:
- (a) admits that the *“similar compensable interest test”* (as defined in section 240 NTA) is satisfied in relation to each Claimed Compensable Act within the meaning of section 24MD(3)(b)(i) of the NTA and otherwise repeats paragraphs [204] – [207] above); but
 - (b) denies that the condition in section 24MD(3)(b)(ii) of the NTA is satisfied and otherwise repeats Part D1.2.2 above.
223. In respect of paragraph [19] of the POC, the First Respondent repeats paragraph [222(a)] above.
224. In respect of paragraph [20] of the POC, the First Respondent repeats paragraph [222(b)] above and otherwise denies paragraph [20] of the POC.

D2.2 An entitlement to compensation under NTA: section 45 NTA

225. In respect of paragraphs [21] – [23] of the POC, the First Respondent:

- (aa) denies that section 10 of the RDA and section 45 of the NTA are engaged in circumstances where section 24MD(3)(b)(ii) of the NTA is not satisfied (irrespective of the operation or effect of sections 29, 38 and/or 123 of the *Mining Act*);
- (a) denies that, in relation to Non-Exclusive Native Title, the effect of section 10 of the RDA is to provide parity of treatment with the holders of ordinary title. Rather, it would be to provide parity of treatment with the holders of equivalent, non-exclusive, non-native title rights and interests;
- (b) repeats Part D1.3 above and says that there is no disparity of treatment between native title rights and interests and equivalent non-native title rights and interests under section 38 and/or section 123 of the *Mining Act* and that, as such, section 10 of the RDA and section 45 of the NTA are not engaged;
- (c) says that:
- (i) the categorisation of land as “*Crown land*”, “*reserve land*” or “*private land*” under the *Mining Act* does not alter the entitlement of an “*owner*” or “*occupier*” to compensation under section 123(2) of the *Mining Act*, which entitlement arises in respect of “*any land*” where mining takes place and is not limited to “*private land*” as defined in section 8 of the *Mining Act*; and
- (ii) to the extent that section 123 of the *Mining Act* otherwise includes a reference to “*private land*” those subsections are either:
- (A) providing for additional heads of compensation that arise in the case of “*private land*” under cultivation (section 123(4) of the *Mining Act*); or
- (B) ensuring that, in circumstances where an “*owner*” and an “*occupier*” of any “*private land*” (or improvements thereon) are entitled to compensation for loss or damage sustained by each of them as a result of mining, the compensation is severally apportioned (as opposed to jointly) (section 123(5) and (6) *Mining Act*); and
- (d) otherwise denies paragraphs [21] – [23] of the POC.

D2.3 An entitlement to compensation under NTA: section 53(1) NTA

226. In respect of paragraphs [24] – [26] of the POC, the First Respondent:

- (a) denies that section 53(1) of the NTA is engaged in respect of any of the Claimed Compensable Acts and repeats Part D1.4 above;
- (b) denies that any of the Claimed Compensable Acts identified in paragraph [8(a)] of the POC confer on the FMG Respondents exclusive possession of the land for mining purposes and says that, in relation to the areas they cover, those Claimed Compensable Acts confer on the FMG Respondents a right to mine in accordance with the terms and conditions on which they were granted and the provisions of the *Mining Act*, which right to mine is exclusive of any other person;
- (c) does not admit that the Yindjibarndi People's native title rights and interests have been wholly suppressed:
 - (i) by the grant of any Claimed Compensable Act; or
 - (ii) entirely within the area of any particular Claimed Compensable Act or, alternatively, within the entirety of the areas covered by the Claimed Compensable Acts;
- (d) says that:
 - (i) the “*non-extinguishment principle*” applies to each Claimed Compensable Act and repeats paragraphs [198] – [201] above;
 - (ii) by operation of the “*non-extinguishment principle*”, native title rights and interests continue to exist in relation to the whole of the areas covered by the Claimed Compensable Acts; and
 - (iii) the operation of the “*non-extinguishment principle*” in respect of any particular Claimed Compensable Act is to be assessed, based on the evidence provided, as to:
 - (A) the rights and interests held, and activities undertaken, pursuant to the Claimed Compensable Act; and
 - (B) the extent to which those things referred to in sub-paragraph (A) are inconsistent with the continued existence, enjoyment or exercise of the Yindjibarndi People's native title rights and interests; and
- (e) otherwise denies paragraphs [24] – [26] of the POC.

E. Liability to Pay Compensation

E1 SUMMARY OF FIRST RESPONDENT'S RESPONSE

227. Paragraphs [27] to [32] of the POC are comprised of contentions regarding the entity liable to pay compensation to the Yindjibarndi People in respect of the Claimed Compensable Acts.

228. For the assistance of the parties and the Court, this Part E1 sets out the First Respondent's contentions with respect to liability and generally identifies where it agrees, or disagrees, with the contentions made by the Applicant. Part E2 provides a specific response to the POC.

E1.1 Under the *Mining Act*

229. If compensation is payable under the *Mining Act* (and not the NTA), it follows that any application for compensation must be made to the Warden's Court under the *Mining Act* and against the FMG Respondents because, under the *Mining Act*, it is the person mining on the land who is liable to pay compensation.

E1.2 Under the NTA

E1.2.1 Liability to pay by operation of section 24MD(3)(b) NTA

230. If, which is denied, an entitlement to compensation under the NTA arises in relation to any of the Claimed Compensable Acts by operation of section 24MD(3)(b) of the NTA, the First Respondent says as follows.

231. Section 24MD(4)(b) of the NTA provides that compensation is payable by the First Respondent unless "a law of the State ... provides that a person other than the Crown in any capacity is liable to pay the compensation", in which case that person is liable to pay.

232. Section 125A of the *Mining Act* is a law of the State of the kind referred to in section 24MD(4)(b)(i) of the NTA. By operation of section 125A of the *Mining Act*, the person liable to pay compensation is either:

- (a) the holder of the mining tenement at the time a determination of compensation is made; or
- (b) if, at the time a determination of compensation is made, the mining tenement has been surrendered, forfeited or has expired, the holder of the mining tenement immediately before its surrender, forfeiture or expiry.

233. As all of the Claimed Compensable Acts were granted after the introduction of section 125A of the *Mining Act* on 11 January 1999, the person liable to pay compensation in respect of each of the Claimed Compensable Acts is the person described in section 125A of the *Mining Act* and not the First Respondent.

E2 RESPONSE TO POC

234. Save that it says that the reference to section 24MD(3) NTA should be a reference to section 24MD(3)(b) NTA, the First Respondent admits paragraph [27] of the POC.

235. In respect of paragraph [28] of the POC, the First Respondent:

- (a) admits that the grant of each of the Claimed Compensable Acts is a “*future act*” attributable to the State and repeats Part D1.1 above;
- (b) admits that, pursuant to section 24MD(3)(a) NTA, the “*non-extinguishment principle*” applies to each of the Claimed Compensable Acts and repeats paragraph [226(d)] above;
- (c) admits that the “*similar compensable interest test*” (as defined in section 240 NTA) is satisfied in relation to each Claimed Compensable Act within the meaning of section 24MD(3)(b)(i) of the NTA and repeats Part D1.2.1 above); and
- (d) denies that the condition in section 24MD(3)(b)(ii) of the NTA is satisfied and repeats Part D1.2.2 above.

236. In respect of paragraph [29] of the POC, the First Respondent:

- (a) admits that all of the Claimed Compensable Acts were granted after the commencement of section 125A of the *Mining Act* on 11 January 1999; and
- (b) repeats Part E1.2.1 above.

237. In respect of paragraph [30] of the POC:

- (a) the First Respondent denies that an entitlement to compensation under the NTA arises in relation to any of the Claimed Compensable Acts by operation of section 24MD(3)(b) of the NTA and repeats paragraphs [198] – [211] and [229] above;
- (b) if, which is denied, an entitlement to compensation under the NTA arises in relation to any of the Claimed Compensable Acts by operation of section 24MD(3)(b) of the NTA, the First Respondent:
 - (i) repeats Part E1.2.1 above; and

- (ii) admits that, as at the date of this document, the person liable to pay compensation by operation of section 24MD(4)(b)(i) of the NTA and section 125A *Mining Act* is:
 - (A) FMG Pilbara Pty Ltd in respect of M 47/1409-I, M 47/1411-I, M 47/1413-I, M 47/1431-I, M 47/1453-I, M 47/1473-I, M 47/1475-I, M 47/1513-I, M 47/1570, L 47/302, L 47/361, L 47/362, L 47/363, L 47/367, L 47/396, L 47/472, L 47/919; E 47/1319-I, E 47/1333-I, E 47/1334-I, E 47/1398-I, E 47/1399-I, E 47/1447-I, E 47/3205-I, E 47/3464-I, P 47/1945, P 47/1946 and P 47/1947;
 - (B) Pilbara Infrastructure Pty Ltd in respect of L 1SA, L 47/801, L 47/813 and L 47/814;
 - (C) Pilbara Gas Pipeline Pty Ltd in respect of L 47/697;
 - (D) Pilbara Energy Company Pty Ltd in respect of L 47/859 and L 47/914; and
 - (E) Pilbara Energy (Generation) Pty Ltd in respect of L 47/901.

238. In respect of paragraph [31] of the POC:

- (a) the First Respondent denies that an entitlement to compensation under the NTA arises in relation to any of the Claimed Compensable Acts by operation of section 24MD(3)(b) of the NTA and repeats paragraphs [198] – [211] and [229] above;
- (b) if, which is denied:
 - (i) an entitlement to compensation under the NTA arises in relation to any of the Claimed Compensable Acts by operation of section 24MD(3)(b) of the NTA; and
 - (ii) section 24MD(4)(b)(i) of the NTA and section 125A of the *Mining Act* do not have the effect of making the FMG Respondents liable to pay that compensation,the First Respondent admits that it is liable to pay compensation in relation to that Claimed Compensable Act by operation of section 24MD(4)(b)(ii) of the NTA.

238A. In respect of paragraph [31A] of the POC:

- (a) the First Respondent denies that an entitlement to compensation under the NTA arises in relation to any of the Claimed Compensable Acts (or any renewal or extension of term thereof) by operation of:
 - (i) section 24HA(5) of the NTA; or
 - (ii) section 24ID(1)(d) of the NTA;

- (b) if, which is denied, an entitlement to compensation under the NTA arises in relation to any of the Claimed Compensable Acts by operation of section 24HA(5) of the NTA, the First Respondent says that:
 - (i) by operation of section 24HA(6)(b) of the NTA, the person liable to pay that compensation is the State; and
 - (ii) section 24MD(4)(b) of the NTA and/or section 125A of the *Mining Act* have no application in those circumstances;
- (c) if, which is denied, an entitlement to compensation under the NTA arises in relation to the renewal or extension of term of any of the Claimed Compensable Acts by operation of section 24ID(1)(d) of the NTA, the First Respondent says that:
 - (i) by operation of section 24ID(2)(b) of the NTA, the person liable to pay that compensation is the State; and
 - (ii) section 24MD(4)(b) of the NTA and/or section 125A of the *Mining Act* have no application in those circumstances; and
- (d) the First Respondent otherwise denies paragraph [31A] of the POC.

239. In respect of paragraph [32] of the POC, the First Respondent:

- (a) denies that section 53(1) of the NTA is engaged to make the State liable to pay compensation and repeats paragraph [238(b)] above;
- (b) denies that:
 - (i) the grant of any of the Claimed Compensable Acts resulted in a “*paragraph 51(xxxi) acquisition of property*” other than on “*paragraph 51(xxxi) just terms*” and repeats Part D1.4 above; and
 - (ii) there are any relevant provisions of the NTA which would result in a “*paragraph 51(xxxi) acquisition of property*” other than on “*paragraph 51(xxxi) just terms*”; and
- (c) otherwise denies paragraph [32] of the POC.

F. Principles, Criteria or Methodology for Assessment of Compensation

F1 SUMMARY OF FIRST RESPONDENT'S RESPONSE

240. Paragraphs [33] to [46] of the POC are largely or wholly comprised of contentions about the principles, criteria or methodology to be applied to the assessment of compensation for the Claimed Compensable Acts under the NTA.

241. As noted at Part D1.2 above, the First Respondent denies that an entitlement to compensation arises under the NTA in respect of any of the Claimed Compensable Acts.

242. If, which is denied, an entitlement to compensation in respect of any of the Claimed Compensable Acts arises under the NTA by operation of either:

- (a) section 24MD(3)(b) of the NTA;
- (b) section 10 of the RDA and section 45 of the NTA; and/or
- (c) section 53(1) of the NTA,

the First Respondent disagrees in fundamental respects with the Applicant's contentions about the methodology to be applied to those assessments.

243. Accordingly, for the assistance of the parties and the Court, this Part F1 sets out the First Respondent's contentions with respect to the principles, criteria or methodology to be applied to the assessment of compensation under the NTA. Part F2 provides a specific response to the POC.

244. For the avoidance of doubt the contentions made at Parts F1.1 – F1.5 below are made only in the event that the First Respondent's primary contention (i.e. that an entitlement to compensation does not arise under the NTA) is not accepted.

F1.1 Relevant criteria to be applied: overview

F1.1.1 Where the entitlement to compensation arises under section 24MD(3)(b) NTA

245. If, which is denied, an entitlement to compensation arises under the NTA in relation to any of the Claimed Compensable Acts by operation of section 24MD(3)(b) of the NTA, the First Respondent says as follows.

246. The compensation is to be determined in accordance with Part 2, Division 5 of the NTA.

247. In particular, the First Respondent says that, in those circumstances:

- (a) section 51(3) of the NTA applies in relation to the Claimed Compensable Acts; and
- (b) the effect of section 51(3) of the NTA is that, subject to sub-sections (5) to (8), any entitlement to compensation that arises under the NTA in favour of the Yindjibarndi People is to be determined in accordance with the principles or criteria for the assessment of compensation set out in the *Mining Act*, whether or not that would provide compensation to the Yindjibarndi People on just terms.

248. Section 51(3) applies because:

- (a) the grant of the Claimed Compensable Act is not the compulsory acquisition of native title (section 51(3)(a)); and
- (b) the “*similar compensable interest test*” is satisfied in relation to the Claimed Compensable Acts (section 51(3)(b)) (as to which see Part D1.2.1 above).

F1.1.2 Where the entitlement to compensation arises by operation of section 10 of the RDA and section 45 of the NTA

249. If, which is denied, an entitlement to compensation arises under the NTA in relation to any of the Claimed Compensable Acts by operation of section 10 of the RDA and section 45 of the NTA, the First Respondent says as follows.

250. Pursuant to section 50 of the NTA, the compensation is to be determined in accordance with Part 2, Division 5 of the NTA.

251. In particular, the First Respondent says that, in those circumstances:

- (a) section 51(3) of the NTA applies in relation to the Claimed Compensable Act; and
- (b) the effect of section 51(3) of the NTA is that, subject to sub-sections (5) to (8), any entitlement to compensation that arises under the NTA in favour of the Yindjibarndi People is to be determined in accordance with the principles or criteria for the assessment of compensation set out in the *Mining Act*, whether or not that would provide compensation to the Yindjibarndi People on just terms.

252. Section 51(3) of the NTA applies because:

- (a) the grant of the Claimed Compensable Act is not the compulsory acquisition of native title (section 51(3)(a)); and

- (b) the “*similar compensable interest test*” is satisfied in relation to the Claimed Compensable Act (section 51(3)(b)) (as to which see Part D1.2.1 above).

F1.1.3 Where section 53(1) NTA applies

253. If, which is denied, section 53(1) of the NTA is engaged in respect of any of the Claimed Compensable Acts, that section provides that the Yindjibarndi People are entitled to such compensation, in addition to that otherwise provided for by the NTA, as is necessary to ensure that the acquisition is on “*paragraph (xxxvi) just terms*”.

F1.2 Principles or criteria where section 51(3) NTA applies

254. Where section 51(3) of the NTA applies in relation to a Claimed Compensable Act, the First Respondent says that the Yindjibarndi People are entitled to be compensated for any loss, diminution, impairment or other effect of a relevant Claimed Compensable Act on their native title rights and interests:

- (a) provided that such compensation can be determined by reference to the provisions of the *Mining Act*; and
- (b) whether or not compensation determined in accordance with those provisions would provide compensation to the Yindjibarndi People on just terms.

255. As a result, for the purposes of determining compensation under the NTA in accordance with the principles or criteria set out in the *Mining Act*, the Yindjibarndi People are afforded equal treatment to the holders of equivalent non-native title interests in the land under the *Mining Act*.

F1.2.1 Mining Act principles and criteria

256. The following provisions of the *Mining Act* provide the principles or criteria to be applied to determine compensation for the grant of the Claimed Compensable Acts under section 51(3) of the NTA:

- (a) the native title holders' entitlement to compensation under section 123(2) of the *Mining Act* only arises in respect of loss and damage suffered, or likely to be suffered, by them as a result of, or arising from, “*mining*”⁵ on a Claimed Compensable Act;

⁵ Defined in section 8 of the *Mining Act* to include fossicking, prospecting and exploring for minerals and mining operations, which definition is expanded by section 123(2a) to include a reference to marking out in connection with an application for a mining tenement.

- (b) section 123(2) of the *Mining Act* is expressed to be subject to sections 123, 124 and 125 which, among other things:
 - (i) limit the types of claims for compensation that may be made (section 123(1));
 - (ii) in the case of pastoral and grazing lessees, and lessees of Crown land for the use and benefit of Aboriginal inhabitants, limit the entitlement to compensation to certain heads of damage (sections 123(7) and 125);
 - (iii) provide for certain matters to be considered by a Warden's Court when determining compensation (sections 124(1) and (3)) including:
 - (A) any work that the person liable for the compensation has carried out or undertakes to carry out to make good injury to the surface of the land (section 124(1)(a));
 - (B) the amount of any compensation that the owner and occupier or either of them have or has already received in respect of the loss or damage for which compensation is being assessed (section 124(1)(a)); and
 - (iv) confer power on the Warden's Court to make an order requiring the miner to restore, so far as is reasonably practicable, the surface of any land that was damaged (section 124(2)); and
- (c) section 123(4) provides that, subject to sections 123(1) and (7), and taking into account the matters referred to in sections 124 and 125, the amount of compensation payable under section 123(2) may include compensation for:
 - (i) being deprived of the possession or use, or any particular use, of the natural surface of the land or any part of the land;
 - (ii) damage to the land or any part of the land;
 - (iii) severance of the land or any part of the land from other land of, or used by, that person;
 - (iv) any loss or restriction of a right of way or other easement or right;
 - (v) the loss of, or damage to, improvements;
 - (vi) social disruption;
 - (vii) in the case of private land that is land under cultivation, particular losses to those agricultural activities; and

(viii) any reasonable expenses properly arising from the need to reduce or control the damage resulting or arising from the mining.

