

No: (P)SAD38/2013

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

ARABANA NO 2 NATIVE TITLE CLAIM (PART 1)

AARON STUART and others named in the schedule
Applicant

STATE OF SOUTH AUSTRALIA and others/another named in the schedule
Respondent

ORDER

JUDGE: Justice Charlesworth

DATE OF ORDER: 17 March 2021

WHERE MADE: Adelaide

PREAMBLE

- A The Applicant first lodged Native Title Determination Application No SAD 38 of 2013 (the Application) with the Federal Court on 1 March 2013 in relation to two separate areas of land in northern South Australia. Part 1 of the Application is now the subject of a proposed determination of native title.
- B The Applicant and the State of South Australia have reached an agreement as to the terms of a determination of native title to be made in relation to Part 1 of the land covered by the Application. They have filed with this Court pursuant to section 87A of the *Native Title Act 1993* (Cth) (the *Native Title Act*) an agreement in writing to seek the making of consent orders for a determination.



C The Parties acknowledge that the effect of the making of the determination will be 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 as defined by Paragraph 2 of this Order.

D The Parties have requested that the Court determine the proceedings without a trial.

Being satisfied that a determination 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 and by the consent of the Parties:

THE COURT ORDERS, DECLARES AND DETERMINES BY CONSENT THAT:

INTERPRETATION & DECLARATION

1. In this determination, including its schedules:
 - (a) unless the contrary intention appears, the words and expressions used have the same meaning as they are given in Part 15 of the *Native Title Act*;
 - (b) “Native Title Land” means the land and waters referred to in paragraph 3 of these orders; and
 - (c) in the event of an inconsistency between a description of an area in a schedule and the depiction of that area on the map in Schedule 2, the written description shall prevail.

DETERMINATION AREA

2. Schedule 1 describes the external boundaries of the determination area (**Determination Area**).

AREAS WITHIN DETERMINATION AREA WHERE NATIVE TITLE EXISTS (NATIVE TITLE LAND)

3. Subject to items 1, 2, 3 and 4 of Schedule 4, native title exists in the land and waters described in Schedule 3.



AREAS WITHIN DETERMINATION AREA WHERE NATIVE TITLE DOES NOT EXIST

4. Pursuant to s 225 of the *Native Title Act*, native title does not exist in relation to all of the land and waters comprised in those areas described in Schedule 4.

NATIVE TITLE HOLDERS

5. Under the relevant traditional laws and customs of the Arabana people the native title holders comprise those living Aboriginal people who both self-identify as Arabana and who are recognised as being Arabana by other Arabana people based on:

- (a) Filiation, including by adoption, from an Arabana parent or grandparent; or
- (b) Long term co-residence with Arabana people on Arabana country;

and who satisfy one or more of the following criteria:

- (i) Being raised in Arabana country and being bound by its system of law and custom;
- (ii) Living and behaving appropriately with Arabana people in accordance with Arabana laws and customs;
- (iii) Having knowledge of Arabana country and its stories and taking appropriate responsibility, under Arabana custom and law, for that knowledge;
- (iv) Having knowledge of Arabana society and the relationships of people within it and seeking to maintain proper relationships amongst Arabana people;
- (v) Having knowledge of Arabana language;
- (vi) Displaying an active interest and engagement in Arabana affairs;

RIGHTS AND INTERESTS

6. Subject to Paragraphs 7, 8 and 9, the nature and extent of the native title rights and interests of the Arabana people in relation to the Native Title Land are non-exclusive rights to use and enjoy in accordance with their traditional laws and customs the land and waters of the Native Title Land, being:



- (a) the right to access and move about the Native Title Land;
- (b) the right to live, to camp and, for the purpose of exercising their native title rights and interests, to erect shelters and other structures on the Native Title Land;
- (c) the right to hunt and fish on the land and waters of the Native Title Land;
- (d) the right to gather and use the natural resources of the Native Title Land such as food, medicinal plants, wild tobacco, timber, resin, ochre and feathers, but excluding those resources referred to in Item 1 of Schedule 4;
- (e) the right to share and exchange the subsistence and other traditional resources of the Native Title Land;
- (f) the right to use the natural water resources of the Native Title Land;
- (g) the right to cook on the Native Title Land and to light fires for domestic purposes but not for the clearance of vegetation;
- (h) the right to engage and participate in cultural activities on the Native Title Land including those relating to births and deaths;
- (i) the right to conduct ceremonies and hold meetings on the Native Title Land;
- (j) the right to teach on the Native Title Land the physical and spiritual attributes of locations and sites within the Native Title Land;
- (k) the right to visit, maintain and protect sites and places of cultural and religious significance to Native Title Holders under their traditional laws and customs on the Native Title Land; and
- (l) the right to be accompanied on to the Native Title Land by those people who, though not Native Title Holders, are:
 - (i) spouses of native title holders; or
 - (ii) people who have rights in relation to the Native Title Land according to the traditional laws and customs acknowledged by the native title holders.

GENERAL LIMITATIONS

7. The native title rights and interests are for personal, domestic and communal use but do not include commercial use of the Determination Area or the resources from it.



8. The native title rights and interests described in paragraph 6 do not confer possession, occupation, use and enjoyment of the Determination Area on the native title holders to the exclusion of others.
9. Native title rights and interests are subject to and exercisable in accordance with:
- (a) the traditional laws and customs of the native title holders; and
 - (b) the valid laws of the State and Commonwealth, including the common law.

For the avoidance of doubt, the native title interest expressed in paragraph 6(f) (the right to use the natural water resources of the Determination Area) is subject to the *Natural Resources Management Act 2004* (SA).

