



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD72/1998
NNTT Number: WCD2000/001

Determination Name: [Clarrie Smith and Others on behalf of the Nharnuwangga, Wajarri and Ngarla People -v- the State of Western Australia and Others](#)

Date(s) of Effect: 5/07/2001

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: 29/08/2000

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

A portion of the geographic co-ordinates of the External Boundary Description was initially entered in the incorrect sequence. This was rectified on 17th February 2009

REGISTERED NATIVE TITLE BODY CORPORATE:

Jidi Jidi Aboriginal Corporation RNTBC
Trustee Body Corporate
PO Box 5814
Perth Western Australia 6831

Note: current contact details for the Registered Native Title Body Corporate are available from the Office of the Registrar of Indigenous Corporations www.oric.gov.au

COMMON LAW HOLDER(S) OF NATIVE TITLE:

The community of Nharnuwangga, Wajarri and Ngarlawangga people.

MATTERS DETERMINED:

[As contained in Order 2 of 29 August 2000]

2.1 Native title exists in the "determination area" save, subject to paragraph 2.4, for the areas of land or waters described in the Second Schedule. The determination area is that part of the land or waters within the area depicted by blue outline on the map in the First Schedule as does not include land or waters in respect of which no application for determination of native title was made by the applicants in the application lodged with the National Native Title

Tribunal referred to the Court by the Tribunal, as that application has been amended from time to time.

2.2 Native title existing in the determination area is held by the community of Nharnuwangga, Wajarri and Ngarlawangga people, hereafter described as the common law holders of native title.

2.3 Subject to paragraphs 2.4, 2.5, 2.6 and 2.7 hereof the nature and extent of the native title rights and interests existing in the balance of the determination area are as follows:

- (a) the right as against any other Aboriginal group or individual to be acknowledged as the traditional Aboriginal owners of the land;
- (b) the right to hunt, fish and gather (including to gather ochre) for the purpose of satisfying their personal, domestic or non-commercial communal needs, including observing traditional laws and customs; and
- (c) the right to have access to and camp on the balance of the determination area in order to:
 - (i) exercise the rights set out in (b) above;
 - (ii) travel through; and
 - (iii) visit and care for places which are of cultural or spiritual importance.

2.4 The native title rights and interests described in paragraph 2.3 above subsist in the land comprising Yulga Jinna Aboriginal Community being that land of 25.0007 hectares in extent as illustrated in diagram number LAWA 1210 dated 14 February 1997 in Western Australia Department of Land Administration file number 634/993, and in Reserve Number 22309 known as Peak Hill Reserve, and in Pastoral Lease Number 3114/1018, North West Division, Teano District, Teano Location 22, known as Mulgul Station.

2.5 The nature and extent of other interests in relation to the determination area are the interests created by the Crown or created otherwise, as set out in the Third Schedule.

2.6 There is no native title right or interest in minerals and petroleum in the State as defined in the Mining Act 1904 (WA), the Mining Act 1978 (WA), and the Petroleum Act 1936 (WA). In all nature reserves or wildlife sanctuaries created in Western Australia in the determination area before the Racial Discrimination Act 1975 (Cth) came into operation, native title to take fauna has been wholly extinguished.

2.7 To the extent that any inconsistency exists between the native title rights and interests referred to in paragraphs 2.3 and 2.4 and the rights conferred by any other interests referred to in paragraph 2.5 hereof the native title rights and interests must yield to such other rights.

2.8 The native title rights and interests described in paragraphs 2.3 and 2.4 are subject to regulation, control, curtailment or restriction by State laws of general application including the Aboriginal Heritage Act 1972 and by valid laws of Australia.

2.9 The native title rights and interests referred to in paragraph 2.3 and 2.4 are not exclusive of the rights and interests of others.

2.10 Within one month of the date of this determination coming into effect, a representative of the common law native title holders may indicate whether they intend to have the native title held in trust by:

- (a) nominating, in writing given to the Federal Court, a prescribed body corporate to be trustee of the native title; and
- (b) including with the nomination the written consent of the body corporate.

2.11 If a prescribed body corporate is nominated in accordance with paragraph 2.10, it will hold the native title rights and interests described in paragraph 2.3 in trust for the common law holders.

2.12 If a prescribed body corporate is not nominated in accordance with paragraph 2.10, the native title rights and interests described in paragraph 2.3 will be held by the common law holders.

FIRST SCHEDULE

Map of the Determination Area [refer to Attachment 1 - "First Schedule"]

SECOND SCHEDULE

Native title has been extinguished in the following areas and/or by the following acts:

- 1.