257. The provisions of the *Mining Act* are determinative. The Court should not assume that it is appropriate to determine compensation for any loss and damage suffered or likely to be suffered by the native title holders in accordance with section 123(2) of the *Mining Act* by reference to components for economic loss and cultural loss, as if determined in accordance with the general entitlement to compensation in section 51(1) of the NTA.

258. However, as the loss or damage contemplated by sections 123(2) and (4) of the *Mining Act* may be suffered in ways which are unique to a group of native title holders, it may (depending on the facts) be appropriate to apply, by way of analogy, the *Griffiths* principles for assessment of:

- (a) economic loss to determine the compensation referred to in section 123(4)(a) of the *Mining Act* (i.e. by assessing the economic value of affected native title rights in relation to the area of land in respect of which the native title holders have been deprived of the possession or use, or any particular use, by reference to the equivalent freehold value of that area of land and the legal content of the affected native title rights); and
- (b) non-economic loss in the form of cultural loss to determine the compensation referred to in section 123(4)(b) and (f) of the *Mining Act* (i.e. in respect of both damage to the land and social disruption, by assessing the effect of mining on the cultural value of the land by reference to native title holders' sense of loss of connection to country),

subject to any adaptation of those principles of assessment as are necessary to determine compensation in accordance with the *Mining Act* principles or criteria.

F1.3 Principles or criteria where section 53(1) NTA applies: just terms

259. As noted at paragraph [216] above, the term “*paragraph 51(xxxi) just terms*” in section 53(1) of the NTA is defined as “*just terms within the meaning of section 51(xxxi) of the Constitution*”. Accordingly, the reference to “*paragraph 51(xxxi) just terms*” in section 53(1) of the NTA is to be construed by reference to paragraph 51(xxxi) of the Constitution.

260. In the constitutional context, the expression “*just terms*” evokes the notion of “*fair dealing*” and the measure of “*just terms*” involves a consideration of what is fair and just as between the community and the owner of the thing taken. It gives rise to an inquiry which focuses upon whether the law amounts to a true attempt to provide fair and just standards of compensation to the owner of the property, as between him and the government.

261. What in practice comprises “*just terms*” will depend upon the circumstances of each case. Whilst there is no precise formula, it is nonetheless inherent in the concept of just terms that a basic requirement of fairness must be met.

F1.4 Economic Loss

262. To the extent that compensation for economic loss is relevant to the determination of compensation in accordance with Part 2, Division 5 of the NTA (for example, in the circumstances described in paragraph [258] above), the First Respondent denies that it is to be assessed in the manner set out in paragraphs [35] and [46(a)] of the POC. Rather, the First Respondent says that compensation for economic loss is to be assessed in the manner set out at paragraphs [263] – [272] below.

263. Compensation for economic loss is for the effect of the relevant Claimed Compensable Act on the native title rights and interests.

264. The entitlement to compensation for economic loss arises when the Claimed Compensable Act was done and is to be assessed at the date each such act was done. To reflect the period between the doing of the act and the date of judgment, interest is awarded on the economic loss component of the compensation (see Part F2.3 below).

265. Compensation for economic loss is determined by an objective assessment of the economic value of the relevant native title rights and interests according to established principles for the valuation of interests in land. That determination is made in respect of each relevant Claimed Compensable Act on a lot-by-lot basis.

266. The objective economic value of the native title rights and interests is assessed by first determining the sum that, in a hypothetical transaction that takes place on the day the relevant Claimed Compensable Act was done, a willing but not anxious person in the position of the Crown in right of the State of Western Australia would have been prepared to pay to a willing but not anxious person in the position of the Yindjibarndi People to obtain the latter's assent to the extinguishment of the native title (**hypothetical transaction sum**).

267. The hypothetical transaction sum is determined:

(a) on the basis that:

(i) the parties are at arm's length;

- (ii) the native title is not treated as if it were alienable, but the inalienability of native title is not a discounting factor; and
 - (iii) as a result of the transaction:
 - (A) the native title rights and interests are brought to an end by surrender; and
 - (B) by reason of that surrender, the Crown is able to create new interests in the land, including a freehold estate;
 - (b) by reference to the legal nature and content of the native title rights and interests and not the way those rights and interests are exercised; and
 - (c) without regard to the particular value of the land to the Yindjibarndi People (which is relevant to the assessment of any compensation for cultural loss as set out in Part F1.5 below).
268. The determination of the hypothetical transaction sum requires the following steps:
- (a) the identification of the nature and extent of the native title rights and interests in relation to the land affected by the relevant Claimed Compensable Act;
 - (b) the determination of the economic value of a freehold estate in that land as a proxy for the economic value of exclusive native title in relation to the land;
 - (c) the determination of the percentage reduction from exclusive native title that represents the comparative limitations of the non-exclusive rights and interests relative to exclusive native title; and
 - (d) the application of that percentage reduction to the economic value of a freehold estate determined in accordance with sub-paragraph (b).
269. The determination of the amount of the percentage reduction referred to in paragraph [268(c)] above is not amenable to a mathematical calculation or a formulaic approach. Rather that determination requires an evaluative judgment that focuses on the nature and extent of the native title rights and interests and the entitlement to compensation for their extinguishment.
270. The hypothetical transaction sum assumes that native title is extinguished. None of the Claimed Compensable Acts extinguished the native title so it is necessary to adjust the hypothetical transaction sum downwards because:
- (a) the native title is not brought to an end and continues to exist; and

- (b) the Crown is not able to create new interests in the land, including a freehold estate, without regard to native title.
271. Having determined the hypothetical transaction sum as set out in paragraphs [266] to [269] above (i.e. as if the native title was extinguished), the second step in the assessment of compensation for economic loss for the Claimed Compensable Acts is adjusting the hypothetical transaction sum downwards by applying a percentage reduction that properly represents the extent to which the native title has been impaired short of extinguishment.
272. The determination of the amount of the percentage reduction referred to in paragraph [271] above is not amenable to a mathematical calculation or a formulaic approach. As the non-extinguishment principle applies to each Claimed Compensable Act, that determination requires an evaluative judgment that takes account of:
- (a) the extent to which the native title rights and interests continue to have effect;
 - (b) the extent to which there is inconsistency between the rights held under the Claimed Compensable Act and the exercise or enjoyment of the native title rights and interests with the result that the native title rights and interests have no effect to any extent; and
 - (c) the contingency that any native title rights and interests which are wholly or partially of no effect might again have full or partial effect.
273. The First Respondent will identify what it says is the relevant percentage or percentages after it has considered the evidence to be adduced in the proceeding.

F1.4.1 Limit on compensation: section 51A

274. On the current state of the law, section 51A of the NTA:
- (a) equates the economic value of exclusive native title in relation to the land with the economic value of a freehold interest in the land; and
 - (b) in the case of extinguishment of all subsisting native title in relation to the land, applies an upper limit on compensation for economic loss at that amount.
275. The effect of section 51A of the NTA is that compensation for economic loss is to be measured by reference to the freehold value of the land and on the basis that the freehold value of the land caps the maximum compensation payable for economic loss in all cases. It follows that compensation for economic loss for an act that does not involve extinguishment of all subsisting native title in relation to the land is to be determined for an amount below the upper limit.

276. None of the Claimed Compensable Acts extinguished the native title rights and interests. On that basis, the First Respondent says that the upper limit in section 51A of the NTA is not engaged in relation to them.

F1.5 Cultural Loss

277. To the extent that compensation for cultural loss is relevant to the determination of compensation in accordance with Part 2, Division 5 of the NTA (for example, in the circumstances described in paragraph [258] above), the First Respondent says compensation for any cultural loss is to be assessed in the manner set out in paragraphs [278] – [292] below.

278. Compensation for cultural loss is for the effect of an act on the spiritual connection that native title holders have with the land and waters by their traditional laws and customs.

279. Any entitlement to compensation for cultural loss arises when the relevant Claimed Compensable Act was done but is assessed at the date of judgment.

280. Compensation for cultural loss is determined by a subjective assessment of any sense of loss of connection to country suffered by the Yindjibarndi People as a whole as an effect of the relevant Claimed Compensable Act.

281. Where, as here, there are multiple Claimed Compensable Acts, it is appropriate to consider the effects of all of those acts *in globo*.

282. The determination of compensation for cultural loss requires three separate but inter-related steps:

- (a) identification of the relevant Claimed Compensable Acts;
- (b) identification of the Yindjibarndi People's connection with the land or waters by their laws and customs; and
- (c) consideration of the particular and inter-related effects of the relevant Claimed Compensable Acts on that connection.

F1.5.1 Identification of the Yindjibarndi People's connection: evaluation of spiritual relationship

283. Identification of the Yindjibarndi People's connection with the land or waters involves a subjective assessment of the sense of connection that the Yindjibarndi People, as a whole, have to their country by reason of the spiritual relationship that exists between them and their country.

F1.5.2 Effects of the relevant Claimed Compensable Acts on the Yindjibarndi People's connection: evaluation of spiritual hurt

284. Consideration of the particular and inter-related effects of the relevant Claimed Compensable Acts on the Yindjibarndi People's connection to country involves the evaluation of any spiritual hurt caused by those acts.
285. It also involves a subjective assessment of any sense of loss of connection to country suffered by the Yindjibarndi People, as a whole, as a result of the relevant Claimed Compensable Acts.
286. It is this sense of loss of connection to country that attracts an award of compensation for cultural loss.
287. An entitlement to compensation for cultural loss requires evidence of a group-felt sense of loss of connection to country that arises when the spiritual integrity of the land or waters is disrupted in a way that is attributable to the relevant Claimed Compensable Acts. An effect of a relevant Claimed Compensable Act on the native title rights and interests, even one involving extinguishment, does not necessarily give rise to an entitlement to compensation for cultural loss. Whether or not it does so will depend on the evidence.
288. Cultural loss is assessed from the perspective of Yindjibarndi People by reference to the content of their traditional laws and customs. Under the NTA, the entitlement to compensation arises from the doing of an act and not from the doing of an activity. However, because cultural loss is a subjective loss having regard to the content of traditional laws and customs, it may be the doing of an activity in exercise of non-native title rights, or the accumulation of those activities, that gives rise to a sense of loss of connection with country. Accepting that, however, an entitlement to compensation for cultural loss is not established by evidence that merely demonstrates that the relevant Claimed Compensable Acts have had a physical effect on land or waters or that they were done in relation to an area to which the Yindjibarndi People have a spiritual connection. Rather the entitlement to compensation is for the intangible effects of an encroachment which is manifested in a sense of loss of connection to country.
289. Cultural loss is not an award in the nature of solatium: it is not is dependent upon the particular subjective distress or mental suffering arising from the disruption that follows from a compulsory, rather than voluntary, deprivation of rights. Accordingly, cultural loss is not an award to cover the distress caused by the extinguishment of native title. Cultural loss is a group-felt loss that, typically, involves a sense of injustice. However, cultural loss is not just about hurt feelings, although the strength of feeling may have evidentiary value in determining the extent of it.

F1.5.3 Translation into compensation

290. An award of compensation for cultural loss requires a fair and just assessment, in monetary terms, of any sense of loss of connection to country suffered by the Yindjibarndi People by reason of the relevant Claimed Compensable Acts. It is a social judgment of what the Australian community would accept as appropriate, fair or just.
291. An appropriate award of compensation for cultural loss will vary depending on the facts of the case. Quantification of cultural loss is not amenable to a mathematical calculation or a formulaic approach.
292. Rather, the assessment of compensation for cultural loss requires an intuitive judgment involving a multifactorial approach. The following matters guide its assessment:
- (a) Any sense of loss of connection to country suffered by the Yindjibarndi People is to be understood by reference to feelings about loss of connection to country but not by reference to individual acts and their effects on a lot-by-lot basis.
 - (b) To attract an award of compensation, the cultural loss must be the effect or consequence of, or be produced by, one or more of the relevant Claimed Compensable Acts. As such, it may be necessary to consider the extent to which any sense of loss of connection to country is attributable to acts other than the relevant Claimed Compensable Acts. It is also necessary to appreciate that the sense of loss of connection may be incremental and cumulative. So, for example, while earlier non-compensable acts may have resulted in a sense of loss of connection, the Claimed Compensable Acts may have resulted in a further sense of loss of connection. In that circumstance, it is only the further sense of loss of connection that is compensable as cultural loss.
 - (c) The sense of loss of connection to country need not be a direct effect of a relevant Claimed Compensable Act.
 - (d) In exercise of the Court's discretion to determine what the Australian community would accept as appropriate, fair or just, it is appropriate to consider the circumstances in which the relevant Claimed Compensable Acts were done. Depending on the facts, this may include consideration of:
 - (i) the extent to which the native title rights and interests were exercised in relation to the area the subject of each such act prior to the act being done;

- (ii) whether the native title rights and interests have been exercised in relation to the area the subject of each such act subsequent to the act being done and, if so, to what extent;
 - (iii) any mitigating circumstances such as any steps taken to seek to avoid or minimise the extent to which the Yindjibarndi People would suffer a sense of loss of connection to country as an effect of those acts; and
 - (iv) any aggravating circumstances that may have contributed to a sense of loss of connection to country.
- (e) Any compensation for cultural loss is awarded to the Yindjibarndi People on an *in globo* basis with its distribution to individuals being an intramural matter.

F2 RESPONSE TO POC

293. The First Respondent says that the Applicant should state for the Court and for the parties to the proceedings the quantum of its claim and the various elements of its claim. This should occur, at the latest, by the commencement of a trial of the proceedings. To fail to identify such matters would not be consistent with the overarching purpose set out in section 37M of the *Federal Court of Australia Act 1976* (Cth) and with the obligations of parties set out in section 37N of that Act.

F2.1 Claimed loss, diminution, impairment or effect on the native title

294. In respect of paragraph [33] of the POC, the First Respondent:

- (a) says that:
 - (i) the “*non-extinguishment principle*” applies to each Claimed Compensable Act and repeats paragraphs [198] – [201] above;
 - (ii) by operation of the “*non-extinguishment principle*”, native title rights and interests continue to exist in relation to the whole of the areas covered by the Claimed Compensable Acts; and
 - (iii) the operation of the “*non-extinguishment principle*” in respect of any particular Claimed Compensable Act is to be assessed, based on the evidence provided, as to:
 - (A) the rights and interests held, and activities undertaken, pursuant to the Claimed Compensable Act; and

- (B) the extent to which those things referred to in sub-paragraph (A) are inconsistent with the continued existence, enjoyment or exercise of the Yindjibarndi People's native title rights and interests;
- (b) does not admit that the Yindjibarndi People's native title rights and interests have been wholly suppressed:
- (i) by the grant of any Claimed Compensable Act; or
- (ii) entirely within the area of any particular Claimed Compensable Act or, alternatively, within the entirety of the areas covered by the Claimed Compensable Acts; and
- (c) otherwise does not know and therefore cannot admit paragraph [33] of the POC.

295. In respect of paragraph [34] of the POC, the First Respondent:

- (a) admits paragraphs [34(i)], [34(ii)], [34(iii)], [34(iv)], [34(vi)] and [34(vii)], [34(ix)] and [34(x)];
- (b) in respect of paragraph [34(viii)], says that it does not know what the Applicant intends to mean when it refers to "*dominion over their country to the exclusion of all others*" but says that, to the extent that it is intended by the Applicant to refer to Exclusive Rights, those rights apply only in the Exclusive Area; and
- (c) otherwise does not know and therefore cannot admit the matters referred to in paragraph [34] of the POC.

295A. In respect of paragraph [34A] of the POC, the First Respondent:

- (a) denies that the mere grant of a Claimed Compensable Act had, in and of itself, the effect pleaded in the chapeau to paragraph [34A] of the POC;
- (b) says, in respect of paragraph [34A(a)] of the POC, that:
- (i) the Applicant has not identified any particular significant or important sites to the Yindjibarndi People that it alleges have been destroyed by activities conducted pursuant to the Claimed Compensable Acts; and
- (ii) the pleaded fact of the making of the applications referred to in paragraphs [34A(c)] and [34A(d)] of the POC, if established, does not demonstrate:
- (A) the existence of a site of which is of significance or importance to the Yindjibarndi People; or

- (B) the destruction of a site generally (or the destruction of a site which is of significance or importance to the Yindjibarndi People) as a result of activities conducted pursuant to the Claimed Compensable Acts;
- (c) admits that the FMG Respondents have made applications under sections 16(2) and 18(2) of the AHA in respect of the area of some of the Claimed Compensable Acts and says that it is aware of the following other applications, in addition to those applications set out in paragraph [295A(d)] below, that are relevant to the Claimed Compensable Acts:
- (i) an application was submitted by Ms Jodie Mitchell of Alpha Archaeology Pty Ltd under section 16(2) of the AHA on 16 September 2011. Permit No. 500 was issued by the Registrar of Aboriginal Sites on 6 February 2012 for a period of one year (expiring on 6 February 2013). Permit No. 500 authorised the holder (subject to conditions) to undertake test pitting and excavations of five specified sites within the Firetail Central and Trinity Tailings Storage Facility Project Areas in the Solomon Mining and Infrastructure Area (being sites 30584 (YIN10-062), 30585 (YIN10-109), 30586 (YIN10-111), 30587 (YIN10-116) and 30400 (YIN10-121));
- (ii) an application was submitted by Ms Jodie Mitchell of Alpha Archaeology Pty Ltd under section 16(2) of the AHA on 21 October 2011. Permit No. 503 was issued by the Registrar of Aboriginal Sites on 20 January 2012 for a period of one year (expiring on 20 January 2013). Permit No. 503 authorised the holder (subject to conditions) to undertake test pit excavations and investigative stone removal in four specified rock shelters within the proposed Solomon Project (being sites 30589 (YIN09-002), 30907 (YIN10-023), 30502 (YIN10-114) and 30503(YIN10-120));
- (iii) an application was submitted by Ms Jodie Mitchell of Alpha Archaeology Pty Ltd under section 16(2) of the AHA on 21 October 2011. Permit No. 506 was issued by the Registrar of Aboriginal Sites on 23 February 2012 for a period of one year (expiring on 23 February 2013). Permit No. 506 authorised the holder (subject to conditions) to undertake test pit excavations and cultural material collection in four specified rock shelters within the proposed Solomon Project (being sites YIN08-31, YIN10-003, YIN10-021, YIN10-087 and YIN10-107);
- (iv) an application was submitted by Ms Jodie Mitchell of Alpha Archaeology Pty Ltd under section 16(2) of the AHA on 26 April 2012. Permit No. 510 was issued by the Registrar of Aboriginal Sites on 13 June 2012 for a period of one year (expiring on 13 June 2013). Permit No. 510 authorised the holder (subject to conditions) to undertake test pit excavations and cultural material collection in a specified rock

shelter with the proposed Solomon Project (being site 31794 (YIN10-017)). On 20 December 2012, Ms Jodie Mitchell informed the Department of Indigenous Affairs that Alpha Archaeology Pty Ltd was no longer working on the Solomon Project and requested that Permit No. 510 be cancelled. Ms Mitchell indicated that test pit excavation and cultural material collection were not undertaken pursuant to Permit No. 510;

(v) an application was submitted by Mr Scott Chisholm of Terra Rosa Cultural Resource Management under section 16(2) of the AHA on 23 October 2012. Permit No. 530 was issued by the Registrar of Aboriginal Sites on 21 January 2013 for a period of one year (commencing on 18 January 2013 and expiring on 18 January 2014). Permit No. 530 authorised the holder (subject to conditions) to undertake subsurface investigations of Aboriginal sites located with the Solomon Project Area (as described in the map entitled "s16 Application Area Solomon" dated 21 August 2012 and submitted with the application). On 12 December 2013 an extension of time under Permit No. 530 was requested by Mr Scott Chisholm. On 16 December 2013 the Registrar of Aboriginal Sites issued an amended Permit No. 530 with an expiry date of 18 January 2015; and

(vi) an application was submitted by Mr Brian Burns, Heritage Specialist of Fortescue Metals Group under section 16(2) of the AHA on 18 August 2016. Permit No. 569 was issued by the Registrar of Aboriginal Sites on 4 November 2016 for a period of one year (commencing on 31 October 2016 and expiring on 31 October 2017). Permit No. 569 authorised the holder (subject to conditions) to undertake investigations of four specified Aboriginal sites (being 28956 (YIN10-03), 33336 (YIN10-004), 36839 (YIN12-009) and 36840 (YIN14-014)).