OTHER INTERESTS & RELATIONSHIP WITH NATIVE TITLE

10. The nature and extent of other interests in the Determination Area are:
- (a) the interests within the Determination Area created by the following pastoral leases:

Lease name	Pastoral Lease No	Crown Lease
Mundowdna (Portion)	PE 2298	Volume 6171 Folio 801
Witchelina (Portion)	PE 2311	Volume 6209 Folio 252

- (b) the interests of the Crown in right of the State of South Australia;
- (c) the interests of persons to whom valid or validated rights and interests have been granted or recognised by the Crown in right of the State of South Australia or by the Commonwealth of Australia pursuant to statute or otherwise in the exercise of executive power including, but not limited to, rights and interests granted or recognised pursuant to the *Crown Land Management Act 2009* (SA), *Crown Lands Act 1929* (SA), *Mining Act 1971* (SA), *Petroleum and Geothermal Energy Act 2000* (SA) and *Opal Mining Act 1995* (SA), all as amended from time to time;
- (d) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth;
- (e) the rights to access land by an employee or agent or instrumentality of the State, Commonwealth or other statutory authority as required in the



performance of his or her statutory or common law duties where such access would be permitted to private land;

11. The relationship between the native title rights and interests in the Determination Area that are described in Paragraph 6 and the other rights and interests that are referred to in Paragraph 10 (“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 any application of section 24IB or section 24JA of the *Native Title Act*, do not extinguish them.
 - (c) the native title rights and interests are subject to extinguishment by:
 - (i) the lawful powers of the Commonwealth and of the State of South Australia; and/or
 - (ii) the lawful grant or creation of interests pursuant to the Laws of the Commonwealth and the State of South Australia.

AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:

12. The native title is not to be held in trust.
13. An Aboriginal corporation, the name of which must be provided to the Court within 6 months of the date of this Order, is to:
- (a) be the prescribed body corporate for the purposes of s 57(2) of the *Native Title Act*; and
 - (b) perform the functions mentioned in s 57(3) of the *Native Title Act* after becoming a registered native title body corporate.



14. The Parties have liberty to apply on 14 days notice to a single judge of the Court for the following purposes:

- (a) to establish the precise location and boundaries of any public works and adjacent land and waters referred to in Schedule 4 of this Order; or
- (b) to determine the effect on native title rights and interests of any public works referred to in Schedule 4 of this Order.

Date that entry is stamped: 31 March 2021



SCHEDULE 1

LOCATION OF AND AREAS COMPRISING THE DETERMINATION AREA

External Boundary Description

Commencing at the point Longitude 138.128406 East, Latitude 29.693668 South [being a point on the western portion of the boundary of native title determination SAD6017/1998 Dieri (SCD2012/001)], then south-easterly in a straight line to its intersection with the centreline of Frome River at Latitude 29.712754 South, then generally south-easterly along the said centreline of Frome River (described as being straight lines through the following coordinate points):

Longitude East	Latitude South
138.143240	29.714250
138.144390	29.715610
138.146263	29.716809
138.146264	29.716810
138.148670	29.718350
138.148960	29.718540
138.149780	29.719140
138.150800	29.720500
138.152084	29.723774
138.152310	29.724350
138.154370	29.727090
138.157660	29.731490
138.158790	29.735220
138.160930	29.739140
138.161050	29.741890
138.161040	29.741910
138.160660	29.742670
138.159700	29.743370
138.159870	29.744020
138.161530	29.745270
138.162940	29.746860

138.163450	29.747310
138.165060	29.747980
138.167310	29.748920
138.168770	29.748880
138.170280	29.748830
138.175150	29.753040
138.177210	29.754400
138.178580	29.756020
138.180530	29.757920
138.184520	29.760200
138.187350	29.761130
138.191610	29.761270
138.195350	29.762650
138.202190	29.763480
138.205140	29.764630
138.205650	29.765880
138.207320	29.767350
138.208210	29.769160
138.209740	29.770530
138.211670	29.771220
138.213210	29.772470
138.215790	29.773270
138.217710	29.774870
138.220420	29.775670
138.221550	29.775540
138.222230	29.775460
138.223950	29.775900
138.224940	29.776150
138.227370	29.778430
138.229300	29.779340
138.230780	29.780650
138.231100	29.780930
138.232130	29.781390
138.234180	29.783430
138.235080	29.784000

138.235720	29.784010
138.237140	29.785030
138.240390	29.785970
138.241130	29.786190
138.242000	29.786770
138.242720	29.787250
138.246010	29.789940
138.250390	29.791320
138.252460	29.791670
138.258150	29.791030
138.261120	29.791280
138.262380	29.791760
138.264080	29.792420
138.264730	29.792490
138.266280	29.792660
138.271580	29.791680
138.274440	29.790570
138.278440	29.790940
138.279730	29.790950
138.281160	29.790160
138.282320	29.790060
138.284540	29.788040
138.286620	29.786700
138.287910	29.786260
138.289210	29.786270
138.292950	29.787310
138.294360	29.788440
138.295390	29.788790
138.296800	29.790150
138.297200	29.790430
138.298080	29.791060
138.301180	29.792090
138.304390	29.793800
138.306960	29.795960
138.313530	29.798930

138.317020	29.799180
138.323710	29.802600
138.327860	29.805340
138.329240	29.806130
138.337500	29.807990
138.341240	29.808460
138.341300	29.808450
138.343190	29.808020
138.345530	29.806000
138.349280	29.805010
138.353050	29.802890
138.354740	29.801430
138.357070	29.800660
138.357950	29.800970
138.358360	29.801120
138.359660	29.801120
138.360430	29.801800
138.361110	29.802020
138.362620	29.802490
138.365100	29.802040
138.366760	29.801730
138.369990	29.801970
138.371800	29.801980
138.373330	29.801510

then south-easterly along the said centreline of Frome River to its intersection with a line between Longitude 138.442894 East, Latitude 29.777290 South and Longitude 138.250455 East, Latitude 29.844403 South [being a point on the southern portion of the boundary of native title determination SAD6017/1998 Dieri (SCD2012/001) and the northern portion of the boundary of native title determination SAD6001/1998 Adnyamathanha People No. 1 (Stage 1) (SCD2009/003)], [being along a portion of the western portion of the boundary of native title determination SAD6017/1998 Dieri (SCD2012/001)].

