

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6007/2000
NNTT Number: WCD2015/002

Determination Name: Smirke on behalf of the Jurruru People v State of Western Australia

Date(s) of Effect: 1/09/2015

Determination Outcome: Native title exists in parts of the determination area

Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

Determination Date: 01/09/2015

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

The Jurruru Aboriginal Corporation RNTBC
Trustee Body Corporate
C/- Yamatji Marlpa Aboriginal Corporation (YMAC)
PO Box 3072,
249 Hay Street
East Perth Western Australia 6004

COMMON LAW HOLDER(S) OF NATIVE TITLE:

The native title in the Determination Area is held by the Jurruru People. The Jurruru People are the people referred to in Schedule Five.

The Jurruru People are those persons who:

- (a) are descended from Kantitharra or Punartu or are adopted by such biological descendants in accordance with traditional laws acknowledged and the traditional customs observed by the Jurruru People;
- (b) identify themselves as Jurruru under traditional law and custom and are so identified by other Jurruru People as Jurruru; and
- (c) have a connection with the land and waters in the Determination Area, in accordance with the traditional laws acknowledged and the traditional customs observed by the Jurruru People.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. In relation to the Determination Area, there be a determination of native title in WAD 6007 of 2000 in terms of the determination as provided for in Attachment A.
2. The Jurruru Aboriginal Corporation 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. In relation to the land and waters of application WAD 6007 of 2000 which are overlapped by application WAD 6173 of 1998, no determination be made and the matters be listed for directions on a date to be fixed to consider the future conduct of the proceedings.

ATTACHMENT A

DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

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

1. Subject to paragraph 2, native title exists in the Determination Area in the manner set out in paragraph 4 of this determination.
2. Native title does not exist in those parts of the Determination Area the subject of the interests identified in Schedule Three which are shown as generally shaded red on the maps at Schedule Two.

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

3. The native title in the Determination Area is held by the Jurruru People. The Jurruru People are the people referred to in Schedule Five.

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

4. Subject to paragraphs 2, 5, 6 and 9 the nature and extent of the native title rights and interests in relation to the Determination Area are that they confer the following non-exclusive rights on the Jurruru People, including the right to conduct activities necessary to give effect to them:

- (a) the right to enter and remain on the land, camp, erect temporary shelters, and travel over and visit any part of the land and waters of the Determination Area;
- (b) the right to hunt, fish, gather, take and use the traditional resources of the land;
- (c) the right to take and use water;
- (d) the right to engage in cultural activities on the Determination Area, including:
 - (i) visiting places of cultural or spiritual importance and maintaining, caring for, and protecting those places by carrying out activities to preserve their physical or spiritual integrity; and
 - (ii) conducting ceremony and ritual; and
- (e) the right to be accompanied by those people who, though not Jurruru people, are:
 - (i) spouses, parents or descendants of one or more Jurruru person; or
 - (ii) people required by traditional law and custom for the performance of ceremonies or cultural activities on the Determination Area.

Qualifications on the native title rights and interests

5. The native title rights and interests set out in paragraph 4:
 - (a) are subject to and 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 Jurruru People for personal, domestic and communal purposes (including social, cultural, religious, spiritual and ceremonial purposes) but not for commercial purposes; and
- (b) do not confer any rights in relation to:
 - (i) minerals as defined in the *Mining Act 1904* (WA) (repealed) and in the *Mining Act 1978* (WA);
 - (ii) petroleum as defined in the *Petroleum 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 pursuant to those Other Interests.

6. The native title rights and interests set out in paragraph 4 do not confer:

- (a) possession, occupation, use and enjoyment on the Jurruru People to the exclusion of all others; or
- (b) a right to control the access to, or use of, the land and waters of the Determination Area or its resources.

Areas to which ss 47, 47A or 47B of the *Native Title Act* apply

7. Sections 47, 47A and 47B of the *Native Title Act* do not apply to disregard any prior extinguishment in relation to the Determination Area.

The nature and extent of any other interests

8. The nature and extent of the Other Interests are described in Schedule Four.

Relationship between native title rights and other interests

9. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraph 4 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 do not extinguish them.

Liberty to Apply

10. The parties have liberty to apply to establish the precise location and boundaries of the public works and adjacent land and waters identified in relation to any part or parts of the Determination Area referred to in clause 2 of Schedule Three of this determination.

