

Extract from the National Native Title Register

Determination Information:

Determination Reference:	Federal Court Number(s): WAD163/2013 NNTT Number: WCD2015/005
Determination Name:	Smith on behalf of the Balanggarra People (Balanggarra #4) v State of Western Australia
Date(s) of Effect:	27/11/2015
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:	27/11/2015
Determining Body:	Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Balanggarra Aboriginal Corporation RNTBC
Trustee Body Corporate
c/o Kimberley Land Council
P.O. Box 2145
Broome Western Australia 6725

COMMON LAW HOLDER(S) OF NATIVE TITLE:

4. The native title in relation to the determination area is held in common by members of the Balanggarra community being the people referred to in Schedule Six.

The native title is held by the descendants of:

WundanganaWaina, 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, Wolambar, Murlu, Zamin[^]elli, Mandomiri, G[^]nambul, Nganawongka, Ng[^]Inari, 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, Mundjagal, 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, Nital, Lura/Gurul, Birim, [^]Ngari, Dumalbon/Tumelben, Merliman, Wangooloo, Wamblma, W[^]rga, Bangudenanga, Birra-rar-raa, Wanjuwila,

Wungaruru, Wurawungedzi, Zuandi, Z[^]lubern, G[^]mura, W[^]mbu/Njurnji, Waneigera, J[^]wan, Z[^]Inga, Guri, Banmon, Warin.

[The symbol [^] is used to connote the sound “a”; as in but. For example, “Dz[^]ngal” would be pronounced “Dzangal”.]

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 Balanggarra people in accordance with traditional laws and customs.

**MATTERS DETERMINED:
THE COURT ORDERS THAT:**

1. There be a determination of native title in the terms of the Determination as provided for in Attachment A.
2. The Balanggarra Aboriginal Corporation ICN 2923 is determined to be the prescribed body corporate which is to hold the rights and interests comprising the native title in trust for the common law holders.

ATTACHMENT “A”

DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

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

1. The determination area is the land and waters described in Schedule One and depicted on the maps at Attachment 1 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 **pink** on the maps at Attachment 1 to Schedule One.

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 Balanggarra community being the people referred to in Schedule Six.

The nature and extent of native title rights and interests (s 225(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 area of land generally shown as shaded **green** on the maps at Attachment 1 to Schedule One, being all of the land in the determination area which has been the subject of prior extinguishment of native title, which extinguishment must be disregarded by operation of s 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 Intertidal Area

6. Subject to paragraphs 7, 8 and 9, the nature and extent of the native title rights and interests in relation to the Intertidal Area being an area where the native title right to possession, occupation, use and enjoyment to the exclusion of all others is not available at law are:

- (a) the right to enter, travel over and remain on the area;
- (b) the right to camp on the area including erecting shelters and other structures for that purpose;
- (c) the right to hunt, fish, gather and use (including by way of sharing or exchange) the resources of the area 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 take and use water from the area; and
- (f) the right to engage in cultural activities on the area 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 ritual; and
 - (iii) 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 interests 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 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 s 47B of the *Native Title Act* apply

11. Section 47B of the *Native Title Act* applies 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 s 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 1 to Schedule One;

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

“**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 13;

“**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; and

“**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 1 to Schedule One, the written description prevails.

SCHEDULE ONE

DETERMINATION AREA

The determination area, generally shown as bordered in **dark blue** on the maps at Attachment 1 to the First Schedule, comprises all land and waters bounded by the following description:

Part A

All that land comprising Adolphus Island, above high water mark.

Part B

All that land comprising Lot 1702 and Lot 1709 as shown on Deposited Plan 183763.

Part C

All that land comprising Marndoc Location 10 as shown on Deposited Plan 93195 (Former Special Lease 3116/10410).

Excluded from Part C

All that land comprising Lot 12 as shown on Deposited Plan 33452 being General Lease L140073.

ATTACHMENT 1

(SCHEDULE ONE)

MAPS OF THE DETERMINATION AREA

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

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 1 to Schedule One:
 - (i) that part of the land comprising Marndoc Location 10 as shown on Deposited Plan 93195 (Former Special Lease 3116/10410), which is within the Intertidal Area; and
 - (b) waters not within an area described in Schedule Three,

For the avoidance of doubt, the maps provided at Attachment 1 of Schedule One do not depict all of the waters within the determination area.

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 areas described at sub-paragraph (a) are generally shown as shaded **pink** on the maps at Attachment 1 to Schedule One (the areas described at sub-paragraph (b) below are not shown on the maps at Attachment 1 to Schedule One):

- (a) all that land comprising Lot 1702 and Lot 1709 as shown on Deposited Plan 183763; and
- (b) any 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 s 251D of the *Native Title Act*) and to which s 12J of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) or s 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. 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; and

- (ii) the public right to navigate;
- (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; or
 - (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 s 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; and
- (f) The international right of innocent passage through the territorial sea.

SCHEDULE FIVE

AREAS TO WHICH SECTION 47B OF THE *NATIVE TITLE ACT* APPLIES

Areas of land within the determination area to which s 47B of the *Native Title Act* applies 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 **green** and **orange** on the maps at Attachment 1 to Schedule One:

1. 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

The following areas of Unallocated Crown Land:

- i. All that land comprising Adolphus Island, above the high water mark and which area is described as Part A in Schedule One of this determination; and
- ii. All that land comprising Marndoc Location 10 as shown on Deposited Plan 93195 (Former Special Lease 3116/10410), excluding that portion of Marndoc Location 10 which is within the Intertidal Area and that portion of Marndoc Location 10 which comprises part of Lot 12 as shown on Deposited Plan 33452.

Intertidal Area

- iii. All that area comprising Marndoc Location 10 as shown on Deposited Plan 93195 (Former Special Lease 3116/10410), which is within, or seaward of, the Intertidal Area and not otherwise part of Lot 12 as shown on Deposited Plan 33452.

(**Note:** The area described in (iii) above is an area within the Intertidal Area so that even though s 47B of the *Native Title Act* applies to disregard any extinguishment by the creation of prior interests in relation to that area, the native title rights and interests which exist in that area are those described in paragraph 6 of the determination.)

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^Inari, 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, Mundjangan, 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.

[The symbol ^ is used to connote the sound “a”; as in but. For example, “Dz^ngal” would be pronounced “Dzangal”.]

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.

REGISTER ATTACHMENTS:

1. Schedule One - Maps of the Determination Area, 4 pages - A3, 27/11/2015

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.