

FEDERAL COURT OF AUSTRALIA

Cheinmora v State of Western Australia (No 3) [2013] FCA 769

Citation: Cheinmora v State of Western Australia (No 3) [2013] FCA 769

Parties: **DELORES CHEINMORA, DUDLEY BAMBRA, ELAINE JOHNSTONE, ERIC JOHNSTONE, FRANK CHULUNG, JAMES TAYLOR, JEAN LEYLAND, JEFF CLARKE, JENNIFER EURA, KENNY MORGAN, LAURIE WAINA, LUVEY WEAVER, MARY TERESA (TAYLOR), MAY SMITH, MONA WILLIAMS, RAYMOND WILLIAMS, ROY MARTIN, TOM BIRCH, VERNON GERRARD AND VICTOR MARTIN v STATE OF WESTERN AUSTRALIA, THE COMMONWEALTH OF AUSTRALIA, DELAWARE NORTH EL QUESTRO PTY LTD AND TELSTRA CORPORATION LIMITED**

File numbers: WAD 6004 of 2000

Judge: **GILMOUR J**

Date of judgment: 7 August 2013

Catchwords: **NATIVE TITLE** – consent determination of native title – whether proceedings affected by possible defect in authorisation – whether order should be made pursuant to s 84D(4)(a) *Native Title Act 1993* (Cth) – whether proposed consent determination within power appropriate – requirements of s 87A *Native Title Act 1993* (Cth) satisfied

Legislation: *Native Title Act 1993* (Cth) ss 13(1), 47B, 56(2), 64(2), 66, 67(1), 68, 84D(4)(a), 87A, 94A, 225
Native Title Amendment Act 1998 (Cth)

Cases cited: *Attorney-General (NT) v Ward* (2003) 134 FCR 16
Barunga v State of Western Australia [2011] FCA 518
Billy Patch on behalf of the Birriliburu People v State of Western Australia [2008] FCA 944
Brown v Western Australia [2007] FCA 1025
Goonack v State of Western Australia [2011] FCA 516
Hughes v Western Australia [2007] FCA 365
James v Western Australia [2002] FCA 1208
Lovett v Victoria [2007] FCA 474
Munn for and on behalf of the Gunggari People v State of Queensland (2001) 115 FCR 109

Nangkiriny v Western Australia (2002) 117 FCR 6
Nangkiriny v Western Australia [2004] FCA 1156
Sharpe v State of Western Australia [2013] FCA 599
Ward v State of Western Australia (1998) 159 ALR 483
Ward v Western Australia [2006] FCA 1848
Western Australia v Ward (2000) 170 ALR 159
Wurrunmurra v State of Western Australia [2012] FCA
1399

Date of hearing: 7 August 2013

Place: Wyndham

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 35

Counsel for the Applicant: Ms J Cole with Ms J Arman

Solicitor for the Applicant: Kimberley Land Council

Counsel for the State of
Western Australia: Ms C Taggart

Solicitor for the State of
Western Australia: State Solicitor's Office

**IN THE FEDERAL COURT OF AUSTRALIA
WESTERN AUSTRALIA DISTRICT REGISTRY
GENERAL DIVISION**

WAD 6004 of 2000

BETWEEN: DELORES CHEINMORA, DUDLEY BAMBRA, ELAINE JOHNSTONE, ERIC JOHNSTONE, FRANK CHULUNG, JAMES TAYLOR, JEAN LEYLAND, JEFF CLARKE, JENNIFER EURA, KENNY MORGAN, LAURIE WAINA, LUYEY WEAVER, MARY TERESA TAYLOR, MAY SMITH, MONA WILLIAMS, RAYMOND WILLIAMS, ROY MARTIN, TOM BIRCH, VERNON GERRARD AND VICTOR MARTIN
Applicant

AND: STATE OF WESTERN AUSTRALIA, THE COMMONWEALTH OF AUSTRALIA, DELAWARE NORTH EL QUESTRO PTY LTD AND TELSTRA CORPORATION LIMITED
Respondents

JUDGE: GILMOUR J

DATE OF ORDER: 7 AUGUST 2013

WHERE MADE: WYNDHAM

THE COURT NOTES THAT:

- A. The applicant in proceeding WAD 6004 of 1998 has made a native title determination application (Balanggarra #3 Application) that relates to an area of land and waters the subject of a proposed determination of native title.
- B. The applicant in the Balanggarra #3 Application, the State of Western Australia and the other respondents to the proceeding (parties) have reached an agreement as to the terms of a determination which is to be made in relation to part of the land and waters covered by the Balanggarra #3 Application.
- C. Pursuant to section 87A(1)(b) and section 87A(1)(c) of the *Native Title Act 1993* (Cth) (*Native Title Act*) the parties have filed with the Court a Minute of Proposed Consent Determination of Native Title which reflects the terms of the agreement reached by the parties.

- D. The terms of the agreement involve the making of consent orders for a determination pursuant to sections 87A and 94A of the *Native Title Act* that native title exists in relation to part of the land and waters the subject of the Balanggarra 3# Application.
- E. The parties have agreed that in respect of the Excluded Area, as described in paragraph 3A of the Determination, no determination be made at present and the matter is to continue in case management by a Registrar of the Court.
- F. The maps provided at Schedule One which indicate the location of the Wyndham Port as referred to at Schedule Three have been agreed between the parties on the basis they are indicative only.
- G. The parties acknowledge that the effect of making the determination is that the members of the native title claim group, in accordance with the traditional laws acknowledged and the traditional customs observed by them, will be recognised as the native title holders for the Determination Area.
- H. The parties have requested that the Court hear and determine that part of the proceeding that relates to the Determination Area.
- I. The applicant in the Balanggarra #3 Application has nominated Balanggarra Aboriginal Corporation ICN 2923 pursuant to section 56(2) of the *Native Title Act* to hold the determined native title in trust for the native title holders.

BEING SATISFIED that a determination of native title in the terms sought by the parties would be within the power of the Court and, it appearing to the Court appropriate to do so, pursuant to section 87A and section 94A of the *Native Title Act*:

BY CONSENT OF THE PARTIES THE COURT ORDERS THAT:

1. There be a determination of native title in WAD 6004 of 2000 in terms of the Determination as provided for in Attachment 'A' hereof.

2. The Balangarra Aboriginal Corporation ICN 2923 shall hold the determined native title in trust for the native title holders pursuant to s 56(2)(b) of the *Native Title Act 1993* (Cth).
3. There be no order as to costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

ATTACHMENT “A”

DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of native title (s 225 *Native Title Act*)

- 1 Subject to paragraph 3A, the Determination Area is the land and waters described in Schedule One and depicted on the maps at Attachment One to Schedule One.
- 2 Subject to paragraph 3, native title exists in the Determination Area in the manner set out in paragraphs 5 to 10.
- 3 By reason of extinguishment, native title does not exist in relation to those parts of the Determination Area comprising land and waters the subject of the interests identified in Schedule Three and which are generally shaded green on the maps at Attachment One to Schedule One.
- 3A In relation to the Excluded Area as described in Schedule One, no determination be made and the matter is to continue in case management by a Registrar of the Court.

Native title holders (s 225(a) *Native Title Act*)

- 4 The native title in relation to the Determination Area is held in common by members of the Balangarra community being the people referred to in Schedule Six.

The nature and extent of native title rights and interests (s225(b) *Native Title Act*) and exclusiveness of native title (s 225(e) *Native Title Act*)

Exclusive rights in relation to certain land

- 5 Subject to paragraphs 7 and 8, the nature and extent of the native title rights and interests in relation to the areas of land generally shown as shaded pink and brown on the map at Attachment One to Schedule One, being all of the land in the Determination Area which:
 - (a) has not been the subject of prior extinguishment of native title as described in Schedule Two and Schedule Three; or

- (b) has been the subject of prior extinguishment of native title, which extinguishment must be disregarded by operation of s 47, 47A or 47B of the *Native Title Act* as described in Schedule Five,

is the right to possession, occupation, use and enjoyment to the exclusion of all others.

Non-exclusive rights in relation to certain land and waters

6 Subject to paragraph 7, 8 and 9 the nature and extent of the native title rights and interests in relation to the area of land and waters described in Schedule Two and generally shown as shaded orange on the map at Attachment One to Schedule One, being areas where the native title right to possession, occupation, use and enjoyment to the exclusion of all others is not available at law including by reason of partial extinguishment of native title, is:

- (a) the right to enter, travel over and remain on the land;
- (b) the right to live and camp on the land including erecting shelters and other structures for those purposes;
- (c) the right to hunt, fish, gather and use including by way of sharing or exchange the resources of the land and waters for personal, domestic and communal needs including, but not limited to, cultural or spiritual needs but not for commercial purposes as in accordance with paragraph 7(a)(ii));
- (d) the right to light fires for domestic purposes;
- (e) the right to engage in cultural activities on the land including:
 - (i) visiting places of cultural or spiritual importance and protecting those places by carrying out lawful activities to preserve their physical or spiritual integrity;
 - (ii) conducting and participating in ceremony and ritual including in relation to death;
 - (iii) holding meetings; and

- (iv) passing on knowledge about the physical and spiritual attributes of the Determination Area and areas of importance on or in the Determination Area.

Qualifications on native title rights and interests

7 The native title rights and interests described in paragraphs 5 and 6:

- (a) are exercisable in accordance with:
 - (i) the laws of the State and the Commonwealth, including the common law; and
 - (ii) the traditional laws and customs of the native title holders for their personal, domestic and communal needs including cultural or spiritual needs but not for commercial purposes.

8 Notwithstanding anything in this Determination:

- (a) there are no native title rights and interest in the Determination Area in relation to:
 - (i) minerals as defined in the *Mining Act 1904* (WA) (repealed) and the *Mining Act 1978* (WA);
 - (ii) petroleum as defined in the *Petroleum and Geothermal Energy Act 1936* (WA) (repealed) and in the *Petroleum and Geothermal Energy Resources Act 1967* (WA);
 - (iii) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA); or
 - (iv) water captured by the holders of the other interests in accordance with those interests; and
- (b) the nature and extent of native title rights and interests 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 this Determination is the non-exclusive right to take, use and enjoy that water for personal, domestic and

communal needs including cultural or spiritual needs but not for commercial purposes.

- 9 The native title rights and interests described in paragraph 6 do not confer:
- (a) possession, occupation, use and enjoyment of the land or waters of the Determination Area on the native title holders to the exclusion of all others; nor
 - (b) a right to control the access to, or use of, the land and waters, or their resources, of those parts of the Determination Area referred to in paragraph 6.
- 10 For the avoidance of doubt, subject to the qualifications described in paragraphs 7, 8 and 9, the manner of exercise of native title rights and interests recognised by this Determination is a matter for the native title holders to determine having regard to, and in accordance with, their traditional laws and customs.

Areas to which sections 47, 47A and 47B of the *Native Title Act* apply

- 11 Sections 47, 47A and 47B of the *Native Title Act* apply to disregard any prior extinguishment in relation to the areas identified in Schedule Five.

The nature and extent of any other interests (s 225(c) *Native Title Act*)

- 12 The nature and extent of the other interests in relation to the Determination Area are described in Schedule Four.

Relationship between native title rights and other interests (s 225(d) *Native Title Act*)

- 13 The relationship between the native title rights and interests described in paragraphs 5 and 6 and the other interests is that:
- (a) to the extent that any of the other interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title rights and interests continue to exist in their entirety, but the native title rights and interests have no effect in relation to the other interests to the extent of the inconsistency during the currency of the other interests; and otherwise,
 - (b) the existence and exercise of the native title rights and interests do not prevent the doing of any activity required or permitted to be done by or under the other

interests, and the other interests, and the doing of any activity required or permitted to be done by or under the other interests, prevail over the native title rights and interests and any exercise of the native title rights and interests, but, subject to the operation of section 24JB(2) of the *Native Title Act*, do not extinguish them.

Definitions and Interpretation

14 In this Determination, unless the contrary intention appears:

“**Determination Area**” means the land and waters described in Schedule One and depicted on the maps at Attachment One to Schedule One not including the Excluded Area;

“**Excluded Area**” means the land and waters described as the “Excluded Area” in Schedule One;

“**Intertidal Area**” means the area of land and waters between lowest astronomical tide and the mean high water mark; and

“**land**” has the same meaning as in the *Native Title Act*;

“*Native Title Act*” means the *Native Title Act 1993* (Cth);

“**Native Title Holders**” means the persons described in paragraph 4;

“**other interests**” means the legal or equitable estates or interests and other rights in relation to the determination area described in Schedule Four and referred to in paragraph 12;

“**resources**” means flora, fauna and other natural resources such as ochre (except ochres for use in the manufacture of porcelain, fine pottery or pigments), charcoal, stone, soil, wood and resin;

“**waters**” has the same meaning as in the *Native Title Act*;

15 In the event of any inconsistency between the written description of an area in Schedules One, Two, Three, Four or Five and the area as depicted on the maps at Attachment One to Schedule One, the written description prevails.

- 16 In the event of any inconsistency as to the existence of native title rights and interests in an area of land and waters which is or was covered by interests that are listed in Schedule Two and Schedule Three, Schedule Three prevails.

- 17 In the event of any inconsistency as to the existence of native title rights and interests in an area of land and waters which is or was covered by interests that are listed in Schedule Two or Schedule Three and Schedule Five, Schedule Five prevails.

SCHEDULE ONE

DETERMINATION AREA

The Determination Area, generally shown as bordered in dark blue on the maps at Attachment One to the First Schedule, comprises all land and waters bounded by the following description subject to the exclusion of those areas described as the "Excluded Area":

PART A

All those lands and waters commencing at the southernmost southwestern corner of the southernmost southwestern severance of Pastoral Lease 3114/962 (Home Valley) and extending northerly, westerly, again northerly, easterly and southerly along boundaries of that Pastoral Lease to the southernmost southwestern corner of Reserve 13873; then generally southerly and generally southwesterly passing through the following co-ordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
15.754244	127.714105
15.757685	127.714105
15.766218	127.716582
15.775688	127.718234
15.779185	127.721954
15.785047	127.722749
15.789230	127.727703
15.791873	127.729135
15.794516	127.727703
15.797268	127.722859
15.799147	127.717778
15.803215	127.716252
15.803435	127.712508
15.805197	127.707994
15.807840	127.703149
15.810593	127.696432
15.809161	127.682338
15.809110	127.671937
15.811473	127.658445
15.814545	127.654847
15.815327	127.652389

15.812795	127.647765
15.813455	127.645453
15.811253	127.639727
15.810015	127.635014
15.807950	127.631138
15.808390	127.627505
15.818961	127.622770
15.826669	127.620788
15.828981	127.618366
15.829421	127.615503
15.835147	127.611649
15.836358	127.608015
15.832615	127.598436
15.829753	127.596124
15.829312	127.594582
15.828211	127.584673
15.830633	127.581150
15.831735	127.575314
15.830413	127.567716
15.830744	127.565624
15.833794	127.563628
15.835258	127.557917
15.838011	127.553732
15.834488	127.533914
15.837792	127.524775
15.838012	127.518939
15.837351	127.517177
15.838012	127.504074
15.841976	127.497798
15.848317	127.488661

Then southwesterly to intersect with the northern boundary of the southernmost southeastern severance of Pastoral Lease 3114/962 (Home Valley) with Longitude 127.475058 East; then generally southwesterly along the boundary of that severance to its westernmost southwestern corner; then westerly back to the commencement point.