Then generally south-westerly in straight lines through the following coordinate points:

Longitude East	Latitude South
138.250455	29.844403
138.101751	29.891091
137.932636	29.937779

then north-westerly in a straight line to the point of commencement [being along a portion of the southern portion of the boundary of native title determination SAD6025/1998 Arabana People (SCD2012/002)].

Reference datum

Geographical coordinates are referenced to the Geocentric Datum of Australia 1994 (GDA94), in decimal degrees.

Data reference and source

Topographic features referenced to GEODATA TOPO 250K – Series 3

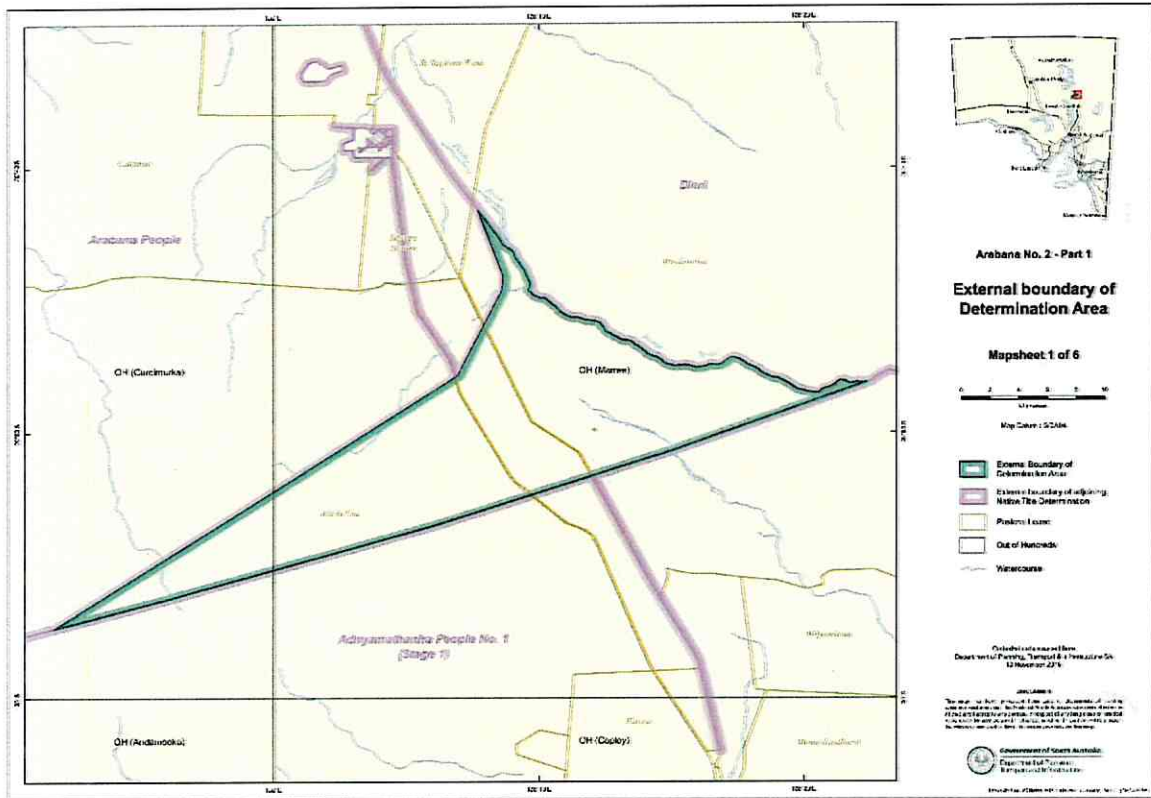
© Commonwealth of Australia (Geoscience Australia).

