



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD569/2019

**JOSEPHINE FARRER & ORS ON BEHALF OF THE NGARRAWANJI NATIVE  
TITLE CLAIM GROUP #2**

Applicant

**STATE OF WESTERN AUSTRALIA**

Respondent

**ORDER**

**JUDGE:** JUSTICE MORTIMER

**DATE OF ORDER:** 08 July 2020

**WHERE MADE:** Melbourne

**THE COURT NOTES THAT:**

- A. Pursuant to section 87(1) of the *Native Title Act 1993* (Cth) the parties have filed with the Court the attached Minute of Consent Determination of Native Title which reflects the terms of an agreement reached by the parties in relation to these proceedings.
- B. The terms of the agreement involve the making of consent orders for a determination of native title in relation to the land and waters the subject of this proceeding pursuant to sections 87(2) and 94A of the *Native Title Act 1993* (Cth).

In these circumstances and with the consent of the parties, **THE COURT DETERMINES, DECLARES AND ORDERS THAT:**

1. It is satisfied that an order in the terms proposed in the attached Minute of Consent Determination of Native Title is within the power of the Court and is appropriate to be made pursuant to section 87 of the *Native Title Act 1993* (Cth).
2. There be a determination of native title in the terms of the Minute of Consent Determination of Native Title attached. The determination is to take effect immediately upon the making of a determination under section 56(1) or 57(2) of the *Native Title Act 1993* (Cth), as the case may be.



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3. On or before 7 December 2020, a representative of the common law holders of the native title rights and interests shall indicate whether they intend to have the native title rights and interests held in trust and, if so, by whom. They are to do so by:
  - (i) nominating in writing to the Federal Court a prescribed body corporate to be trustee of the native title rights and interests; and
  - (ii) including with the nomination the written consent of the body corporate.
4. If a prescribed body corporate is nominated in accordance with order 3, it will hold the native title rights and interests described in order 1 in trust for the common law holders of the native title rights and interests.
5. In the event that there is no nomination within the time specified in order 3, or such later time as the Court may order, the matter is listed for further directions.
6. There be no order as to costs.

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

Date that entry is stamped: 8 July 2020

  
Registrar



## ATTACHMENT A

### DETERMINATION

#### THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of native title (s225)

1. The Determination Area is the land and waters described in Schedule 1 and depicted on the maps comprising Schedule 2.
2. Native title exists in those parts of the Determination Area identified in Schedule 3 (**Native Title Area**).

#### Native title holders (s225(a))

3. The native title in the Determination Area is held by the native title holders. The native title holders are the people referred to in Schedule 4.

#### The nature and extent of native title rights and interests (s225(b)) and exclusiveness of native title (s225(e))

##### Exclusive native title rights and interests

4. Subject to paragraphs 5, 6 and 7 the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule 3 (being areas where any extinguishment must be disregarded) is the right to possession, occupation, use and enjoyment of that part of the Determination Area as against the whole world.
5. Notwithstanding anything in this Determination there are no native title rights and interests in the Determination Area in or in relation to:
  - (a) minerals as defined in the *Mining Act 1904* (WA) (repealed) and the *Mining Act 1978* (WA);
  - (b) petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and the *Petroleum and Geothermal Energy Resources Act 1967* (WA);



- (c) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA); or
  - (d) water lawfully captured by the holders of Other Interests,  
  
except the right to take and use ochre to the extent that ochre is not a mineral pursuant to the *Mining Act 1904* (WA).
6. Native title rights and interests are subject to and exercisable in accordance with:
- (a) the laws of the State and the Commonwealth, including the common law; and
  - (b) the traditional laws and customs of the Native Title Holders.
7. For the avoidance of doubt, the nature and extent of native title rights and interests in relation to water in any watercourse, wetland or underground water source as 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.

**Areas to which s47B of the Native Title Act applies**

8. Section 47B of the Native Title Act applies to disregard any prior extinguishment in relation to the areas described in Schedule 5.

**The nature and extent of any other interests**

9. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 6.