PART B

All those lands and waters commencing at Latitude 15.158555 South, Longitude 128.110801 East and extending generally southeasterly, generally southerly, generally westerly, again generally southerly, again generally westerly and generally northwesterly passing through the following co-ordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
15.159457	128.120650
15.165766	128.126024
15.172978	128.148410
15.181990	128.167394
15.188112	128.174153
15.198317	128.184291
15.201719	128.193077
15.204760	128.222040
15.209559	128.224002
15.215259	128.226594
15.219269	128.228101
15.223447	128.229722
15.227965	128.231513
15.233327	128.233994
15.238293	128.236247
15.242358	128.237930
15.246311	128.239497
15.250937	128.241875
15.255497	128.245609
15.258531	128.248902
15.261270	128.253793
15.262998	128.257644
15.265176	128.261957
15.268247	128.267959
15.271565	128.271188
15.275729	128.274812
15.280297	128.277427
15.285541	128.280381
15.290502	128.283459
15.294954	128.286488
15.299349	128.289518

15.303411	128.291613
15.308326	128.293161
15.313469	128.294468
15.314939	128.294850
15.315734	128.294539
15.315514	128.293542
15.320885	128.294668
15.326095	128.294678
15.330339	128.294944
15.334699	128.294972
15.339909	128.294864
15.345855	128.294741
15.351125	128.294220
15.355658	128.293714
15.361217	128.292480
15.366151	128.291319
15.370518	128.290404
15.374992	128.290253
15.379179	128.290637
15.384047	128.290831
15.388520	128.290917
15.392934	128.291238
15.398081	128.292015
15.403056	128.293208
15.407803	128.294464
15.412663	128.295777
15.418097	128.296018
15.422616	128.297515
15.426873	128.300239
15.427966	128.300551
15.429840	128.300395
15.431557	128.299927
15.435773	128.299147
15.436778	128.298566
15.437419	128.298275
15.438033	128.298131
15.438540	128.297815
15.439334	128.297772
15.440475	128.297526

15.440865	128.297021
15.440669	128.296660
15.441532	128.296365
15.445023	128.294682
15.445335	128.294609
15.446255	128.294529
15.446985	128.294409
15.447325	128.294269
15.447715	128.294219
15.448435	128.294189
15.449025	128.294069
15.450315	128.293879
15.451595	128.293849
15.452035	128.293849
15.452335	128.293919
15.452775	128.293939
15.452835	128.293959
15.453365	128.293989
15.453595	128.294059
15.453875	128.294219
15.454035	128.294239
15.455325	128.294329
15.455555	128.294309
15.456425	128.294449
15.456865	128.294609
15.457155	128.294799
15.457505	128.295109
15.457895	128.295529
15.458125	128.295699
15.458585	128.295839
15.459645	128.296159
15.460405	128.296439
15.460795	128.296679
15.461625	128.297079
15.462265	128.297599
15.462795	128.297899
15.464105	128.298509
15.465145	128.299189
15.465215	128.299239

15.465535	128.299449
15.466405	128.299809
15.467075	128.300089
15.467495	128.300369
15.468435	128.301339
15.469385	128.302419
15.469795	128.302819
15.470185	128.303549
15.470355	128.303839
15.470905	128.304379
15.471135	128.304549
15.471735	128.304849
15.472234	128.304989
15.472334	128.305009
15.472924	128.305199
15.473524	128.305269
15.473774	128.305269
15.474354	128.305149
15.474814	128.304959
15.475014	128.304769
15.475134	128.304479
15.475544	128.303869
15.475724	128.303649
15.476204	128.302889
15.476204	128.302819
15.476224	128.302749
15.476574	128.302609
15.476704	128.302609
15.476864	128.302699
15.476874	128.302839
15.476644	128.303199
15.476344	128.303959
15.475914	128.304459
15.475654	128.304759
15.475294	128.304929
15.475154	128.305049
15.475064	128.305429
15.475114	128.305859
15.475274	128.306279

15.475414	128.306489
15.475874	128.306919
15.476424	128.307579
15.477144	128.308309
15.477394	128.308469
15.477464	128.308549
15.478504	128.309249
15.479534	128.310169
15.480204	128.310669
15.480504	128.311069
15.480294	128.311019
15.479424	128.310529
15.478734	128.310059
15.478244	128.309609
15.477234	128.308809
15.476594	128.308409
15.476174	128.307859
15.475784	128.307369
15.475294	128.306919
15.475234	128.306869
15.474584	128.306259
15.474144	128.305999
15.473504	128.305669
15.472924	128.305529
15.472584	128.305509
15.472444	128.305559
15.472374	128.305649
15.472404	128.305869
15.472744	128.306269
15.473734	128.307089
15.474954	128.308149
15.475004	128.308219
15.475674	128.308689
15.476084	128.309169
15.477174	128.309939
15.478164	128.310479
15.478364	128.310649
15.478944	128.311549
15.479124	128.311849

15.479264	128.312229
15.479494	128.312559
15.479774	128.313129
15.480264	128.313959
15.480494	128.314359
15.481044	128.315089
15.481904	128.316249
15.482704	128.317309
15.483374	128.318369
15.483444	128.318439
15.483704	128.318769
15.484134	128.319219
15.484464	128.319459
15.485224	128.320539
15.485704	128.321199
15.486094	128.321559
15.486354	128.321789
15.487114	128.322329
15.487644	128.322709
15.488284	128.322969
15.488954	128.323229
15.489414	128.323299
15.490584	128.323499
15.491094	128.323639
15.491684	128.323669
15.492054	128.323789
15.492744	128.323879
15.493014	128.323859
15.493844	128.324009
15.494424	128.324149
15.494974	128.324359
15.495614	128.324679
15.496074	128.324849
15.496674	128.325169
15.496924	128.325229
15.497204	128.325349
15.498074	128.325849
15.498304	128.325929
15.498514	128.326059

15.498564	128.326109
15.498914	128.326449
15.499274	128.326659
15.499594	128.326709
15.499924	128.326689
15.500354	128.326779
15.500624	128.326739
15.501204	128.326429
15.501564	128.326319
15.502134	128.326109
15.502914	128.325989
15.503724	128.325959
15.504084	128.325839
15.504964	128.325729
15.505264	128.325589
15.505404	128.325469
15.505694	128.325039
15.505904	128.324569
15.506064	128.324329
15.506134	128.324279
15.506314	128.324329
15.506564	128.324589
15.506524	128.324899
15.506154	128.325139
15.506084	128.325209
15.506064	128.325349
15.506274	128.325629
15.506484	128.325749
15.506644	128.325749
15.507034	128.325579
15.507264	128.325439
15.507318	128.325439
15.507318	128.309083
15.507310	128.282993
15.507302	128.251244
15.536294	128.251245
15.536276	128.130670
15.536416	128.130860
15.537056	128.131310

15.537516	128.131490
15.538436	128.131490
15.538986	128.131470
15.539856	128.131250
15.540136	128.131180
15.540686	128.130910
15.541026	128.130560
15.541276	128.130200
15.541326	128.130130
15.541626	128.129420
15.541776	128.128870
15.541986	128.128260
15.541936	128.127690
15.541776	128.127210
15.541356	128.126270
15.540946	128.125540
15.540576	128.125060
15.540476	128.124920
15.540356	128.124810
15.540296	128.124710
15.540016	128.124310
15.539946	128.124280
15.539786	128.124050
15.539376	128.123620
15.539026	128.123150
15.538636	128.122510
15.538476	128.122110
15.538396	128.121730
15.538326	128.121260
15.538326	128.120740
15.538396	128.120310
15.538646	128.119740
15.539076	128.119050
15.540066	128.117980
15.540616	128.117510
15.540686	128.117460
15.541236	128.117000
15.541376	128.116910
15.541966	128.116720

15.542626	128.116340
15.543066	128.116100
15.543526	128.115950
15.544146	128.115600
15.544626	128.115380
15.545796	128.115190
15.546136	128.115110
15.546986	128.115160
15.547866	128.115130
15.549336	128.115010
15.550686	128.114930
15.551626	128.114900
15.552016	128.114830
15.552226	128.114740
15.552336	128.114660
15.553076	128.114310
15.553506	128.114160
15.554406	128.113780
15.555316	128.113210
15.555896	128.112850
15.556506	128.112230
15.556606	128.112180
15.557496	128.111350
15.557836	128.111110
15.558636	128.110490
15.558956	128.110350
15.559716	128.110230
15.560156	128.109970
15.560706	128.109750
15.561166	128.109510
15.562076	128.109300
15.562696	128.109390
15.563486	128.109670
15.563846	128.109860
15.564056	128.110090
15.564496	128.110920
15.564496	128.111120
15.564566	128.111870
15.564526	128.112170

15.564546	128.112390
15.564476	128.112530
15.564326	128.113150
15.564096	128.113480
15.563956	128.113600
15.563686	128.113790
15.563086	128.114010
15.562376	128.114170
15.562286	128.114200
15.561206	128.114080
15.560606	128.113830
15.559986	128.113590
15.559546	128.113500
15.559336	128.113500
15.558006	128.113500
15.556906	128.113600
15.556216	128.113770
15.555966	128.113890
15.555716	128.114110
15.555326	128.114390
15.554336	128.114920
15.553716	128.115250
15.553036	128.115850
15.553006	128.115920
15.552596	128.116390
15.552076	128.117130
15.551956	128.117250
15.551656	128.117650
15.551346	128.118270
15.551276	128.118530
15.551096	128.119310
15.551116	128.119550
15.551256	128.120000
15.551696	128.120610
15.552296	128.121040
15.553606	128.121740
15.554666	128.122260
15.554966	128.122450
15.556256	128.123150

15.557606	128.123860
15.557696	128.123910
15.558256	128.124210
15.558776	128.124550
15.558896	128.124710
15.559266	128.124990
15.559676	128.125150
15.560736	128.125440
15.561226	128.125690
15.562116	128.126260
15.562516	128.126870
15.563116	128.127560
15.563436	128.128080
15.563666	128.128460
15.564386	128.129430
15.564936	128.130560
15.565166	128.130910
15.566116	128.132240
15.566646	128.133020
15.567086	128.133490
15.567126	128.133560
15.567706	128.133960
15.568536	128.134360
15.568926	128.134550
15.569866	128.134620
15.569936	128.134620
15.570596	128.134570
15.571034	128.134361
15.571034	128.132764
15.571056	128.132760
15.571646	128.132710
15.572206	128.132520
15.572586	128.132090
15.572656	128.132070
15.572886	128.131620
15.573046	128.131030
15.573026	128.130650
15.572926	128.130480
15.572746	128.130250

15.572076	128.129610
15.571636	128.129330
15.571034	128.129084
15.571034	128.127746
15.570966	128.127720
15.569546	128.127340
15.568556	128.127160
15.567956	128.126970
15.567146	128.126740
15.566256	128.126310
15.565976	128.126130
15.565336	128.125540
15.564936	128.125020
15.564796	128.124540
15.564866	128.123670
15.564886	128.123550
15.564996	128.122770
15.565156	128.122460
15.565416	128.122150
15.565666	128.121890
15.565686	128.121810
15.566556	128.121120
15.567706	128.120460
15.567976	128.120380
15.568226	128.120380
15.568736	128.120400
15.569676	128.120640
15.570386	128.120970
15.570626	128.121230
15.570866	128.121560
15.571196	128.122150
15.571726	128.122930
15.572286	128.123900
15.572586	128.124250
15.572816	128.124580
15.573456	128.125170
15.573756	128.125340
15.574386	128.125710
15.574976	128.125780

15.575416	128.125760
15.575666	128.125640
15.576076	128.125120
15.576196	128.124970
15.576306	128.124810
15.576676	128.124450
15.576996	128.124000
15.577496	128.123470
15.577726	128.123260
15.578416	128.122830
15.578806	128.122710
15.579006	128.122710
15.579766	128.122680
15.580246	128.122750
15.581076	128.122920
15.581586	128.123170
15.581926	128.123430
15.582066	128.123670
15.582626	128.124380
15.582946	128.124690
15.583616	128.125180
15.583816	128.125390
15.584236	128.125720
15.585083	128.126207
15.585106	128.126220
15.585706	128.126500
15.586416	128.126660
15.587246	128.126750
15.588006	128.126770
15.588896	128.126940
15.589686	128.127240
15.590396	128.127600
15.590946	128.127920
15.591206	128.128140
15.591296	128.128210
15.592536	128.128940
15.593616	128.129600
15.593896	128.129670
15.594533	128.129739

15.594569	128.132476
15.593246	128.135245
15.592142	128.136410
15.591982	128.137242
15.591982	128.138049
15.592055	128.142160
15.591941	128.143752
15.593165	128.149335
15.593791	128.154301
15.594072	128.160098
15.595041	128.162402
15.597737	128.165656
15.599856	128.166962
15.600708	128.166986
15.603125	128.167127
15.603839	128.167578
15.604461	128.168172
15.606995	128.170238
15.608492	128.170879
15.612661	128.173372
15.613007	128.174132
15.613214	128.174939
15.613951	128.175343
15.617588	128.174842
15.623296	128.174531
15.627187	128.175290
15.628546	128.176144
15.629375	128.176073
15.629812	128.175384
15.629926	128.174576
15.630340	128.173839
15.631122	128.173625
15.632434	128.172792
15.632663	128.171984
15.633077	128.171271
15.633790	128.170867
15.635055	128.169821
15.636366	128.168799
15.637126	128.169108

15.637679	128.169749
15.641273	128.173383
15.642056	128.173691
15.642885	128.173857
15.645371	128.173927
15.650158	128.172476
15.653427	128.172284
15.654187	128.172664
15.656466	128.173542
15.657179	128.173090
15.658721	128.172519
15.660310	128.172685
15.664408	128.173419
15.670070	128.172989
15.673317	128.173772
15.674100	128.173463
15.675734	128.173082
15.676586	128.173200
15.678980	128.173698
15.679740	128.173389
15.680430	128.172937
15.681212	128.172604
15.682064	128.172556
15.682893	128.172794
15.688579	128.173551
15.690903	128.172790
15.691501	128.172219
15.691961	128.171506
15.692213	128.170698
15.693638	128.167751
15.694348	128.163736
15.695242	128.158959
15.698415	128.155015
15.701727	128.151235
15.704831	128.147385
15.706211	128.146529
15.710031	128.144839
15.710881	128.144744
15.714956	128.144409

15.715669	128.144837
15.716107	128.145573
15.716223	128.146404
15.716109	128.147260
15.715374	128.149636
15.715146	128.151253
15.715584	128.152725
15.717197	128.154577
15.717911	128.155005
15.720468	128.157071
15.721320	128.157023
15.722010	128.156547
15.723552	128.156357
15.724151	128.156903
15.724428	128.157687
15.725235	128.159112
15.725834	128.159658
15.727286	128.161511
15.727286	128.162319
15.726781	128.162961
15.726160	128.163507
15.724412	128.165148
15.724412	128.165956
15.724620	128.166739
15.725727	128.168925
15.726418	128.169352
15.728261	128.171015
15.729505	128.171774
15.730218	128.171370
15.733761	128.169420
15.734521	128.169681
15.736525	128.171011
15.736387	128.171819
15.735997	128.172532
15.735055	128.174885
15.735079	128.175693
15.736164	128.179660
15.736924	128.179921
15.737752	128.179897

15.741022	128.180371
15.741827	128.180251
15.743324	128.180678
15.743900	128.181248
15.744567	128.180797
15.745073	128.180107
15.748199	128.175235
15.750614	128.172549
15.751282	128.173000
15.756211	128.176016
15.760449	128.178770
15.764618	128.181952
15.768833	128.184872
15.774106	128.187294
15.774728	128.187816
15.774844	128.188648
15.775099	128.190311
15.775468	128.191047
15.776551	128.192282
15.778025	128.193018
15.778853	128.193041
15.779659	128.192922
15.781270	128.192969
15.781961	128.193373
15.783389	128.194180
15.784886	128.194987
15.789264	128.198882
15.794377	128.201517
15.799303	128.202584
15.804207	128.203817
15.805681	128.204601
15.810218	128.207093
15.812474	128.208090
15.817402	128.209181
15.818967	128.209798
15.821155	128.210842
15.821961	128.210890
15.826081	128.210864
15.826887	128.210555

15.828475	128.210126
15.834161	128.210884
15.838399	128.213591
15.839897	128.215610
15.844389	128.219291
15.845172	128.219481
15.850191	128.220167
15.853368	128.220974
15.854796	128.221781
15.855624	128.221781
15.857236	128.221376
15.860296	128.220091
15.864783	128.217832
15.869777	128.216642
15.875138	128.214454
15.880062	128.211577
15.882456	128.211695
15.884022	128.211932
15.884804	128.211742
15.886415	128.211670
15.886807	128.212382
15.886946	128.213237
15.887269	128.213974
15.887914	128.214449
15.887963	128.214443
15.891143	128.210781
15.905451	128.186520
15.908255	128.185867
15.917767	128.165798
15.921374	128.015556
15.849258	127.930219
15.730268	127.832862
15.723873	127.827995

Then northwesterly to intersect with a southeastern boundary of Reserve 13873 at Longitude 127.826924 East; then generally northeasterly along boundaries of that reserve to Latitude 15.685255 South; then generally northeasterly and generally northerly passing through the following co-ordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
15.677527	127.854946
15.670992	127.858765
15.663689	127.864111
15.657538	127.869076
15.653358	127.871191
15.652906	127.871191
15.651548	127.871191
15.649736	127.871191
15.648378	127.871191
15.647472	127.871191
15.646566	127.871191
15.645661	127.871191
15.644302	127.870741
15.642943	127.870291
15.642037	127.870291
15.640679	127.869840
15.639320	127.868941
15.637961	127.868041
15.637056	127.867591
15.636150	127.867141
15.635244	127.866691
15.634338	127.866241
15.633433	127.865791
15.632527	127.865791
15.631622	127.865342
15.630263	127.864442
15.629357	127.863992
15.627999	127.862642
15.626640	127.861742
15.625735	127.860393
15.625282	127.859493
15.624829	127.858593
15.623470	127.857243
15.622565	127.856794
15.621659	127.855894
15.620753	127.855894
15.619848	127.855894
15.618942	127.855894

15.617583	127.855894
15.615772	127.855894
15.614413	127.856794
15.613508	127.857243
15.612602	127.857243
15.611696	127.858143
15.610791	127.859043
15.609885	127.859943
15.608979	127.860843
15.608073	127.861742
15.606715	127.863542
15.605357	127.865791
15.604451	127.867591
15.603545	127.869390
15.602639	127.870740
15.602187	127.872090
15.601734	127.873889
15.601281	127.875239
15.601281	127.876139
15.601281	127.877038
15.600375	127.877938
15.599922	127.878838
15.599017	127.880638
15.598111	127.882887
15.597205	127.883787
15.596300	127.885586
15.595847	127.886486
15.594941	127.888286
15.594488	127.889185
15.594035	127.890085
15.593583	127.891885
15.593130	127.893234
15.591771	127.895484
15.591771	127.896383
15.591318	127.897283
15.590865	127.899083
15.590865	127.899983
15.589960	127.901332
15.589507	127.903132