(d) says, in respect of paragraph [34A(d)] of the POC, that:

(i) as to sub-paragraph (i), it cannot locate an application under the AHA which relevantly matches that sub-paragraph;

(ii) as to sub-paragraph (ii), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 18 February 2011. An amended notice was submitted on 17 March 2011. That notice sought consent to use a portion of M 47/1413 for the purpose of the construction and operation of a mining area and associated infrastructure known as the Firetail Priority Mining Area. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 30 June 2011;

- (iii) as to sub-paragraph (iii), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 18 February 2011. An amended notice was submitted on 17 March 2011. That notice sought consent to use portions of E 47/1334 and E 47/1447 for the purpose of the construction and operation of a mining area and associated infrastructure known as the Firetail Priority Infrastructure Area. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 27 January 2012;
- (iv) as to sub-paragraph (iv), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 19 August 2011. An amended notice was submitted on 9 September 2011. That notice sought consent to use portions of M 47/1409, M 47/1413 and M 47/1431 for the purpose of the construction of a mining area and associated infrastructure, including a tailings storage facility, at Firetail and Kings Mining Areas (Firetail, Conveyors and Trinity TSF). Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 27 January 2012;
- (v) as to sub-paragraphs (v) and (x), it cannot locate an application under the AHA which relevantly matches those sub-paragraphs but says that a notice was submitted by FMG Pilbara Pty Ltd and The Pilbara Infrastructure Pty Ltd under section 18(2) of the AHA on 16 September 2011. An amended notice was submitted on 7 October 2011. That notice sought consent to use portions of M 47/1409, M 47/1413, M 47/1431 and Licence to Occupy Crown Land 50213/2004 15 168 for the purpose of the construction of a rail loop and associated infrastructure in the Rail Loop area, the construction of a run of mine pad, crushing hub, ore processing facility and associated infrastructure in Firetail Central Area, and the construction of ore and waste stockpiles, roads and associated infrastructure in the Firetail West Area (Firetail Central, West and Rail Loop). Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 27 January 2012;
- (vi) as to sub-paragraphs (vi) and (vii), it cannot locate an application under the AHA which relevantly matches those sub-paragraphs but says that a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 21 October 2011. That notice sought consent to use portions of M 47/1409 and M 47/1431 for the purpose of the construction of a tailings storage facility and associated infrastructure in the Trinity Area and an ore processing facility, roads and associated infrastructure in the

Firetail West Area (Firetail West and Trinity). Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 7 February 2012;

(vii) as to sub-paragraph (viii), it cannot locate an application under the AHA which relevantly matches that sub-paragraph;

(viii) as to sub-paragraph (ix), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 9 December 2011. That notice sought consent to use portions of M 47/1413 and M 47/1431 for the purpose of the construction and usage of a conveyor, roads and associated infrastructure in the Firetail Area (Conveyor and Infrastructure Phase 2). Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 2 April 2012;

(ix) as to sub-paragraph (xi), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 24 February 2012. That notice sought consent to use portions of M 47/1413 and M 47/1431 for the purpose of the construction of mining areas and associated infrastructure (Phase 7) associated with the Solomon Project, being the construction of a conveyor, mine pit, pit access ramp, roads and associated infrastructure in the Firetail Area. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 24 April 2012;

(x) as to sub-paragraph (xii), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 27 April 2012. That notice sought consent to use portions of M 47/1409, M 47/1413 and M 47/1431 for the purpose of mining and infrastructure (Phase 8) associated with the Solomon Project, being the construction and operation of mining pits, ROM pad, ore stockpiling, haulage access ramp, roads and associated infrastructure in the Firetail and Valley of the Kings Areas. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 25 July 2012;

(xi) as to sub-paragraph (xiii), it cannot locate an application under the AHA which relevantly matches that sub-paragraph;

(xii) as to sub-paragraph (xiv), it cannot locate an application under the AHA which relevantly matches that sub-paragraph;

- (xiii) as to sub-paragraph (xv), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 23 July 2012. That notice sought consent to use portions of M 47/1409, M 47/1413 and M 47/1431 for the purpose of mining and infrastructure (Phase 9) associated with the Solomon Project, being the construction and operation of mining pits, ROM pad, tailings storage facility, roads and associated infrastructure at the Solomon Project. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 22 October 2012;
- (xiv) as to sub-paragraph (xvi), it cannot locate an application under the AHA which relevantly matches that sub-paragraph;
- (xv) as to sub-paragraph (xvii), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 14 March 2013. That notice sought consent to use portions of M 47/1409, M 47/1431, M 47/1453, L 47/362 and L 47/363 for the purpose of mining and infrastructure (Phase 10) associated with the Solomon Project, being the construction of a staged waste rock landform and associated infrastructure and haul roads at the Solomon Project. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 28 June 2013;
- (xvi) as to sub-paragraph (xviii), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 13 March 2013. That notice sought consent to use portions of M 47/1409, M 47/1431 and E 47/1334 for the purpose of mining and infrastructure (Phase 11) associated with the Solomon Project, being dewatering, grade control drilling and construction of a future mining pit and associated infrastructure for the Solomon Project. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 23 August 2013;
- (xvii) as to sub-paragraph (xix), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 15 May 2013. That notice sought consent to use portions of M 47/1413 and M 47/1431 for the purpose of mining and infrastructure (Phase 12) associated with the Solomon Project, being the construction of a waste rock dump and a northern extension of the Firetail mining pits in the Solomon Project area. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 22 August 2013;

(xviii) as to sub-paragraph (xx), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 15 May 2013. That notice sought consent to use a portion of M 47/1409 for the purpose of mining and infrastructure (Phase 13) associated with the Solomon Project, being the extension of the Trinity tailings storage facility supporting the Solomon mining project. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 23 August 2013;

(xix) as to sub-paragraph (xxi), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 19 May 2013. That notice sought consent to use portions of M 47/1413 and L 1SA for the purpose of mining and infrastructure (Phase 14) associated with the Solomon Project, being the extension of the Firetail mining pits and construction of a gas pipeline. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 1 October 2013;

(xx) as to sub-paragraph (xxii), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 19 September 2013. That notice sought consent to use portions of M 47/1409, M 47/1413, M 47/1453, L 47/362 and L 47/363 for the purpose of mining and infrastructure (Phase 15) associated with the Solomon Project, being the extension of the Firetail mining pits, the extension of the Kings waste rock landform and developing associated mining infrastructure within the Solomon Project. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 18 December 2013;

(xxi) as to sub-paragraph (xxiii), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 12 December 2013. That notice sought consent to use portions of M 47/1431 and M 47/1453 for the purpose of mining and infrastructure (Phase 16) associated with the Solomon Project, being the extension of the Kings waste rock landform and developing associated mining infrastructure within the Solomon Project. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 1 April 2014;

(xxii) as to sub-paragraph (xxiv), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 11 March 2014. That notice sought consent to use portions of M 47/1409, M 47/1413 and M47/1431 for the purpose of mining and

infrastructure (Phase 17) associated with the Solomon Project, being the extension of the mining operations and infrastructure in Kings and Firetail within the Solomon Project. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 4 July 2014;

(xxiii) as to sub-paragraph (xxv), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 17 September 2014. That notice sought consent to use portions of M 47/1409, M 47/1413, M47/1431 and M 47/1334 for the purpose of mining and infrastructure (Phase 18) associated with the Solomon Project, being the extension of the mining operations and infrastructure in the Firetail and Trinity sections of the Solomon Project including, but not limited to, mining pits, a waste dump, roads, lay-downs, power and water corridors. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 26 March 2015;

(xxiv) as to sub-paragraph (xxvi), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 14 July 2015. That notice sought consent to use portions of M 47/1409 and M 47/1475 for the purpose of mining and infrastructure (Phase 19) associated with the Solomon Project, being the extension of the mining operations and infrastructure in the Trinity section of the Solomon Project including, but not limited to, mining pits, a waste dump, roads, lay-downs, power and water corridors. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 27 November 2015;

(xxv) as to sub-paragraph (xxvii), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 21 July 2016. That notice sought consent to use portions of M 47/1409, M 47/1413, M 47/1431 and M 47/1473 for the purpose of mining and infrastructure (Phase 20) associated with the Solomon Project, being the extension of mining operations and associated infrastructure in the Firetail North, Firetail South and Trinity sections of the Solomon Project including, but not limited to, mining pits, a tailings storage facility lift, roads, ramps, lay-downs, power and water infrastructure. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 3 November 2016;

(xxvi) as to sub-paragraph (xxviii), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 20 October 2016. That notice sought consent to use

portions of M 47/1413, M 47/1431, M 47/1453, M 47/1473, E 47/1334 and E 47/1447 for the purpose of mining and infrastructure (Phase 21) associated with the Solomon Project, being the extension of mining operations and infrastructure in the Firetail North and Firetail South sections of the Solomon Project including, but not limited to, mining pits, ramps, waste dumps, roads, lay-downs, power and water infrastructure. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 1 February 2017;

(xxvii) as to sub-paragraph (xxix), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 20 October 2016. That notice sought consent to use portions of M 47/1409, M 47/1411, M 47/1413, M 47/1431, M 47/1453, M 47/1473, M47/1475, E47/1319, E 47/1334 and E 47/1447 for the purpose of mining and infrastructure (Phase 22) associated with the Solomon Project, being the extension of exploration and mining activities (including infrastructure) in the Solomon Project including, but not limited to, mining pits, roads, lay-downs, minor camps, power and water corridors and exploration drilling programs. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 1 February 2017;

(xxviii) as to sub-paragraph (xxx), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 12 December 2017. That notice sought consent to use portions of M 47/1409, M 47/1453, E 47/1334 and L 47/363 for the purpose of mining and infrastructure (Phase 23) associated with the Solomon Project, being the extension of mining operations and supporting infrastructure in the Kings South, Magnus and Zion Mining areas in the Solomon Project including, but not limited to, drilling programs, mining pits, ramps, waste dumps, roads, lay-downs, power, water and rail infrastructure. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 14 January 2019;

(xxix) as to sub-paragraph (xxxi), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 17 September 2019. That notice sought consent to use portions of M 47/1409 for the purpose of mining and infrastructure (Phase 24) associated with the Solomon Project, being the expansion of mining operations and supporting infrastructure including, but not limited to, drilling programs, mining pits, ramps, waste dumps, roads, lay-downs, power, water and rail infrastructure. Consent (subject to conditions) to use the specified land for the specified purpose was granted

pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 26 May 2020; and

(xxx) as to sub-paragraph (xxxii), a notice was submitted by FMG Pilbara Pty Ltd under section 18(2) of the AHA on 10 December 2019. That notice sought consent to use portions of M 47/1409 for the purpose of mining and infrastructure (Phase 25) associated with the Solomon Project, being activities permitted by a mining lease under the *Mining Act* including, but not limited to, mining, blasting and drilling, construction of light and heavy vehicle roads, lay-downs areas, conveyors, power and water infrastructure and all other activities that Fortescue considered necessary, incidental or conducive to the extraction of minerals. Consent (subject to conditions) to use the specified land for the specified purpose was granted pursuant to section 18(3) of the AHA by the Minister for Aboriginal Affairs on 26 May 2020; and

(e) otherwise does not know and therefore cannot admit paragraph [34A] of the POC.

296. In respect of paragraph [35] of the POC, the First Respondent:

(a) says the grant of each of the Claimed Compensable Acts was valid in accordance with the provisions of the NTA and the *Mining Act*;

(aa) denies that the statutory rights and procedures contained in section 31 of the NTA (**the right to negotiate**) applied to all of the Claimed Compensable Acts and says that it applied only to those Claimed Compensable Acts identified in paragraph [194A(a)] above;

(ab) says that, in respect of those Claimed Compensable Acts to which the right to negotiate applied, the First Respondent and the grantee party (as that term is defined in section 29(2)(c) of the NTA) were found by the NNTT to have negotiated in good faith as required by section 31(b) of the NTA or, alternatively, it was not ultimately alleged that the First Respondent and the grantee party had failed to negotiate in good faith;

(b) says that the circumstances in which the Claimed Compensable Acts were done are irrelevant to the determination of compensation for economic loss;

(ba) says that the statutory rights and procedures contained in the right to negotiate (or Part 2, Division 3 of the NTA more generally), and whether those statutory rights and procedures applied in any particular circumstance, are irrelevant to the determination of compensation for economic loss;

(bb) denies that compensation is payable for any economic loss that is said to be referable to the value of any statutory rights and procedures contained in the right to negotiate (or Part

2. Division 3 of the NTA more generally) that may attach to the affected native title rights and interests; and

(c) otherwise denies paragraph [35] of the POC.

297. ~~The First Respondent does not know and therefore cannot admit~~ In respect of paragraph [36] of the POC, the First Respondent:

(a) admits paragraph [36(b)] of the POC and says that a Notice of Appointment of New Agent pursuant to O 78 r 42(2) of the *Federal Court Rules* was filed in the Federal Court on 23 February 2008 by the Yindjibarndi #1 claimant;

(b) says that, in respect of the Supreme Court of Western Australia matters referred to in paragraphs [36(k) – (m)] of the POC, it is aware of, but was not a party to, the following proceedings:

(i) CIV 2072/2011 between Aileen Sandy and Sylvia Allan⁶ (Plaintiffs) and Yindjibarndi Aboriginal Corporation (ICN 4370) (YAC) and Stanley Warrie (Defendants). The plaintiffs contended that they had been wrongly excluded from the membership of the YAC and that, since December 2010, YAC had acted and threatened to act in contravention of the requirements of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (CATSI Act) and in contravention of its constitution. The plaintiffs sought to have a receiver appointed to the defendant and an order that certain persons be reinstated as members of the defendant and certain other persons be reinstated as directors of the defendant. Justice Pritchard delivered judgment on 20 April 2018. Her Honour found that YAC had engaged in oppressive conduct of the kind described in s 166-1(1)(d) and (e) of the CATSI Act: see *Sandy v Yindjibarndi Aboriginal Corporation RNTBC (No.4)* [2018] WASC 124. On 4 May 2018 Pritchard J ordered judgment for the plaintiffs, granted declaratory and injunctive relief, and ordered the defendants to pay 70% of the plaintiffs' costs of the action. Her Honour declined to appoint a receiver to the defendant;

(ii) CIV 2491/2014 between Charmaine Adams, Ken Sandy and John Sandy (Plaintiffs) and YAC (Defendant). In this proceeding two members of YAC - Ms Charmaine Adams and Ms Jill Tucker - sought declarations as to the validity of their convening of a general meeting of YAC on 10 November 2014. On 7 November 2014 Justice

⁶ Mavis Pat was also a plaintiff in this action. She discontinued her action in July 2013.