(a) those parts of pastoral leases granted in the determination area under the Land Regulations 1882 (WA), the Land Regulations (1887) (WA) and the Land Act 1898 (WA) which were, prior to 1994, "enclosed and improved" within the meaning of the reservations in favour of Aboriginal people contained in the said pastoral leases, and

(b) those parts of pastoral leases granted in the determination area under the Land Act 1933 (WA) which were, prior to 1994, enclosed or improved within the meaning of s 106 of the Land Act 1933.

2. mining or general purpose leases granted under the Mining Act 1978 prior to 1994 and gold mining leases, mineral leases and coal mining leases granted under the Mining Act 1904;

3. any interests set out in the Titles (Validation) Act and Native Title (Effect of Past Acts) Act 1995 as extinguishing native title; and

4. any interests that are wholly inconsistent with native title rights and interests.

5. Lot 195 Peak Hill, formerly the subject of Certificate of Title Volume 1293 Folio 841 (Peak Hill telephone exchange).

6. The whole of the following Reserves for the purpose of 'repeater' or 'repeater station':

(a) Reserve 40710 (Touhey DRCS)

(b) Reserve 40869 (Facey DRCS))

(c) Reserve 41016 (Dunns Range DRCS))

(d) Reserve 41151 (BaTthewmurnarna DRCS))

(e) Reserve 42690 (Bundabunda DRCS))

(f) Reserve 44235 (Robinson DRS)

(g) Reserve 44454 (Fremanga DCRS);

7. Part of Lot 111 Peak Hill, being an area of 5666.7 square metres, the boundaries of which, commencing from the northernmost corner of Lot 195 Peak Hill, are 36 metres bearing 42 degrees 56 minutes and then a boundary of 86.67 metres bearing 132 degrees 56 minutes and then a boundary of 77.68 metres bearing 222 degrees 56 minutes and then a boundary of 61.09 metres bearing 312 degrees 56 minutes and then a boundary of 41.68 metres bearing 42 degrees 56 minutes and then a boundary of 25.59 metres bearing 313 degrees 59 minutes and 24 seconds back to the point of commencement (Peak Hill DRCS);

8. Part of Reserve 35104 (Collier Range National Park) being a square-shaped area of 10,000 square metres (100 metres by 100 metres), the corner points of which are located 70.71 metres from a central station mark located at AMG 84 Zone 50 North 7272469, East 683010, on the following bearings 45 degrees, 135 degrees, 225 degrees and 315 degrees (Begg Hill DRCS);

9. Part of Teano Location 23 (Mingah Springs Station) being an area of 966 square metres in the shape of an equilateral triangle with sides 47.22 metres, the southernmost point of which is located 26.99 metres from station mark AMG 84 Zone 50 North 7239381 East 672940 on a bearing of 180 degrees 57 minutes 6 seconds, the further two corner-points being located 47.22 metres from the southernmost corner-point on a bearing of 331 degrees 0 minutes 38 seconds and 31 degrees 0 minutes 38 seconds (Mingah Springs DRCS).

THIRD SCHEDULE

Other interests in the determination area are of the following kind:

(a) an Indigenous Land Use Agreement entered into by or on behalf of the Nharnuwangga Wajarri and Ngarlawangga People of the one part and the State of Western Australia of the other part relating to the determination area;

(b) pastoral access agreements entered into by or on behalf of the Nharnuwangga Wajarri and Ngarlawangga People of the first part and the State of Western Australia of the second part and certain pastoral lessees of the third part in each case relating to access to certain pastoral leases situated within or partly within the determination area;

(c) Interests of persons in whom Crown reserves are vested under the Land Act 1898 (WA) or Land Act 1933 (WA) or under a lease of the reserve;

(d) the interests of the National Parks and Nature Conservation Authority under the Conservation and Land Management Act 1984 (WA) in Reserve no. 35104, being land vested in the Authority;

(e) Interests of persons entitled to use reserves according to a purpose for which Crown land is reserved, or under a lease made for the purpose of the reserve.

(f) Interests of lessees under:

(i) Leases granted under the Land Act 1933 (WA);

(ii) Leases granted under the Mining Act 1978 (WA);

(iii) Leases granted under the Aboriginal Affairs Planning Authority Act 1972 (Cth).