15.589054	127.904482
15.588601	127.905381
15.587695	127.907181
15.586790	127.908980
15.585884	127.909880
15.584979	127.911680
15.584073	127.912579
15.583620	127.913479
15.582714	127.914379
15.582262	127.915279
15.581808	127.916178
15.580903	127.917528
15.579997	127.918428
15.579544	127.919777
15.577732	127.921576
15.576826	127.923376
15.575921	127.924276
15.575015	127.926075
15.574562	127.926975
15.573656	127.927874
15.573204	127.928774
15.572298	127.929674
15.571845	127.931024
15.570034	127.933723
15.569128	127.935522
15.567769	127.936872
15.566864	127.939122
15.565958	127.940921
15.565052	127.942721
15.564147	127.944069
15.563241	127.945419
15.562335	127.946769
15.561882	127.948118
15.561430	127.949468
15.560977	127.950368
15.560071	127.951717
15.559618	127.953067
15.558712	127.953517
15.557354	127.954417

15.555996	127.955766
15.554184	127.957566
15.553278	127.958916
15.552373	127.960265
15.551920	127.961165
15.551467	127.962065
15.551014	127.962965
15.550109	127.964764
15.549656	127.966114
15.548750	127.967013
15.548297	127.967913
15.547844	127.968813
15.546939	127.969713
15.546486	127.970613
15.545580	127.971512
15.544674	127.972412
15.543769	127.973312
15.542864	127.974212
15.541505	127.975113
15.540600	127.976462
15.539694	127.977362
15.538788	127.978711
15.537430	127.979611
15.536524	127.980511
15.535619	127.981411
15.534713	127.981861
15.533807	127.982311
15.532449	127.982596
15.531489	127.984027
15.531009	127.984980
15.531009	127.985934
15.530529	127.986888
15.530529	127.987841
15.529569	127.988318
15.529089	127.989271
15.528609	127.990225
15.527650	127.990702
15.527170	127.991655
15.526210	127.992132

15.525250	127.993086
15.524290	127.993086
15.523330	127.994039
15.522370	127.994039
15.521411	127.994039
15.520451	127.994516
15.519491	127.994516
15.518531	127.995469
15.517571	127.995946
15.516612	127.996423
15.516132	127.997377
15.515172	127.997854
15.514692	127.998807
15.514212	127.999761
15.514212	128.000714
15.513252	128.001668
15.512772	128.002621
15.512292	128.003575
15.511812	128.004528
15.511332	128.005482
15.511332	128.006436
15.510852	128.007389
15.509893	128.008343
15.508933	128.008343
15.508453	128.009296
15.507493	128.009773
15.506533	128.010250
15.506053	128.011203
15.505093	128.011680
15.504134	128.012634
15.503174	128.013111
15.502214	128.013587
15.501734	128.014541
15.501734	128.015494
15.501254	128.016448
15.500774	128.017401
15.500294	128.018355
15.500294	128.019309
15.499334	128.019785

15.498855	128.020739
15.498375	128.021693
15.497895	128.022646
15.497895	128.023600
15.497895	128.024553
15.497415	128.025507
15.496935	128.026937
15.496935	128.027891
15.496455	128.028844
15.495975	128.029798
15.495495	128.030751
15.495015	128.031705
15.494055	128.032658
15.493575	128.033612
15.493575	128.034566
15.493575	128.035519
15.493095	128.035996
15.492136	128.036949
15.491176	128.037903
15.490696	128.038857
15.490216	128.039810
15.489736	128.040764
15.489256	128.041717
15.488296	128.042194
15.488296	128.043148
15.487817	128.044101
15.487337	128.045055
15.487337	128.046008
15.486857	128.046962
15.486857	128.047915
15.486857	128.048869
15.486377	128.049822
15.486377	128.050776
15.485897	128.051730
15.485417	128.052683
15.484937	128.053637
15.483977	128.054114
15.483497	128.055067
15.482537	128.055544

15.481577	128.056021
15.480618	128.056497
15.479658	128.056497
15.478698	128.056497
15.477738	128.056974
15.476778	128.057451
15.475818	128.057451
15.475338	128.058404
15.474379	128.058881
15.473419	128.059358
15.472939	128.060312
15.471979	128.060788
15.471019	128.060788
15.470060	128.061265
15.469100	128.061742
15.468140	128.062219
15.467180	128.062219
15.466220	128.062696
15.465260	128.063172
15.464300	128.063649
15.463341	128.064603
15.462381	128.065079
15.461421	128.065556
15.460461	128.066033
15.459501	128.066510
15.458542	128.066987
15.457582	128.067463
15.456622	128.067940
15.455662	128.068417
15.454702	128.068417
15.453742	128.068894
15.452899	128.069141
15.452093	128.069589
15.451287	128.070036
15.450570	128.070529
15.449584	128.071111
15.448017	128.071648
15.447023	128.071754
15.446064	128.072231

15.445104	128.072708
15.444144	128.073185
15.443184	128.074138
15.442224	128.075092
15.441265	128.075569
15.440305	128.076045
15.439345	128.076522
15.438385	128.077476
15.437425	128.077952
15.436465	128.078429
15.435985	128.079383
15.435026	128.079860
15.434066	128.080336
15.433106	128.081290
15.432146	128.081767
15.431186	128.082244
15.430227	128.082720
15.429267	128.083197
15.428307	128.083674
15.427347	128.084627
15.426387	128.085581
15.425427	128.086058
15.424467	128.087011
15.423508	128.087488
15.422548	128.087488
15.421588	128.087965
15.420628	128.087965
15.420148	128.088918
15.419188	128.089395
15.418708	128.090349
15.417749	128.090826
15.416789	128.091302
15.415829	128.091302
15.414869	128.092256
15.413909	128.092733
15.412949	128.093209
15.412470	128.094163
15.411510	128.095117
15.410550	128.096070

15.409590	128.096547
15.408630	128.097024
15.407670	128.097501
15.406710	128.098454
15.405751	128.098931
15.405271	128.099884
15.404311	128.100361
15.403351	128.100838
15.402391	128.101315
15.401431	128.102268
15.400223	128.102788
15.377592	128.103638
15.329819	128.100953
15.273933	128.103639
15.262216	128.098266
15.247792	128.096475
15.231567	128.094683
15.213540	128.103638
15.203625	128.103638
15.185597	128.102741
15.168471	128.108115

Then northeasterly back to the commencement point.

Excluded Area

All those land and waters being:

Lot 1702 and 1709 as shown on Deposited Plan 183763 being Unallocated Crown Land;

Lot 1776 as shown on Deposited Plan 208835 being Certificate of Title 2561/586;

Lot 1777 as shown on Deposited Plan 208835 being Certificate of Title 2561/587;

Lot 1778 as shown on Deposited Plan 208835 being Certificate of Title 2561/588;

Lot 1779 as shown on Deposited Plan 208835 being Certificate of Title 2561/589;

Lot 1365 as shown on Deposited Plan 213443 being Certificate of Title 2600/54;

Lot 1297 as shown on Deposited Plan 210697 being Certificate of Title 2726/303.

Note:

- *Geographic Coordinates provided in Decimal Degrees.*
- *All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.*
- *Cadastral boundaries sourced from Landgate's SCDB as at February 2013.*

Datum: Geocentric Datum of Australia 1994 (GDA94)

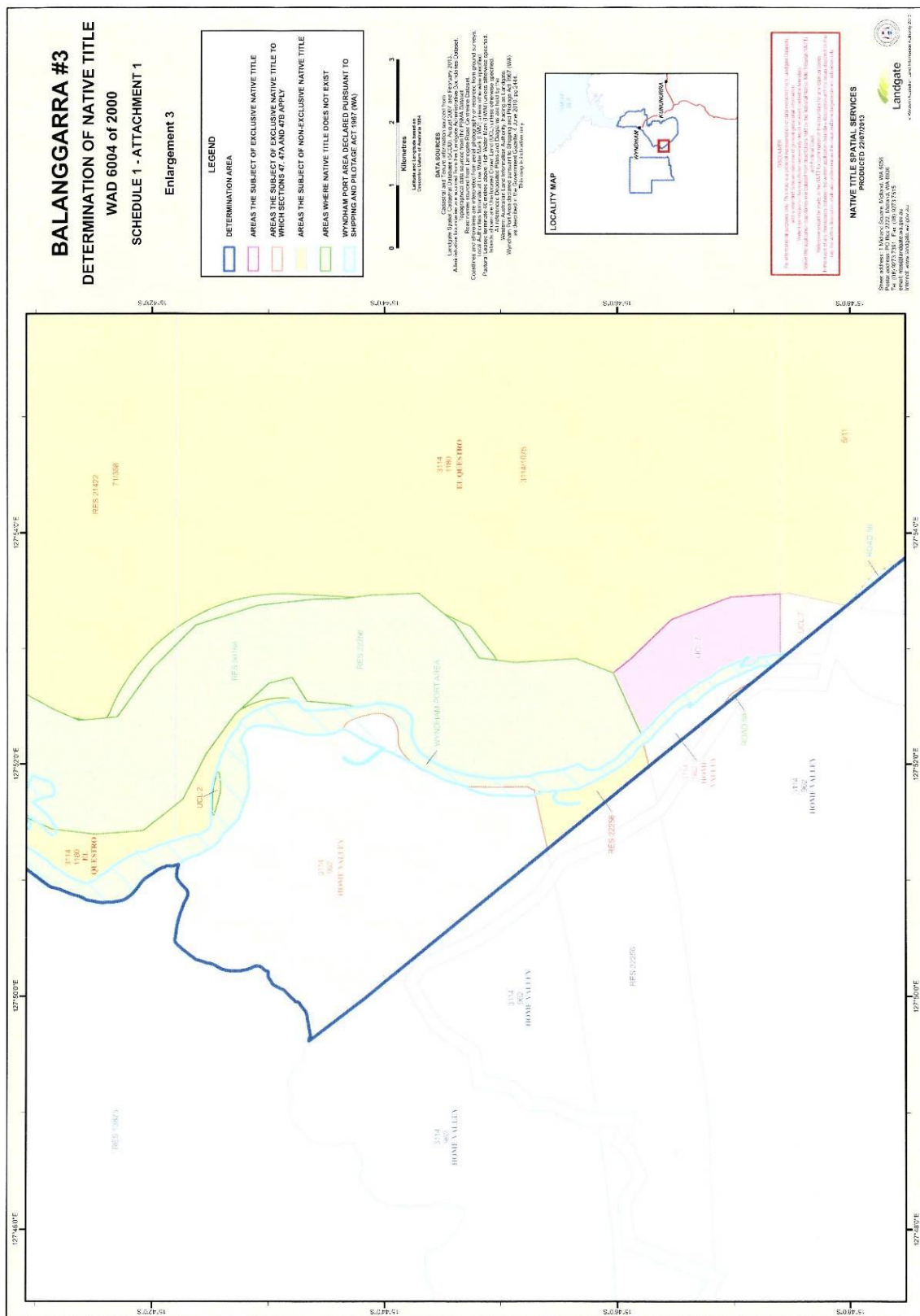
Prepared by: Native Title Spatial Services (Landgate) 18 July 2013.

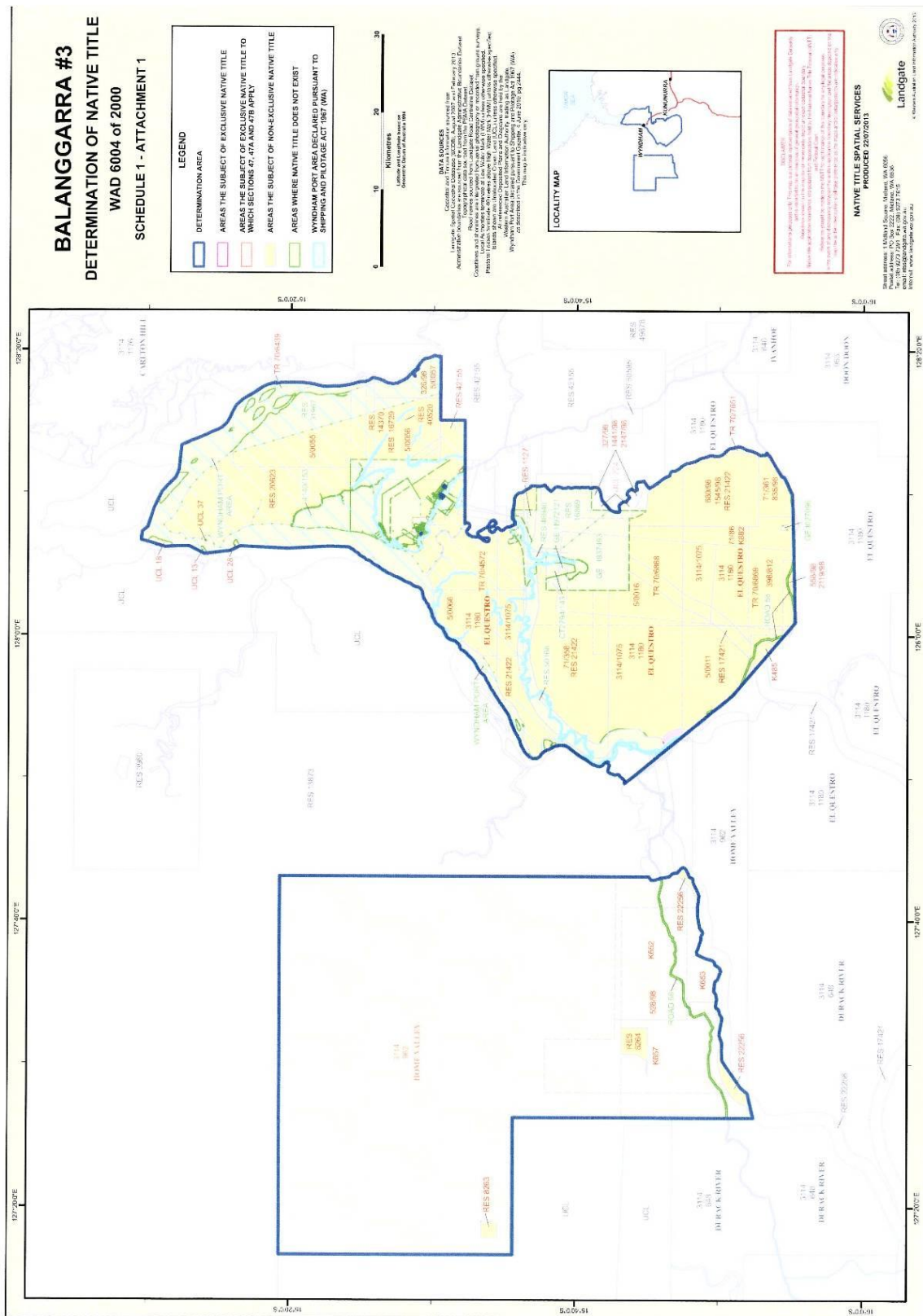
Use of Co-ordinates:

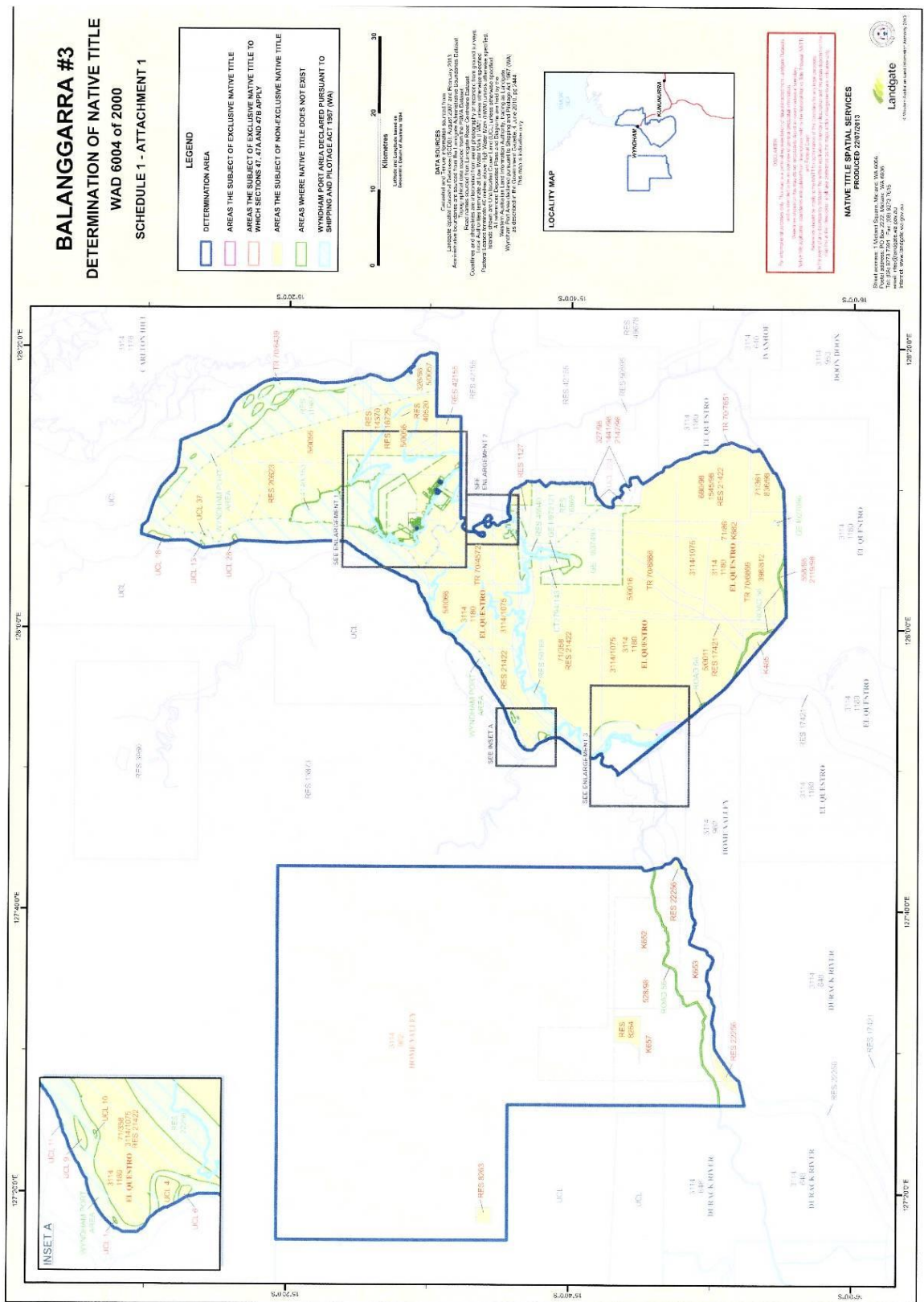
Where co-ordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