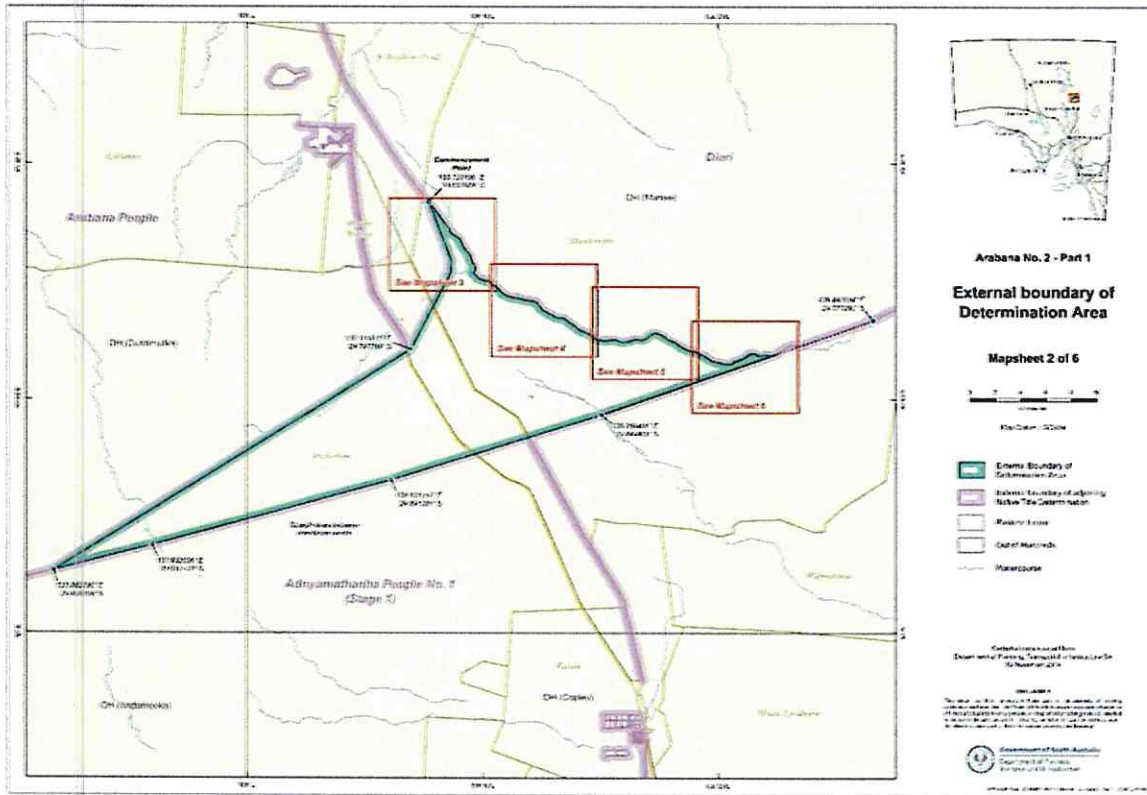
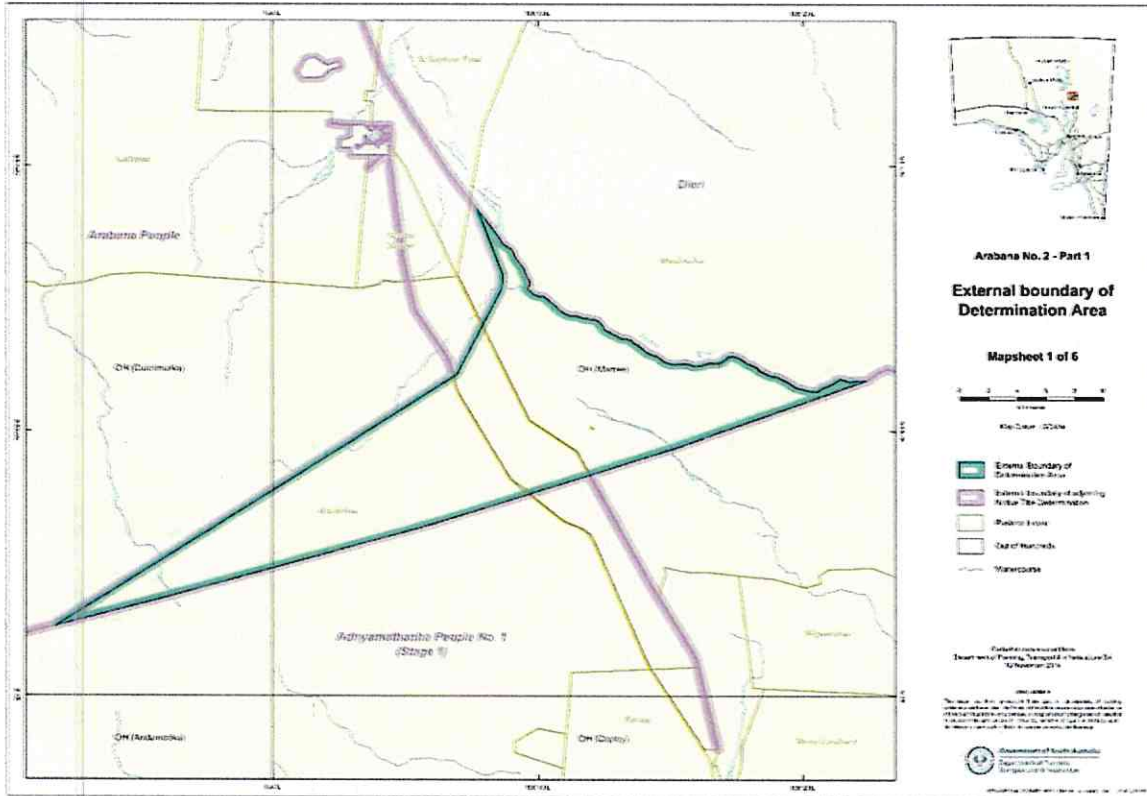
Use of Coordinates