Definitions and Interpretation

11. 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 Schedule Two;

“land” has the same meaning as in the *Native Title Act* and, for the avoidance of doubt, includes any natural collection of water found on the land which does not fall within the definition of “waters”;

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

“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 8;

“resources” means flora, fauna, and other natural resources such as charcoal, stone, soil, wood, resin and ochre (except, for the avoidance of doubt, ochres for use in the manufacture of porcelain, fine pottery or pigments which are minerals pursuant the *Mining Act 1904* (WA) (repealed));

“use” does not include use by way of trade;

“underground water” means water from and including an underground water source, including water that percolates from the ground; and

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

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

SCHEDULE ONE

DETERMINATION AREA

The Determination Area, generally shown as bordered in blue on the maps at Schedule Two, comprises all land and waters bounded by the following description:

All those lands and waters commencing at the intersection of the southern bank of the Hardy River with Longitude 116.123696 East and extending generally southeasterly along that river bank to Longitude 117.027727 East; Then southeasterly to Latitude 23.098797 South, Longitude 117.169463 East, being a point on the present boundary of Native Title Application WAD6173/1998 Gobawarra Minduarra Yinhawanga (WC1997/043); Then generally southerly, generally southeasterly and generally northeasterly along boundaries of that native title application to Latitude 23.952359 South; Then generally southwesterly through the following coordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
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23.970868	117.267179
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23.971648	117.266289
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23.998609	117.236780
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Then southwesterly to Latitude 24.031719 South, Longitude 117.199411 East, being a point on the present boundary of Native Title Application WAD6033/1998 Wajarri Yamatji (WC2004/010); Then northwesterly along the boundary of that native title application to Latitude 24.903982 South; Then generally northwesterly through the following coordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
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23.532377	116.495492
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23.118482	116.341184
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Then northwesterly to the southeastern corner of Reserve 40991; Then northerly along the eastern boundary of that reserve to its northeastern corner; Then northerly back to the commencement point.

Note: Geographic Coordinates provided in Decimal Degrees.

Cadastral boundaries sourced from Landgate’s Spatial Cadastral Database dated 30th April 2015.

The Hardy River sourced from 1:50,000 Department of Defence Digital verified data.

For the avoidance of doubt the application excludes any land and waters already claimed by:

Native Title Application WAD6173/1998 Gobawarra Minduarra Yinhawanga (WC1997/043) as accepted for registration on the 6th September 2010.

Native Title Application WAD6033/1998 Wajarri Yamatji (WC2004/010) as accepted for registration on the 17th October 2014.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Use of Coordinates:

Where coordinates 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.

SCHEDULE TWO

MAPS OF THE DETERMINATION AREA

[See NNTR attachment 1: "Schedule Two - Maps of the Determination Area"]

SCHEDULE THREE

AREAS WHERE NATIVE TITLE DOES NOT EXIST (PARAGRAPH 2)

Native title does not exist in relation to land and waters the subject of the following interests within the Determination Area which, with the exception of public works (as described in clause 2 of this Schedule), are generally shown as shaded in red on the maps at Schedule Two:

1. Dedicated roads and roads set aside, taken or resumed

Dedicated roads, roads set aside, taken or resumed or roads which are to be considered public works (as that expression is defined in the *Native Title Act* and the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA)), including the following:

- (a) Road 5424, one chain wide, which road is depicted on Cancelled Public Plan 503 115;
- (b) Road 8385, which road is depicted on Cancelled Public Plans 503 115 and 503 121, opened by notice published in the government gazette on 21 March 1930, and extended by notices published in the government gazette and 4 April 1930 and 11 April 1930;
- (c) Road 8476, which road is depicted on Cancelled Published Plan 503 121 and described by notice published in the government gazette on 4 April 1930.

2. Public Works

Any other public works as that expression is 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 8)

The nature and extent of the Other Interests in relation to the Determination Area as at the date of this determination are:

1. Reserves

- (a) The following reserves:

Reserve No.	Current Purpose
1110	Watering place
1112	Watering place
1113	Watering place

1114	Watering place
1115	Watering place
1119	Watering place
18498	Water

(b) The rights and interests of persons who have the care, control and management of the reserves identified in subclause (a) above; and

(c) The rights and interests of persons entitled to access and use the reserves identified in subclause (a) above for the respective purposes for which they are reserved, subject to any statutory limitations upon those rights.