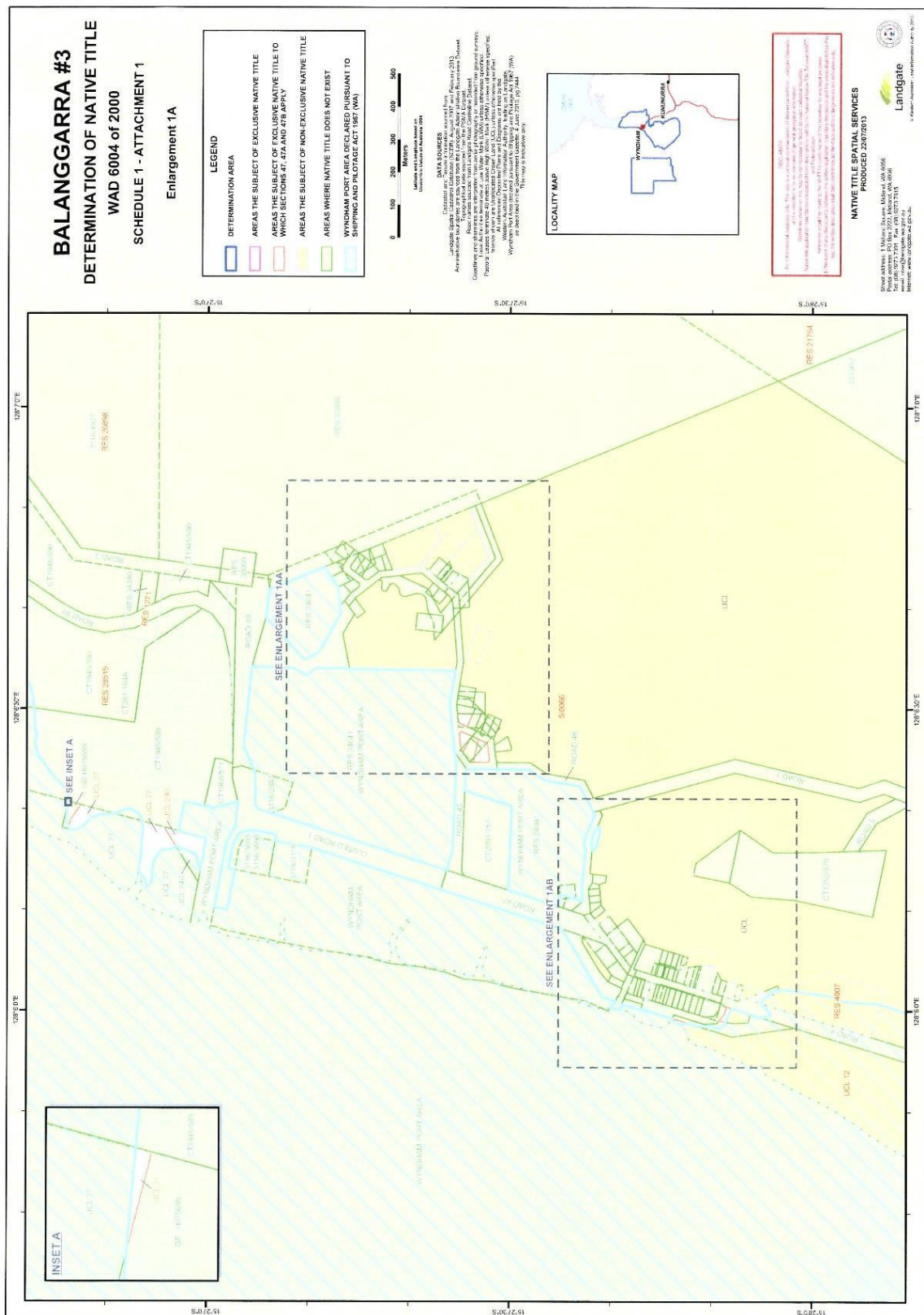
ATTACHMENT ONE
(SCHEDULE ONE)