Martin made a declaration that the general meeting had been validly called and that each of the motions set out in the notice of the general meeting was able to be proposed at that meeting: see *Adams v Yindjibarndi Aboriginal Corporation RNTBC* [2014] WASC 467;

(iii) CIV 3048/2015 between John Sandy (Plaintiff) and YAC, Angus Mack, Jill Tucker, Lyn Cheedy, Lynette Phillips, Middleton Cheedy, Pansy Cheedy, Rosemary Woodley, Russel Sandy, Sonia Wilson, Stanley Warrie and Tootsie Daniels (Defendants). The plaintiff brought proceedings challenging the validity of a meeting of the directors of YAC which was held on 16 December 2015. In addition, the plaintiff contended that the terms of appointment of all of YAC's directors had expired on 10 September 2015, and that although extended (by the CATSI Act) until the next general meeting of YAC on 30 November 2015, motions for the appointment of directors were put, but not passed, at that meeting, with the result that on 16 December 2015, YAC had no validly appointed directors. Justice Le Miere delivered judgement on 9 March 2016. His Honour found that the purported meeting of directors on 16 December 2015, and the resolutions passed at that meeting, were invalid because the person who called the meeting, and the persons who attended, had ceased to be directors on 30 November 2015. His Honour further held that the directors had accepted 46 membership applications for an improper purpose: see *Sandy v Yindjibarndi Aboriginal Corporation RNTBC (No 2)* [2016] WASC 75; and

(iv) CIV 2883/2017 between John Sandy & Paul Aubrey (Plaintiffs) and YAC (Defendant). The plaintiffs brought proceedings on 8 November 2017 seeking: declarations that the affairs of YAC had been conducted oppressively or unfairly and that special resolutions purportedly carried at the 2016 YAC AGM were not validly carried; an order that the YAC Rule Book registered on 4 December 2016 be replaced with the previous version; an injunction requiring YAC to lodge with the Office of the Registrar of Indigenous Corporations a financial report for the 2018 financial year that complies with regulatory, accounting and auditing standards; and the appointment of a receiver over the property of YAC. YAC subsequently applied for orders that the plaintiffs' originating summons be struck out and the proceeding be dismissed on the ground that the proceeding was an abuse of process. Justice Le Meire delivered judgement on YAC's application on 11 September 2019. His Honour found that the proceeding was not an abuse of process and dismissed YAC's application: see *Sandy v Yindjibarndi Aboriginal Corporation RNTBC (No 2)* [2019]

WASC 328. On 18 March 2020 his Honour ordered that the defendant pay the plaintiffs' costs of the abuse of process hearing (and a related subpoena application brought by the defendant): see *Sandy v Yindjibarndi Aboriginal Corporation RNTBC (No 3)* [2020] WASC 88. The First Respondent does not know the progress and/or outcome of the substantive proceedings;

- (c) says, in respect of the joinder of application referred to in paragraph [36(l)] of the POC, that:
- (i) on or about 31 January 2014, Margaret Todd, Lindsay Todd and Phyllis Harris filed an interlocutory application in the Yindjibarndi Claim seeking orders pursuant to section 84(5) of the NTA to be joined as respondent parties to the Yindjibarndi Claim;
 - (ii) on 14 October 2014 the Federal Court made orders joining Margaret Todd, Lindsay Todd and Phyllis Harris as respondents to the Yindjibarndi Claim: see *Jacob v State of Western Australia* [2014] FCA 1106; and
 - (iii) on 20 July 2017 the Federal Court found that Margaret Todd, Lindsay Todd and Phyllis Harris had not established on the balance of probabilities that they or their living members were Yindjibarndi people: see *Warrie*;
- (d) says, in respect of the applications made pursuant to section 66B of the NTA to replace the applicant in the Yindjibarndi Claim, referred to in paragraph [36(n)] of the POC, that:
- (i) the original applicant for the Yindjibarndi Claim (as filed on 9 July 2003) comprised Ned Cheedy, Guinness Gilby, Mavis Pat, Aileen Sandy, Edie Whalebone, Kenny Jerrold, Thomas Jacob, Sylvia Allen, Alum Cheedy and Michael Woodley;
 - (ii) on 5 September 2011, Mavis Pat, Aileen Sandy and Sylvia Allen filed an interlocutory application in the Yindjibarndi Claim seeking orders pursuant to section 66B of the NTA that they jointly replace the persons comprising the applicant in the Yindjibarndi Claim;
 - (iii) on 5 June 2012, Thomas Jacob, Stanley Warrie, Allum Cheedy, Kevin Guinness, Angus Mack, Michael Woodley, Joyce Hubert, Pansy Samba, Jean Norman, Esther Pat, Judith Coppin and Maisie Ingie filed an interlocutory application in the Yindjibarndi Claim seeking orders pursuant to section 66B of the NTA that they jointly replace the persons comprising the applicant in the Yindjibarndi Claim;
 - (iv) on 15 February 2013, the Federal Court made orders, *inter alia*:
 - (A) allowing the interlocutory application made on 5 June 2012;

- (B) that, pursuant to section 66B of the NTA, Thomas Jacob, Stanley Warrie, Allum Cheedy, Kevin Guinness, Angus Mack, Michael Woodley, Joyce Hubert, Pansy Sambo, Jean Norman, Esther Pat, Judith Coppin and Maisie Ingie jointly replace the applicant in the Yindjibarndi Claim; and
- (C) dismissing the interlocutory application made by Mavis Pat, Aileen Sandy and Sylvia Allen on 5 September 2011
- see *NC (deceased) v State of Western Australia (No 2)* [2013] FCA 70;
- (v) on 3 July 2015, Rodney Adams, Sylvia Allen, Maudie Jerrold, Francis Phillips, Allery Sandy, Ken Sandy and Diana Smith filed an interlocutory application in the Yindjibarndi Claim seeking orders pursuant to section 66B of the NTA that they jointly replace the persons comprising the applicant in the Yindjibarndi Claim; and
- (vi) on 21 July 2015, the Federal Court made orders dismissing the interlocutory application filed on 3 July 2015: see *TJ v State of Western Australia* [2015] FCA 818;
- (e) says, in respect of the joinder of the Wintawari Guruma Aboriginal Corporation RNTBC (WGAC) to the Yindjibarndi Claim and the lodgement of an overlapping native title determination application referred to in paragraph [36(o)] of the POC, that:
- (i) on 11 August 2015, WGAC filed an interlocutory application pursuant to section 84(5) of the NTA in the Yindjibarndi Claim seeking to be joined as a party to the Yindjibarndi Claim. The Yindjibarndi Claim had, at that time, been set down for a hearing on-country commencing on 7 September 2015;
- (ii) on 18 August 2015, WGAC filed a revised native title determination application (WAD 434 of 2015) that applied for the variation of two approved determinations of native title held by the Eastern Guruma people.⁷ The area of the land and waters claimed in WAD 434 of 2015 overlapped, and bifurcated, approximately one quarter of the Yindjibarndi Claim;
- (iii) on 25 August 2015, the Federal Court dismissed native title determination application WAD 434 of 2015 and the interlocutory application made by WGAC on 11 August 2015 and ordered WGAC to pay costs on an indemnity basis. Those orders were not entered;

⁷ *Hughes v State of Western Australia* [2007] FCA 365 on 1 March 2007 and *Hughes v State of Western Australia (No 2)* [2012] FCA on 20 November 2012.

- (iv) on 25 September 2015, the Federal Court set aside and remade the orders made on 25 August 2015: see *Wintawari Guruma Aboriginal Corporation RNTBC v State of Western Australia* [2015] FCA 1053;
 - (v) on 22 December 2015, Michael Hughes, Judith Hughes, Terry Hughes, July Hicks, Dennis Hicks and Michael Hicks filed native title determination application WAD 750 of 2015 of behalf of the Eastern Guruma people. WAD 750 of 2015 overlapped, and bifurcated, the Yindjibarndi Claim;
 - (vi) on 25 January 2016:
 - (A) the applicant to the Yindjibarndi Claim filed an interlocutory application in WAD 750 of 2015 seeking to be joined to that proceeding and orders that WAD 750 of 2015 be stayed, struck out or dismissed as an abuse of process; and
 - (B) Michael Hughes, one of the persons constituting the applicant in WAD 750 of 2015, filed an interlocutory application in the Yindjibarndi Claim seeking that he be joined as a respondent pursuant to s 84(5) of the NTA;
 - (vii) on 29 January 2016, the Federal Court made orders (by consent) that the Yindjibarndi Claim applicant and certain other respondents to the Yindjibarndi Claim be joined to WAD 750 of 2015;
 - (viii) on 10 March 2016, the Federal Court made orders:
 - (A) dismissing WAD 750 of 2015 on the ground that it constituted an abuse of the process of the Court;
 - (B) dismissing the interlocutory application filed on 25 January 2016 by Michael Hughes in the Yindjibarndi Claim;
 - (C) that Michael Hughes pay the Yindjibarndi Claim applicant:
 - (1) the costs of his interlocutory application on an indemnity basis; and
 - (2) the costs thrown away by the Yindjibarndi Claim applicant in the Yindjibarndi Claim as a result of the filing and prosecution of WAD 750 of 2015 on a party-party basis; and
 - (D) that the applicant in WAD 750 of 2015 pay the costs of the Yindjibarndi Claim applicant in WAD 750 of 2015
- see *TJ v State of Western Australia* [2016] FCA 553;

- (ix) on 1 June 2016:
 - (A) Michael Hughes, Judith Hughes, Terry Hughes, July Hicks, Dennis Hicks and Michael Hicks filed an application for leave to appeal from the judgement of the Federal Court on 10 March 2015 dismissing WAD 750 of 2015 (WAD 225 of 2016); and
 - (B) Michael Hughes filed an application for leave to appeal from the costs orders made in the Yindjibarndi Claim by the Federal Court on 10 March 2015 (WAD 226 of 2016); and
- (x) on 25 July 2016 the Federal Court:
 - (A) dismissed application for leave to appeal WAD 225 of 2016; and
 - (B) granted Michael Hughes leave to appeal from the order made by the Federal Court on 10 March 2016 that he pay the costs thrown away by the Yindjibarndi Claim applicant in the Yindjibarndi Claim as a result of the filing and prosecution of WAD 750 of 2015; and
 - (C) otherwise dismissed the application for leave to appeal in WAD 226 of 2016 see *Hughes v State of Western Australia (No 3)* [2016] FCA 840;
- (f) says, in respect of the relationship between the FMG Respondents, Wirilu-Murra Yindjibarndi Aboriginal Corporation (ICN 7483) (WMYAC), the Applicant and the Yindjibarndi people referred to in paragraphs [36(c) – (e), (i) and (k) – (n)] of the POC, that:
 - (i) in *Sandy v Yindjibarndi Aboriginal Corporation RNTBC (No.4)* [2018] WASC 124, Pritchard J considered, based on the evidence in that proceeding, that:
 - (A) some members of YAC were dissatisfied with the management of YAC, including the management of its finances, and that of its subsidiaries, and that those concerns contributed to the decision made by some YAC members to establish, or join, WMYAC, and continued to contribute to the dispute between YAC and those of its members who are also members of WMYAC;
 - (B) from late 2010 onwards, and up until the trial of the matter in 2017, there were genuine, and very strongly held, opposing views within the Yindjibarndi community, and within YAC's membership, about whether the Yindjibarndi people (through YAC) should enter into an agreement with FMG on the terms

- set out in the FMG Agreement⁸ in advance of the determination of the Yindjibarndi Claim;
- (C) whilst it was not necessary to reach any conclusion as to whether WMYAC, in fact, sought to take control of YAC with a view to entering into an agreement with FMG, in all of the circumstances it was not unreasonable for YAC, acting through its directors and CEO, to have formed the belief that:
- (1) WMYAC stood behind: (a) the plaintiffs in this proceeding and the other YAC members who took steps to oblige YAC to enter into the FMG Agreement; and (b) those persons who sought to have YAC removed as the agent for the applicant in the Yindjibarndi Claim;
 - (2) WMYAC's objective in doing so was, initially, to enter into the FMG Agreement, and later to enter into an agreement with FMG in similar terms to the FMG Agreement;
 - (3) WMYAC members were determined to achieve this objective and had been willing to apply to the Federal Court to remove YAC as the agent for the Yindjibarndi Claim and to seek to remove YAC as the prescribed body corporate for the common law holders in respect of the determination made in *Daniel v State of Western Australia* [2005] FCA 536 (as amended); and
 - (4) FMG was supporting (including financially) WMYAC and its members in seeking to achieve these objectives;
- (D) the dispute between YAC and those of its members who were also members of WMYAC was not, and is not, confined to a dispute about the terms of the FMG Agreement, or any similar agreement between YAC and FMG. It was also a dispute about the management of YAC, including as to its financial management; and
- (E) nothing in the evidence at the trial suggested that the dispute within the Yindjibarndi community was intractable. On the contrary, the evidence demonstrated that members of the Yindjibarndi community have, in the past, been willing to attempt to resolve their dispute;

⁸ As described in paragraphs [144] – [151] of *Sandy v Yindjibarndi Aboriginal Corporation RNTBC (No.4)* [2018] WASC 124.

- (ii) in *Sandy v Yindjibarndi Aboriginal Corporation RNTBC (No 2)* [2019] WASC 328, Le Miere J, based on the evidence in that proceeding:
 - (A) noted that the plaintiffs gave notice pursuant to O 9A of the *Rules of the Supreme Court 1971* (WA) that WMYAC was an interested non-party in relation to the plaintiffs (being a person who provides financial assistance to a party for the purposes of conducting the case and exercises direct or indirect control or influence over the way in which the party conducts the case);
 - (B) recorded that the plaintiffs admitted that WMYAC paid the plaintiffs' legal fees in CIV 2072/2011 and were paying the legal fees of the plaintiffs in this proceeding. The plaintiffs also affirmed that they were unable to pay the costs of the action and needed the financial assistance of WMYAC to bring it; and
 - (C) concluded that WMYAC exercised control over the way in which the plaintiffs conducted the present proceeding and exercised control over the way in which the plaintiffs in CIV 2072/2011 conducted that proceeding;
- (iii) in *Sandy v Yindjibarndi Aboriginal Corporation RNTBC (No 2)* [2016] WASC 75, Le Miere J found, based on the evidence in that proceeding, that:
 - (A) the plaintiff brought the proceeding as a member of YAC and, whilst he may have been motivated to bring the proceeding as a result of his perceptions of the interests of WMYAC (of which he was a director), the action was not brought as a representative action on behalf of WMYAC;
 - (B) reasonable notice was not given of a directors' meeting on 16 December 2015 to one of the directors, Ms Tucker, which caused her not to attend the meeting; and
 - (C) the resolution at the directors' meeting on 16 December 2015 to accept applications for certain new members of YAC was passed for an improper purpose, namely adding new members to YAC who were supportive of Mr Woodley and the incumbent directors (other than Ms Tucker) and who it was believed would vote to re-appoint those incumbent directors (other than Ms Tucker) at a special AGM. This was despite other membership applications having been outstanding since at least 2014;
- (iv) in *NC v State of Western Australia* [2013] FCA 70 McKerracher J considered, in respect of the section 66B application made by Thomas Jacob, Stanley Warrie, Allum Cheedy, Kevin Guinness, Angus Mack, Michael Woodley, Joyce Hubert,

Pansy Samba, Jean Norman, Esther Pat, Judith Coppin and Maisie Ingie on 5 June 2012, that:

- (A) the preparation for, and procedure at, the authorisation meeting held on 24 March 2012 was particularly thorough;
 - (B) the YAC and WMYAC representatives at the meeting addressed each other with courtesy and with an air of mutual respect. Several comments were made about trying to heal past rifts and moving forward together. Apart from two instances of minor disagreement across the floor, the Yindjibarndi people who were at the meeting conducted themselves in an equally courteous manner; and
 - (C) although there were clear differences of opinion in the claim group, there were no incidents of intimidation or abuse and the meeting proceeded in an orderly manner;
- (v) in *TJ v State of Western Australia* [2015] FCA 818 Rares J considered, in respect of the section 66B NTA application made by Rodney Adams, Sylvia Allen, Maudie Jerrold, Francis Phillips, Allery Sandy, Ken Sandy and Diana Smith on 3 July 2015, that:
- (A) FMG had orchestrated, to a considerable degree, the convening of the authorisation meeting that occurred on 23 June 2015 and voting procedure at that meeting. The meeting and voting arrangements were sophisticated and organised through the active involvement of FMG. FMG had also paid for a number of expenses associated with the meeting;
 - (B) the significant role that FMG played in the promotion and conduct of the meeting, and the benefit to it if resolutions were passed, were not revealed to persons who might be interested in voting; and
 - (C) in the days before 23 June 2015, WMYAC let their supporters know that a \$400 Woolworths shopping voucher would be given to members of WMYAC if they voted at the 23 June meeting. The decision to offer those vouchers involved an investment of \$120,000 and had the appearance of rewarding members associated with WMYAC and excluding those who might have opposed the resolutions; and

- (vi) in *Warrie Rares J* considered, based on the evidence in that proceeding, that:
- (A) WMYAC had a very close relationship with FMG and that FMG had an obvious and legitimate commercial interest in supporting both WMYAC directly, and through it indirectly, the Todd respondents (as the Todd family could have provided a sufficient margin to enable the current dissident faction within YAC to create a majority to vote in favour of YAC entering into an agreement with FMG);
 - (B) WMYAC had paid the legal fees of the Todd respondents in the proceeding; and
 - (C) the Todd respondents were encouraged by the support that WMYAC, and the elders associated with it, gave to them in asserting that they were Yindjibarndi. After years of ignorance of knowledge as to their ancestry (and the lack of any language group which accepted them or with which they identified), his Honour considered that it was understandable that the Todd respondents would pursue their claim to be Yindjibarndi in the proceeding, paid for and supported as it was by WMYAC;
- (g) repeats, with respect to the applications made under the AHA referred to in paragraph [36(r)] of the POC, paragraph [295A] above;
- (h) repeats, with respect to the application of Part 2, Division 3 of the NTA to the Claimed Compensable Acts referred to in paragraph [36(s)] of the POC, paragraph [194A] above; and
- (i) otherwise does not know and therefore cannot admit paragraph [36] of the POC.

298. In respect of paragraph [37] of the POC, the First Respondent:

- (a) says that, to the extent that “*dominion over their country*” is intended by the Applicant to refer to Exclusive Rights, those rights apply only in the Exclusive Area;
- (b) repeats paragraph [294(a)] and [294(b)] above; and
- (c) otherwise does not know and therefore cannot admit paragraph [37] of the POC.

299. The First Respondent does not know and therefore cannot admit paragraph [38] of the POC.

F2.2 The principles or the criteria to be applied for determining compensation

300. In respect of paragraph [39] of the POC, the First Respondent:

- (a) denies that an entitlement to compensation arises under the NTA in respect of the Claimed Compensable Acts and repeats Parts D1.2, D1.3 and D1.4 above; but alternatively
- (b) says that if, which is denied, an entitlement to compensation arises under the NTA, the criteria for determining that compensation are as set out in Part 2, Division 5 of the NTA.

301. The First Respondent admits paragraph [40] of the POC.

302. In respect of paragraph [41] of the POC, the First Respondent:

- (a) denies that an entitlement to compensation arises under the NTA in respect of any of the Claimed Compensable Acts and repeats Parts D1.2, D1.3 and D1.4 above; but alternatively
- (b) says that, if which is denied, an entitlement to compensation in respect of any of the Claimed Compensable Acts arises under the NTA by operation of either:
 - (i) section 24MD(3)(b) of the NTA; or
 - (ii) section 10 of the RDA and section 45 of the NTA, section 51(3) of the NTA applies in relation to all Claimed Compensable Acts and repeats Parts F1.1.1 and F1.1.2 above; and
- (c) otherwise denies paragraph [41] of the POC.

303. In respect of paragraph [42] of the POC if, which is denied, an entitlement to compensation in respect of any of the Claimed Compensable Acts arises under the NTA by operation of section 51(3) of the NTA, the First Respondent:

- (a) admits that, the effect of section 51(3) of the NTA is that, subject to sub-sections (5) to (8), any entitlement to compensation that arises under the NTA in favour of the Yindjibarndi People must be determined in accordance with the principles or criteria for the assessment of compensation set out in the *Mining Act*, whether or not that would provide compensation to the Yindjibarndi People on just terms and repeats Parts F1.1.1 and F1.1.2 above; **and**
- (b) says that the principles or criteria of the *Mining Act* which are to be applied to determine the entitlement to compensation under section 51(3) of the NTA are those set out in Part F1.2 (as read together with Parts F1.4 and F1.5) above; **and**
- (c) **otherwise denies paragraph [42] of the POC.**

303A. In respect of paragraph [42A] of the POC, the First Respondent:

- (a) repeats Part F1.2.1 and paragraph [303] above;
- (b) says that, in accordance with the principles and criteria in the *Mining Act* which are to be applied to the assessment of the entitlement to compensation under section 51(3) and 24MD(3)(b) of the NTA:
 - (i) the entitlement to compensation arises under the *Mining Act* in favour of an “owner” or “occupier” of any land where mining takes place in respect of all loss and damage suffered, or likely to be suffered, resulting or arising from the mining. Accordingly, there must be a causal link between the loss and damage suffered, or likely to be suffered, and the activity of mining on the land; and
 - (ii) the *Mining Act* provides no entitlement to, or liability for, compensation arising:
 - (A) in respect of the circumstances in which the grant of a mining tenement is made;
 - (B) in consideration of permitting entry on to any land for mining purposes, (section 123(1)(a) *Mining Act*);
 - (C) in respect of the value of any mineral which is or may be in, on or under the surface of any land (section 123(1)(b) *Mining Act*); or
 - (D) by reference to any rent, royalty or other amount assessed in respect of the mining of the mineral (section 123(1)(c) *Mining Act*); and
- (c) otherwise denies paragraph [42A] of the POC.