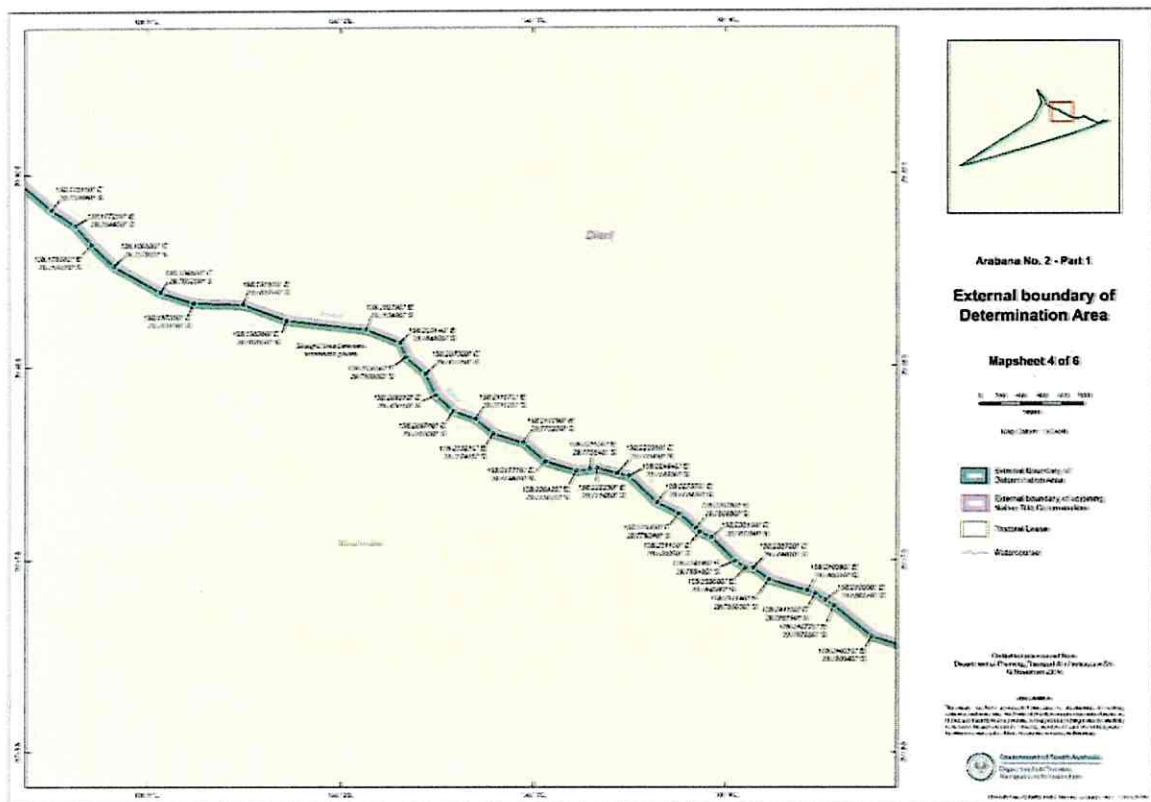
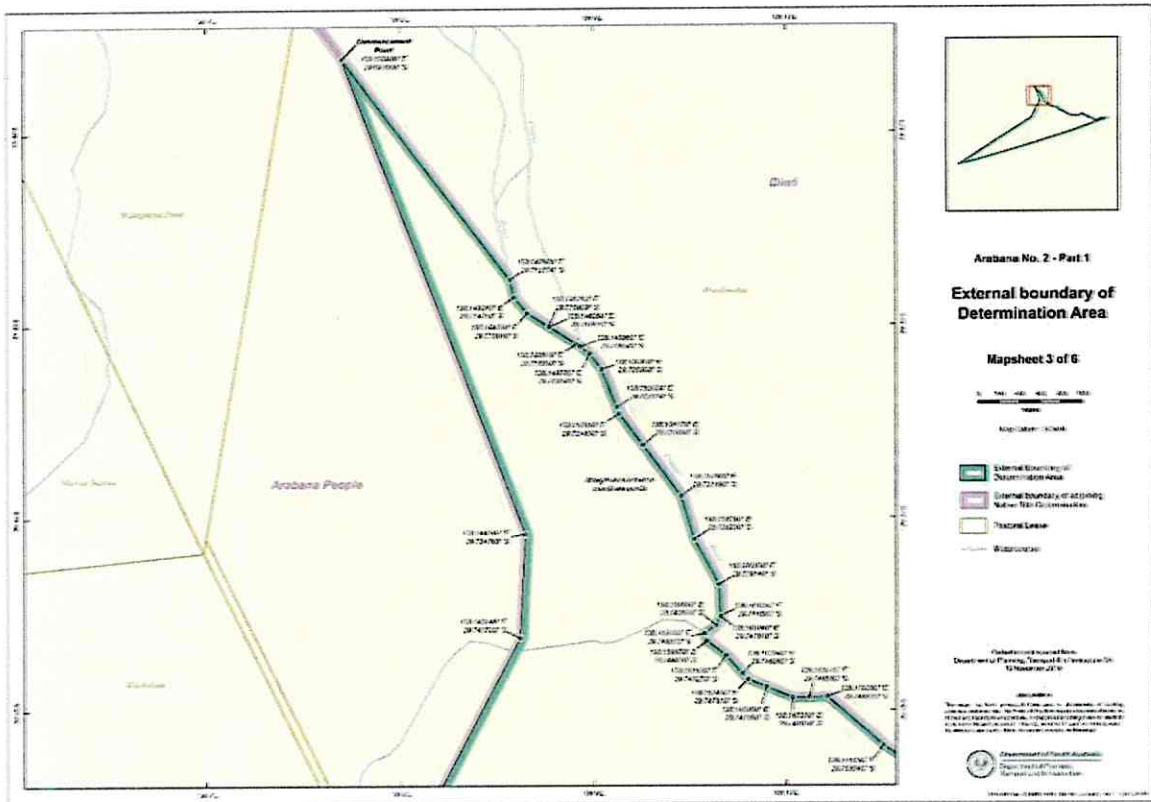
Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome of the custodians of cadastral and topographical data continuously recalculating the geographic position of their data based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