MAPS OF THE DETERMINATION AREA



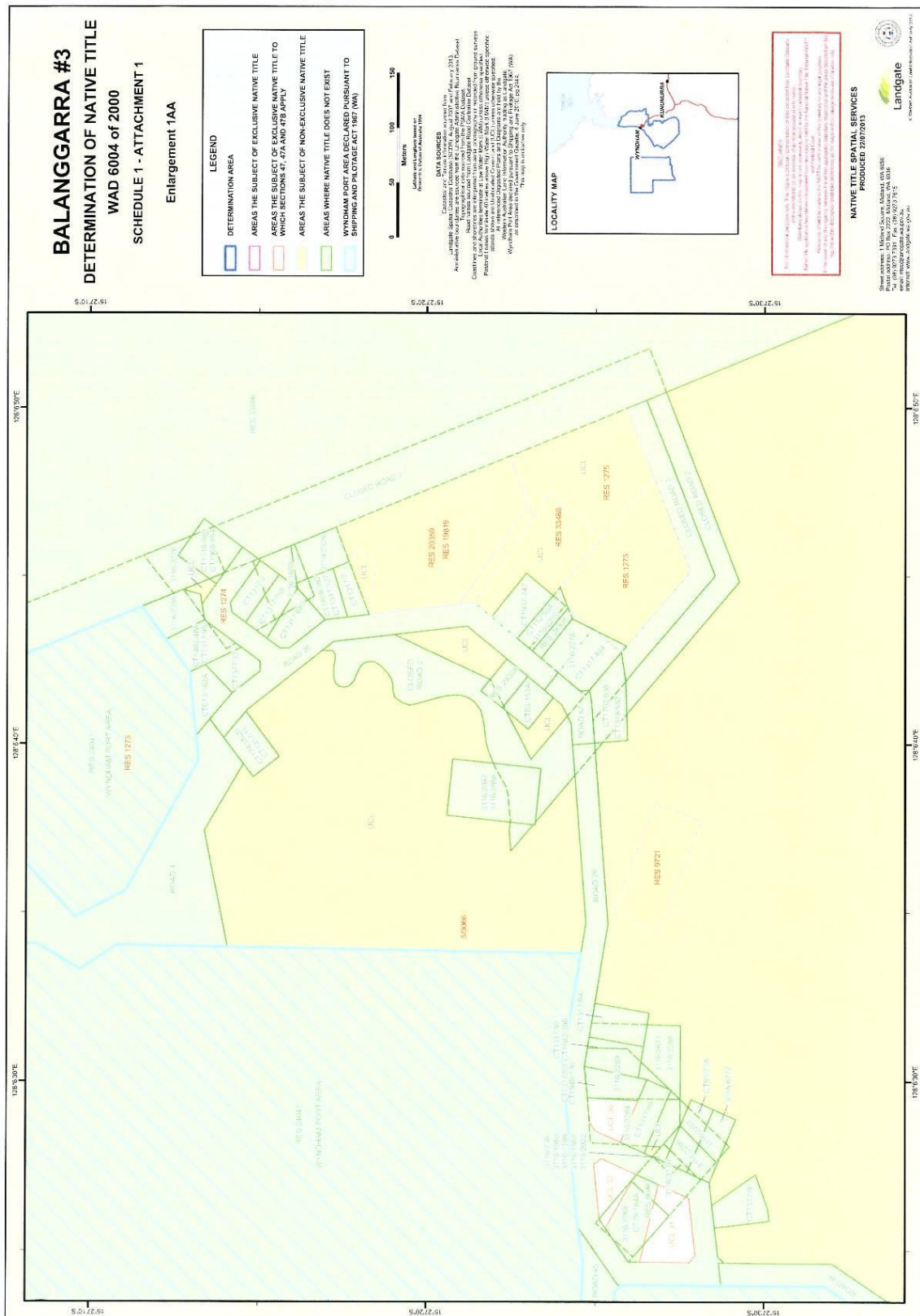


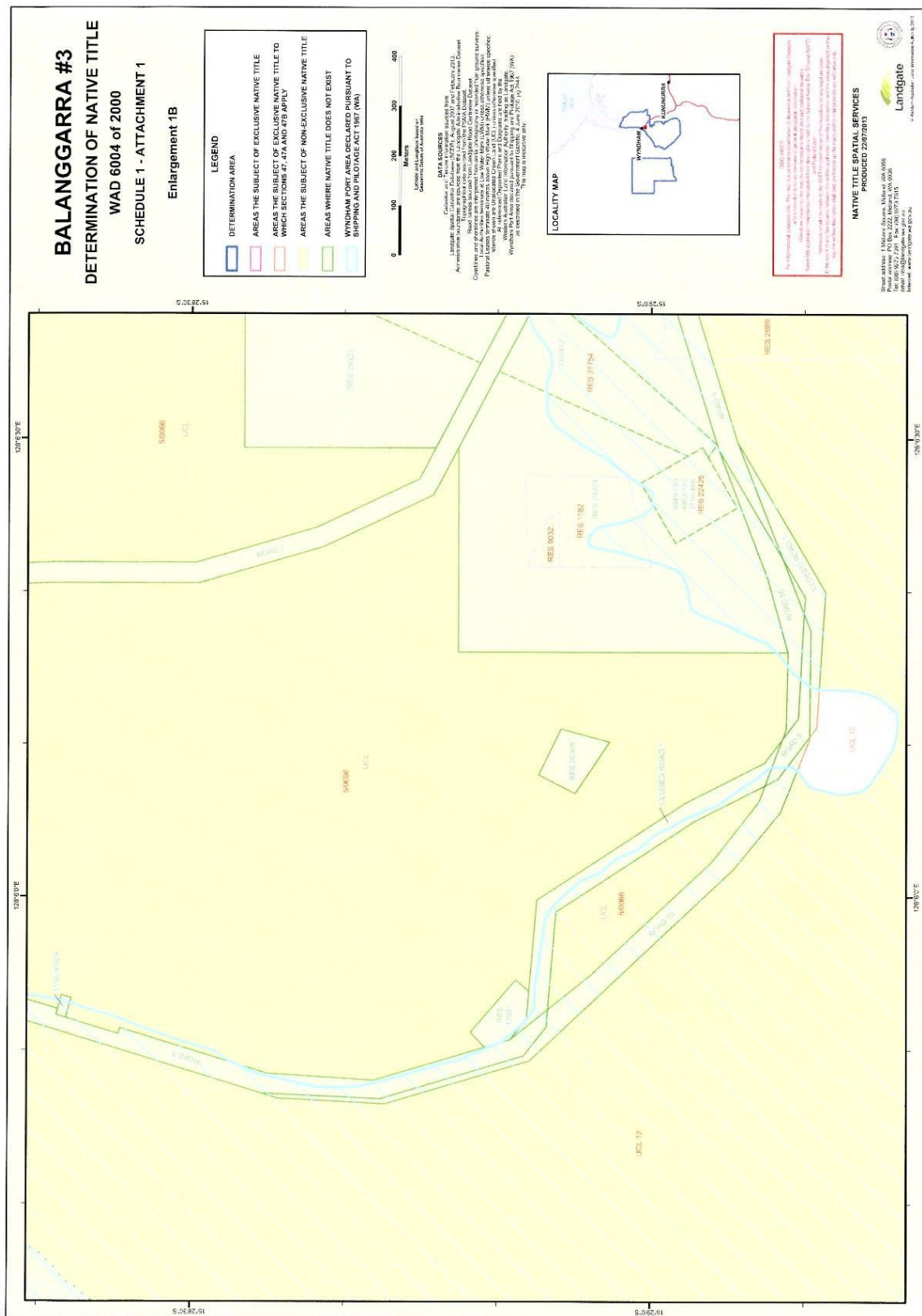


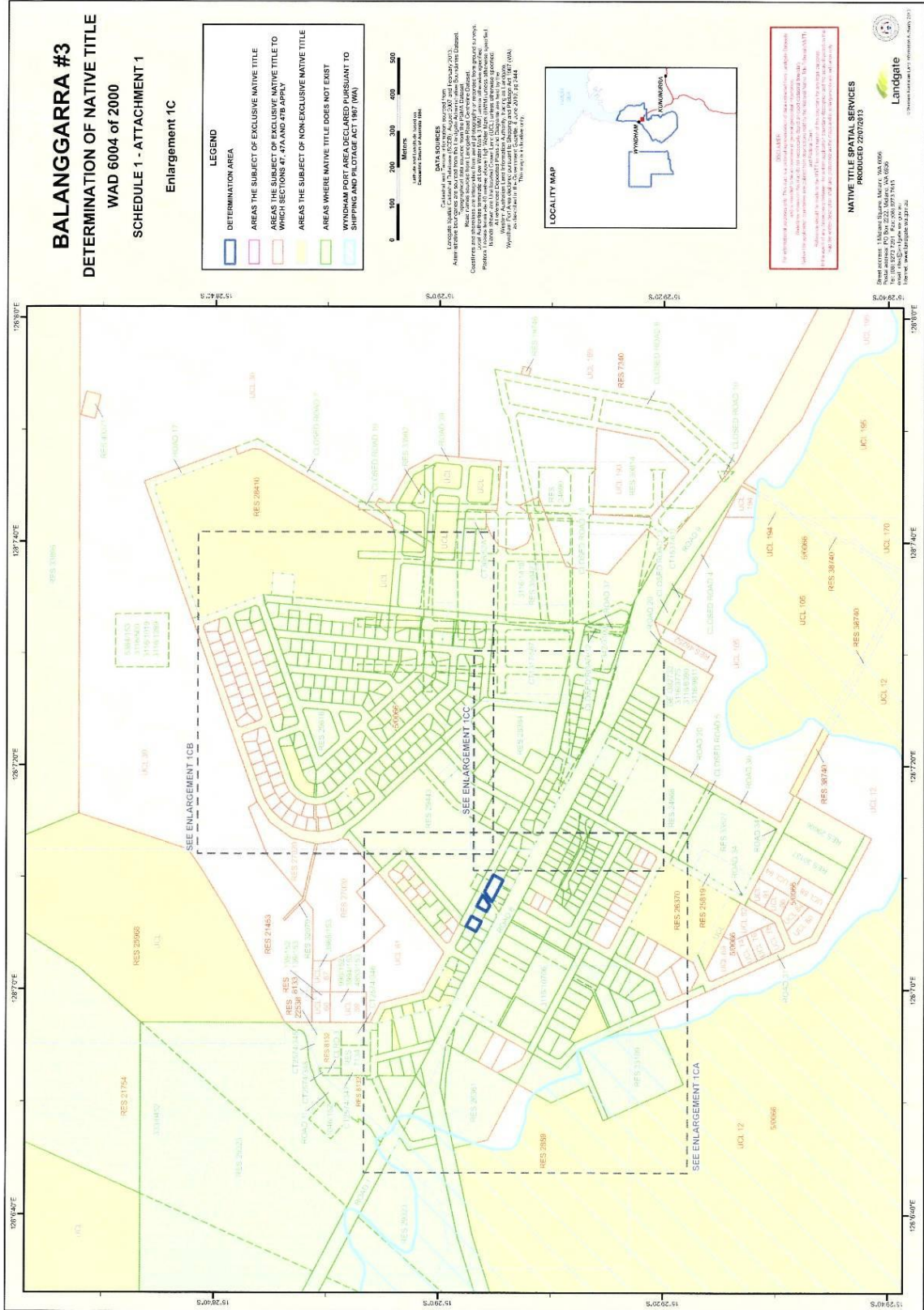


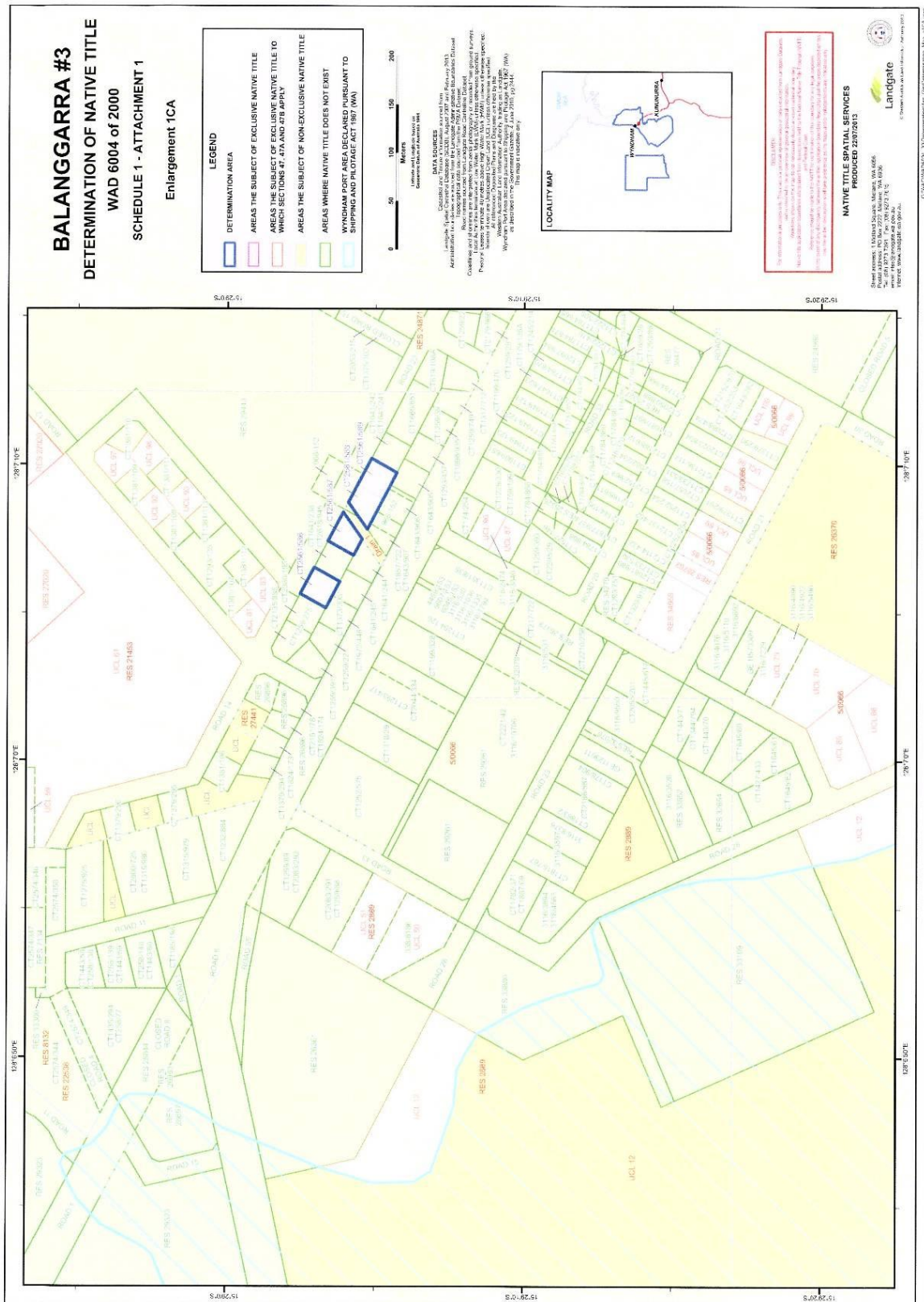
128°52'E 128°54'E 128°56'E 128°58'E 129°00'E

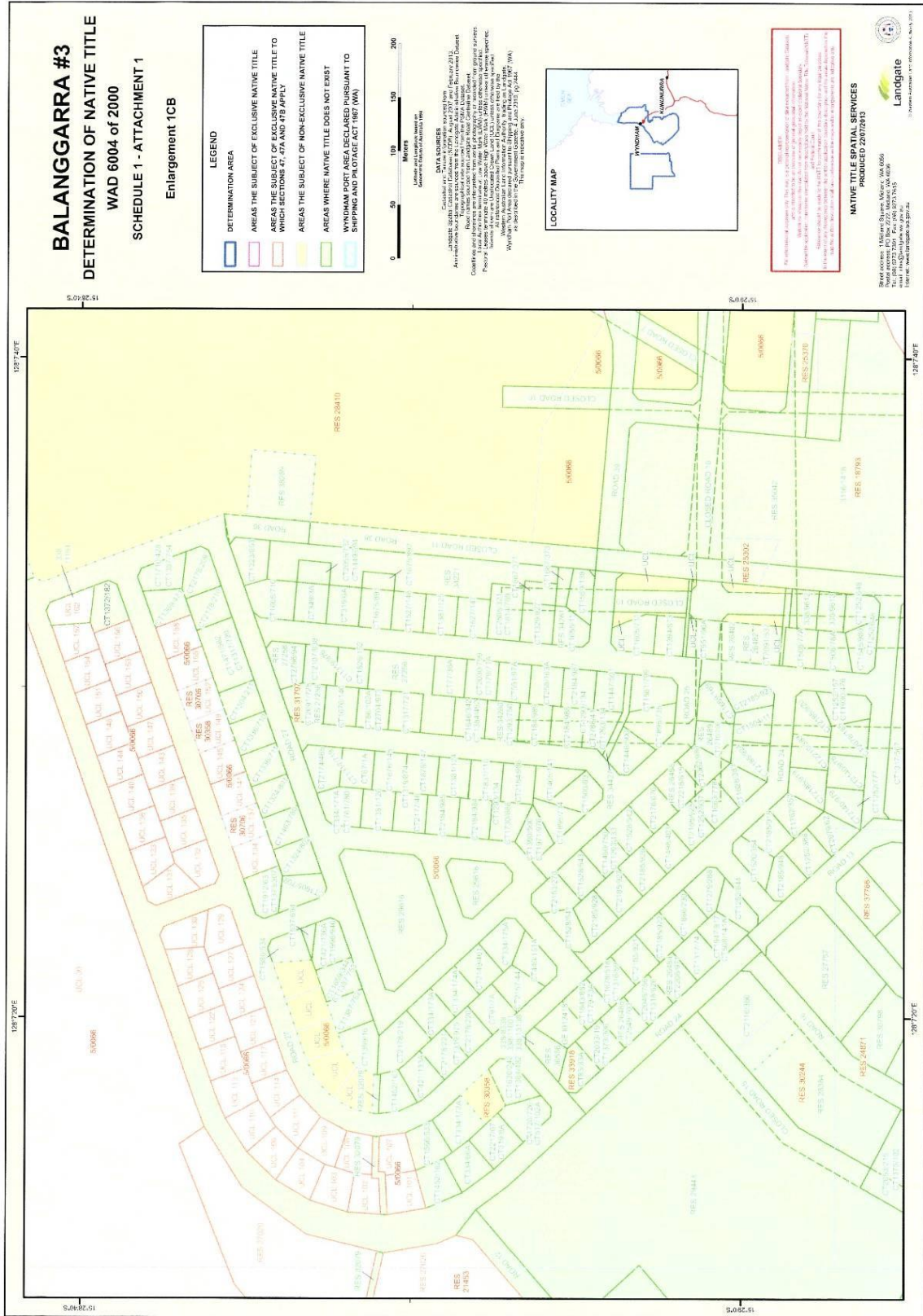
34°22'S 34°24'S 34°26'S 34°28'S 34°30'S

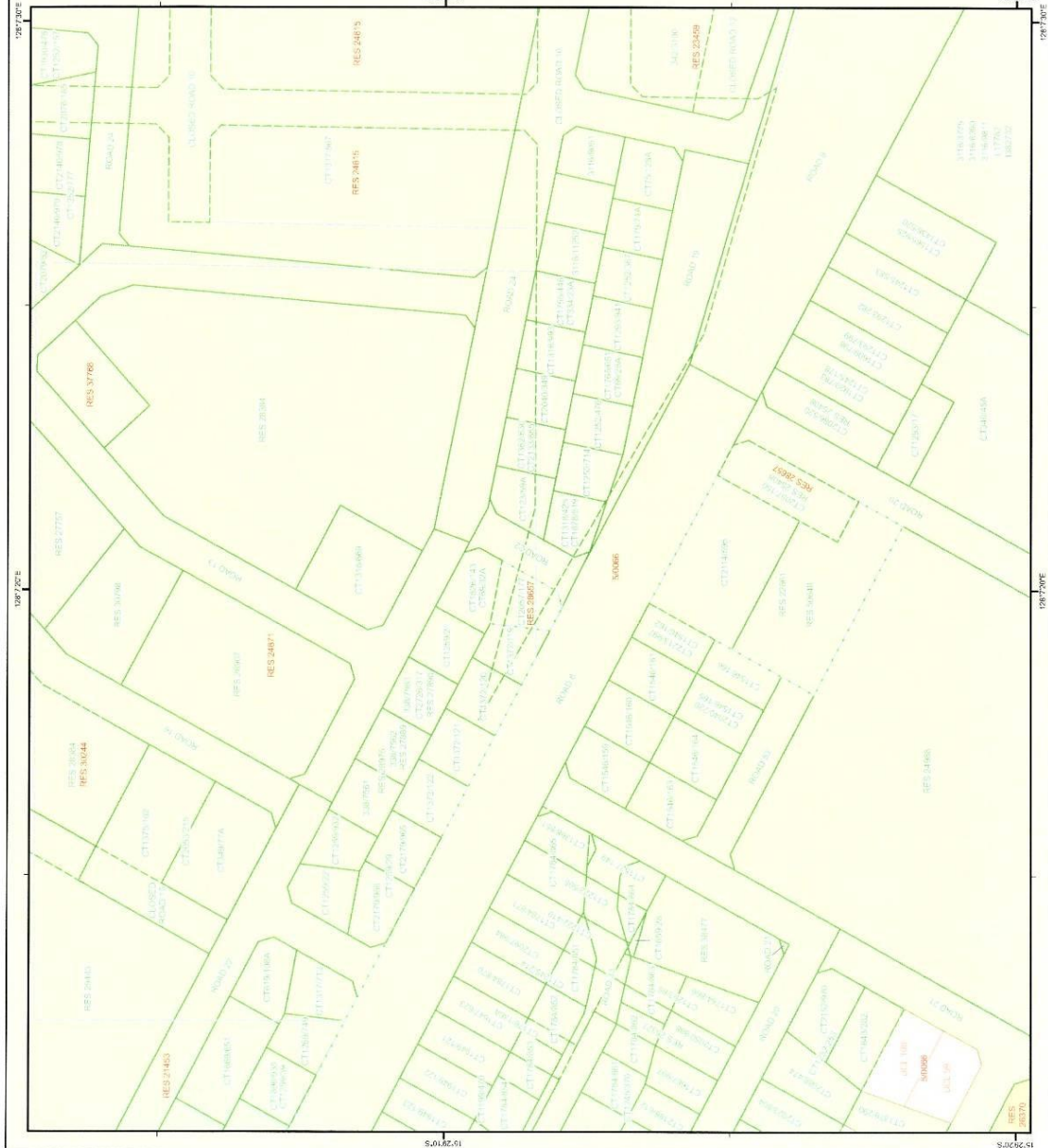




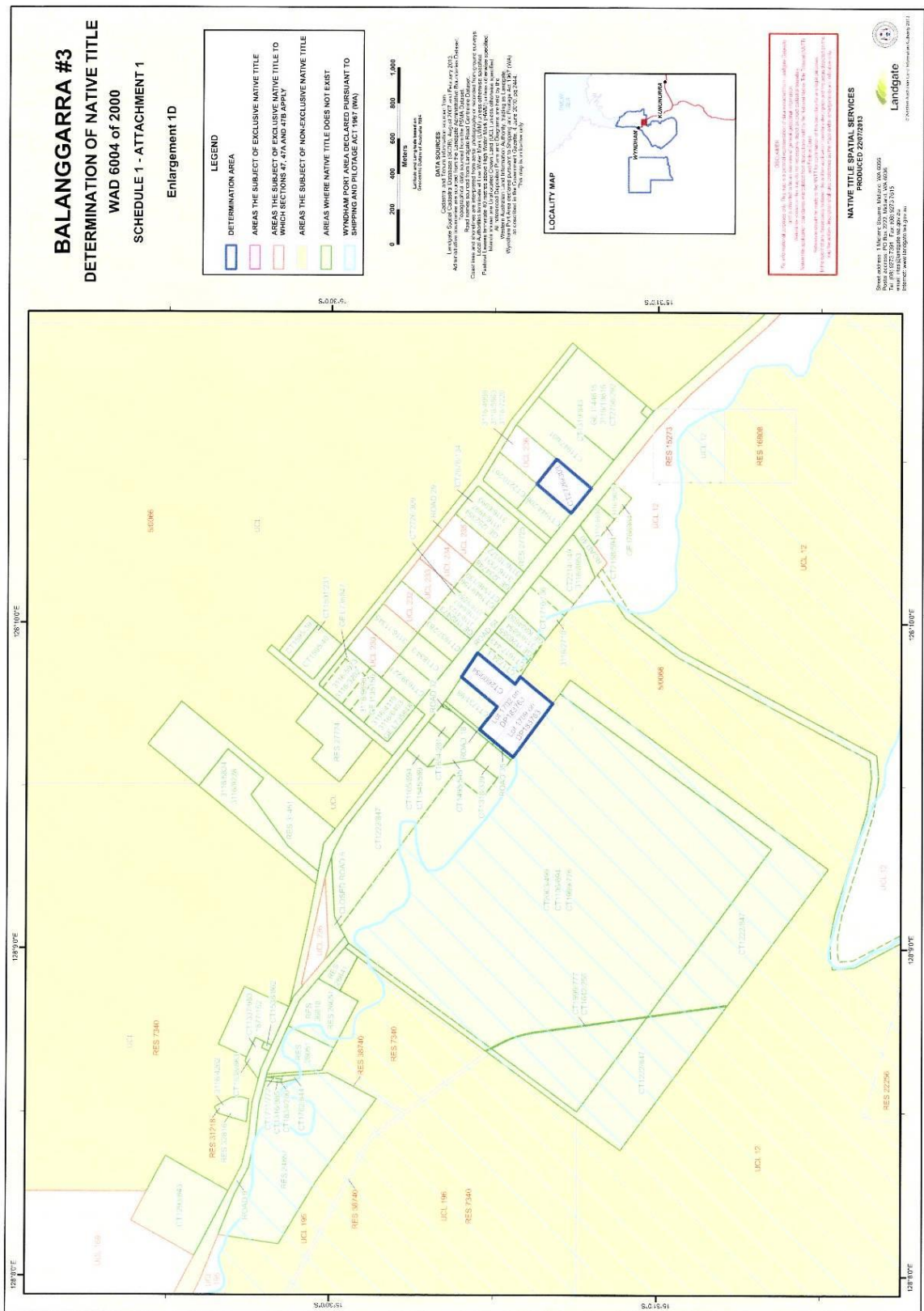


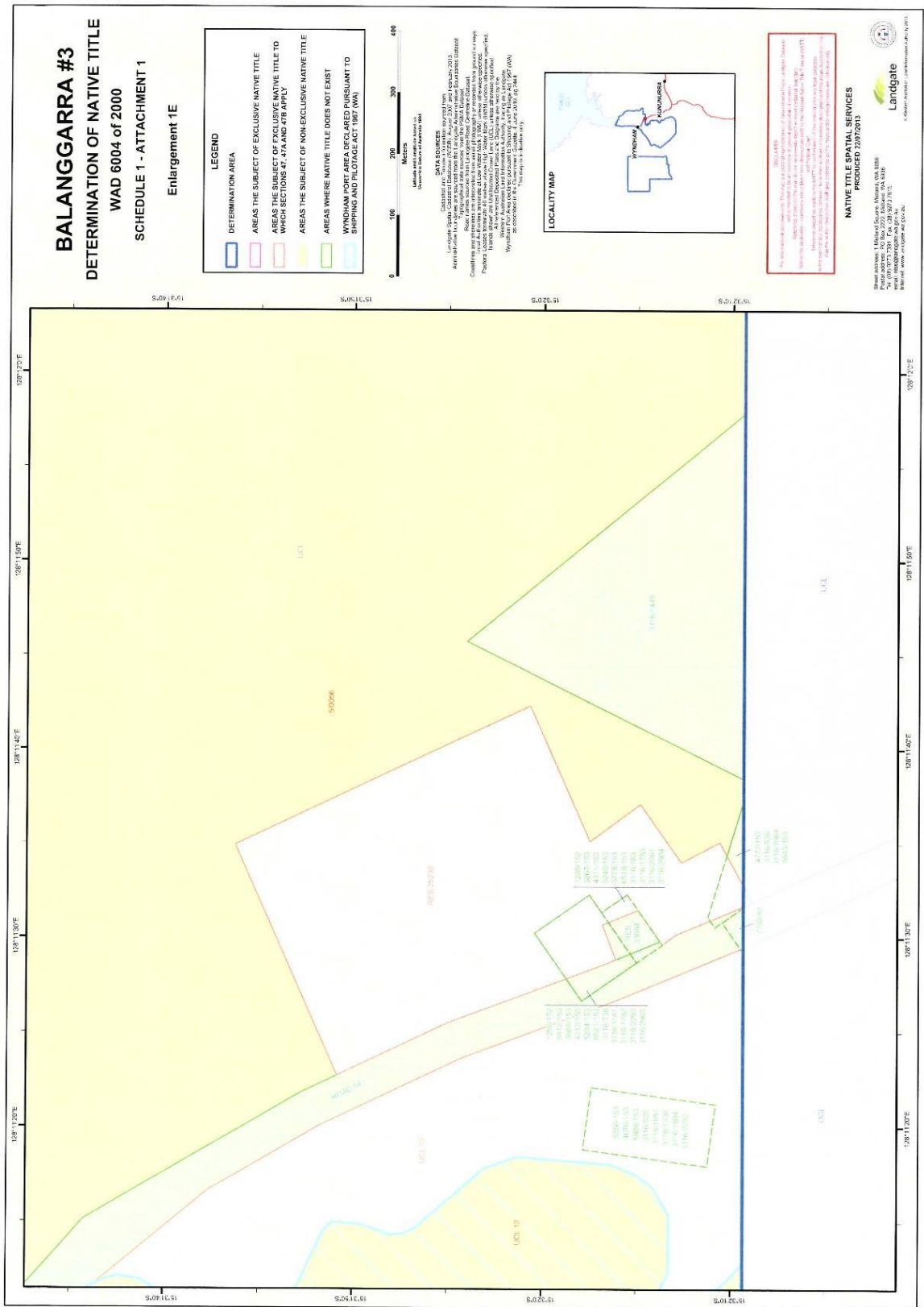






152°20'E 152°20'E 152°20'E 152°20'E
 118°20'E 118°20'E 118°20'E 118°20'E
 118°20'E 118°20'E 118°20'E 118°20'E
 118°20'E 118°20'E 118°20'E 118°20'E





SCHEDULE TWO

LAND AND WATERS THE SUBJECT OF NON-EXCLUSIVE NATIVE TITLE

Areas where native title comprises the rights set out in paragraph 6.