304. In respect of paragraph [43] of the POC:

- (a) the First Respondent denies that an entitlement to compensation arises under the NTA in respect of any of the Claimed Compensable Acts and repeats Parts D1.2, D1.3 and D1.4 above;
- (b) if, which is denied, an entitlement to compensation in respect of any of the Claimed Compensable Acts arises under the NTA by operation of section 24MD(3)(b) of the NTA, the First Respondent says that:
 - (i) section 51(3) of the NTA applies in relation to the Claimed Compensable Acts and repeats Part F1.1.1 above;
 - (ii) the effect of section 51(3) of the NTA is that, subject to sub-sections (5) to (8), any entitlement to compensation that arises under the NTA in favour of the Yindjibarndi

People must be determined in accordance with the principles or criteria for the assessment of compensation set out in the *Mining Act*, whether or not that would provide compensation to the Yindjibarndi People on just terms;

- (iii) the principles or criteria of the *Mining Act* which are to be applied to determine the entitlement to compensation under section 51(3) of the NTA are those set out in Part F1.2 (as read together with Parts F1.4 and F1.5) above; and
 - (iv) absent the engagement of section 53(1) of the NTA, any compensation to which the Applicant may be entitled under section 51(3) does not require just terms;
- (c) if which is denied, an entitlement to compensation in respect of any of the Claimed Compensable Acts arises under the NTA by operation of section 10 of the RDA and section 45 of the NTA, the First Respondent says that section 51(3) of the NTA applies in relation to the Claimed Compensable Act and repeats Part F1.1.2 and paragraphs [304(b)(ii)] – [304(b)(iv)] above;
- (d) the First Respondent says that only section 53(1) of the NTA, and not section 45 of the NTA, is capable of applying to provide such compensation, in addition to that otherwise provided for by the NTA, as is necessary to ensure that the acquisition is on “*paragraph (xxxvi) just terms*”;
- (e) the First Respondent denies that section 53(1) of the NTA is engaged in respect of the grant of any of the Claimed Compensable Acts and repeats Parts F1.1.3 and F1.3 above; and
- (f) the First Respondent otherwise denies paragraph [43] of the POC.

305. In respect of paragraph [44] of the POC:

- (a) the First Respondent denies that an entitlement to compensation in respect of any of the Claimed Compensable Acts arises under the NTA by operation of section 10 of the RDA and section 45 of the NTA and repeats Part D1.3 above;
- (b) if, which is denied, an entitlement to compensation in respect of any of the Claimed Compensable Acts arises under the NTA by operation of section 10 of the RDA and section 45 of the NTA, the First Respondent:
 - (i) denies that section 51(1) of the NTA applies and says that section 51(3) of the NTA applies in relation to the Claimed Compensable Act; and
 - (ii) repeats Part F1.1.2 and paragraphs [304(b)(ii)] – [304(b)(iv)] above; and
- (c) otherwise denies paragraph [44] of the POC.

306. In respect of paragraph [45] of the POC:

- (a) the First Respondent denies that section 53(1) of the NTA is engaged in respect of the grant of any of the Claimed Compensable Acts and repeats Part D1.4 above;
- (b) if which is denied, section 53(1) of the NTA is engaged in respect of the grant of any of the Claimed Compensable Acts, the First Respondent:
 - (i) denies that section 51(2) of the NTA applies and says that none of the Claimed Compensable Acts is a compulsory acquisition of native title (see paragraphs [201] and [252(a)] above); and
 - (ii) repeats Parts F1.1.3 and F1.3 above; and
- (c) otherwise denies paragraph [45] of the POC.

307. In respect of paragraph [46(a) – (ccc)] of the POC:

- (a) the First Respondent denies that an entitlement to compensation arises under the NTA in respect of any of the Claimed Compensable Acts and repeats Parts D1.2, D1.3 and D1.4 above;
- (b) if which is denied, an entitlement to compensation arises under the NTA in respect of any of the Claimed Compensable by operation of either section 24MD(3)(b) of the NTA or section 10 of the RDA and section 45 of the NTA, the First Respondent:
 - (i) repeats paragraphs [304(b)] and [304(c)] above;
 - (ii) says that, subject to paragraphs [307(b)(iii)], [307(c)] and [307(d)] below, it may (depending on the facts) be appropriate to apply, by way of analogy, the *Griffiths* principles for the assessment of economic and cultural loss when determining compensation suffered or likely to be suffered by the Yindjibarndi People in accordance with section 123(2) of the *Mining Act* and repeats paragraph [258] above;
 - (iii) if, which is not admitted, an effect of the Claimed Compensable Acts is a fragmentation of Yindjibarndi society, serious social disruption, disharmony and conflict, does not admit that those matters are capable of attracting an award of compensation for cultural loss; and
 - (iv) says that section 51A of the NTA is relevant to the assessment of compensation for any economic loss suffered as a result of a Claimed Compensable Act that did not extinguish native title and repeats Part F1.4.1 above;

- (c) the First Respondent denies that economic loss it is to be assessed in the manner set out in paragraph [46(a) – (aaaa)] of the POC and says that compensation for economic loss is to be assessed in the manner set out at Part F1.4 above. Further, the First Respondent:
- (i) says that economic loss is not assessed by reference to the amount that the Yindjibarndi People would have been prepared to accept in exchange for their consent to the grant of a mining tenement for the purpose of Part 2, Division 3 of the NTA;
 - (ii) denies that the First Respondent has paid, or is required to pay, any compensation (or any compensation of the kind described in paragraph [46(aaaa)] of the POC) to obtain the consent of registered native title claimants or registered native title bodies corporate to the grant of mining tenements for the purpose of Part 2, Division 3 of the NTA; and
 - (iii) says that the First Respondent is not a party to, and does not have access to, agreements of the kind mentioned in paragraphs [46(aaa)] and [46(ccc)] of the POC and therefore does not know and cannot admit the terms of those agreements or “what a reasonable miner acting fairly and justly would have been prepared to pay” under them;
- (d) the First Respondent denies that cultural loss it is to be assessed in the manner set out in paragraph [46(b) and (c)] of the POC and says that compensation for cultural loss is to be assessed in the manner set out at Part F1.5 above. Further, the First Respondent says that:
- (i) compensation for cultural loss is not:
 - (A) an award in the nature of a solatium for mental distress caused by mining, the grant of the Claimed Compensable Acts or the circumstances in which those grants were made (accepting, however, that evidence of mental distress may be relevant to the assessment of cultural loss); or
 - (B) payable for social disruption or a division in the Yindjibarndi community unless that is also manifested in a sense of loss of spiritual connection with the land; and
 - (ii) in respect of the alleged destruction of sites, the Applicant has not pleaded the material facts in support of their claim for cultural loss, including a description of the nature and extent of the loss (having regard to the content of traditional law and custom) and/or the consequences of any destruction on the Yindjibarndi People's spiritual attachment to the country; and

- (e) otherwise denies paragraph [46(a) – (ccc)] of the POC.

F2.3 Interest

308. In respect of paragraph [46(d)] of the POC, the First Respondent:

- (a) says that to the extent that the *Griffiths* principles for assessment of compensation for economic loss are relevant to the determination of compensation under section 51(3) of the NTA (for example, in the circumstances described in paragraph [258] above):
- (i) simple interest is payable during the period between when an entitlement to compensation arose and the date of judgement;
- (ii) it would be appropriate to calculate the interest payable referred to in subparagraph (a)(i) above on the basis of the rate prescribed in section 8(1)(a) of the *Civil Judgments Enforcement Act 2004* (WA); and
- (iii) otherwise does not admit that any interest is payable on any award of compensation;
- (b) denies that any of the matters pleaded by the Applicant in the POC establish any entitlement to interest on any portion of the compensation for any Claimed Compensable Act at a compounding interest rate;
- (c) says that paragraph [46(d)] of the POC does not state, but should state, the compounding interest rate which is claimed and the intervals at which that interest is to be compounded and for this reason the pleading does not comply with rule 16.02(1)(f) of the *Federal Court Rules 2011* (Cth); and
- (d) otherwise denies paragraph [46(d)] of the POC.

Dated: 14 July 2023



Griff Ranson SC

Statement pursuant to rr 16(a) and (b) of the *Federal Court Rules 2011 (Cth)*

We, Emma Owen and Alicia Warren, prepared these Points of Response that were settled by Griff Ranson SC.



Emma Owen



Alicia Warren

Certificate of lawyer pursuant to r 16.01(c) of the *Federal Court Rules 2011 (Cth)*

We, Emma Owen and Alicia Warren, each certify to the Court that, in relation to these Points of Response, the factual and legal material available to us at present provides a proper basis for:

- (a) each allegation in the pleading;
- (b) each denial in the pleading; and
- (c) each non-admission in the pleading.



Emma Owen



Alicia Warren

Annexure A

Overlap Analysis

1. This Annexure provides, in respect of each of the Claimed Compensable Acts:
 - (a) a list of all current and/or historical tenures, tenements and interests in the area covered by each Claimed Compensable Act (“**overlapping tenures**”) which are contained in the State Tenure Material; and
 - (b) the extent to which the overlapping tenure intersects with the Claimed Compensable Acts (together the “**overlap analysis**”).
2. The overlap analysis was produced using a computer software tool that allowed the user (Landgate) to run an automated computer script which identified all current and/or historical tenures, tenements and interests contained in the State Tenure Material which overlapped each Claimed Compensable Act. The software also allowed for the automatic calculation of the extent to which the overlapping tenures intersected with each Claimed Compensable Act. The areas were calculated in kilometres square and are approximates only (within a 5 – 10% margin for error).
3. It should be noted that:
 - (a) this Annexure does not list the extent to which the Claimed Compensable Acts intersect with each other. That information is contained in Parts C1.1 – C1.4 above;
 - (b) the overlap analysis was limited to the extent of any intersection between the overlapping tenures and the Claimed Compensable Acts that occurred within the boundary of the Yindjibarndi Claim (as depicted in the State Tenure Material);
 - (c) the boundary utilised for the Claimed Compensable Acts was that in the table / layer entitled *Compensable_Tenements_asat_20221209* in the State Tenure Material; and
 - (d) due to the automated nature of the overlap analysis, some of the very small overlaps identified may be of a technical nature, resulting from, for example, shared but not overlapping boundaries.

MINING LEASE 47/1409-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	11.1210	20.1840
2.	UCL 01	Unallocated Crown Land	0.0047	0.0085
3.	UCL 05	Unallocated Crown Land	0.0854	0.1551
4.	UCL 07	Unallocated Crown Land	43.8871	79.6524
Historical Land and Road Tenure				
5.	0235/96	Pastoral Lease	11.2112	20.3476
6.	0301/96	Pastoral Lease	11.2112	20.3476
7.	2345/96	Pastoral Lease	11.2112	20.3476
8.	3114/0465	Pastoral Lease	11.2112	20.3476
9.	394/0432	Pastoral Lease	11.2112	20.3476
10.	69/0040	Pastoral Lease	11.2112	20.3476
11.	69/0273	Pastoral Lease	6.7012	12.1622
12.	N1348	Pastoral Lease	3.7446	6.7963
13.	N2363	Pastoral Lease	2.9565	5.3659
14.	ROAD 01	Road	0.0122	0.0221
Mining and Petroleum Tenure granted prior to 31 October 1975				
15.	TR 7001807	Temporary Reserve	55.0983	100.0000
16.	TR 7002703	Temporary Reserve	54.9977	99.8175
17.	OPA-201H	Oil Prospecting Area	9.7305	17.6603
18.	OPA-20H	Oil Prospecting Area	55.0983	100.0000
19.	PE-23H	Permit to Explore	55.0983	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
20.	TR 7006662	Temporary Reserve	19.6861	35.7291
21.	EP 304	Exploration Permit	0.1949	0.3537
Mining and Petroleum Tenure granted post 1 January 1994				
22.	E 4700806	Exploration Licence	7.9342	14.4001
23.	L 4701034	Miscellaneous Licence	2.9923	5.4308

MINING LEASE 47/1411-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	UCL 07	Unallocated Crown Land	1.9250	100.0000
Historical Land and Road Tenure				
2.	69/0273	Pastoral Lease	0.8066	41.8988
3.	N2363	Pastoral Lease	0.8066	41.8988
Mining and Petroleum Tenure granted prior to 31 October 1975				
4.	TR 7001807	Temporary Reserve	1.9250	100.0000
5.	TR 7002703	Temporary Reserve	1.9250	100.0000
6.	OPA-201H	Oil Prospecting Area	1.3904	72.2276
7.	OPA-20H	Oil Prospecting Area	1.9250	99.9999
8.	PE-23H	Permit to Explore	1.9250	99.9999
Mining and Petroleum Tenure granted post 1 January 1994				
9.	E 4700806	Exploration Licence	1.6813	87.3396

MINING LEASE 47/1413-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	UCL 07	Unallocated Crown Land	11.2889	100.0000
Historical Land and Road Tenure				
2.	69/0243	Pastoral Lease	1.2450	11.0285
3.	69/0579	Pastoral Lease	1.2450	11.0285
4.	N1581	Pastoral Lease	1.2450	11.0285
Mining and Petroleum Tenure granted prior to 31 October 1975				
5.	TR 7001807	Temporary Reserve	11.2889	100.0000
6.	TR 7002703	Temporary Reserve	11.2889	100.0000
7.	OPA-201H	Oil Prospecting Area	11.2889	100.0000
8.	OPA-20H	Oil Prospecting Area	11.2889	100.0000
9.	PE-23H	Permit to Explore	11.2889	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
10.	TR 7006662	Temporary Reserve	11.0236	97.6497
11.	EP 304	Exploration Permit	5.7461	50.9003

MINING LEASE 47/1431-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	8.6234	26.9384
2.	UCL 07	Unallocated Crown Land	23.3882	73.0616
Historical Land and Road Tenure				
3.	0235/96	Pastoral Lease	8.6234	26.9384
4.	0301/96	Pastoral Lease	8.6234	26.9384
5.	2345/96	Pastoral Lease	8.6234	26.9384
6.	3114/0465	Pastoral Lease	8.6234	26.9384
7.	394/0432	Pastoral Lease	8.6234	26.9384
8.	69/0040	Pastoral Lease	0.7904	2.4690
9.	69/0243	Pastoral Lease	11.5406	36.0513
10.	69/0579	Pastoral Lease	11.5406	36.0513
11.	N1581	Pastoral Lease	6.9991	21.8644
Mining and Petroleum Tenure granted prior to 31 October 1975				
12.	TR 7001807	Temporary Reserve	32.0116	100.0000
13.	TR 7002703	Temporary Reserve	31.8238	99.4133
14.	OPA-201H	Oil Prospecting Area	14.8507	46.3916
15.	OPA-20H	Oil Prospecting Area	32.0116	100.0000
16.	PE-23H	Permit to Explore	32.0116	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
17.	E 4700504	Exploration Licence	2.1480	6.7101
18.	TR 7006662	Temporary Reserve	21.8617	68.2930
19.	TR 7007297	Temporary Reserve	7.1495	22.3342
20.	EP 304	Exploration Permit	20.9537	65.4565
Mining and Petroleum Tenure granted post 1 January 1994				
21.	L 4701034	Miscellaneous Licence	2.0651	6.4510
22.	PL 105	Pipeline Licence	0.2420	0.7558

MINING LEASE 47/1453-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	UCL 07	Unallocated Crown Land	7.8600	100.0000
Mining and Petroleum Tenure granted prior to 31 October 1975				
2.	TR 7001807	Temporary Reserve	7.8600	100.0000
3.	TR 7002703	Temporary Reserve	7.8600	100.0000
4.	OPA-20H	Oil Prospecting Area	7.8600	100.0000
5.	PE-23H	Permit to Explore	7.8600	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
6.	TR 7006662	Temporary Reserve	7.8128	99.3994
7.	EP 304	Exploration Permit	4.3654	55.5398
Mining and Petroleum Tenure granted post 1 January 1994				
8.	L 4701034	Miscellaneous Licence	0.0468	0.5956

MINING LEASE 47/1473-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	UCL 07	Unallocated Crown Land	5.2467	100.0000
Mining and Petroleum Tenure granted prior to 31 October 1975				
2.	TR 7001807	Temporary Reserve	5.2467	100.0000
3.	TR 7002703	Temporary Reserve	5.2467	100.0000
4.	OPA-201H	Oil Prospecting Area	5.2467	100.0000
5.	OPA-20H	Oil Prospecting Area	5.2467	100.0000
6.	PE-23H	Permit to Explore	5.2467	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
7.	TR 7006662	Temporary Reserve	5.2467	100.0000
8.	EP 304	Exploration Permit	1.5687	29.8977

MINING LEASE 47/1475-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	UCL 07	Unallocated Crown Land	5.6828	100.0000
Mining and Petroleum Tenure granted prior to 31 October 1975				
2.	TR 7001807	Temporary Reserve	5.6828	100.0000
3.	TR 7002703	Temporary Reserve	5.6828	100.0000
4.	OPA-201H	Oil Prospecting Area	5.6828	100.0000
5.	OPA-20H	Oil Prospecting Area	5.6828	100.0000
6.	PE-23H	Permit to Explore	5.6828	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
7.	TR 7006662	Temporary Reserve	2.3906	42.0668
Mining and Petroleum Tenure granted post 1 January 1994				
8.	E 4700806	Exploration Licence	0.0449	0.7902

MINING LEASE 47/1513-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	4.8294	63.7559
2.	UCL 07	Unallocated Crown Land	2.7454	36.2441
Historical Land and Road Tenure				
3.	0235/96	Pastoral Lease	4.8294	63.7559
4.	0301/96	Pastoral Lease	4.8294	63.7559
5.	2345/96	Pastoral Lease	4.8294	63.7559
6.	3114/0465	Pastoral Lease	4.8294	63.7559
7.	394/0432	Pastoral Lease	4.8294	63.7559
8.	69/0040	Pastoral Lease	4.8294	63.7559
Mining and Petroleum Tenure granted prior to 31 October 1975				
9.	TR 7001807	Temporary Reserve	7.5748	100.0000
10.	TR 7002703	Temporary Reserve	7.5748	100.0000
11.	OPA-20H	Oil Prospecting Area	7.5748	100.0000
12.	PE-23H	Permit to Explore	7.5748	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
13.	TR 7006662	Temporary Reserve	3.8472	50.7892
14.	TR 7007297	Temporary Reserve	1.5993	21.1129
15.	EP 304	Exploration Permit	2.4277	32.0501
Mining and Petroleum Tenure granted post 1 January 1994				
16.	L 4701034	Miscellaneous Licence	4.8629	64.1985