(g) Interests of licensees under:

(i) Licences issued under the Land Act 1933 (WA);

(ii) Licences issued under the Mining Act 1978 (WA);

(iii) Licences issued under the Wildlife Conservation Act 1950 (WA);

(iv) Licences issued under the Rights in Water and Irrigation Act 1914 (WA);

(v) Licences issued under the Transport Co-ordination Act 1966 (WA);

(vi) Licences issued under the Petroleum Pipelines Act 1969 (WA)

(h) Interests of holders of permits issued under the Land Act 1933 (WA);

(i) Interests of holders of tenements under the Mining Act 1904 (WA);

(j) Interests of holders of tenements under the Petroleum Act 1936 (WA) and the Petroleum Act 1967 (WA);

(k) Interests of holders of rights or licences under the Goldfields Gas Pipeline Agreement Act 1994 (WA);

(l) Other interests obtained by reason of provisions of legislation of the State, Territory or Commonwealth;

(m) Other interests held by members of the public arising under the common law;

(n) The interests of Telstra Corporation Limited with respect to telecommunications facilities installed within the determination area which were created pursuant to the Post and Telegraph Act 1901 (Cth), the Telecommunications Act 1975 (Cth), the Australian Telecommunications Corporation Act 1989 (Cth), the Telecommunications Act 1991 (Cth) and the Telecommunication Act 1997 (Cth).

OTHER INFORMATION INCLUDED BY NATIVE TITLE REGISTRAR:

[The following Notes A to F do not form part of the determination but are included on this Register as other information thought appropriate for inclusion by the Native Title Registrar, pursuant to s193 (3) of the Native Title Act 1993 (Cth).]

A) The determination was contained in Order 2 made by Justice Madgwick by consent on 29 August 2000. By Order 4, the determination was only to come into operation and effect upon the registration by the Native Title Registrar of an attached Indigenous Land Use Agreement. The ILUA was registered on 5 July 2001. The date of determination of native title is thus indicated as 5 July 2001.

B) Other orders made on 29 August 2000 provided for amendment to the Native Title Determination Application (Order 1), and for costs (Order 3). Those orders also came into effect on 5 July 2001. Those orders are not included on this Register.

C) On 20 September 2000, prior to the orders of 29 August 2000 coming into operation and effect, those orders were varied by order of Justice French, to substitute a new map at the First Schedule. (That map now appears as an attachment to this Register Extract.) An identical map and accompanying technical description were also substituted in the Native Title Determination Application by order of that date. That technical description is included as other information at Note F below.

D) Pursuant to Order 2.10 above, on 3 August 2001 the representative of the common law native title holders nominated, in writing to the Federal Court, the Jidi-Jidi Aboriginal Corporation to be trustee of the native title.

E) The full judgment delivered by Justice Madgwick on 29 August 2000, including reasons, may be viewed at <<http://scaletext.law.gov.au/html/feddec/0/20003/0/FD002970.htm>>, and is reported as *Clarrie Smith v State of Western Australia* (2000) 104 FCR 494. Note that the judgment does not include the later variation to the First

Schedule (map) made by order of Justice French on 20 September 2000.

F) As indicated at Note C (above) the Native Title Determination Application as amended effective 5 July 2001 includes a technical description of an external boundary that corresponds to both the map at the First Schedule of the determination (Attachment 1 to this Register Extract) and the map included in the Application. That technical description is reproduced below for information:

EXTERNAL BOUNDARY DESCRIPTION - NHARNUWANGGA WAJARRI & NGARLAWANGGA NATIVE TITLE APPLICATION

The claim consists of Three individual areas.

AREA 1

Commencing at the westernmost southwestern corner of Pastoral Lease 3114/1125 (Prairie Downs) and extending easterly, southerly and again easterly along boundaries of that pastoral lease to a western boundary of Pastoral Lease 3114/1201 (Bulloo Downs); Then southerly, generally westerly, generally southerly, generally easterly, generally southerly, again generally westerly, again southerly, again generally easterly and southerly along boundaries of that pastoral lease to a northern boundary of Reserve 35104 (Collier Range National Park); Then generally easterly along the boundaries of that reserve to Longitude 119.642403 East; Then southwesterly to a southern boundary of the aforesaid reserve at Longitude 119.547031 East; Then generally westerly and generally southerly again along boundaries of that reserve to the westernmost south western corner of Pastoral Lease 3114/1126 (Kumarina); Then easterly along the southern boundary of that pastoral lease to Longitude 119.415910 East; Then south westerly, north easterly and generally south westerly passing through the following co-ordinate positions.

