



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6208/1998
NNTT Number: WCD2007/001

Determination Name: [Hughes \(on behalf of the Eastern Guruma People\) v State of Western Australia](#)

Date(s) of Effect: 1/03/2007

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 01/03/2007

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Wintawari Guruma Aboriginal Corporation RNTBC
Trustee Body Corporate
Attention: Matthew Hansen, In-House Counsel
Unit 1
398 Great Eastern Highway
Ascot Western Australia 6104

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 native title holders are:

- (1) the descendants of Wirntawari who:
 - (a) identify and are identified by other members of the native title holding group as Muntulgura Guruma; and
 - (b) have a connection with the land and waters in Determination Area A, in accordance with the traditional laws acknowledged and the traditional customs observed by the Muntulgura Guruma; and
- (2) the descendants of Jack Smith to whom the Muntulgura Guruma accord the right to exercise rights and interests in Determination Area A in accordance with the traditional laws acknowledged and traditional customs observed by

the Muntulgura Guruma.

MATTERS DETERMINED:

BY CONSENT OF THE PARTIES THE COURT NOTES THAT:

A. The Applicant in proceeding WAD 6208 of 1998 has brought a native title determination application ("the Eastern Guruma Application") that relates to an area of land and waters, part of which comprises the area the subject of the proposed determination of native title ("the Determination").

B. The Eastern Guruma Application includes land and waters also covered by the native title determination application brought in proceeding WAD 6096 of 1998 ("Innawonga and Bunjima Application").

C. The parties have reached an agreement as to the terms of the Determination which is to be made in relation to most of the land and waters covered by the Eastern Guruma Application, which the parties have designated "Determination Area A".

D. The parties have agreed that in respect of the balance of the land and waters the subject of the Eastern Guruma Application, namely the area of Tom Price townsite, no determination be made at present and a separate negotiation process in these proceedings take place.

E. The Applicant in the Eastern Guruma Application has agreed to discontinue its application in respect of the land and waters covered by the Innawonga Bunjima Application, Mt Florance pastoral lease (3114/465) and Karijini National Park (Reserve 30082).

F. The Applicant in the Eastern Guruma Application has reached agreement with the applicant in the Kuruma Marthudunera native title determination application brought in proceeding WAD 6090 of 1998, and with the applicant in the Puutu[sic] Kunti Kurrama Pinikura native title determination application brought in proceeding WAD 6007 of 2001, in relation to areas of special interest that those native title claim groups have within Determination Area A, which agreements are referred to in the Second Schedule to the Determination and annexed as Attachments 1 and 2 to the said Second Schedule.

G. The Coolawanyah Pastoral Co Pty Ltd has agreed to the terms of the Determination on the basis of having reached an agreement with the Applicant in the Eastern Guruma Application in relation to that portion of the Coolawanyah pastoral lease (3114/1228) that is situated within Determination Area A. Following the making of the Determination, the said agreement will be executed and application will be made for the agreement to be registered as an Indigenous Land Use Agreement on the Register of Indigenous Land Use Agreements as a body corporate agreement pursuant to section 24BG of the Native Title Act 1993 (Cth).

H. Pursuant to section 87(1)(a)(ii) and section 87(1)(b) of the Native Title Act 1993 (Cth) the parties have filed with this Court an agreement in writing setting out the terms of the agreement reached.

I. The terms of the agreement involve the making of consent orders for a determination pursuant to sections 87 and 94A of the Native Title Act 1993 (Cth) that native title exists in relation to Determination Area A as set out in the attached Determination.

J. The parties acknowledge that the effect of the making of the Determination is that the members of the native title claim group, in accordance with the traditional laws acknowledged and the traditional customs observed by them, should be recognised as the native title holders for Determination Area A as set out in the attached Determination.

K. The parties have requested that the Court hear and determine the proceedings that relate to Determination Area A.

L. The Applicant in the Eastern Guruma Application has nominated the Wintawari Guruma Aboriginal Corporation pursuant to section 56(2) of the Native Title Act 1993 (Cth) to hold the determined native title in trust for the native title holders.

BY CONSENT OF THE PARTIES THE COURT ORDERS THAT:

1. To the extent that the Eastern Guruma Application includes land and waters also covered by the:

(a) the Innawonga Bunjima Application (WAD 6096 of 1998);

(b) Mt Florance pastoral lease (3114/465); and

(c) Karijini National Park (Reserve 30082),

the Eastern Guruma Application is discontinued and no determination is made.

2. In relation to Determination Area A, there be a determination of native title in WAD 6208 of 1998 in the terms set out below.
3. The Wintawari Guruma Aboriginal Corporation shall hold the determined native title in trust for the native title holders pursuant to section 56(2) of the Native Title Act 1993 (Cth).

DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

1. The Eastern Guruma Determination Area A ("Determination Area A") is the land and waters within the external boundary described in the First Schedule and depicted on the maps at Attachment 1 to the First Schedule other than the exclusions from the area as described in the First Schedule. In the event of any inconsistency between the written description in Schedule 1 and the areas depicted on the maps at Attachment 1, the written description prevails.
2. Native title exists in relation to Determination Area A.
3. The native title rights and interests are held by the persons described in the Third Schedule ("native title holders").
4. Subject to paragraphs 5 to 10:
 - (1) the nature and extent of the native title rights and interests held by the native title holders are non-exclusive rights to:
 - (a) enter and remain on the land, camp, erect temporary shelters, and travel over and visit any part of the land and waters;
 - (b) hunt, fish, gather or take and to use, share and exchange the resources of the land and waters such as food, water and medicinal plants and trees, timber, charcoal, ochre, stone and other traditional resources (excluding minerals);
 - (c) engage in ritual and ceremony on and in relation to the land and waters; and
 - (d) care for, maintain and protect from physical harm, particular objects, sites and areas of significance to the native title holders.
 - (2) The native title rights and interests set out in sub-paragraph (1) are exercisable in accordance with the traditional laws and customs of the native title holders for personal, domestic and non-commercial communal purposes (including social, medicinal, cultural, religious, spiritual and ceremonial purposes).
 - (3) The native title rights and interests set out in sub-paragraph (1) do not confer:
 - (a) possession, occupation, use and enjoyment on the native title holders to the exclusion of all others; nor
 - (b) a right to control the access of others to the land and waters of Determination Area A.
5. Notwithstanding anything in this determination the native title rights and interests include the right to take and use ochre to the extent that ochre is not a mineral pursuant to the Mining Act 1904 (WA), but do not include other minerals and petroleum as defined in the Mining Act 1904 (WA), Mining Act 1978 (WA), the Petroleum Act 1936 (WA) and the Petroleum Act 1967 (WA).
6. Section 47B of the Native Title Act 1993 (Cth) applies with the effect that any prior extinguishment in relation to the areas described in the Fourth Schedule is to be disregarded.
7. The native title rights and interests are subject to and exercisable in accordance with the laws of the State and the Commonwealth including the common law.
8. The nature and extent of other rights and interests in relation to Determination Area A in existence at the date of this determination are those set out in the Second Schedule.
9. The relationship between the native title rights and interests described in subparagraph 4(1) and the other rights and interests referred to in paragraph 8 ("the other rights and interests") is that:
 - (1) to the extent that any of the other rights and interests is 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 rights and interests to the extent of the inconsistency during the currency of the other rights and interests; and otherwise,

(2) 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 rights and interests, and the other rights and interests, and the doing of any activity required or permitted to be done by or under the other rights and interests, prevail over the native title rights and interests and any exercise of the native title rights and interests, but do not extinguish them.

10. Nothing in paragraph 9 is intended to affect the operation of Part F of the Hamersley Iron Pty Ltd - Eastern Guruma Indigenous Land Use Agreement (Area Agreement) ("ILUA") dated 27 November 2002 and registered on the Register of Indigenous Land Use Agreements on 5 March 2004 (Tribunal No. WI01/1). For the avoidance of doubt, to the extent that the native title rights and interests co-exist with the "Agreed Interests" in the "Agreement Area" (as those terms are defined in the ILUA), the native title rights and interests can only be exercised in a manner that is consistent with the ILUA.

FIRST SCHEDULE

[Please refer to Attachment 1]

SECOND SCHEDULE

[Please refer to Attachment 2]

THIRD SCHEDULE

The native title holders are:

- (1) the descendants of Wirntawari who:
 - (a) identify and are identified by other members of the native title holding group as Muntulgura Guruma; and
 - (b) have a connection with the land and waters in Determination Area A, in accordance with the traditional laws acknowledged and the traditional customs observed by the Muntulgura Guruma; and
- (2) the descendants of Jack Smith to whom the Muntulgura Guruma accord the right to exercise rights and interests in Determination Area A in accordance with the traditional laws acknowledged and traditional customs observed by the Muntulgura Guruma.

FOURTH SCHEDULE

Section 47B of the Native Title Act 1993 (Cth) applies to the following areas of unallocated Crown land in Determination Area A:

- (a) UCL 23 (being the area formerly the subject of pastoral lease 3114/788 which was resumed and vested in the Crown pursuant to section 18 of the Public Works Act 1902 (WA));
- (b) UCL 85 (part Gregory Location 26 and being the area formerly the subject of special leases 3116/3465 and 3114/5156);
- (c) UCL 90 (being the area formerly the subject of pastoral lease 3114/788 which was resumed and vested in the Crown pursuant to section 18 of the Public Works Act 1902 (WA)). Those areas of unallocated Crown land are hatched in blue on the maps attached to the First Schedule.

REGISTER ATTACHMENTS:

1. Attachment 1 - First Schedule (Including determination maps), , 22 pages - A4, 01/03/2007
2. Attachment 2 - Second Schedule, , 54 pages - A4, 01/03/2007

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.