MINING LEASE 47/1570

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	8.4254	75.4231
2.	UCL 07	Unallocated Crown Land	2.7454	24.5769
Historical Land and Road Tenure				
3.	0235/96	Pastoral Lease	8.4254	75.4231
4.	0301/96	Pastoral Lease	8.4254	75.4231
5.	2345/96	Pastoral Lease	8.4254	75.4231
6.	3114/0465	Pastoral Lease	8.4254	75.4231
7.	394/0432	Pastoral Lease	8.4254	75.4231
8.	69/0040	Pastoral Lease	8.4254	75.4231
Mining and Petroleum Tenure granted prior to 31 October 1975				
9.	TR 7001807	Temporary Reserve	11.1708	100.0000
10.	TR 7002703	Temporary Reserve	10.6498	95.3363
11.	OPA-20H	Oil Prospecting Area	11.1708	100.0000
12.	PE-23H	Permit to Explore	11.1708	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
13.	E 4700504	Exploration Licence	0.9894	8.8574
14.	TR 7006662	Temporary Reserve	3.8472	34.4398
15.	TR 7007297	Temporary Reserve	3.4065	30.4946
16.	EP 304	Exploration Permit	3.5844	32.0875
Mining and Petroleum Tenure granted post 1 January 1994				
17.	L 4701034	Miscellaneous Licence	5.1223	45.8541

MISCELLANEOUS LICENCE (STATE AGREEMENT) L1SA

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	22.3635	80.4926
2.	RES 31428	Reserve	0.4403	1.5846
3.	UCL 01	Unallocated Crown Land	0.3353	1.2067
4.	UCL 02	Unallocated Crown Land	0.3513	1.2646
5.	UCL 03	Unallocated Crown Land	0.7635	2.7480
6.	UCL 04	Unallocated Crown Land	0.2041	0.7346
7.	UCL 05	Unallocated Crown Land	0.5654	2.0351
8.	UCL 07	Unallocated Crown Land	2.6945	9.6982
9.	UCL 11	Unallocated Crown Land	0.0152	0.0548
10.	UCL 19	Unallocated Crown Land	0.0150	0.0539
11.	WATER 1	Unallocated Crown Land	0.0352	0.1269
Historical Land and Road Tenure				
12.	0235/96	Pastoral Lease	24.4444	87.9826
13.	0301/96	Pastoral Lease	24.4444	87.9826
14.	1237/96	Pastoral Lease	0.6444	2.3192
15.	2345/96	Pastoral Lease	24.4444	87.9826
16.	2390/96	Pastoral Lease	0.6444	2.3192
17.	3114/0465	Pastoral Lease	24.4444	87.9826
18.	394/0432	Pastoral Lease	24.4444	87.9826
19.	394/0870	Pastoral Lease	0.6444	2.3192
20.	69/0040	Pastoral Lease	18.3596	66.0813
21.	69/0208	Pastoral Lease	0.6444	2.3192
22.	69/0243	Pastoral Lease	6.0849	21.9013
23.	69/0273	Pastoral Lease	0.2329	0.8381
24.	69/0579	Pastoral Lease	6.0849	21.9013
25.	N1348	Pastoral Lease	0.2329	0.8381
26.	N1581	Pastoral Lease	2.0649	7.4321
27.	N1582	Pastoral Lease	1.9437	6.9961
28.	N2170	Pastoral Lease	0.6444	2.3192

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
29.	RES 23046	Crown Reserve	0.6444	2.3192
30.	ROAD 01	Road	0.1791	0.6446
Mining and Petroleum Tenure granted prior to 31 October 1975				
31.	TR 7001643	Temporary Reserve	9.5869	34.5059
32.	TR 7001807	Temporary Reserve	27.7833	100.0000
33.	TR 7002703	Temporary Reserve	13.1968	47.4992
34.	OPA-201H	Oil Prospecting Area	0.7163	2.5783
35.	OPA-20H	Oil Prospecting Area	27.7833	100.0000
36.	PE-216H	Permit to Explore	0.4574	1.6464
37.	PE-23H	Permit to Explore	27.7833	100.0000
38.	PE-37H	Permit to Explore	0.4574	1.6464
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
39.	E 4700504	Exploration Licence	10.7437	38.6696
40.	M 4700097	Mining Lease	0.0140	0.0506
41.	M 4700098	Mining Lease	0.0157	0.0566
42.	TR 7006457	Temporary Reserve	6.6896	24.0779
43.	TR 7006662	Temporary Reserve	3.0941	11.1366
44.	TR 7007241	Temporary Reserve	0.3154	1.1352
45.	TR 7007243	Temporary Reserve	0.4676	1.6829
46.	TR 7007297	Temporary Reserve	15.1195	54.4194
47.	TR 7008037	Temporary Reserve	1.3606	4.8971
48.	EP 304	Exploration Permit	7.0400	25.3391
Mining and Petroleum Tenure granted post 1 January 1994				
49.	E 4701617	Exploration Licence	2.1304	7.6678
50.	L 4701034	Miscellaneous Licence	0.7610	2.7391
51.	PL 105	Pipeline Licence	0.2185	0.7863

MISCELLANEOUS LICENCE 47/302

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	UCL 07	Unallocated Crown Land	2.5850	100.0000
Mining and Petroleum Tenure granted prior to 31 October 1975				
2.	TR 7001807	Temporary Reserve	2.5850	100.0000
3.	TR 7002703	Temporary Reserve	2.5850	100.0000
4.	OPA-201H	Oil Prospecting Area	2.5850	100.0000
5.	OPA-20H	Oil Prospecting Area	2.5850	100.0000
6.	PE-23H	Permit to Explore	2.5850	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
7.	TR 7006662	Temporary Reserve	1.6014	61.9518

MISCELLANEOUS LICENCE 47/361

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	43.5835	91.4723
2.	UCL 01	Unallocated Crown Land	0.8548	1.7941
3.	UCL 02	Unallocated Crown Land	1.5168	3.1834
4.	UCL 03	Unallocated Crown Land	0.8517	1.7876
5.	UCL 05	Unallocated Crown Land	0.3461	0.7265
6.	UCL 07	Unallocated Crown Land	0.2614	0.5486
7.	UCL 11	Unallocated Crown Land	0.0543	0.1140
8.	UCL 19	Unallocated Crown Land	0.0386	0.0810
9.	WATER 1	Unallocated Crown Land	0.1394	0.2925
Historical Land and Road Tenure				
10.	0235/96	Pastoral Lease	47.3853	99.4514
11.	0301/96	Pastoral Lease	47.3853	99.4514
12.	2345/96	Pastoral Lease	47.3853	99.4514
13.	3114/0465	Pastoral Lease	47.3853	99.4514
14.	394/0432	Pastoral Lease	47.3853	99.4514
15.	69/0040	Pastoral Lease	19.3246	40.5581
16.	69/0243	Pastoral Lease	28.3091	59.4148
17.	69/0579	Pastoral Lease	28.3091	59.4148
18.	N1581	Pastoral Lease	15.8261	33.2157
19.	N1582	Pastoral Lease	6.6239	13.9021
20.	ROAD 01	Road	0.1588	0.3332
Mining and Petroleum Tenure granted prior to 31 October 1975				
21.	TR 7001643	Temporary Reserve	18.0680	37.9209
22.	TR 7001807	Temporary Reserve	47.6466	100.0000
23.	TR 7002703	Temporary Reserve	16.4992	34.6283
24.	OPA-201H	Oil Prospecting Area	12.3046	25.8247
25.	OPA-20H	Oil Prospecting Area	47.6466	100.0000
26.	PE-23H	Permit to Explore	47.6466	100.0000

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
27.	E 4700504	Exploration Licence	26.1964	54.9805
28.	M 4700097	Mining Lease	0.0757	0.1589
29.	M 4700098	Mining Lease	0.0649	0.1362
30.	TR 7006457	Temporary Reserve	21.0677	44.2165
31.	TR 7006662	Temporary Reserve	2.4387	5.1184
32.	TR 7007241	Temporary Reserve	6.6973	14.0563
33.	TR 7007242	Temporary Reserve	0.2794	0.5865
34.	TR 7007243	Temporary Reserve	1.8746	3.9343
35.	TR 7007297	Temporary Reserve	36.1280	75.8248
36.	TR 7008037	Temporary Reserve	7.9655	16.7179
37.	TR 7008038	Temporary Reserve	0.2794	0.5865
38.	EP 304	Exploration Permit	27.7760	58.2958
Mining and Petroleum Tenure granted post 1 January 1994				
39.	AL 7000007	Misc License S.A.	0.0001	0.0001
40.	E 4701617	Exploration Licence	0.4237	0.8893
41.	L 4701034	Miscellaneous Licence	1.9092	4.0070
42.	PL 105	Pipeline Licence	0.6572	1.3794

MISCELLANEOUS LICENCE 47/362

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	UCL 07	Unallocated Crown Land	37.8133	100.0000
Historical Land and Road Tenure				
2.	69/0243	Pastoral Lease	5.8214	15.3951
3.	69/0579	Pastoral Lease	5.8214	15.3951
4.	N1581	Pastoral Lease	4.4855	11.8622
Mining and Petroleum Tenure granted prior to 31 October 1975				
5.	TR 7001807	Temporary Reserve	37.8133	100.0000
6.	TR 7002703	Temporary Reserve	37.8133	100.0000
7.	OPA-201H	Oil Prospecting Area	27.0478	71.5297
8.	OPA-20H	Oil Prospecting Area	37.8133	100.0000
9.	PE-23H	Permit to Explore	37.8133	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
10.	TR 7006662	Temporary Reserve	34.6953	91.7542
11.	EP 304	Exploration Permit	20.2274	53.4928
Mining and Petroleum Tenure granted post 1 January 1994				
12.	L 4701034	Miscellaneous Licence	0.5302	1.4023

MISCELLANEOUS LICENCE 47/363

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	UCL 07	Unallocated Crown Land	7.8600	100.0000
Mining and Petroleum Tenure granted prior to 31 October 1975				
2.	TR 7001807	Temporary Reserve	7.8600	100.0000
3.	TR 7002703	Temporary Reserve	7.8600	100.0000
4.	OPA-20H	Oil Prospecting Area	7.8600	100.0000
5.	PE-23H	Permit to Explore	7.8600	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
6.	TR 7006662	Temporary Reserve	7.8128	99.3994
7.	EP 304	Exploration Permit	4.3654	55.5398
Mining and Petroleum Tenure granted post 1 January 1994				
8.	L 4701034	Miscellaneous Licence	0.0468	0.5956

MISCELLANEOUS LICENCE 47/367

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	10.4238	79.1527
2.	UCL 07	Unallocated Crown Land	2.7454	20.8473
Historical Land and Road Tenure				
3.	0235/96	Pastoral Lease	10.4238	79.1527
4.	0301/96	Pastoral Lease	10.4238	79.1527
5.	2345/96	Pastoral Lease	10.4238	79.1527
6.	3114/0465	Pastoral Lease	10.4238	79.1527
7.	394/0432	Pastoral Lease	10.4238	79.1527
8.	69/0040	Pastoral Lease	10.4238	79.1527
Mining and Petroleum Tenure granted prior to 31 October 1975				
9.	TR 7001807	Temporary Reserve	13.1692	100.0000
10.	TR 7002703	Temporary Reserve	10.8109	82.0920
11.	OPA-20H	Oil Prospecting Area	13.1692	100.0000
12.	PE-23H	Permit to Explore	13.1692	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
13.	E 4700504	Exploration Licence	1.1576	8.7901
14.	TR 7006662	Temporary Reserve	3.8472	29.2135
15.	TR 7007297	Temporary Reserve	3.9658	30.1138
16.	EP 304	Exploration Permit	3.7523	28.4929
Mining and Petroleum Tenure granted post 1 January 1994				
17.	L 4701034	Miscellaneous Licence	5.1223	38.8957

MISCELLANEOUS LICENCE 47/396

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	UCL 07	Unallocated Crown Land	2.3366	100.0000
Mining and Petroleum Tenure granted prior to 31 October 1975				
2.	TR 7001807	Temporary Reserve	2.3366	100.0000
3.	TR 7002703	Temporary Reserve	2.3366	100.0000
4.	OPA-201H	Oil Prospecting Area	2.3366	100.0000
5.	OPA-20H	Oil Prospecting Area	2.3366	100.0000
6.	PE-23H	Permit to Explore	2.3366	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
7.	TR 7006662	Temporary Reserve	0.1294	5.5378

MISCELLANEOUS LICENCE 47/472

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	10.4135	100.0000
Historical Land and Road Tenure				
2.	0235/96	Pastoral Lease	10.4135	100.0000
3.	0301/96	Pastoral Lease	10.4135	100.0000
4.	2345/96	Pastoral Lease	10.4135	100.0000
5.	3114/0465	Pastoral Lease	10.4135	100.0000
6.	394/0432	Pastoral Lease	10.4135	100.0000
7.	69/0040	Pastoral Lease	10.4135	100.0000
Mining and Petroleum Tenure granted prior to 31 October 1975				
8.	TR 7001807	Temporary Reserve	10.4135	100.0000
9.	TR 7002703	Temporary Reserve	2.8944	27.7951
10.	OPA-20H	Oil Prospecting Area	10.4135	100.0000
11.	PE-23H	Permit to Explore	10.4135	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
12.	E 4700504	Exploration Licence	2.8349	27.2233
13.	TR 7006457	Temporary Reserve	0.0870	0.8356
14.	TR 7007297	Temporary Reserve	8.0656	77.4529
15.	TR 7008037	Temporary Reserve	0.0870	0.8356
16.	EP 304	Exploration Permit	3.8346	36.8232
Mining and Petroleum Tenure granted post 1 January 1994				
17.	L 4701034	Miscellaneous Licence	1.2234	11.7479

MISCELLANEOUS LICENCE 47/697

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	1.0284	100.0000
Historical Land and Road Tenure				
2.	0235/96	Pastoral Lease	1.0284	100.0000
3.	0301/96	Pastoral Lease	1.0284	100.0000
4.	2345/96	Pastoral Lease	1.0284	100.0000
5.	3114/0465	Pastoral Lease	1.0284	100.0000
6.	394/0432	Pastoral Lease	1.0284	100.0000
7.	69/0040	Pastoral Lease	0.7745	75.3064
8.	69/0243	Pastoral Lease	0.2539	24.6936
9.	69/0579	Pastoral Lease	0.2539	24.6936
10.	N1582	Pastoral Lease	0.1728	16.8070
Mining and Petroleum Tenure granted prior to 31 October 1975				
11.	TR 7001643	Temporary Reserve	0.6216	60.4407
12.	TR 7001807	Temporary Reserve	1.0284	100.0000
13.	TR 7002703	Temporary Reserve	0.1630	15.8524
14.	OPA-20H	Oil Prospecting Area	1.0284	100.0000
15.	PE-23H	Permit to Explore	1.0284	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
16.	E 4700504	Exploration Licence	0.5295	51.4880
17.	TR 7006457	Temporary Reserve	0.6003	58.3765
18.	TR 7007243	Temporary Reserve	0.0207	2.0130
19.	TR 7007297	Temporary Reserve	1.0077	97.9870
20.	TR 7008037	Temporary Reserve	0.0082	0.7996
21.	EP 304	Exploration Permit	0.2486	24.1779
Mining and Petroleum Tenure granted post 1 January 1994				
22.	L 4701034	Miscellaneous Licence	0.0116	1.1246

MISCELLANEOUS LICENCE 47/801

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	6.7652	95.9282
2.	UCL 01	Unallocated Crown Land	0.0333	0.4719
3.	UCL 05	Unallocated Crown Land	0.2519	3.5715
4.	UCL 07	Unallocated Crown Land	0.0020	0.0285
Historical Land and Road Tenure				
5.	0235/96	Pastoral Lease	7.0503	99.9715
6.	0301/96	Pastoral Lease	7.0503	99.9715
7.	2345/96	Pastoral Lease	7.0503	99.9715
8.	3114/0465	Pastoral Lease	7.0503	99.9715
9.	394/0432	Pastoral Lease	7.0503	99.9715
10.	69/0040	Pastoral Lease	7.0503	99.9715
11.	ROAD 01	Road	0.0339	0.4813
Mining and Petroleum Tenure granted prior to 31 October 1975				
12.	TR 7001643	Temporary Reserve	1.8522	26.2636
13.	TR 7001807	Temporary Reserve	7.0523	100.0000
14.	TR 7002703	Temporary Reserve	6.3696	90.3185
15.	OPA-20H	Oil Prospecting Area	7.0523	100.0000
16.	PE-23H	Permit to Explore	7.0523	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
17.	TR 7006457	Temporary Reserve	0.1224	1.7361
18.	TR 7006662	Temporary Reserve	0.0312	0.4429
19.	TR 7007297	Temporary Reserve	0.0154	0.2187
Mining and Petroleum Tenure granted post 1 January 1994				
20.	E 4701617	Exploration Licence	1.6901	23.9658

MISCELLANEOUS LICENCE 47/813

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	1.5723	33.8828
2.	UCL 07	Unallocated Crown Land	3.0682	66.1172
Historical Land and Road Tenure				
3.	0235/96	Pastoral Lease	1.5723	33.8828
4.	0301/96	Pastoral Lease	1.5723	33.8828
5.	2345/96	Pastoral Lease	1.5723	33.8828
6.	3114/0465	Pastoral Lease	1.5723	33.8828
7.	394/0432	Pastoral Lease	1.5723	33.8828
8.	69/0040	Pastoral Lease	1.5723	33.8828
9.	69/0273	Pastoral Lease	0.2663	5.7378
10.	N1348	Pastoral Lease	0.2663	5.7378
Mining and Petroleum Tenure granted prior to 31 October 1975				
11.	TR 7001807	Temporary Reserve	4.6405	100.0000
12.	TR 7002703	Temporary Reserve	4.6405	100.0000
13.	OPA-20H	Oil Prospecting Area	4.6405	100.0000
14.	PE-23H	Permit to Explore	4.6405	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
15.	TR 7006662	Temporary Reserve	3.4590	74.5404
Mining and Petroleum Tenure granted post 1 January 1994				
16.	L 4701034	Miscellaneous Licence	0.8430	18.1670