LONGITUDE EAST	LATITUDE SOUTH
119.371013	24.965596
119.395425	24.946292
119.389520	24.955720
119.375970	24.975900
119.364230	24.992270
119.356700	25.001060
119.323880	25.048360
119.325870	25.071600
119.324900	25.093700
119.324460	25.122800
119.326680	25.152340
119.324330	25.177540
119.322880	25.195100
119.322360	25.217890
119.323980	25.227810
119.323070	25.249850
119.312890	25.280420
119.310100	25.305970
119.300580	25.340600
119.293620	25.369720

119.288190	25.387540
119.281200	25.407820
119.273570	25.427820
119.266940	25.442940
119.261270	25.461780
119.257850	25.476140
119.253680	25.491540
119.248380	25.508600
119.246190	25.528810
119.243430	25.548150
119.238820	25.563670
119.229420	25.582410
119.220990	25.592490
119.209260	25.601030
119.198940	25.614030
119.192090	25.620780
119.183650	25.631190
119.180340	25.640450
119.175090	25.654470
119.171230	25.667050
119.167620	25.679980
119.160960	25.691770
119.159100	25.699580
119.155870	25.712160
119.152690	25.724390
119.148830	25.736800
119.145840	25.746110
119.142670	25.759200
119.139700	25.774020
119.134220	25.779720
119.121220	25.786890
119.094520	25.799560

Then south westerly to a northern boundary of Pastoral Lease 3114/1247 (Mooloogool) at Longitude 119.077340 East; Then westerly and southerly along boundaries of that pastoral lease to Latitude 25.834295 South; Then generally westerly and north westerly passing through the following co-ordinate positions

LONGITUDE EAST LATITUDE SOUTH

118.987040	25.836080
118.978239	25.836241
118.966800	25.836450
118.939220	25.837930
118.913800	25.838490
118.889570	25.838240
118.880090	25.838170
118.861560	25.839040
118.837340	25.841200
118.816280	25.839850
118.793120	25.839940
118.770970	25.835610
118.747420	25.832600
118.728260	25.831870
118.713710	25.831410
118.690490	25.831740
118.669270	25.837550
118.645260	25.842700
118.627250	25.845350
118.497060	25.857000
118.468410	25.855020
118.443570	25.842290
118.421570	25.826390
118.397460	25.808440
118.375360	25.791260
118.358610	25.779340
118.341600	25.764380
118.313290	25.747400
118.288570	25.738350
118.267810	25.737980
118.244830	25.734360
118.224630	25.734000
118.197750	25.732050
118.167880	25.727460
118.145780	25.724320

118.128970	25.722810
118.106180	25.715390
118.078800	25.709640
118.047890	25.703310
118.014660	25.691780
117.972150	25.679420
117.927520	25.658000
117.897030	25.639380
117.866970	25.618070
117.834430	25.593390
117.809690	25.574850
117.789730	25.558750
117.772090	25.540260
117.750600	25.531090
117.708950	25.519320
117.659930	25.510020
117.620660	25.503510
117.571500	25.497660
117.511870	25.489580
117.466220	25.485630
117.408130	25.480270
117.357820	25.478250
117.312810	25.477580
117.269580	25.473200
117.245527	25.475065
117.230510	25.476230
117.195390	25.478470
117.151860	25.476380
117.130290	25.474910
117.106160	25.471610
117.077960	25.469640
117.061170	25.466630
117.044240	25.464310
117.020520	25.462750
116.999120	25.462540

Then north westerly to a eastern boundary of Pastoral lease 3114/696 (Erong Springs) at Latitude 25.451408 South; Then northerly and westerly along boundaries of that pastoral lease to Longitude 116.874893 East; Then generally north westerly and generally north easterly passing through the following co-ordinate positions.

LONGITUDE EAST LATITUDE SOUTH

116.859320	25.396630
116.833280	25.387340
116.815730	25.375290
116.780650	25.375300
116.754610	25.378310
116.733270	25.373440
116.716870	25.373150
116.701160	25.361260
116.679670	25.347520
116.656790	25.333640
116.633800	25.319280
116.613010	25.305160
116.593620	25.295780
116.578550	25.285910
116.571370	25.274420
116.568070	25.265090
116.568600	25.254400
116.572950	25.237870
116.579340	25.220980
116.585390	25.204950

Then north easterly to a eastern boundary of Pastoral Lease 3114/1276 (Dalgety Downs) at Latitude 25.194665 South; Then generally north easterly along the eastern boundaries of that pastoral lease to Latitude 25.124431 South; Then north easterly passing through the following co-ordinate positions

LONGITUDE EAST LATITUDE SOUTH

116.621610	25.114420
116.636510	25.096320
116.660950	25.069800

Then north easterly to again intersect a southern boundary of the aforesaid pastoral lease at Longitude 116.676039 East; Then easterly and northerly again along boundaries of that pastoral lease to Latitude 25.028344 South; Then generally easterly, generally north easterly and generally north westerly passing through the following co-ordinate positions.