Areas the subject of the native title rights and interests described in paragraph 6 of the Determination are:

- (a) the areas of land listed below, which are generally shown as shaded orange on the maps at Attachment One to Schedule One;
- (b) waters not within an area described in Schedule Three; and
- (c) that part of the Wyndham Port area as declared pursuant to s 10 of the *Shipping and Pilotage Act 1967* (WA) generally shown with hatched blue lines on the maps at Attachment One to Schedule One and which is not covered by.
 - (i) the Wyndham Port Area as described in Schedule Three; or
 - (ii) an area described in Schedule Five as an area where section 47A of the *Native Title Act 1993* (Cth) applies.

Notes: Schedule Five identifies areas where any prior extinguishment of native title is to be disregarded. While all care has been taken, the areas in Schedule Five *may* cover areas which are referred to in Schedule Two and, if that occurs, Schedule Five prevails.

For the avoidance of doubt, the maps provided at Attachment One of Schedule One do not depict all of the waters within the Determination Area.

2. Leasehold

Historical

PART 0326/98	3114/1075	71/0361
0396/812	PART 5/0016	PART K0485
0558/98	PART 5/0055	PART K0652
0680/98	PART 5/0056	PART K0653
0836/98	PART 5/0057	PART K0657
PART 1545/98	PART 5/0066	PART K0882

2119/98	PART 71/0086	
---------	--------------	--

Current

3114/1180

3. Reserves

Historical

RES 01117	RES 16808	PART RES 24615
PART RES 01274	PART RES 18166	PART RES 25302
RES 01275	RES 19819	PART RES 25968
PART RES 02889	PART RES 21422	PART RES 30358
RES 04007	PART RES 21453	PART RES 33486
PART RES 07340	RES 21918	DRN 2
RES 09721	RES 22286	
RES 14370	RES 22499	

Current

RES 01126	RES 20359	RES 38740
PART RES 01275	PART RES 20623	RES 40520
RES 08263	RES 26370	RES 42155
RES 08264	PART RES 27441	That portion of RES 22256 which is not vested in the Shire of Wyndham – East Kimberley
RES 16729	RES 28410	
RES 17421	RES 37677	

SCHEDULE THREE

AREAS WHERE NATIVE TITLE DOES NOT EXIST (Paragraph 3)

Areas of land and waters where, by reason of extinguishment, native title rights and interests do not exist, as described in paragraph 3 of the Determination are the areas listed below which are generally, with the exception of public works, shown as shaded green on the maps at Attachment One to Schedule One:

Note: Schedule Five identifies areas where any prior extinguishment of native title is to be disregarded. While all care has been taken, the areas in Schedule Five *may* cover areas which are referred to in Schedule Three and, if that occurs, Schedule Five prevails.

1. Freehold

- (a) Grants of estates in fee simple within the Determination Area including, but not necessarily limited to, the following:

Historical

CT34/4	CT1252/253	CT1390/500
CT34/51	CT1252/254	CT1398/551
CT52/200	CT1252/648	CT1427/433
CT69/25A	CT1252/721	CT1438/520
CT69/32A	CT1252/777	CT1445/617
CT77/26	CT1252/937	CT1449/694
CT83/33A	CT1259/29	CT1501/231
CT112/50A	CT1259/39	CT1527/146
CT179/71A	CT1259/88	CT1527/149
CT179/73A	CT1259/89	CT1546/130
CT179/136A	CT1259/275	CT1546/162
CT223/142	CT1259/393	CT1546/165
CT258/77	CT1259/604	CT1564/270
CT258/138	CT1293/86	CT1605/758
CT258/139	CT1293/133	CT1617/443
CT258/140	CT1293/134	CT1642/255
CT281/164A	CT1293/417	CT1643/907

CT306/200A	CT1293/750	CT1655/11
CT319/8A	CT1293/751	CT1659/28
CT334/23A	CT1293/799	CT1711/772
CT334/171A	CT1316/59	CT1733/530
CT349/77A	CT1316/582	CT1733/531
CT364/50	CT1316/869	CT174/254
CT421/130A	CT1316/985	CT1762/844
CT508/141A	CT1317/11	CT1780/904
CT517/102A	CT1317/92	CT1782/371
CT1031/879	CT1317/93	CT1824/174
CT1070/381	CT1317/95	CT1863/2
CT1105/694	CT1317/127	PART GC13/160
CT1107/151	CT1317/719	GT8/655
CT1131/533	CT1317/720	GT8/656
CT1149/626	CT1318/425	GT8/729
CT1170/84	CT1318/626	
CT1179/165	CT1319/843	
CT1188/513	CT1319/874	
CT1188/639	CT1319/975	
CT1198/923	CT1319/976	
CT1199/470	CT1327/829	
CT1208/137	CT1337/983	
CT1222/410	CT1344/794	
CT1222/505	CT1362/630	
CT1222/847	CT1373/305	
CT1223/101	CT1373/306	
CT1229/330	CT1373/307	
CT1245/178	CT1375/102	
CT1245/214	CT1384/482	
CT1245/370	CT1384/492	
CT1245/723	CT1387/753	
CT1252/157	CT1387/754	

Current

CT67/1A	CT1379/295	CT1710/428	CT2086/520
CT75/128A	CT1379/296	CT1723/899	CT2088/474
CT77/36A	CT1381/106	CT1726/726	CT2091/537
CT79/184A	CT1381/107	CT1730/686	CT2091/725

CT83/153A	CT1381/108	CT1731/98	CT2091/757
CT91/7A	CT1381/109	CT1734/3	CT2097/984
CT91/71A	CT1381/110	CT1743/620	CT2107/838
CT123/59A	CT1381/111	CT1755/446	CT2114/432
CT124/50A	CT1381/112	CT1759/109	CT2114/595
CT126/78	CT1381/113	CT1761/780	CT2116/360
CT126/79	CT1381/124	CT1762/353	CT2133/665
CT179/74A	CT1381/125	CT1765/651	CT2135/885
CT258/163A	CT1381/126	CT1765/839	CT2136/117
CT306/52A	CT1387/752	CT1776/548	CT2137/452
CT319/6A	CT1394/813	CT1782/779	CT2140/978
CT334/66A	CT1399/16	CT1782/780	CT2140/979
CT334/172A	CT1405/141	CT1784/851	CT2144/195
CT334/173A	CT1407/978	CT1784/852	CT2149/401
CT334/174A	CT1435/294	CT1784/853	CT2152/969
CT334/175A	CT1438/978	CT1784/854	CT2152/970
CT340/45A	CT1443/58	CT1784/855	CT2153/270
CT349/3A	CT1443/59	CT1784/856	CT2157/44
CT421/133A	CT1443/60	CT1784/857	CT2158/594
CT440/151A	CT1443/70	CT1784/858	CT2161/78
CT508/77A	CT1443/71	CT1784/859	CT217/722
CT508/78A	CT1446/500	CT1784/860	CT2174/465
CT551/96A	CT1447/501	CT1784/861	CT2176/676
CT551/97A	CT1452/161	CT1784/862	CT2177/46
CT613/162A	CT1452/162	CT1784/863	CT2178/209
CT619/108A	CT1460/750	CT1784/864	CT2178/210
CT721/111	CT1462/488	CT1784/865	CT2178/219
CT1088/75	CT1463/780	CT1784/866	CT2178/220
CT1149/626	CT1471/562	CT1784/868	CT2178/221
CT1185/198	CT1495/545	CT1784/870	CT2179/965
CT1188/639	CT1498/403	CT1784/871	CT2179/966
CT1199/328	CT1500/69	CT1788/193	CT2184/984
CT1222/82	CT1504/11	CT1815/767	CT2184/985
CT1222/241	CT1504/211	CT1824/173	CT2184/986
CT1232/884	CT1520/354	CT1826/143	CT2184/987
CT1245/583	CT1527/147	CT1826/152	CT2184/988
CT1252/254	CT1527/148	CT1831/110	CT2184/989
CT1252/367	CT1528/541	CT1834/3	CT2185/47
CT1252/368	CT1528/542	CT1834/200	CT2185/918

CT1252/476	CT1528/543	CT1843/882	CT2185/919
CT1252/575	CT1537/611	CT1857/722	CT2185/920
CT1252/644	CT1537/694	CT1861/799	CT2185/921
CT1252/648	CT1538/862	CT1866/230	CT2185/922
CT1252/714	CT1538/863	CT1877/937	CT2185/923
CT1252/730	CT1545/569	CT1887/69	CT2185/924
CT1252/744	CT1545/980	CT1888/382	CT2185/925
CT1252/879	CT1546/116	CT1895/734	CT2185/926
CT1259/21	CT1546/159	CT1895/735	CT2185/927
CT1259/22	CT1546/160	CT1896/935	CT2185/928
CT1259/391	CT1546/161	CT1908/511	CT2185/948
CT1259/749	CT1546/163	CT1909/681	CT2186/567
CT1259/932	CT1546/164	CT1912/63	CT2188/611
CT1275/925	CT1546/166	CT1920/783	CT2188/612
CT1279/288	CT1559/138	CT1930/476	CT2205/29
CT1293/17	CT1565/925	CT1937/283	CT2206/971
CT1293/134	CT1566/533	CT1937/742	CT2210/206
CT1293/135	CT1566/534	CT1944/206	CT2210/258
CT1293/282	CT1595/39	CT1945/589	CT2210/261
CT1293/457	CT1595/40	CT1945/590	CT2210/383
CT1293/843	CT1605/709	CT1947/601	CT2213/997
CT1293/941	CT1605/710	CT1947/817	CT2214/149
CT1315/979	CT1605/711	CT1949/121	CT2217/67
CT1316/317	CT1609/798	CT1949/122	CT2218/615
CT1316/993	CT1618/250	CT1949/123	CT2221/42
CT1317/2	CT1628/383	CT1949/130	CT2228/358
CT1317/7	CT1630/242	CT1949/156	CT2227/144
CT1317/12	CT1632/984	CT1958/211	CT2549/703
CT1317/74	CT1633/821	CT1968/854	CT2561/585
CT1317/89	CT1639/221	CT1971/976	CT2574/344
CT1317/91	CT1641/238	CT2044/334	CT2574/345
CT1317/94	CT1641/242	CT2048/756	CT2574/346
CT1317/464	CT1641/244	CT2050/888	CT2574/347
CT1317/567	CT1641/245	CT2053/215	CT2574/348
CT1317/680	CT1643/282	CT2055/201	CT2574/349
CT1317/712	CT1643/905	CT2055/732	CT2574/350
CT1317/721	CT1669/169	CT2057/150	CT1407/978
CT1317/765	CT1669/651	CT2057/158	CT2618/945
CT1318/29	CT1675/892	CT2057/177	CT2676/134

CT1318/339	CT1675/893	CT2059/894	CT2704/973
CT1318/669	CT1676/145	CT2062/980	CT2726/303
CT1323/653	CT1676/146	CT2070/776	CT2726/309
CT1372/120	CT1676/147	CT2076/185	CT2726/317
CT1372/121	CT1678/518	CT2079/62	CT2741/247
CT1372/122	CT1678/519	CT2080/195	CT2758/292
CT1372/182	CT1682/396	CT2081/980	CT2786/41
CT1379/290	CT1687/997	CT2082/234	CT2786/94
CT1379/291	CT1702/938	CT2083/291	CT2794/143
CT1324/801	CT1643/906	CT1972/446	CT2800/725
CT1324/802	CT1645/60	CT1996/940	CT2805/321
CT1329/910	CT1645/61	CT1999/776	CT 2600/54
CT1329/927	CT1645/62	CT1999/777	
CT1330/342	CT1646/342	CT2003/499	
CT1336/710	CT1647/623	CT2016/754	
CT1336/711	CT1654/281	CT2023/804	
CT1351/835	CT1659/344	CT2030/799	
CT1354/126	CT1663/778	CT2033/19	
CT1369/471	CT1667/371	CT2040/220	
CT1372/119	CT1667/373	CT2040/349	
CT1379/294	CT1710/136	CT2083/292	

2. Reserves

- (a) The creation of reserves within the Determination Area including, but not necessarily limited to, the following:

Historical

RES 01276	RES 25408	RES 26896
RES 07134	RES 26051	RES 26983
PART RES 08046	RES 26379	RES 27256
PART RES 15273	RES 26482	RES 27889
RES 16869	RES 26484	RES 27890
RES 22661	RES 26485	RES 29261
RES 24384	RES 26488	RES 31271
RES 25326	RES 26489	RES 31451
RES 25327	RES 26641	RES 47015

Current

RES 04298	RES 29323	RES 33896
RES 06067	RES 29443	RES 33992
RES 17921	RES 29606	RES 34221
RES 19746	RES 29616	RES 34279
That portion of RES 22256 which is vested in the Shire of Wyndham-East Kimberley	RES 30099	RES 34280
RES 24041	RES 30137	RES 34281
RES 24384	RES 30798	RES 34340
RES 24857	RES 31271	RES 34427
RES 24968	RES 31451	RES 34958
RES 26051	RES 31967	RES 35042
RES 26308	RES 31980	RES 36528
RES 26361	RES 31981	RES 36556
RES 26896	RES 32078	RES 36818
RES 26907	RES 32079	RES 38269
RES 27256	RES 32654	RES 38477
RES 27724	RES 32816	RES 40371
RES 27725	RES 33109	RES 40961
RES 27757	RES 33268	RES 44714
RES 28384	RES 33380	RES 49399
RES 28697	RES 37768	RES 46940
RES 28844	RES 33527	RES 50168
RES 28976	RES 33684	RES 50648
RES 29261	RES 33852	
RES 29308	RES 33880	

3. Leases

- (a) The grant of leases within the Determination Area including, but not necessarily limited to, the following:

Historical

332/0712	3116/00530	3116/02288	3116/05973
333/0452	3116/00531	3116/02289	3116/06272
342/3100	PART 3116/00536	3116/02325	3116/06390
338/07561	3116/00739	3116/02468	3116/06403
338/07562	3116/01002	3116/02629	3116/06457
338/07563	3116/01036	3116/02671	3116/06692
338/08338	3116/01050	3116/02710	3116/06854
338/09612	PART 3116/01064	3116/02868	3116/06993
338/09613	3116/01199	3116/02887	3116/07331
338/11001	3116/01284	3116/03003	3116/08051
338/13138	3116/01335	3116/03119	3116/08376
345A/4741	PART 3116/01418	3116/03161	3116/08953
0317/152	3116/01449	PART 3116/03170	3116/09228
0726/152	3116/01594	3116/03202	3116/09550
0876/152	3116/01597	3116/03320	3116/09625
1027/152	3116/01659	3116/03526	3116/09695
1046/152	3116/01732	3116/03597	3116/09790
1677/152	3116/01794	3116/03775	3116/09811
3755/153	3116/02019	3116/03894	3116/09930
4140/153	3116/02022	3116/03998	3116/10198
4459/153	3116/02097	3116/04076	3116/10372
PART 4772/153	3116/02239	3116/04119	3116/10616
4773/153	GE H972121	3116/04123	3116/10629
4803/153	GE I382732	3116/04262	3116/10670
GE I135150	GE H815492	3116/04563	3116/10706
GE K069232	3116/02270	PART 3116/04927	3116/11252
5607/153	3116/02276	3116/04997	PART 3116/11345
PART 5643/153	3116/02278	GE I252354	GE H573309
5645/153	PART 3116/02284	GE I144615	GE H852292
6045/153	3116/02285	3116/05110	GE I126355
3116/00496	3116/02286	3116/05462	GE J139642
3116/00507	3116/02287	3116/05824	

Current

GE H075699	GE I162473	GE L735847
GE H603413	GE I766964	L 17782
GE I012418	GE I837493	GE L735848
GE I027096	GE J234748	

GE I123611	GE K934650
------------	------------

4. Wyndham Port Area

- (a) Wyndham Port Area vested pursuant to section 9 of the *Marine and Harbours Act 1981* (WA) and published in the Government Gazette on 5 February 1982.