MISCELLANEOUS LICENCE 47/814

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	5.1545	54.3919
2.	UCL 07	Unallocated Crown Land	4.3221	45.6081
Historical Land and Road Tenure				
3.	0235/96	Pastoral Lease	5.1545	54.3919
4.	0301/96	Pastoral Lease	5.1545	54.3919
5.	2345/96	Pastoral Lease	5.1545	54.3919
6.	3114/0465	Pastoral Lease	5.1545	54.3919
7.	394/0432	Pastoral Lease	5.1545	54.3919
8.	69/0040	Pastoral Lease	4.1109	43.3795
9.	69/0243	Pastoral Lease	1.5509	16.3652
10.	69/0273	Pastoral Lease	0.2746	2.8977
11.	69/0579	Pastoral Lease	1.5509	16.3652
12.	N1348	Pastoral Lease	0.2746	2.8977
13.	0235/96	Pastoral Lease	0.0646	100.0000
14.	0301/96	Pastoral Lease	0.0646	100.0000
15.	2345/96	Pastoral Lease	0.0646	100.0000
16.	3114/0465	Pastoral Lease	0.0646	100.0000
17.	394/0432	Pastoral Lease	0.0646	100.0000
18.	69/0243	Pastoral Lease	0.0646	100.0000
19.	69/0579	Pastoral Lease	0.0646	100.0000
20.	0235/96	Pastoral Lease	0.1143	100.0000
21.	0301/96	Pastoral Lease	0.1143	100.0000
22.	2345/96	Pastoral Lease	0.1143	100.0000
23.	3114/0465	Pastoral Lease	0.1143	100.0000
24.	394/0432	Pastoral Lease	0.1143	100.0000
25.	69/0243	Pastoral Lease	0.1143	100.0000
26.	69/0579	Pastoral Lease	0.1143	100.0000
27.	0235/96	Pastoral Lease	2.3891	100.0000
28.	0301/96	Pastoral Lease	2.3891	100.0000

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
29.	2345/96	Pastoral Lease	2.3891	100.0000
30.	3114/0465	Pastoral Lease	2.3891	100.0000
31.	394/0432	Pastoral Lease	2.3891	100.0000
32.	69/0040	Pastoral Lease	2.0377	85.2899
33.	69/0243	Pastoral Lease	0.3514	14.7101
34.	69/0579	Pastoral Lease	0.3514	14.7101
35.	N1582	Pastoral Lease	0.2584	10.8160
Mining and Petroleum Tenure granted prior to 31 October 1975				
36.	TR 7001807	Temporary Reserve	9.4766	100.0000
37.	TR 7002703	Temporary Reserve	9.4766	100.0000
38.	OPA-20H	Oil Prospecting Area	9.4766	100.0000
39.	PE-23H	Permit to Explore	9.4766	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
40.	E 4700504	Exploration Licence	0.0561	0.5920
41.	TR 7006662	Temporary Reserve	5.3940	56.9198
42.	TR 7007297	Temporary Reserve	2.6067	27.5067
43.	EP 304	Exploration Permit	3.5871	37.8524
Mining and Petroleum Tenure granted post 1 January 1994				
44.	L 4701034	Miscellaneous Licence	9.4633	99.8600
45.	PL 105	Pipeline Licence	0.0512	0.5401

MISCELLANEOUS LICENCE 47/859

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	0.0646	100.0000
Historical Land and Road Tenure				
2.	0235/96	Pastoral Lease	0.0646	100.0000
3.	0301/96	Pastoral Lease	0.0646	100.0000
4.	2345/96	Pastoral Lease	0.0646	100.0000
5.	3114/0465	Pastoral Lease	0.0646	100.0000
6.	394/0432	Pastoral Lease	0.0646	100.0000
7.	69/0243	Pastoral Lease	0.0646	100.0000
8.	69/0579	Pastoral Lease	0.0646	100.0000
Mining and Petroleum Tenure granted prior to 31 October 1975				
9.	TR 7001807	Temporary Reserve	0.0646	100.0000
10.	TR 7002703	Temporary Reserve	0.0646	100.0000
11.	OPA-20H	Oil Prospecting Area	0.0646	100.0000
12.	PE-23H	Permit to Explore	0.0646	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
13.	TR 7006662	Temporary Reserve	0.0544	84.2166
14.	TR 7007297	Temporary Reserve	0.0102	15.7834
15.	EP 304	Exploration Permit	0.0646	100.0000
Mining and Petroleum Tenure granted post 1 January 1994				
16.	L 4701034	Miscellaneous Licence	0.0646	100.0000
17.	PL 105	Pipeline Licence	0.0023	3.5893

MISCELLANEOUS LICENCE 47/901

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	0.1143	100.0000
Historical Land and Road Tenure				
2.	0235/96	Pastoral Lease	0.1143	100.0000
3.	0301/96	Pastoral Lease	0.1143	100.0000
4.	2345/96	Pastoral Lease	0.1143	100.0000
5.	3114/0465	Pastoral Lease	0.1143	100.0000
6.	394/0432	Pastoral Lease	0.1143	100.0000
7.	69/0243	Pastoral Lease	0.1143	100.0000
8.	69/0579	Pastoral Lease	0.1143	100.0000
Mining and Petroleum Tenure granted prior to 31 October 1975				
9.	TR 7001807	Temporary Reserve	0.1143	100.0000
10.	TR 7002703	Temporary Reserve	0.1143	100.0000
11.	OPA-20H	Oil Prospecting Area	0.1143	100.0000
12.	PE-23H	Permit to Explore	0.1143	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
13.	TR 7006662	Temporary Reserve	0.0052	4.5846
14.	TR 7007297	Temporary Reserve	0.1090	95.4154
15.	EP 304	Exploration Permit	0.1143	100.0000
Mining and Petroleum Tenure granted post 1 January 1994				
16.	L 4701034	Miscellaneous Licence	0.1143	100.0000
17.	PL 105	Pipeline Licence	0.0211	18.4356

MISCELLANEOUS LICENCE 47/914

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	2.1337	89.3088
2.	UCL 02	Unallocated Crown Land	0.0013	0.0536
3.	UCL 03	Unallocated Crown Land	0.1960	8.2029
4.	UCL 05	Unallocated Crown Land	0.0582	2.4347
Historical Land and Road Tenure				
5.	0235/96	Pastoral Lease	2.3891	100.0000
6.	0301/96	Pastoral Lease	2.3891	100.0000
7.	2345/96	Pastoral Lease	2.3891	100.0000
8.	3114/0465	Pastoral Lease	2.3891	100.0000
9.	394/0432	Pastoral Lease	2.3891	100.0000
10.	69/0040	Pastoral Lease	2.0377	85.2899
11.	69/0243	Pastoral Lease	0.3514	14.7101
12.	69/0579	Pastoral Lease	0.3514	14.7101
13.	N1582	Pastoral Lease	0.2584	10.8160
14.	ROAD 01	Road	0.0142	0.5926
Mining and Petroleum Tenure granted prior to 31 October 1975				
15.	TR 7001643	Temporary Reserve	1.8170	76.0551
16.	TR 7001807	Temporary Reserve	2.3891	100.0000
17.	TR 7002703	Temporary Reserve	0.2325	9.7327
18.	OPA-20H	Oil Prospecting Area	2.3891	100.0000
19.	PE-23H	Permit to Explore	2.3891	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
20.	E 4700504	Exploration Licence	1.4743	61.7115
21.	TR 7006457	Temporary Reserve	1.7860	74.7565
22.	TR 7006662	Temporary Reserve	0.0227	0.9488
23.	TR 7007243	Temporary Reserve	0.0664	2.7805
24.	TR 7007297	Temporary Reserve	2.3000	96.2707
25.	TR 7008037	Temporary Reserve	0.0419	1.7522

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Mining and Petroleum Tenure granted post 1 January 1994				
26.	E 4701617	Exploration Licence	0.0565	2.3629
27.	L 4701034	Miscellaneous Licence	0.1141	4.7743

MISCELLANEOUS LICENCE 47/919

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	5.1545	54.3919
2.	UCL 07	Unallocated Crown Land	4.3221	45.6081
Historical Land and Road Tenure				
3.	0235/96	Pastoral Lease	5.1545	54.3919
4.	0301/96	Pastoral Lease	5.1545	54.3919
5.	2345/96	Pastoral Lease	5.1545	54.3919
6.	3114/0465	Pastoral Lease	5.1545	54.3919
7.	394/0432	Pastoral Lease	5.1545	54.3919
8.	69/0040	Pastoral Lease	4.1109	43.3795
9.	69/0243	Pastoral Lease	1.5509	16.3652
10.	69/0273	Pastoral Lease	0.2746	2.8977
11.	69/0579	Pastoral Lease	1.5509	16.3652
12.	N1348	Pastoral Lease	0.2746	2.8977
Mining and Petroleum Tenure granted prior to 31 October 1975				
13.	TR 7001807	Temporary Reserve	9.4766	100.0000
14.	TR 7002703	Temporary Reserve	9.4766	100.0000
15.	OPA-20H	Oil Prospecting Area	9.4766	100.0000
16.	PE-23H	Permit to Explore	9.4766	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
17.	E 4700504	Exploration Licence	0.0561	0.5920
18.	TR 7006662	Temporary Reserve	5.3940	56.9198
Mining and Petroleum Tenure granted post 1 January 1994				
19.	L 4701034	Miscellaneous Licence	9.4633	99.8600
20.	PL 105	Pipeline Licence	0.0512	0.5401

EXPLORATION LICENCE 47/1319-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	UCL 07	Unallocated Crown Land	71.9645	100.0000
Historical Land and Road Tenure				
2.	N2088	Pastoral Lease	28.3112	39.3405
Mining and Petroleum Tenure granted prior to 31 October 1975				
3.	TR 7001807	Temporary Reserve	71.9645	100.0000
4.	TR 7002703	Temporary Reserve	70.4687	97.9214
5.	OPA-201H	Oil Prospecting Area	71.9645	100.0000
6.	OPA-20H	Oil Prospecting Area	71.9645	100.0000
7.	PE-23H	Permit to Explore	71.9645	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
8.	E 4700475	Exploration Licence	12.0644	16.7644
9.	TR 7006661	Temporary Reserve	45.2925	62.9373
10.	TR 7006662	Temporary Reserve	12.5740	17.4725
11.	TR 7006980	Temporary Reserve	12.0644	16.7644
12.	EP 304	Exploration Permit	3.0746	4.2723

EXPLORATION LICENCE 47/1333-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	UCL 07	Unallocated Crown Land	12.2745	100.0000
Historical Land and Road Tenure				
2.	69/0273	Pastoral Lease	0.1608	1.3101
3.	N2363	Pastoral Lease	0.1608	1.3101
Mining and Petroleum Tenure granted prior to 31 October 1975				
4.	TR 7001807	Temporary Reserve	12.2745	100.0000
5.	TR 7002703	Temporary Reserve	12.2745	100.0000
6.	OPA-201H	Oil Prospecting Area	12.2647	99.9201
7.	OPA-20H	Oil Prospecting Area	12.2745	100.0000
8.	PE-23H	Permit to Explore	12.2745	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
9.	E 4700475	Exploration Licence	6.5672	53.5025
10.	TR 7006980	Temporary Reserve	6.5672	53.5025
Mining and Petroleum Tenure granted post 1 January 1994				
11.	E 4700806	Exploration Licence	4.5888	37.3845

EXPLORATION LICENCE 47/1334-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	7.8765	43.5529
2.	UCL 01	Unallocated Crown Land	1.1757	6.5007
3.	UCL 05	Unallocated Crown Land	0.4003	2.2134
4.	UCL 07	Unallocated Crown Land	8.6324	47.7329
Historical Land and Road Tenure				
5.	0235/96	Pastoral Lease	9.4524	52.2671
6.	0301/96	Pastoral Lease	9.4524	52.2671
7.	2345/96	Pastoral Lease	9.4524	52.2671
8.	3114/0465	Pastoral Lease	9.4524	52.2671
9.	394/0432	Pastoral Lease	9.4524	52.2671
10.	69/0040	Pastoral Lease	9.4524	52.2671
11.	ROAD 01	Road	0.0521	0.2882
Mining and Petroleum Tenure granted prior to 31 October 1975				
12.	TR 7001807	Temporary Reserve	18.0849	100.0000
13.	TR 7002703	Temporary Reserve	15.0042	82.9655
14.	OPA-201H	Oil Prospecting Area	8.5874	47.4840
15.	OPA-20H	Oil Prospecting Area	18.0849	100.0000
16.	PE-23H	Permit to Explore	18.0849	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
17.	E 4700475	Exploration Licence	4.6890	25.9279
18.	TR 7006662	Temporary Reserve	2.9510	16.3175
19.	TR 7006980	Temporary Reserve	4.6890	25.9279
20.	TR 7007297	Temporary Reserve	0.6550	3.6219
Mining and Petroleum Tenure granted post 1 January 1994				
21.	E 4700806	Exploration Licence	1.1014	6.0899

EXPLORATION LICENCE 47/1398-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	211.1981	90.8511
2.	UCL 01	Unallocated Crown Land	3.0975	1.3324
3.	UCL 02	Unallocated Crown Land	14.3032	6.1528
4.	UCL 03	Unallocated Crown Land	0.7921	0.3408
5.	UCL 05	Unallocated Crown Land	0.4587	0.1973
6.	UCL 07	Unallocated Crown Land	1.8142	0.7804
7.	UCL 08	Unallocated Crown Land	0.0570	0.0245
8.	UCL 09	Unallocated Crown Land	0.0350	0.0150
9.	UCL 10	Unallocated Crown Land	0.0414	0.0178
10.	UCL 11	Unallocated Crown Land	0.0543	0.0234
11.	UCL 18	Unallocated Crown Land	0.0282	0.0121
12.	UCL 19	Unallocated Crown Land	0.0386	0.0166
13.	UCL 23	Unallocated Crown Land	0.0124	0.0053
14.	WATER 1	Unallocated Crown Land	0.5355	0.2303
Historical Land and Road Tenure				
15.	0235/96	Pastoral Lease	230.6520	99.2196
16.	0280/96	Pastoral Lease	96.8481	41.6611
17.	0301/96	Pastoral Lease	83.5123	35.9245
18.	0815/102	Pastoral Lease	13.7693	5.9232
19.	2345/96	Pastoral Lease	230.6520	99.2196
20.	3114/0465	Pastoral Lease	230.6520	99.2196
21.	394/0432	Pastoral Lease	230.6520	99.2196
22.	69/0040	Pastoral Lease	38.3049	16.4776
23.	69/0243	Pastoral Lease	83.5625	35.9461
24.	69/0262	Pastoral Lease	96.6158	41.5612
25.	69/0326	Pastoral Lease	38.1276	16.4013
26.	69/0579	Pastoral Lease	83.5625	35.9461
27.	69/0580	Pastoral Lease	82.8464	35.6381
28.	N1458	Pastoral Lease	38.1276	16.4013

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
29.	N1532	Pastoral Lease	59.1245	25.4336
30.	N1581	Pastoral Lease	58.9721	25.3681
31.	N1582	Pastoral Lease	14.2937	6.1487
32.	N2088	Pastoral Lease	8.3884	3.6084
33.	ROAD 01	Road	0.1655	0.0712
Mining and Petroleum Tenure granted prior to 31 October 1975				
34.	TR 7001643	Temporary Reserve	102.9210	44.2735
35.	TR 7001807	Temporary Reserve	232.4662	100.0000
36.	TR 7002703	Temporary Reserve	74.1905	31.9145
37.	OPA-201H	Oil Prospecting Area	164.1151	70.5974
38.	OPA-20H	Oil Prospecting Area	232.4662	100.0000
39.	PE-23H	Permit to Explore	232.4662	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
40.	E 4700503	Exploration Licence	88.3778	38.0175
41.	E 4700504	Exploration Licence	86.9962	37.4232
42.	E 4700555	Exploration Licence	3.5489	1.5266
43.	M 4700097	Mining Lease	0.0757	0.0326
44.	M 4700098	Mining Lease	0.0649	0.0279
45.	TR 7006449	Temporary Reserve	0.0712	0.0306
46.	TR 7006457	Temporary Reserve	67.1547	28.8880
47.	TR 7006458	Temporary Reserve	88.7455	38.1757
48.	TR 7006459	Temporary Reserve	32.4837	13.9735
49.	TR 7006661	Temporary Reserve	7.4954	3.2243
50.	TR 7006662	Temporary Reserve	3.8543	1.6580
51.	TR 7007238	Temporary Reserve	3.6348	1.5636
52.	TR 7007239	Temporary Reserve	51.7213	22.2490
53.	TR 7007241	Temporary Reserve	100.8868	43.3985
54.	TR 7007243	Temporary Reserve	2.4787	1.0663
55.	TR 7007297	Temporary Reserve	49.7970	21.4212
56.	TR 7008036	Temporary Reserve	19.2580	8.2842
57.	TR 7008037	Temporary Reserve	151.4831	65.1635

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
58.	TR 7008038	Temporary Reserve	3.4583	1.4877
59.	EP 304	Exploration Permit	193.4841	83.2311
Mining and Petroleum Tenure granted post 1 January 1994				
60.	AL 7000007	Misc License S.A.	51.1215	21.9910
61.	E 4700680	Exploration Licence	21.5745	9.2807
62.	PL 105	Pipeline Licence	2.2069	0.9493

EXPLORATION LICENCE 47/1399-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	63.2376	94.0732
2.	UCL 02	Unallocated Crown Land	3.9245	5.8381
3.	UCL 03	Unallocated Crown Land	0.0596	0.0887
Historical Land and Road Tenure				
4.	0235/96	Pastoral Lease	67.2217	100.0000
5.	0301/96	Pastoral Lease	12.2639	18.2439
6.	0815/102	Pastoral Lease	25.6475	38.1536
7.	2345/96	Pastoral Lease	67.2217	100.0000
8.	3114/0465	Pastoral Lease	67.2217	100.0000
9.	394/0432	Pastoral Lease	67.2217	100.0000
10.	69/0200	Pastoral Lease	3.4304	5.1032
11.	69/0243	Pastoral Lease	63.7912	94.8968
12.	69/0450	Pastoral Lease	3.4304	5.1032
13.	69/0542	Pastoral Lease	3.4304	5.1032
14.	69/0579	Pastoral Lease	41.5742	61.8464
15.	N1582	Pastoral Lease	59.5920	88.6500
16.	N1707	Pastoral Lease	3.4304	5.1032
17.	N1940	Pastoral Lease	4.1992	6.2468
18.	ROAD 01	Road	0.0077	0.0114
Mining and Petroleum Tenure granted prior to 31 October 1975				
19.	TR 7001643	Temporary Reserve	67.2217	100.0000
20.	TR 7001807	Temporary Reserve	67.2217	100.0000
21.	TR 7002703	Temporary Reserve	2.9317	4.3613
22.	OPA-201H	Oil Prospecting Area	14.2602	21.2136
23.	OPA-20H	Oil Prospecting Area	67.2217	100.0000
24.	PE-23H	Permit to Explore	67.2217	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
25.	E 4700504	Exploration Licence	31.5218	46.8923