2. Pastoral Leases

The following pastoral leases and the rights and interests of the holders from time to time of those pastoral leases:

Pastoral Lease	Station Name
PL N050360 (formerly 3114/0647)	Wyloo
PL N050044 (formerly 3114/0773)	Dooley Downs
PL N050594 (formerly 3114/1014)	Glenflorrie
PL N050036 (formerly 3114/1218)	Ashburton Downs
PL N049418 (formerly 3114/1236)	Kooline
PL N050510 (formerly 3114/1241)	Pingandy
PL N050545 (formerly 398/782)	Cheela Plains
PL N049994 (formerly K981339)	Ullawarra

3. Easements

The following easement and the rights and interests of the holders from time to time of that easement:

Easement No. Purpose

F 924685 For the purpose described in the government gazette on 4 July 1995, commencing on page 2799 at "LA 801 Goldfields Gas Pipeline Agreement Act 1994 Public Works Act 1902 Land Acquisition".

4. Mining Tenements

(a) The rights and interests of the holders of the following mining tenements under the *Mining Act 1904* (WA) (repealed) and the *Mining Act 1978* (WA):

(i) Mining Leases

Tenement ID	Tenement ID	Tenement ID
M 0800011	M 0800012	M 0800027
M 0800066	M 0800071	M 0800098
M 0800105	M 0800192	M 0800197

(ii) Exploration Licences

Tenement ID	Tenement ID	Tenement ID
E 0801628	E 0801629	E 0801630

E 0801631	E 0801632	E 0801633
E 0801650	E 0801741	E 0801746
E 0801841	E 0801915	E 0801916
E 0801949	E 0801950	E 0801954
E 0802033	E 0802038	E 0802232
E 0802237	E 0802240	E 0802250
E 0802258	E 0802280	E 0802281
E 0802282	E 0802296	E 0802372
E 0802373	E 0802472	E 0802474
E 0802487	E 0802494	E 0802550
E 0802557	E 0802562	E 0802567
E 0802613	E 0802614	

(iii) Prospecting Licences

Tenement ID	Tenement ID	Tenement ID
P 0800540	P 0800616	P 0800648
P 0800670	P 0800675	P 0800676

(b) The agreement as amended and ratified by the *Goldfields Gas Pipeline Agreement Act 1994* (WA) and rights and interests comprised in, conferred under or in accordance with, or pursuant to that agreement, including the following tenements:

Tenement ID Tenement Type

PL24 Pipeline Licence

5. Access to Mining and Petroleum Areas

(a) Without limiting the operation of any other clause in Schedule Four, but subject to clause (1)(b) below, the rights of the holders from time to time of a mining tenement or petroleum interest referred to in clauses 0 of Schedule Four 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 or petroleum interest for the purposes of exercising the rights granted by that tenement or interest.

(b) Nothing in clause (1)(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 pursuant to clause (1)(a).

6. Other

The following rights and interests:

(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 and any regulations made pursuant to such legislation;

(b) Rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth, including but not limited to, the force and operation of the *Rights in Water and Irrigation Act 1914* (WA);

(c) Rights and interests of members of the public arising under common law, including but not limited to:

- (i) the public right to fish;
- (ii) the public right to navigate; and
- (iii) the right of any person to use and enjoy any roads 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 the 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;
- (e) So far as confirmed pursuant to section 212(2) of the *Native Title Act* and 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, the following places in the Determination Area:
 - (i) waterways;
 - (ii) beds and banks or foreshores of waterways;
 - (iii) coastal waters;
 - (iv) beaches;
 - (v) stock routes; and
 - (vi) areas that were public places at the end of 31 December 1993;
 - (f) Any other:
 - (i) legal or equitable estate or interest in the land or waters; or
 - (ii) any other right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with:
 - (A) the land or waters; or
 - (B) an estate or interest in the land or waters; or
 - (iii) restriction on the use of the land or waters, whether or not annexed to other land or waters.

SCHEDULE FIVE

NATIVE TITLE HOLDERS (PARAGRAPH 3)

The Jurruru People are those persons who:

- (a) are descended from Kantitharra or Punartu or are adopted by such biological descendants in accordance with traditional laws acknowledged and the traditional customs observed by the Jurruru People;
- (b) identify themselves as Jurruru under traditional law and custom and are so identified by other Jurruru People as Jurruru; and
- (c) have a connection with the land and waters in the Determination Area, in accordance with the traditional laws acknowledged and the traditional customs observed by the Jurruru People.

REGISTER ATTACHMENTS:

1. Schedule Two - Maps of the Determination Area, 5 pages - A4, 01/09/2015

Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.