LONGITUDE EAST LATITUDE SOUTH

116.717010	25.022430
116.739330	25.016340
116.777280	25.008280

116.816460	24.996740
116.843220	24.995520
116.879310	24.995410
116.888920	24.996270
116.932950	25.001080
116.938580	24.975170
116.939330	24.970380
116.944920	24.935200
116.946980	24.926430
116.960460	24.921200
116.992000	24.884610
117.016390	24.879260
117.054500	24.872830
117.101870	24.865930
117.148810	24.860290
117.186810	24.855300
117.221990	24.851940
117.237810	24.842000
117.246520	24.823610
117.258870	24.792020
117.281310	24.752100
117.302090	24.725090
117.325890	24.699620
117.353540	24.673510
117.394390	24.647350
117.424320	24.631400
117.470510	24.605050
117.490210	24.591890
117.503910	24.576240
117.529340	24.559520
117.545770	24.548500
117.565610	24.526540
117.591940	24.502230
117.620570	24.480130
117.643010	24.457660

117.653630	24.437080
117.672380	24.408910
117.689130	24.385470
117.708400	24.356750
117.721340	24.334620
117.739550	24.309090
117.758370	24.282310
117.778820	24.248900
117.789460	24.222500
117.792200	24.199140
117.791780	24.180260
117.773610	24.180030
117.743710	24.168230
117.720880	24.163180
117.679740	24.173590
117.618690	24.165720
117.589550	24.142960
117.533820	24.132530

Then north westerly to a eastern boundary of Pastoral Lease 3114/1241 (Pingandy) at Latitude 24.121013 South; Then generally northerly, easterly, again generally northerly, generally westerly and northerly along boundaries of that pastoral lease to Latitude 23.836891 South; Then generally north easterly passing through the following co-ordinate positions.

LONGITUDE EAST	LATITUDE SOUTH
117.527440	23.818820
117.576710	23.794450
117.645900	23.752250

Then north easterly to a southern boundary of Pastoral Lease 3114/1193 (Mininer) at Longitude 117.668157 East; Then easterly and northerly along boundaries of that pastoral lease to Latitude 23.717445 South; Then generally north easterly passing through the following co-ordinate positions

LONGITUDE EAST	LATITUDE SOUTH
117.737820	23.702990
117.789280	23.677730
117.875110	23.644170
117.943290	23.626680

Then north easterly to a western boundary of the aforesaid pastoral lease at Latitude 23.609036 South; Then southerly, easterly and generally northerly along boundaries of that pastoral lease to Latitude 23.572426 South; Then generally north easterly and generally easterly passing through the following co-ordinate positions.

LONGITUDE EAST	LATITUDE SOUTH
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118.238830	23.536580
118.239840	23.536210
118.285190	23.527050
118.347300	23.511560
118.407300	23.476410
118.437830	23.458690
118.499630	23.458060
118.558240	23.466670
118.615230	23.478120
118.681020	23.492260
118.728240	23.499940
118.796326	23.499069
118.806430	23.498940
118.871320	23.497550
118.930700	23.499330
118.988670	23.502000

Then easterly to the westernmost boundary of Pastoral Lease 3114/1125 (Prairie Downs) at Latitude 23.507578 South; Then southerly along that boundary to the commencement point.

AREA 2

Commencing at the north western corner of Reserve 16733 and extending east along the northern boundary of that reserve to Longitude 119.537987 East; Then south westerly to the western boundary of the aforesaid reserve at Latitude 24.717695 South; Then north along the boundaries of that reserve back to the commencement point.

AREA 3

Commencing at the intersection of Longitude 119.689763 and a southern boundary of Pastoral Lease 3114/1201 (Bulloo Downs) and extending generally southerly passing through the following co-ordinate positions.

LONGITUDE EAST	LATITUDE SOUTH
119.689720	24.188820
119.692240	24.212200
119.694440	24.231900
119.695630	24.244540
119.694410	24.253870
119.696140	24.271900

Then southerly to a northern boundary of the aforesaid pastoral lease at Longitude 119.696310 East; Then westerly and northerly along boundaries of the pastoral lease back to the commencement point.

Note: Geographic Co-ordinates provided in Decimal Degrees

Cadastral Boundaries sourced from Department of Land Administration

Spatial Cadastral Data dated 28 July 2000

Datum: Australian Geodetic Datum (1984)

Prepared by: Land Claims Mapping Unit (DOLA) 05 September 2000

[Note F of Other Information - ENDS]

REGISTER ATTACHMENTS:

1. Attachment 1 - First Schedule - Map as referred to in Order 2.1, 1 page - A3, 29/08/2000

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.