For the avoidance of doubt, part of the land and waters which are described as UCL 27 and UCL 240, which includes areas subject to a lease dated 17 February 2011 between the Minister for Transport, KMG Logistics Pty Ltd and Kimberley Metals Group Pty Ltd, is within the Wyndham Port Area as described in Schedule Three and shaded in green on the maps at Attachment One of Schedule One.

5. Roads

- (a) The following roads, including closed roads, within the Determination Area:
- (i) Those roads shown on Cancelled Public Plans: 505323; 505324; 505325; 505330; and 505332;
 - (ii) Those roads shown on Deposited Plans: 13383; 144204; 168933; 168934; 168939; 170159; 171448; 172278; 181237; 183763; 185473; 192257; 192258; 202387; 207811; 208245; 208835; 208836; 208837; 209188; 209210; 209511; 209771; 210697; 211095; 211980; 212146; 213682; 214734 and 223236;
 - (iii) Those portions of the Great Northern Highway shown on Deposited Plans: 167548; 206001; 206002 and 213443;
 - (iv) That portion of Kangaroo Road in the town of Wyndham, as shown on DG 80/21.09 and on plan Wyndham 4567-111 S.W; and
 - (v) The following Roads as identified by Road Number: 11469; 12388; 12451; 13110; 13128; 13201; 13948; 13971; 14100; 15107; 15405; 15406; 15955; 15568; 15961; 16177 and 17312.

6. Public Works

- (a) Any other public work as defined in the *Native Title Act* and the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)* (including the land and waters on which a public work is constructed, established or situated as described in section 251D of the *Native Title Act*) and to which section 12J of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)* or section 23C(2) of the *Native Title Act* applies.

SCHEDULE FOUR
OTHER INTERESTS (Paragraph 12)

The nature and extent of the other interests in relation to the Determination Area as at the date of the determination are:

1. Reserves

- (a) The rights of persons who have the care, control and management of the following reserves; and
- (b) the rights of persons entitled to access and use the following reserves for the respective purposes for which they are reserved, subject to any statutory limitations upon those rights:

RES 01126	RES 20623	RES 28762
RES 01275	RES 25238	RES 34958
RES 08263	RES 26370	RES 37677
RES 08264	RES 26482	RES 38740
RES 16729	RES 27020	RES 40520
RES 17421	RES 27441	RES 42155
RES 20359	RES 28410	RES 46252

2. Wyndham Port declared pursuant to the *Shipping and Pilotage Act 1967* (WA)

- (a) The rights conferred and arising in the Wyndham Port area as declared pursuant to s 10 of the *Shipping and Pilotage Act 1967* (WA).

3. Leases

- (a) The rights of the holders from time to time of the following leases:

- (i) Pastoral Lease 3114/0962; and
- (ii) Pastoral Lease 3114/1180.

4. Roads

- (a) Part King River Road as shown on Deposited Plan 48225, to the extent that Road is not otherwise covered by areas which are set out in Schedule Three as areas where native title does not exist.

5. Mining Tenements

- (a) The rights of the holders from time to time of the following mining tenements including their right to use including by servants, agents and contractors such portions of existing roads and tracks in the determination area as necessary to have access to the area the subject of the mining tenement for the purpose of exercising the rights granted by that tenement.

- (i) Mining Leases

Tenement ID	Holder	Date Granted
G8000016	KMG Logistics Pty Ltd	08/05/2012

- (ii) Miscellaneous Licences

Tenement ID	Holder	Date Granted
L8000056	KMG Logistics Pty Ltd	06/08/2010
L8000059	KMG Logistics Pty Ltd	22/09/2010

Nothing in paragraph 5(a) above allows any upgrade, extension, widening or other improvement to the road or track other than work done to maintain it in reasonable repair and in order to leave it in substantially the same condition as it was prior to its use as contemplated by that paragraph.

6. Telstra Corporation

The rights and interests of Telstra Corporation Limited:

- (a) as the owner or operator of telecommunications facilities within the determination area;
- (b) created pursuant to the *Post and Telegraph Act 1901* (Cth) the *Telecommunications Act 1975* (Cth), the *Australian Telecommunications Corporation Act 1991* (Cth) and the *Telecommunications Act 1997* (Cth), including rights:
 - (i) to inspect land;
 - (ii) to install and operate telecommunications facilities; and
 - (iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities;
- (c) for its employees, agents or contractors to access its telecommunications facilities in and in the vicinity of the determination area in performance of their duties; and
- (d) under any lease, licence or easement relating to its telecommunications facilities in the determination area.

7. Other

- (a) Rights and interests, including licences and permits, granted by the Crown in right of the State or of the Commonwealth pursuant to statute or otherwise in the exercise of its executive power including but not limited to the rights and interests of the holders of statutory fishing and pearling interests granted under the *Fish Resources Management Act 1994* (WA), the *Pearling Act 1990* (WA), and the *Fisheries Management Act 1991* (Cth) and any regulations made

pursuant to that legislation.

- (b) Rights and interests held by reason of the force and operation of the laws of the State (including the *Rights in Water and Irrigation Act 1914* (WA)) and the Commonwealth.
- (c) Rights and interests of members of the public arising under common law including but not limited to:
 - (i) the public right to fish;
 - (i) the public right to navigate; and
 - (ii) the right of any person to use Meat Works Road, Hugo Austla Drive and any other road in the determination area (subject to the laws of the State) over which, as at the date of this determination, members of the public have a right of access under common law.
- (d) The right to access the Determination Area by:
 - (i) an employee, agent or instrumentality of the State;
 - (ii) an employee, agent or instrumentality of the Commonwealth;
 - (iii) an employee, agent or instrumentality of any local government authority,as required in the performance of his or her statutory or common law duty where such access would be permitted to private land.
- (e) So far as confirmed pursuant to section 14 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) as at the date of this determination, any existing public access to and enjoyment of:
 - (i) waterways;
 - (ii) beds and banks or foreshores of waterways;
 - (iii) beaches; and
 - (iv) stock routes.
- (f) The international right of innocent passage through the territorial sea.

SCHEDULE FIVE

AREAS TO WHICH SECTIONS 47A AND SECTION 47B OF THE *NATIVE TITLE ACT* APPLY

Areas of land within the Determination Area to which sections 47A or 47B of the *Native Title Act* 1993 (Cth) apply as described in paragraph 11 of the Determination are the following areas described and listed as being in Schedule Five in the Determination Area table and are generally shown as shaded in brown on the maps at Attachment One to Schedule One:

1. Section 47A

Section 47A of the *Native Title Act* applies to disregard any extinguishment by the creation of prior interests in relation to the following areas within the Determination Area:

- (a) Reserve 27020;
- (b) Reserve 28762;
- (c) Reserve 34958;
- (d) Reserve 25238 (Guda Guda Aboriginal Community); and
- (e) Pastoral Lease 3114/962 (Home Valley).

2. Section 47B

Section 47B of the *Native Title Act* applies to disregard any extinguishment by the creation of prior interests in relation to the following areas within the Determination Area:

Unallocated Crown Land

Those areas of unallocated Crown land which are described in the table below, to the extent those areas are not otherwise covered by the Wyndham Port Area as described in Schedule Two and Schedule Three.

UCL Ref	Description of general location
---------	---------------------------------

UCL 7 (Part)	A triangular area of land historically covered by part of former Pastoral Lease 5/0066 and in the vicinity of the point at which the Gibb River Road crosses the Pentecost River.
UCL 12 (Part)	An area of land historically covered by part of former Pastoral Lease 5/0066 and generally located to the north, north-east of current Reserve 22256, which is not otherwise covered by the Wyndham Port Area as described in Schedule Two of this determination.
UCL 105 (part), 194 (part) and 195 (part)	Areas of land historically covered by part of former Pastoral Lease 5/0066, generally located to the south and south-west of Wyndham and which are not within the Wyndham Port Area as that area is described in Schedule Two.
UCL 27 (part) and UCL 240 (part)	Portions of land which abut the Wyndham Port as vested pursuant to s 9 of the <i>Marine and Harbours Act</i> 1981 generally adjacent to CT1945/590 and which are not within the Wyndham Port Area as that area is described in Schedule Two or Schedule Three.
UCL 30 (Part), 59, 60, 61, 67	Areas of land to the north of Wyndham, historically covered by part of cancelled Reserve 21453, extending to the northern boundary of that former reserve, then upwards to the south east corner of Reserve 33896 which is closest to cancelled Reserve 21453, and then along the boundary of Reserve 33896 to the northern boundary of former Reserve 7340.
UCL 31	A block within the Wyndham Port area at the north eastern corner of Cross Way and Reginald Street.
UCL 32	A block within the Wyndham Port area at the south western corner of Cross Way and Gulley Road.
UCL 36	A block within the Wyndham Port area at the south eastern corner of Cross Way and Gulley Road.
UCL 49 (part), 54 (part), 71	Blocks of land within the Wyndham Port area at the northern end of Barytes Road, historically covered by part of former special lease 3116/4927 and special lease 3116/5236 and which are not covered by the Wyndham Port Area as described in Schedule Two.
UCL 50	A Wyndham Town block on the corner of Ord and Sharpe Streets, formerly subject to licence to occupy 338/08186.
UCL 51	A Wyndham Town block on Sharpe Street, formerly subject to part of Cancelled Reserve 02889 and otherwise adjoining UCL 50.
UCL 65, 66, 70, 73	Wyndham Town blocks between Kimberley Street, Durack Road and Eric Street.

UCL 69, 74, 76, 78, 82	Wyndham Town blocks between Eric Street, Durack Road and Coverley Street and the water depot Reserve 26370.
UCL 80, 84, 86,88, 91, 94	Wyndham Town blocks between Durack Road, Coverley Street and Ivanhoe Street.
UCL 81	A Wyndham Town block at the north eastern corner of Koolama Street and Kangaroo Drive.
UCL 83	A Wyndham Town block at the north western corner of Koolama Street and Doongan Street.
UCL 85	A Wyndham Town block on Murphy Street.
UCL 87	A Wyndham Town block formerly covered by part of Special Lease 3116/2474.
UCL 89	A Wyndham Town block on Murphy Street.
UCL 90	A Wyndham Town block formerly covered by part of Special Lease 3116/2474.
UCL 92	A Wyndham Town block on Kangaroo Drive.
UCL 93	A Wyndham Town block on Doongan Street.
UCL 95	A Wyndham Town block on Murphy Street.
UCL 96	A Wyndham Town block on Murphy Street.
UCL 97	A Wyndham Town block on Kangaroo Drive.
UCL 98	A Wyndham Town block on Doongan Street.
UCL 99, 100	Wyndham Town blocks on Coverley Street, at the corner of Murphy Street.
UCL 101-104, 106- 111, 113, 114, 117,118, 121,122, 124, 125, 127, 128- 133,135, 136, 139, 140, 143, 144, 147, 148, 150, 151, 153, 154, 156, 157, 162	Wyndham Town blocks between Kabbarli Street and Koojarra Street, from Mineroo Street to approximately where Kangaroo Drive meets Kabbarli Street.
UCL 134, 137, 141, 145, 149, 152, 155, 158	Wyndham Town blocks on the south side of Koojarra Street between Limpet Street and Minderoo Street.
UCL 169 (part)	All that Unallocated Crown Land commencing at the intersection of the southwestern corner of Lot 1234 as shown on Deposited Plan 169897 with a northern side of the Great Northern Highway; then generally northwesterly

	<p>along sides of that highway to the southernmost southeastern corner of Reserve 35042; then northeasterly, northwesterly, northerly, again northeasterly, again northwesterly, generally southwesterly, generally northwesterly and generally northeasterly along boundaries of that reserve to the southern boundary of Lot 536 as shown on Deposited Plan 206010; then easterly along the boundary of that lot to the western side of Astridge Way; then southerly, easterly and northerly along sides of that road to the intersection with the prolongation westerly of the southernmost southern boundary of Reserve 33896; then approximately 830 metres easterly along that prolongation to a point on the southern boundary of that reserve; then south to a northern boundary of Lot 1234 as shown on Deposited Plan 169897; then northwesterly and southwesterly along the boundaries of that lot back to the commencement point.</p> <p>Exclusions All that Unallocated Crown Land comprising Lot 1314 as shown on Deposited Plan 174837; and All that land comprising Reserve 19746.</p>
UCL 193	Cancelled Reserve 30814
UCL 217 (part), 219	Areas formerly covered by GC13/160.
UCL 224	Parts of cancelled Reserve 21422 to the east of GE I837493 and Reserve 16869.
UCL 226	A triangular area of land south of the Great Northern Highway and north of the access road to Wyndham Airport, generally east of Reserve 36818.
UCL 230, 232-236	Areas of land north of the Great Northern Highway, in the vicinity of Wyndham Airport, historically covered by part of former Pastoral Lease 5/0066 and other leases.

Other areas

- (a) Reserve 46252

SCHEDULE SIX

NATIVE TITLE HOLDERS

The native title is held by the descendants of:

Wundangana Waina, Wuju, Amburu, Djirlarmuru, Mitilber/Njorda, Jiani, Akingungka/Nakmara, Rugben, Moolpan/Kandarworl, Boongottor, Matilda Moorajayi, Joonpan/Moorajayi, Maraltadj, Miuron, Moongkama, Purwan, Waapa, Makumuku, Torto/Yilimbiri, Nandjimara, Jalalarimiri/Kolorumari, Puraru, Nandjimara, Yarluwutj, Koolberi, Angela, Moongkama, Yoolyool, Mutumutu, Murungga, Bundamiri, Vernon Dah, Mayaltor, Malangnari, Dz[^]ngal, Naringa, Wolarmbar, Murlu, Zamin[^]elli, Mandomiri, G[^]nambul, Nganawongka, Ng[^]lnari, Mal[^]ngu, W[^]Nu, W[^]garmiri, Waibela, [^]Nuwija, Jidei-ida/Wugad[^]r, N[^]lamiri, Malnuben, Gootimurri, Junbabara, Linound[^]ri, Wungur[^]ru, Judu, Linound[^]ri, Jumbabera, Bo, Do[^]lu, Lau-uri, Wiju/Baluga, Wanguben, Mundjanggal, D[^]Inga, Mud[^]ta, Rebern, D[^]Inga, Med[^]rda, Aruwund[^]rdzera, Mal[^]ngunawal, Galamiri, Angular, Benmiri, Ziranim/Ganggu, M[^]labu, [^]m]ra, Wulangan, Jura/Juradide, Njama, Dagi, Zunggalima, Weni, Njama, Charlie Plateman, Dickie Kooyoo, Baija, Jeduri, Zunggalima, Mandurga, W[^]ngadju, Nitil, Lura/Gurul, Birim, [^]Ngari, Dumalbon/Tumelben, Merliman, Wangooloo, Wamblma, W[^]rga, Bangudenanga, Birra-rar-raa, Wanjuwila, Wungaruru, Wurarwungedzi, Zuandi, Z[^]lubern, G[^]mura, W[^]mbu/Njurnji, Waneigera, J[^]wan, Z[^]Inga, Guri, Banmon, Warin.

For the avoidance of doubt, recognition of the native title rights and interests by this determination includes recognition of the Native Title Holders' ability to transmit those rights and interests to successive generations of Balangarra people in accordance with traditional laws and customs.

**IN THE FEDERAL COURT OF AUSTRALIA
WESTERN AUSTRALIA DISTRICT REGISTRY
GENERAL DIVISION**

WAD 6004 of 2000

BETWEEN: DELORES CHEINMORA, DUDLEY BAMBRA, ELAINE JOHNSTONE, ERIC JOHNSTONE, FRANK CHULUNG, JAMES TAYLOR, JEAN LEYLAND, JEFF CLARKE, JENNIFER EURA, KENNY MORGAN, LAURIE WAINA, LUVEY WEAVER, MARY TERESA TAYLOR, MAY SMITH, MONA WILLIAMS, RAYMOND WILLIAMS, ROY MARTIN, TOM BIRCH, VERNON GERRARD AND VICTOR MARTIN
Applicant

AND: STATE OF WESTERN AUSTRALIA, THE COMMONWEALTH OF AUSTRALIA, DELAWARE NORTH EL QUESTRO PTY LTD AND TELSTRA CORPORATION LIMITED
Respondents

JUDGE: GILMOUR J

DATE: 7 AUGUST 2013

PLACE: WYNDHAM

REASONS FOR JUDGMENT

1 This proceeding, WAD 6004 of 2000, (Balanggarra #3 Application) was filed by the applicant on 3 July 2000 pursuant to the *Native Title Act 1993 (Cth)* (*Native Title Act*). It is the third application made on behalf of members of the Balanggarra community; two previous applications were combined into proceeding WAD 6027 of 1998 (Balanggarra Combined Application).

2 The Balanggarra #3 Application area covers approximately 4,318 square kilometres of land and includes areas of the waters of the Cambridge Gulf and islands located in the northern Kimberley region of Western Australia. It comprises two major land areas, an eastern component which includes Wyndham and a western component which includes parts of Home Valley pastoral station. The eastern and western components of the Balanggarra #3 Application area are separated by the southern portion of the Balanggarra Combined Application.

Agreement of parties to resolve the proceeding

3 Through mediation, the parties have reached an agreement as to the terms of a
determination of native title to provide recognition of the native title rights and interests held
by the Balanggarra community in relation to part of the land and waters covered by the
Balanggarra #3 Application (Determination Area). The parties have agreed in respect of the
balance of the land and waters the subject of the Balanggarra #3 Application that no
determination be made at present and the matter remain in case management before a
Registrar of the Court.