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
26.	TR 7006456	Temporary Reserve	14.4935	21.5608
27.	TR 7006457	Temporary Reserve	43.4177	64.5888
28.	TR 7006458	Temporary Reserve	1.3411	1.9951
29.	TR 7007241	Temporary Reserve	26.2073	38.9865
30.	TR 7007242	Temporary Reserve	32.7490	48.7180
31.	TR 7007243	Temporary Reserve	5.3406	7.9448
32.	TR 7007244	Temporary Reserve	0.0043	0.0063
33.	TR 7007297	Temporary Reserve	2.9204	4.3444
34.	TR 7008037	Temporary Reserve	0.7399	1.1007
35.	TR 7008038	Temporary Reserve	58.6023	87.1777
36.	TR 7008039	Temporary Reserve	0.0043	0.0063
37.	EP 304	Exploration Permit	62.2570	92.6144
Mining and Petroleum Tenure granted post 1 January 1994				
38.	AL 7000007	Misc License S.A.	21.0110	31.2563
39.	E 4700680	Exploration Licence	3.4098	5.0725
40.	E 4700681	Exploration Licence	0.0139	0.0206

EXPLORATION LICENCE 47/1447-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	25.9142	31.5442
2.	UCL 07	Unallocated Crown Land	56.2379	68.4558
Historical Land and Road Tenure				
3.	0235/96	Pastoral Lease	25.9142	31.5442
4.	0280/96	Pastoral Lease	21.7382	26.4609
5.	0301/96	Pastoral Lease	4.1761	5.0833
6.	2345/96	Pastoral Lease	25.9142	31.5442
7.	3114/0465	Pastoral Lease	25.9142	31.5442
8.	394/0432	Pastoral Lease	25.9142	31.5442
9.	4/0899	Pastoral Lease	3.0873	3.7580
10.	69/0243	Pastoral Lease	7.5670	9.2110
11.	69/0579	Pastoral Lease	7.5670	9.2110
12.	N1581	Pastoral Lease	7.5670	9.2110
13.	N2088	Pastoral Lease	26.5466	32.3139
Mining and Petroleum Tenure granted prior to 31 October 1975				
14.	TR 7001807	Temporary Reserve	82.1522	100.0000
15.	TR 7002703	Temporary Reserve	68.7080	83.6351
16.	OPA-201H	Oil Prospecting Area	82.1522	100.0000
17.	OPA-20H	Oil Prospecting Area	82.1522	100.0000
18.	PE-23H	Permit to Explore	82.1522	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
19.	E 4700585	Exploration Licence	0.2758	0.3357
20.	TR 7006458	Temporary Reserve	1.2326	1.5004
21.	TR 7006459	Temporary Reserve	1.2747	1.5516
22.	TR 7006661	Temporary Reserve	53.2519	64.8210
23.	TR 7006662	Temporary Reserve	23.1362	28.1626
24.	TR 7007238	Temporary Reserve	1.5912	1.9369
25.	TR 7007239	Temporary Reserve	0.1648	0.2006

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
26.	TR 7007241	Temporary Reserve	3.1966	3.8911
27.	TR 7007297	Temporary Reserve	0.8199	0.9980
28.	TR 7008036	Temporary Reserve	1.7885	2.1771
29.	TR 7008037	Temporary Reserve	0.7185	0.8746
30.	EP 304	Exploration Permit	45.9624	55.9478

EXPLORATION LICENCE 47/3205-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/1228	Pastoral Lease	6.2215	93.6690
2.	GE I195323	Lease	0.0002	0.0036
3.	UCL 06	Unallocated Crown Land	0.0145	0.2188
4.	UCL 07	Unallocated Crown Land	0.4015	6.0456
5.	ROAD 2	Dedicated Road	0.0042	0.0631
Historical Land and Road Tenure				
6.	0340/96	Pastoral Lease	0.0791	1.1915
7.	1369/96	Pastoral Lease	1.2604	18.9763
8.	2568/96	Pastoral Lease	1.2604	18.9763
9.	3114/0952	Pastoral Lease	2.2999	34.6270
10.	3114/1138	Pastoral Lease	6.2257	93.7320
11.	394/0663	Pastoral Lease	1.2604	18.9763
12.	398/0644	Pastoral Lease	3.9258	59.1050
13.	69/0314	Pastoral Lease	2.3000	34.6284
14.	N1362	Pastoral Lease	2.3000	34.6284
15.	RES 01544	Crown Reserve	1.0396	15.6521
16.	RESUMPTION 1	Resumption	0.0002	0.0036
Mining and Petroleum Tenure granted prior to 31 October 1975				
17.	TR 7001807	Temporary Reserve	6.6420	100.0000
18.	TR 7002703	Temporary Reserve	6.6420	100.0000
19.	OPA-201H	Oil Prospecting Area	6.6420	100.0000
20.	OPA-20H	Oil Prospecting Area	6.6420	100.0000
21.	PE-23H	Permit to Explore	6.6420	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
22.	TR 7006484	Temporary Reserve	1.5248	22.9565
23.	TR 7006485	Temporary Reserve	5.1173	77.0436
24.	TR 7008034	Temporary Reserve	1.4849	22.3568
25.	EP 303	Exploration Permit	6.5255	98.2455

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Mining and Petroleum Tenure granted post 1 January 1994				
26.	E 4700722	Exploration Licence	6.6420	99.9999
27.	E 4700939	Exploration Licence	2.4874	37.4487
28.	E 4701557	Exploration Licence	6.6420	99.9999
29.	L 4700047	Miscellaneous Licence	0.0005	0.0077
30.	L 4700274	Miscellaneous Licence	0.0012	0.0182

EXPLORATION LICENCE 47/3464-I

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	4.4932	42.8516
2.	UCL 01	Unallocated Crown Land	3.8514	36.7307
3.	UCL 02	Unallocated Crown Land	1.3026	12.4233
4.	UCL 05	Unallocated Crown Land	0.6089	5.8069
5.	UCL 07	Unallocated Crown Land	0.0778	0.7419
6.	UCL 23	Unallocated Crown Land	0.0294	0.2802
7.	WATER 1	Unallocated Crown Land	0.1222	1.1651
Historical Land and Road Tenure				
8.	0235/96	Pastoral Lease	10.4076	99.2578
9.	0301/96	Pastoral Lease	10.4076	99.2578
10.	0341/96	Pastoral Lease	0.0778	0.7422
11.	2345/96	Pastoral Lease	10.4076	99.2578
12.	3114/0465	Pastoral Lease	10.4076	99.2578
13.	3379/96	Pastoral Lease	0.0778	0.7422
14.	394/0432	Pastoral Lease	10.4076	99.2578
15.	69/0040	Pastoral Lease	10.4076	99.2578
16.	ROAD 01	Road	0.0791	0.7548
Mining and Petroleum Tenure granted prior to 31 October 1975				
17.	TR 7001643	Temporary Reserve	7.9732	76.0405
18.	TR 7001807	Temporary Reserve	10.4855	100.0000
19.	TR 7002703	Temporary Reserve	9.2719	88.4264
20.	OPA-20H	Oil Prospecting Area	10.4855	100.0000
21.	PE-23H	Permit to Explore	10.4855	100.0000
Mining and Petroleum Tenure granted 1 November 1975 – 31 December 1993				
22.	TR 7006457	Temporary Reserve	0.4873	4.6471
23.	TR 7007297	Temporary Reserve	0.3991	3.8064
Mining and Petroleum Tenure granted post 1 January 1994				
24.	E 4701617	Exploration Licence	9.0049	85.8800

PROSPECTING LICENCE 47/1945

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	0.0486	100.0000
Historical Land and Road Tenure				
2.	0235/96	Pastoral Lease	0.0486	100.0000
3.	0301/96	Pastoral Lease	0.0486	100.0000
4.	2345/96	Pastoral Lease	0.0486	100.0000
5.	3114/0465	Pastoral Lease	0.0486	100.0000
6.	394/0432	Pastoral Lease	0.0486	100.0000
7.	69/0040	Pastoral Lease	0.0486	100.0000
Mining and Petroleum Tenure granted prior to 31 October 1975				
8.	TR 7001807	Temporary Reserve	0.0486	100.0000
9.	TR 7002703	Temporary Reserve	0.0486	100.0000
10.	OPA-20H	Oil Prospecting Area	0.0486	100.0000
11.	PE-23H	Permit to Explore	0.0486	100.0000

PROSPECTING LICENCE 47/1946

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	0.0569	33.4900
2.	UCL 01	Unallocated Crown Land	0.8000	44.6800
3.	UCL 05	Unallocated Crown Land	0.3900	21.8300
Historical Land and Road Tenure				
4.	0235/96	Pastoral Lease	1.8000	100.0000
5.	0301/96	Pastoral Lease	1.8000	100.0000
6.	2345/96	Pastoral Lease	1.8000	100.0000
7.	3114/0465	Pastoral Lease	1.8000	100.0000
8.	394/0432	Pastoral Lease	1.8000	100.0000
9.	69/0040	Pastoral Lease	1.8000	100.0000
10.	ROAD 01	Road	0.0517	2.8800
Mining and Petroleum Tenure granted prior to 31 October 1975				
11.	TR 7001643	Temporary Reserve	0.0757	100.0000
12.	TR 7001807	Temporary Reserve	1.7900	100.0000
13.	TR 7002703	Temporary Reserve	1.7900	100.0000
14.	OPA-20H	Oil Prospecting Area	1.8000	100.0000
15.	PE-23H	Permit to Explore	1.8000	100.0000

PROSPECTING LICENCE 47/1947

No.	Overlap Tenure	Overlap Tenure Type	Overlap (sq km)	Overlap (%)
Land and Road Tenure as at 1 August 2013				
1.	3114/0465	Pastoral Lease	0.0777	4.8146
2.	UCL 01	Unallocated Crown Land	1.3404	83.0283
3.	UCL 02	Unallocated Crown Land	0.0172	1.0629
4.	UCL 05	Unallocated Crown Land	0.1624	10.0583
5.	WATER 1	Unallocated Crown Land	0.0167	1.0359
Historical Land and Road Tenure				
6.	0235/96	Pastoral Lease	1.6144	100.0000
7.	0301/96	Pastoral Lease	1.6144	100.0000
8.	2345/96	Pastoral Lease	1.6144	100.0000
9.	3114/0465	Pastoral Lease	1.6144	100.0000
10.	394/0432	Pastoral Lease	1.6144	100.0000
11.	ROAD 01	Road	0.0214	1.3275
Mining and Petroleum Tenure granted prior to 31 October 1975				
12.	TR 7001643	Temporary Reserve	1.4024	86.8703
13.	TR 7001807	Temporary Reserve	1.6144	100.0000
14.	TR 7002703	Temporary Reserve	1.6144	100.0000
15.	OPA-20H	Oil Prospecting Area	1.6144	100.0000
16.	PE-23H	Permit to Explore	1.6144	100.0000

Annexure B

Mining Tenements associated with the Solomon Project

The following table is a list of mining tenements which MINDEX associates with the mining project entitled 'Solomon – Greater Solomon' (Project Code J01646) and includes details with respect to the native title determinations in which those tenements are located.

This table does not list pending applications for grants of mining tenements associated with Project Code J01646.

	Tenement	Status	Current Holder	Comp. Act	Native Title Determination
Exploration Licences					
1.	E 47/536-I	Dead	–		Eastern Guruma ⁹
2.	E 47/768-I	Dead	–		Eastern Guruma
3.	E 47/1011-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
4.	E 47/1306-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
5.	E 47/1319-I	Live	FMG Pilbara Pty Ltd	Y	Yindjibarndi
6.	E 47/1333-I	Live	FMG Pilbara Pty Ltd	Y	<ul style="list-style-type: none"> • Yindjibarndi • Eastern Guruma
7.	E 47/1334-I	Live	FMG Pilbara Pty Ltd	Y	<ul style="list-style-type: none"> • Yindjibarndi • Eastern Guruma
8.	E 47/1353	Dead	–		Eastern Guruma
9.	E 47/1372-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
10.	E 47/1390-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
11.	E 47/1391-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
12.	E 47/1398-I	Live	FMG Pilbara Pty Ltd	Y	Yindjibarndi
13.	E 47/1399-I	Live	FMG Pilbara Pty Ltd	Y	<ul style="list-style-type: none"> • Yindjibarndi • Banjima
14.	E 47/1447-I	Live	FMG Pilbara Pty Ltd	Y	Yindjibarndi
15.	E 47/1523-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
16.	E 47/1524-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
17.	E 47/1579-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
18.	E 47/1763-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma

⁹ WAD 6208 of 1998: see *Hughes v State of Western Australia* [2007] FCA 365

	Tenement	Status	Current Holder	Comp. Act	Native Title Determination
19.	E 47/1821-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
20.	E 47/2879-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
21.	E 47/3211-I	Live	FMG Pilbara Pty Ltd		<ul style="list-style-type: none"> • Eastern Guruma • Kuruma Marthudunera (Part A)¹⁰
Miscellaneous Licences					
22.	L 45/222	Dead	–		<ul style="list-style-type: none"> • Banjima¹¹ • Palyku (Part A)¹²
23.	L 45/223	Dead	–		<ul style="list-style-type: none"> • Karriyarra¹³ • Palyku (Part A)
24.	L 47/293	Live	FMG Pilbara Pty Ltd		Eastern Guruma
25.	L 47/294	Live	FMG Pilbara Pty Ltd		Eastern Guruma
26.	L 47/296	Live	FMG Pilbara Pty Ltd		Eastern Guruma
27.	L 47/297	Dead	–		Eastern Guruma
28.	L 47/298	Dead	–		Eastern Guruma
29.	L 47/302	Dead	–	Y	Yindjibarndi
30.	L 47/350	Dead	–		<ul style="list-style-type: none"> • Yindjibarndi • Banjima
31.	L 47/354	Dead	–		Yindjibarndi
32.	L 47/355	Dead	–		Yindjibarndi
33.	L 47/360	Live	FMG Pilbara Pty Ltd		Eastern Guruma
34.	L 47/361	Live	FMG Pilbara Pty Ltd	Y	<ul style="list-style-type: none"> • Yindjibarndi • Banjima
35.	L 47/362	Live	FMG Pilbara Pty Ltd	Y	Yindjibarndi
36.	L 47/363	Live	FMG Pilbara Pty Ltd	Y	Yindjibarndi
37.	L 47/367	Live	FMG Pilbara Pty Ltd	Y	Yindjibarndi
38.	L 47/368	Dead	–		Yindjibarndi
39.	L 47/375	Dead	–		Banjima
40.	L 47/381	Live	FMG Pilbara Pty Ltd		Eastern Guruma
41.	L 47/382	Live	FMG Pilbara Pty Ltd		Eastern Guruma

¹⁰ WAD 6090 of 1998: see *Finlay v State of Western Australia* (No.2) [2016] FCA 1260

¹¹ WAD 6096 of 1998: see *Banjima People v State of Western Australia* (No. 3) [2014] FCA 201 (as amended by orders made by the Full Court in WAD 72 of 2014 (unreported 02/02/2016)).

¹² WAD 23 of 2019: see *O'Connor v State of Western Australia* [2019] FCA 330

¹³ WAD 6169 of 1998, WAD 232 of 2009 and WAD 47 of 2014: see *Gordon v State of Western Australia* (No.2) [2018] FCA 1990

	Tenement	Status	Current Holder	Comp. Act	Native Title Determination
42.	L 47/383	Dead	–		Eastern Guruma
43.	L 47/391	Live	FMG Pilbara Pty Ltd		Eastern Guruma
44.	L 47/392	Live	FMG Pilbara Pty Ltd		Eastern Guruma
45.	L 47/395	Dead	–		Banjima
46.	L 47/397	Live	FMG Pilbara Pty Ltd		Eastern Guruma
47.	L 47/471	Live	FMG Pilbara Pty Ltd		Eastern Guruma
48.	L 47/710	Live	Chichester Metals Pty Ltd		Eastern Guruma
49.	L 47/711	Live	Chichester Metals Pty Ltd		Eastern Guruma
50.	L 47/713	Live	FMG Pilbara Pty Ltd		Eastern Guruma
51.	L 47/801	Live	The Pilbara Infrastructure Pty Ltd	Y	Yindjibarndi
Mining Leases					
52.	M 47/1407-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
53.	M 47/1408-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
54.	M 47/1409-I	Live	FMG Pilbara Pty Ltd	Y	<ul style="list-style-type: none"> • Yindjibarndi • Eastern Guruma
55.	M 47/1410-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
56.	M 47/1411-I	Live	FMG Pilbara Pty Ltd	Y	<ul style="list-style-type: none"> • Yindjibarndi • Eastern Guruma
57.	M 47/1413-I	Live	FMG Pilbara Pty Ltd	Y	Yindjibarndi
58.	M 47/1417-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
59.	M 47/1431-I	Live	FMG Pilbara Pty Ltd	Y	Yindjibarndi
60.	M 47/1440	Dead	–		Eastern Guruma
61.	M 47/1441	Dead	–		Eastern Guruma
62.	M 47/1453-I	Live	FMG Pilbara Pty Ltd	Y	Yindjibarndi
63.	M 47/1456	Dead	–		Eastern Guruma
64.	M 47/1457	Dead	–		Eastern Guruma
65.	M 47/1458	Dead	–		Eastern Guruma
66.	M 47/1459	Dead	–		Eastern Guruma
67.	M 47/1466	Live	FMG Pilbara Pty Ltd		Eastern Guruma
68.	M 47/1473-I	Live	FMG Pilbara Pty Ltd	Y	Yindjibarndi
69.	M 47/1474-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
70.	M 47/1475-I	Live	FMG Pilbara Pty Ltd	Y	Yindjibarndi
71.	M 47/1481-I	Live	FMG Pilbara Pty Ltd		Banjima

	Tenement	Status	Current Holder	Comp. Act	Native Title Determination
72.	M 47/1513-I	Dead	–	Y	Yindjibarndi
73.	M 47/1569	Dead	–		Yindjibarndi
74.	M 47/1570	Live	FMG Pilbara Pty Ltd	Y	Yindjibarndi
75.	M 47/1573	Live	FMG Pilbara Pty Ltd		Eastern Guruma
76.	M 47/1577	Live	FMG Pilbara Pty Ltd		Eastern Guruma
77.	M 47/1613	Dead	–		Yindjibarndi
Prospecting Licences					
78.	P 47/1287-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
79.	P 47/1410-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
80.	P 47/1411-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma
81.	P 47/1412-I	Live	FMG Pilbara Pty Ltd		Eastern Guruma