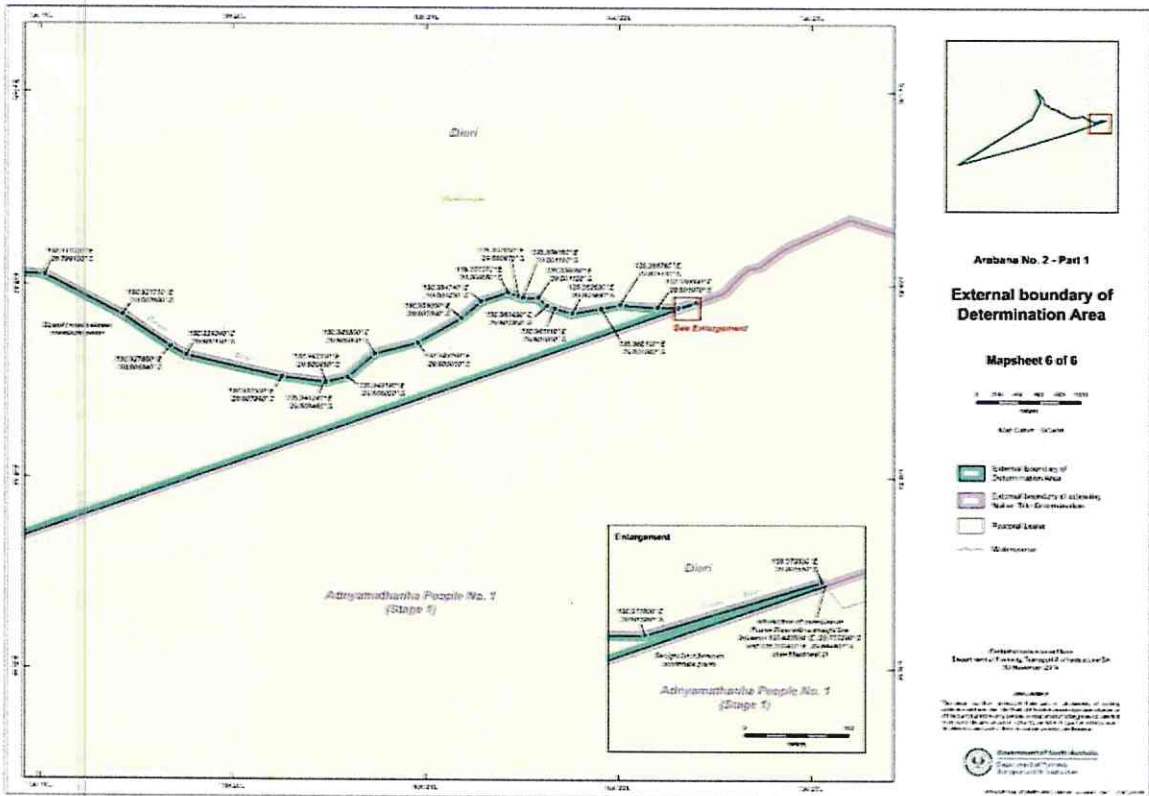
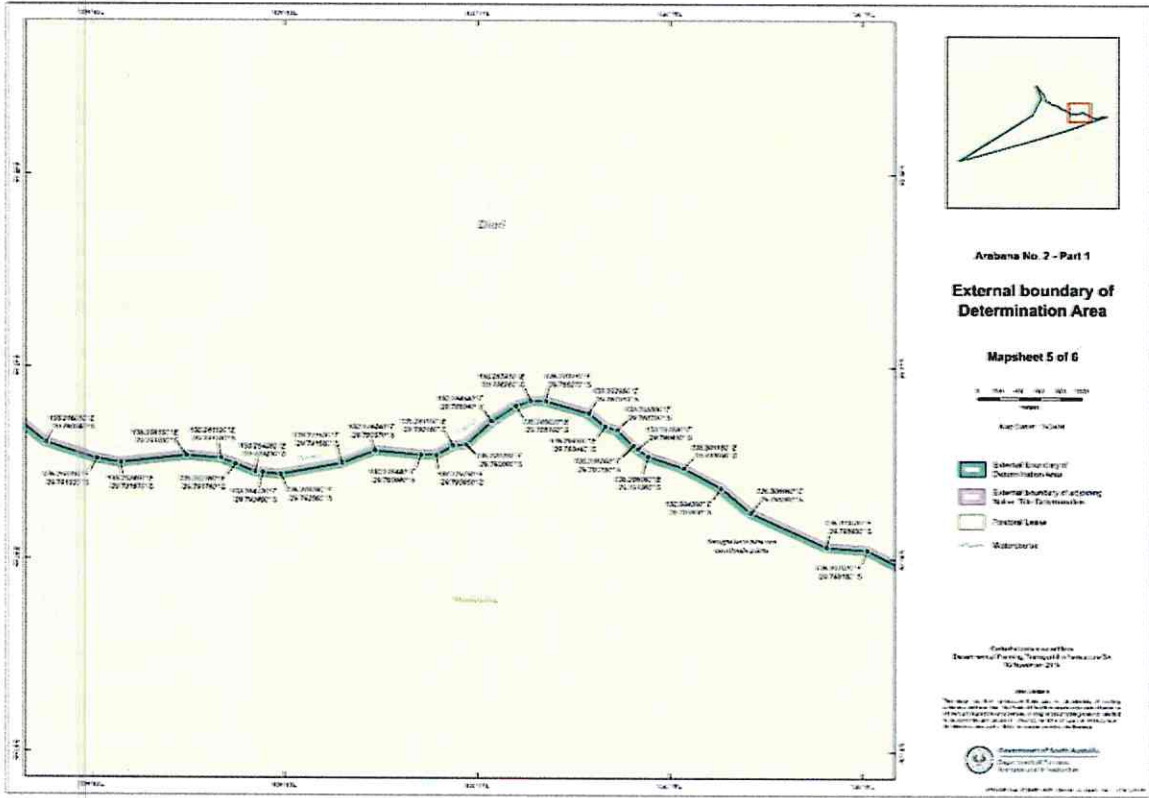
SCHEDULE 2 - Maps