4 Consent orders signed by each of the parties to the proceeding have been filed
together with a Minute of Proposed Consent Determination of Native Title (Minute).

5 The parties, or their representatives, who have signed the Minute are:

- (a) the applicant;
- (b) State of Western Australia;
- (c) The Commonwealth of Australia;
- (d) Delaware North El Questro Pty Ltd; and
- (e) Telstra Corporation Ltd.

6 The external boundaries of the Determination Area are described in Schedule One to
the Minute. In summary, the Determination Area includes all of the land and waters of the
Balanggarra #3 Application except certain areas that are excluded (Excluded Area) as follows:

- (a) two parcels of land generally located east of the Wyndham airport and known
as Lot 1702 and Lot 1709 as shown on Deposited Plan 183763;
- (b) four blocks of land generally located in the town of Wyndham and known as
Lots 1776 to 1779 as shown on Deposited Plan 208835; and
- (c) two blocks of land generally located east of the Wyndham airport and known
as Lot 1297 as shown on Deposited Plan 210697 and Lot 1365 as shown on
Deposited Plan 213443.

7 A new application, WAD 163 of 2013 (Balanggarra #4 Application), was recently
filed over the area identified at paragraph 6(a) above, in order to take advantage of the

provisions in section 47B of the *Native Title Act* in respect of that area. The parties have agreed that no determination in respect of the areas described at paragraph 6(b) and (c) above be made at this time to allow continued discussions in relation to them.

8 In *Ward v State of Western Australia* (1998) 159 ALR 483 (*Ward*), it was found that the Balang[*g*]arra peoples and the Miriuwung and Gajerrong people held native title rights and interests in the area known as Boorroonoong (Lacrosse Island): *Ward*, at 639.

9 The finding in *Ward* was upheld by a Full Court: *Western Australia v Ward* (2000) 170 ALR 159, at [264] - [271] (*Ward (WA) FC*). It was not disturbed, though not specifically considered, also by a Full Court: *Attorney-General (NT) v Ward* (2003) 134 FCR 16 (*Ward (NT) FC*).

10 The applicant has filed genealogical, ethnographic, historical and anthropological material relating to the connection of the members of the Balangarra community to the areas covered by the Determination Area, being:

- (a) an affidavit of Catherine Wohlan, Anthropologist, affirmed 13 May 2013 regarding the apical ancestors;
- (b) an affidavit of Caitlin Fegan, Legal Officer, affirmed 13 May 2013 relating to authorisation; and
- (c) an affidavit of Caitlin Fegan, Legal Officer, affirmed 28 May 2013 annexing a summary of connection material prepared by the Kimberley Land Council in support of the proposed determination of native title.

11 The parties agree that the members of the Balangarra community are bound together by a normative system of laws and customs which, on the basis of known fact and reasonable inference, has continued to be observed by its members in a substantially uninterrupted manner since prior to the declaration of sovereignty over Western Australia.

12 Pursuant to s 56(2)(a) of the *Native Title Act*, the applicant has nominated the Balangarra Aboriginal Corporation ICN 2923 (Corporation) as the prescribed body corporate to hold the determined native title in trust for the native title holders. That nomination is in writing and the Corporation has given its consent to the nomination. I am

satisfied that the requirements of the *Native Title Act* and of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth) have been met.

Assessment of connection

13 In his affidavit affirmed on 25 July 2013, John Alan Catlin, on behalf of the State, deposes to the reasons why the State considers that the material provided by the applicant demonstrates the applicant's traditional connection with the Determination Area and satisfies the requirements of the *Native Title Act*. It also affirms the State's satisfaction, based on its assessment, with the evidence of the Balanggarra community's connection with the Determination Area as described in the Minute. Annexed to Mr Catlin's affidavit is a comprehensive list of materials, including published and unpublished literature, to which the State had regard for the purposes of its assessment.

14 In forming its assessment of the Balanggarra #3 Application, the State had regard to the decision of Lee J in *Ward*, upheld by the Full Court in *Ward (WA) FC*, in which it was found that the members of the Balang[g]arra community constituted a society and observed a normative system of law and custom that had remained substantially unchanged since sovereignty: *Ward (WA) FC* at [264] - [271].

15 Mr Catlin deposes that the State completed its assessment of connection material for the Balanggarra #3 Application in 2009 and was, by then, satisfied that the information in the connection material met the State's October 2004 "Guidelines for the Provision of Information in Support of Applications for a Determination of Native Title" (State's Connection Guidelines). This formed the basis on which the State entered into negotiations towards a consent determination of native title.

16 The applicant and the State jointly submit that the ethnographic and historical materials combined with the Aboriginal evidence provided in accordance with the State's Connection Guidelines demonstrate that members of the Balanggarra community have maintained a physical presence in the Determination Area since the acquisition of British sovereignty. In addition, evidence of their continuing physical or spiritual involvement in the application area was more than sufficient to enable the State to conclude that this connection had not been severed. Taken together, the State was satisfied that the material presented was strongly indicative of the maintenance of connection according to traditional laws and custom

in the Balanggarra #3 Application area.

Authorisation issues

17 Some issues in relation to authorisation arise. The first concerns the fact that 10 of the 20 persons who are named as the applicant have died and whether the surviving 10 persons remain authorised without the need for further authorisation. The second concerns the fact that the native title claimant group, as described in the Balanggarra #3 Application, differs from the proposed native title holding group identified in Schedule Six of the Minute. Additionally, the native title holding group identified in Schedule Six is not, *prima facie*, identical to the description of “Balanggarra peoples” as recognised and described in the decision of the Full Court in *Ward (NT) FC*.

18 The Balanggarra #3 Application has not been amended since 8 August 2000. In respect of the first issue, the applicant has provided evidence that at an authorisation meeting held on 1 and 2 May 2013, in relation to the proposed Determination Area, the surviving members of the applicant group were authorised to agree to the terms as reflected in the Minute.

19 In her affidavit affirmed on 13 May 2013, Ms Fegan deposes that prior to the authorisation meeting, the Kimberley Land Council gave notice of that meeting by, *inter alia*, writing both by post and by email to those Balanggarra persons whose relevant contact details are known to the Kimberley Land Council, as well as distributing information about the meeting in person and via word of mouth, and publishing a notice in the Broome Advertiser and Kimberley Echo newspapers.

20 In each instance, those notices advised that the authorisation meeting would consider, *inter alia*:

- (a) the difference between the description of the native title claim group in the Balanggarra #3 Application and the native title holding group in the Minute; and
- (b) whether to affirm the authorisation of those living persons who comprise the applicant.

21 A description of the proposed native title holding group as described in Schedule Six of the Minute was also provided in that notice. In respect of this, it was resolved at the authorisation meeting that:

- (a) “The persons at this meeting resolve that there are enough people present and that this is an appropriate meeting to make decisions about authorising the terms of the proposed draft minute of consent determination for Balanggarra #3 WAD 6004/2000”;
- (b) “The description of the native title holding group in the Minute should remain in its current form, noting the difference between that description and the Balanggarra #3 Application”; and
- (c) “The Balanggarra claim group affirms that the surviving members of the applicant of the Balanggarra #3 Application WAD 6004/2000 or such of them as are able to act are authorised to continue acting as applicant.”

22 The differences between the Balanggarra #3 Application and the description of the native title holding group in the Minute are explained in the affidavits of Caitlin Fegan affirmed 13 May 2013 and Catherine Wohlan, affirmed 13 May 2013, who is an anthropologist with specialised knowledge relevant to this matter. In summary, those affidavits provide:

- (a) the differences relate to 3 ancestors who are not identified in the Balanggarra #3 Application but who are named in the native title claim group description set out in the Balanggarra Combined Application;
- (b) similarly, there are an additional 3 ancestors who are not referred to in the Balanggarra Combined Application who are named in the native title claim group description set out in the Balanggarra #3 Application;
- (c) it is Ms Wohlan's opinion that those 6 names are likely a reference to 3 ancestors who have been described differently because of personal style and orthographic preference of the person who compiled those various applications; and
- (d) it is Ms Wohlan's overall opinion that the differences in the claim group descriptions between Balanggarra Combined Application and the Balanggarra

#3 Application and the native title holding group, as determined in *Ward (NT) FC*, do not result in differences of constituency between the three groups described.

23 The Balang[g]arra native title holding group is referred to in Schedule Five of the determination made by Wilcox, North and Weinberg JJ in *Ward (NT) FC*. Schedule Five states: "Persons identified with the Balangarra as at the date of this determination include descendants of the following persons". A number of ancestors are then listed. The names of the ancestors Dalza-ungnari, Zigalu, Mangular, Madamal, Timothy, Lumbia and Gumbol referred to in the decision in *Ward (NT) FC* are not included in the native title holding group described at Schedule Six of the Minute. Conversely, the Minute before me identifies ancestors named as Njama, Weni and Nandjimara, who are not individually referred to in the decision in *Ward (NT) FC*.

24 In respect of the formulation and effect of the proposed native title holding group described at Schedule Six of the Minute, I find that:

- (a) the description is likely to be the result of further research undertaken since the Balangarra #3 Application was made;
- (b) while there is a difference between that description and the description in *Ward (NT) FC*, that difference is a matter of form rather than substance as the difference in the two descriptions does not change the membership of the native title holding group;
- (c) the description is consistent with the native title holding group which is to be recognised in the determination relating to the Balangarra Combined Application which is to be determined concurrently with this proceeding;
- (d) the description, including its apparent difference from that set out in *Ward (NT) FC*, has been extensively considered by an anthropologist with specialised knowledge relevant to this matter, who is of the opinion that the description in Schedule Six of the Minute does not result in any differences between the Balangarra Combined Application, the Balangarra #3 Application or the finding in *Ward (NT) FC*; and

- (e) notices advising of the authorisation meeting were widely distributed, identified persons who are members of the Balanggarra community by reference to the description of the proposed native title holding group and a resolution was passed at the authorisation meeting authorising that description of the native title holding group and the ongoing authority of the applicant.

25 I am satisfied, based on the material before me, that there is no difference in substance between the native title holders described in *Ward (NT) FC* and the persons described in Schedule Six of the Minute as persons who together comprise the Balanggarra community. Further, in making the determination sought in the Minute, the Court will not be making a contrary finding or otherwise departing from the finding made in *Ward (NT) FC* as to the identity of the native title holding group described therein.

26 Although the description of the claim group in the Balanggarra #3 Application has not been amended to conform with the description in Schedule Six of the Minute, the Court is not limited to making a determination in the form sought in the application and may proceed to make a determination in such form as it sees fit based on the evidence, provided the application is valid: *Billy Patch on behalf of the Birriliburu People v State of Western Australia* [2008] FCA 944 at [18]. In my view it would be appropriate for the Court to make a determination as sought in the Minute. My reasons for so concluding are very similar to those applied in *Sharpe v State of Western Australia* [2013] FCA 599, at [19]-[23] (*Sharpe*), in that:

- (a) there will be a satisfactory resolution of the Balanggarra #3 Application for all parties;
- (b) the nature of any defect in authorisation does not arise out of any dispute within the Balanggarra community and is not a recent development;
- (c) the description of the native title holding group in Schedule Six of the Minute was widely notified and advertised in the process of notifying the authorisation meeting;
- (d) the State is satisfied that the holders of native title rights and interests in the Determination Area are the persons described in Schedule Six of the Minute; and

- (e) appropriate measures have been taken to notify members of the Balanggarra community of the proposed determination of native title and they have authorised the applicant to agree to the making of the Minute in its current terms, including the description of the proposed native title holding group.

27 To the extent that it might be thought that there is a defect in the authorisation of this application I find, pursuant to s 84D(4) of the *Native Title Act*, that it is in the interests of justice and would be appropriate for the Court to make the Determination. This long running application should not fail simply on authorisation grounds. My reasons for so concluding are, in effect, the same as applied in *Sharpe*, at [20] - [21] where I referred to *Barunga v State of Western Australia* [2011] FCA 518 (*Barunga*), at [12]-[21].

28 In *Barunga*, some of the members of the applicant group were deceased at the time of the making of an agreement for the determination of native title by consent in that matter. The native title holding group recognised in the determination then made was a larger group of people than the native title claimant group on whose behalf the application was brought. In the present case, for the same reasoning I adopted in *Barunga*, I would exercise my discretion under s 84D(4) of the *Native Title Act* to make the determination sought despite any perceived defect in authorisation.

Requirements of s 87A of the *Native Title Act*

29 Section 87A of the *Native Title Act* provides, in effect, that the Court may make a determination of native title by consent over part of an application area without holding a hearing where:

- (a) the period specified in the notice given under section 66 of the *Native Title Act* has ended (s 87A(1)(b));
- (b) there is an agreement for a proposed determination of native title in relation to part of an area covered by the native title application (s 87A(1)(b));
- (c) the terms of the proposed determination are in writing, signed by or on behalf of all of the parties required to be parties to the agreement pursuant to section 87A(1)(c) and are filed with the Court (ss 87A(1)(c), 87A(1)(d) and 87A(2));
- (d) the Registrar of the Federal Court has given notice to the other parties to the proceeding who have not become, or are not required to be, parties to the agreement that the proposed determination of native title has been filed with the Court (s 87A(3));

- (e) the Court has taken into account any objection made by the other parties to the proceeding (s 87A(5));
- (f) the Court is satisfied that an order in, or consistent with, those terms would be within the power of the Court (s 87A(4)(a)); and
- (g) it appears appropriate to the Court to make the orders sought (s 87A(4)(b)).

30 The first three of the above pre-conditions have been met. The Balangarra #3 Application was made on 3 July 2000 and was notified by the Native Title Registrar pursuant to section 66 of the *Native Title Act*. The period of 3 months after the notification day referred to in sections 66 (8) and 66 (10)(c) of the *Native Title Act* ended on 29 August 2001. There is an agreement for a proposed determination of native title, the terms of which are in writing and signed by or on behalf of all of the parties and contained in the Minute. The fourth and fifth pre-conditions are not applicable as all relevant parties to the application are parties to the agreement the subject of the Minute. Hence the Registrar need not give notice to any party pursuant to s 87A(3). It follows that there are no objections for the Court to take into account pursuant to s 87A(5). There is no reason why the Court should not be satisfied that an order in, or consistent with, the terms of the agreement as reflected in the Minute is within the power of the Court and that there is no barrier under ss 13(1)(a), 67(1), 68, 94A and 225 of the *Native Title Act* to the making of a consent determination of native title, as proposed by the parties. I am satisfied that the Court has jurisdiction to make the orders sought and there is nothing in the agreed terms that would suggest that the power of the Court would be exceeded by making those orders.

31 It remains for me to consider whether it appears to be appropriate to make the orders consented to by the parties. In *Wurrunmurra v State of Western Australia* [2012] FCA 1399, at [22], citing my earlier decision in *Goonack v State of Western Australia* [2011] FCA 516, I considered the terms and operation of s 87A(4) of the *Native Title Act*, as follows:

[25] The terms of s 87A(4) of the *Native Title Act* do not necessarily require the Court to receive evidence, make findings, embark on its own inquiry on the merits of the claim made in the application or even to form a concluded view as to whether the legal requirements for proving native title have been met. It is appropriate for the Court to make orders under s 87A where no evidence of the primary facts substantiating native title has been received if the Court is satisfied that the parties have freely and on an informed basis come to an agreement: *Brown v Western Australia* at [23]-[24] in respect of s 87A and *Hughes v Western Australia* [2007] FCA 365 at [9]; *Ward v Western Australia* [2006] FCA 1848 at [8]. The exercise of the Court's discretion pursuant to s 87A of the *Native Title Act* imports the same principles as those applying to the making of a consent determination of native title

under section 87: *Brown v Western Australia* [2007] FCA 1025; *Nangkiriny v Western Australia* (2002) 117 FCR 6; *Nangkiriny v Western Australia* [2004] FCA 1156; *James v Western Australia* [2002] FCA 1208; *Hughes v Western Australia* and under alternatively s 87 and s 87A; *Brown v Western Australia*.

[26] The requirements of s 87A(4) of the *Native Title Act* will be met where the Court is satisfied that the State, through competent legal representation, is satisfied as to the cogency of the evidence upon which the applicant relies. Generally this will not involve the Court making findings on the evidence on which the State relies, but it might consider that evidence for the limited purpose of being satisfied that the State is acting in good faith and rationally: *Munn v Queensland* (2001) 115 FCR 109 at [29]-[30] and *Lovett v Victoria* [2007] FCA 474 at [37].

32 The State has played an active role in the negotiation of the proposed consent determination which is an important factor. I consider that in so doing, the State, acting on behalf of the community generally, having regard to the requirements of the *Native Title Act* and through a rigorous and detailed assessment process has satisfied itself that the determination as sought is justified in all the circumstances.

33 In all the circumstances I am satisfied that it would be appropriate and within power to make orders under ss 87A and 94A of the *Native Title Act*. That includes an order that the Corporation is to hold the rights and interests from time to time comprising the native title in trust for the native title holders pursuant to s 56(2) of the *Native Title Act*.

34 The effect is that the native title claim group, being the Balanggarra community, in accordance with the traditional laws acknowledged and the traditional customs observed by them, are to be recognised as the native title holders for the Determination Area.

35 I propose therefore to make orders, in effect, as sought in the Minute.

I certify that the preceding thirty five (35) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Gilmour.

Associate:

Dated: 7 August 2013