**Relationship between native title rights and other interests**

10. The relationship between the native title rights and interests and the other interests is as follows:
- (a) the determination does not affect the validity of those other interests;
  - (b) to the extent of any inconsistency between the other interests and 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
  - (c) otherwise the other interests co-exist with the native title rights and interests. To avoid doubt, existence and exercise of native title rights and interests do not



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prevent the doing of any activity required or permitted to be done by or under the other rights and interests, and the doing of an activity required or permitted under those other interests prevails over the native title rights and interests and their exercise, but does not extinguish them.

### **Definitions and interpretation**

11. In this Determination, unless the contrary intention appears:

**“Determination Area”** means the land and waters described in Schedule 1 and depicted on the maps at Schedule 2;

**“land”** and **“waters”** respectively have the same meanings as in the Native Title Act;

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

In the event of any inconsistency between the written description of an area in Schedule 1 or Schedules 3 to 5 and the area as depicted on the maps at Schedule 2, the written description prevails.



## **SCHEDULE 1**

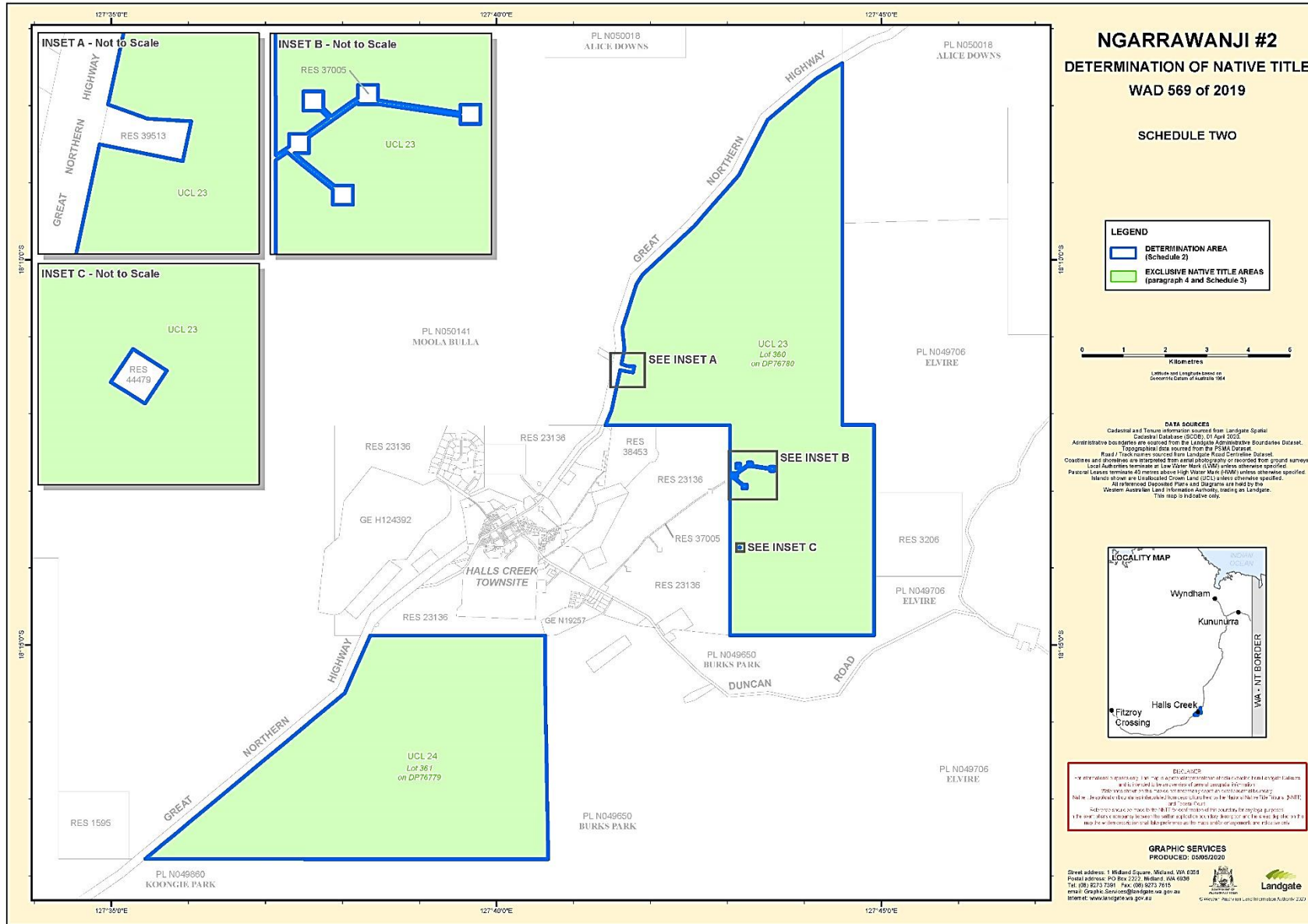
### **DETERMINATION AREA**

The **Determination Area**, generally shown as bordered in blue on the maps at Schedule 2, comprises all that land and waters bounded by the following description:

Two unallocated Crown land parcels, being Lot 360 on Deposited Plan 76780 (Certificate of Title LR 3164/221) and Lot 361 on Deposited Plan 76779 (Certificate of Title LR 3164/222).



**SCHEDULE 2**  
**MAP OF THE DETERMINATION AREA**







### **SCHEDULE 3**

#### **EXCLUSIVE NATIVE TITLE AREAS**

#### **Areas where native title comprises the rights set out in paragraph 4**

The following land and waters (generally shown as green on the maps at Schedule 2):

UCL 23	Lot 360 on Deposited Plan 76780 (Certificate of Title LR 3164/221)
UCL 24	Lot 361 on Deposited Plan 76779 (Certificate of Title LR 3164/222)



## SCHEDULE 4

### DESCRIPTION OF THE NATIVE TITLE HOLDERS

1. The native title holders are those Aboriginal people who:
  - (a) are related through filiation (including by adoption) to one of the Apical Ancestors who held rights and interest in one of the local estate countries comprising the **Determination Area**; or