Part A: Map of the External Boundaries of the Determination Area



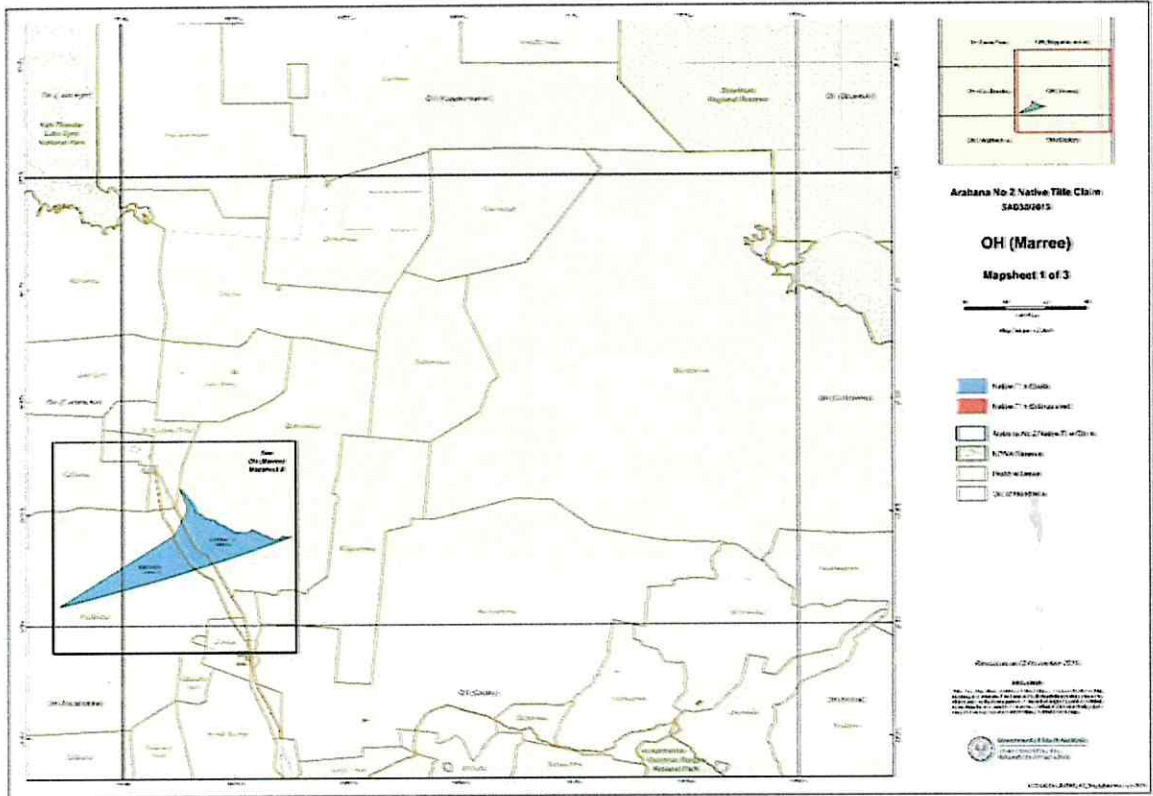


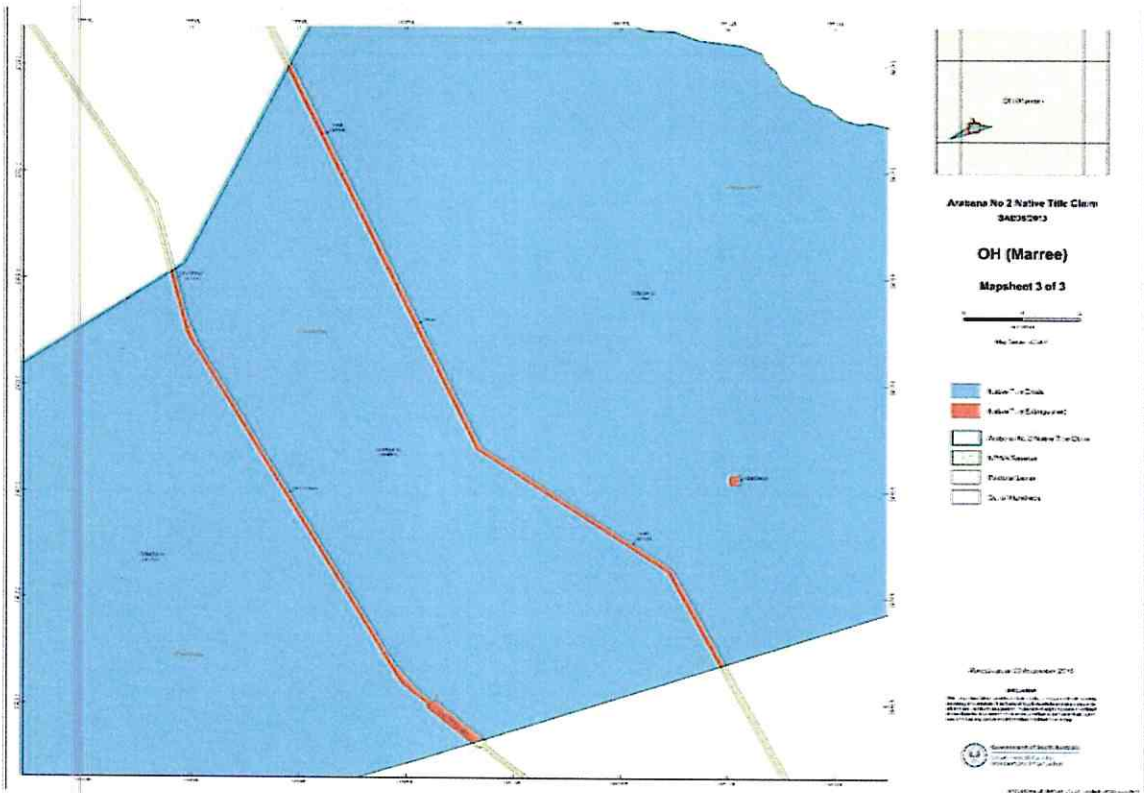
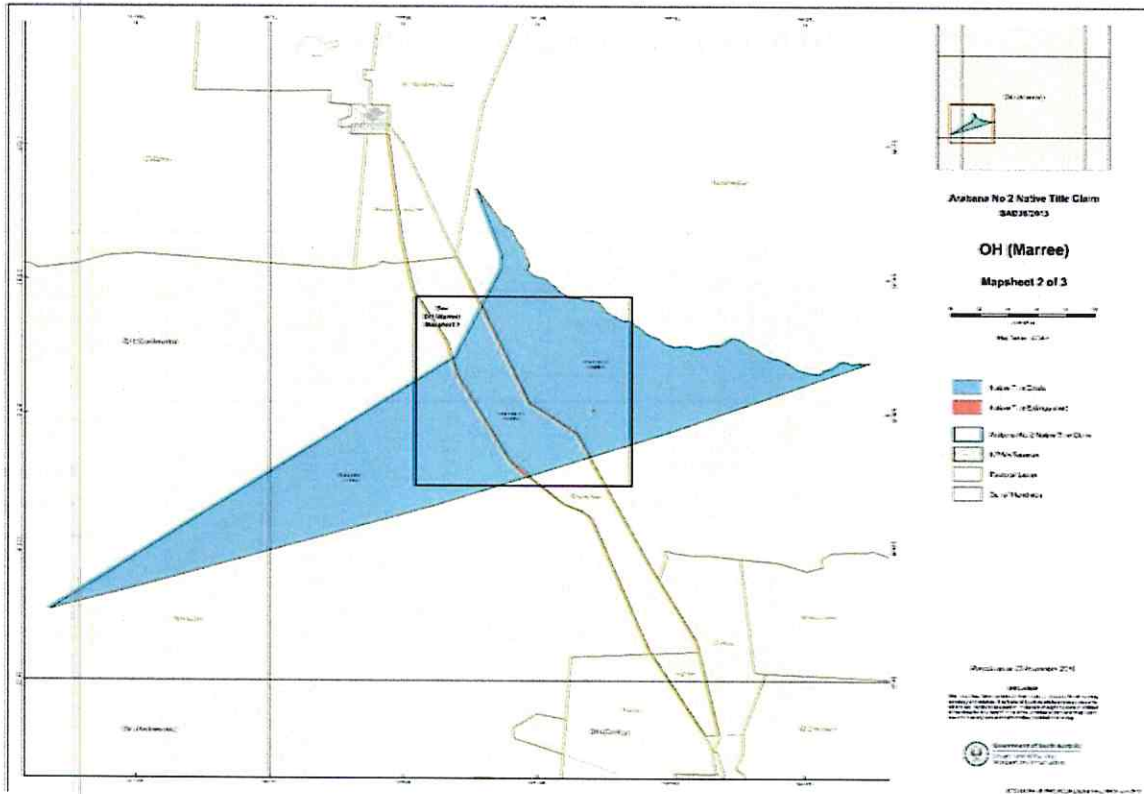




SCHEDULE 2 - Maps

Part B: Maps depicting Native Title Land





SCHEDULE 3

Land and waters where native title exists (Native Title Land)

Note: Please refer to Schedule 2 Part B for further detail where a portion of a parcel is indicated.

Parcel Identifier	Hundred	Other interests
D35803Q111 (Portion)	OH(MARREE)	CL6209/252 PE2311
D35809A110 (Portion)	OH(MARREE)	CL6171/801 PE2298
D35803Q112 (Portion)	OH(MARREE)	CL 6209/252 PE2311

SCHEDULE 4

Areas where native title does not exist

1. Native title rights and interests do not exist in:
 - (a) minerals as defined in section 6 of the *Mining Act 1971* (SA);
 - (b) petroleum, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA);
 - (c) a naturally occurring underground accumulation of a regulated substance as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth;
 - (d) a natural reservoir, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth;
 - (e) geothermal energy, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA) the source of which is below a depth of 100 metres from the surface of the earth.

For the purposes of this item 1 and the avoidance of doubt:

- (f) a geological structure (in whole or in part) on or at the earth's surface or a natural cavity which can be accessed or entered by a person through a natural opening in the earth's surface, is not a natural reservoir;
- (g) thermal energy contained in a hot or natural spring is not geothermal energy as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA);
- (h) the absence from this Order of any reference to a natural reservoir or a naturally occurring accumulation of a regulated substance, as those terms are defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), above a depth 100 metres below the surface of the earth or geothermal energy the source of which is above a depth of 100 metres below the surface of the earth is not, of itself, to be taken as an indication of the existence or otherwise of native title rights or interests in such natural reservoir, naturally occurring accumulation of a regulated substance or geothermal energy.

2. Native title rights and interests have been extinguished in the areas of Native Title Land covered by Public Works (including the land and waters defined in section 251D of the *Native Title Act*) which were constructed, established or situated prior to 23 December 1996 or commenced to be constructed or established on or before that date.
3. Public Works constructed, established or situated after 23 December 1996 on Native Title Land have had such effect as has resulted from Part 2, Division 3, of the *Native Title Act*.
4. Native title rights and interests have been extinguished over all roads which have been delineated in a public map pursuant to section 5(d)(ii) of the *Crown Lands Act 1929* (SA) or section 70(3) or (4) of the *Crown Land Management Act 2009* (SA) or which have otherwise been validly established pursuant to South Australian statute or common law.
5. Native title rights and interests do not exist over the following parcels (insofar as they are within the Determination area):

Parcel Identifier	Hundred	Current Tenure
H833100S547	OH(MARREE)	CROWN
F218779A2	OH(MARREE)	CT5883/110
H833100S546	OH(MARREE)	CR5771/761
D35809A211	OH(MARREE)	CR5753/160
H833100S545	OH(MARREE)	CR5771/760
F218779A3	OH(MARREE)	CT5883/110
F218779A4	OH(MARREE)	CT5883/110

Schedule

No: (P)SAD38/2013

Federal Court of Australia

District Registry: South Australia

Division: General

NATIVE TITLE ACTION filed by STUART, AARON(A) on 01-MAR-2013

Applicant: JOANNE WARREN

Applicant: GREG WARREN (SNR)

Applicant: PETER WATTS