  - (b) are affiliated to an Ngarrawanji Apical Ancestor and who have spirit conception and/or birth sites in one of the local estate countries in the Determination Area; or
  - (c) are recognised by the persons described above as:
    - (i) holding rights and responsibilities for certain songs and ceremonies which make reference to important sites in the Determination Area; or
    - (ii) holding rights and interests in one of the local estate countries in the Determination Area under traditional law and custom.
  
2. The **Ngarrawanji Apical Ancestors** are:

1.	Djulbir / Dzulbir
2.	Jurrgi
3.	Linmarji
4.	Madangal (wife of Wolameri)
5.	Ngiliyayiny / Nyiliyang
6.	Ngowanderin
7.	Nigan and Kalkburreny
8.	Nirbrarir / Nirbarr
9.	Rosie Bulmaril
10.	Topsy Nanzili
11.	Unnamed Father of Ngularraji and Polly Gulungal



## **SCHEDULE 5**

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

UCL 23	Lot 360 on Deposited Plan 76780 (Certificate of Title LR 3164/221)
UCL 24	Lot 361 on Deposited Plan 76779 (Certificate of Title LR 3164/222)



## SCHEDULE 6 OTHER INTERESTS

### 1. Water Bores

The right of employees and contractors of the Water Corporation, established under the *Water Corporations Act 1995* (WA), to continue to access and maintain water bores on the Determination Area existing as at the date of the determination.

### 2. Existing Interests under the *Mining Act 1978* (WA)

Tenement ID	Tenement Type	Date of grant
E 80/4795	Exploration Licence	10 December 2014
E 80/4858	Exploration Licence	6 May 2016
E80/5127	Exploration Licence	27 November 2018

### 3. Other Rights and Interests

- (a) Rights and interests, including licences and permits, granted by the Crown in right of the Commonwealth or the State pursuant to statute or otherwise in the exercise of its executive power and under 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 the force and operation of the *Rights in Water and Irrigation Act 1914* (WA).
- (c) The right to access land by an employee or agent or instrumentality of:
  - (a) the State;
  - (b) the Commonwealth; or
  - (c) any local Government authority;as required in the performance of his or her statutory or common law duties where such access would be permitted to private land.



## Schedule

No: WAD569/2019

Federal Court of Australia

District Registry: Western Australia

Division: General

Applicant	GREGORY DONALD TAIT
Applicant	MARK BIN BAKAR
Applicant	MATT DAWSON
Applicant	PHYLLIS WALLABY
Applicant	MARTY STEVENS