



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6208/1998
NNTT Number: WCD2012/002

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

Date(s) of Effect: 20/11/2012

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: 20/11/2012

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:

4. The common rights comprising the native title in Determination Area B are held by the Eastern Guruma people, being the people referred to in the Fifth Schedule.

FIFTH SCHEDULE - NATIVE TITLE HOLDERS

[Schedule referred to in Paragraphs 4 and 13]

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 B, in accordance with the traditional laws acknowledged and the traditional customs observed by the Muntulgura Guruma;

(2) the descendants of Jack Smith to whom the Muntulgura Guruma accord the right to exercise rights and interests in Determination Area B in accordance with the traditional laws acknowledged and traditional customs observed by the Muntulgura Guruma.

MATTERS DETERMINED:

BEING SATISFIED that a determination in the terms sought by the parties is within the power of the Court, and it appearing appropriate for the Court to do so:

BY CONSENT OF THE PARTIES THE COURT ORDERS THAT:

1. There be a determination of native title in WAD 6208 of 1998 in the terms set out below.

2. The Wintawari Guruma Aboriginal Corporation shall hold the determined native title in trust for the native title holders pursuant to section 56(2)(b) of the Native Title Act 1993 (Cth).

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

EXISTENCE OF NATIVE TITLE (s 225 NATIVE TITLE ACT)

1. Determination Area B is the land and waters described in the First Schedule and depicted on the maps at Attachment 1 to the First Schedule.

2. Subject to paragraph 3, native title exists in Determination Area B in the manner set out in paragraph 5 of this determination.

3. Native title does not exist in relation to those parts of Determination Area B the subject of the interests identified in the Second Schedule which are generally shown as shaded green on the maps at Attachment 1 to the First Schedule.

NATIVE TITLE HOLDERS (s 225(a) NATIVE TITLE ACT)

4. The common rights comprising the native title in Determination Area B are held by the Eastern Guruma people, being the people referred to in the Fifth Schedule.

THE NATURE AND EXTENT OF NATIVE TITLE RIGHTS AND INTERESTS (s 225(b); s 225(e) Native Title Act)

5. Subject to paragraphs 6 and 7, the nature and extent of the native title rights and interests in relation to Determination Area B are that they confer the following nonexclusive rights on the Native Title Holders:

(a) the right to enter and remain on the land, camp, erect temporary shelters, and travel over and visit any part of the land and waters;

(b) the right to hunt, fish, gather or take and to use, share and exchange the resources of the land and waters;

(c) the right to take and use water from the land;

(d) the right to engage in ritual and ceremony on and in relation to the land and waters; and

(e) the right to care for, maintain and protect from physical harm, particular objects, sites and areas of significance to the native title holders.

QUALIFICATIONS ON NATIVE TITLE RIGHTS AND INTERESTS (s 225(b); s 225(e) NATIVE TITLE ACT)

6. The native title rights and interests described in paragraph 5:

(a) are subject to and 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, but not limited to, cultural or spiritual needs) but not for commercial purposes; and

(b) do not confer any rights 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 pursuant to those Other Interests.

7. The native title rights and interests set out in paragraph 5 do not confer:

(a) possession, occupation, use and enjoyment of the land or waters of Determination Area B on the Native Title Holders to the exclusion of all others; nor

(b) a right to control access to, or use of, the land and waters of Determination Area B or their resources.

NO APPLICATION OF s 47A OF THE NATIVE TITLE ACT

8. For the avoidance of doubt, section 47A of the Native Title Act does not apply in relation to Determination Area B.

AREAS TO WHICH OF s 47B OF THE NATIVE TITLE ACT APPLY

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

THE NATURE AND EXTENT OF ANY OTHER INTERESTS (s 225(c) NATIVE TITLE ACT)

10. The nature and extent of the Other Interests in relation to Determination Area B are described in the Fourth Schedule.

RELATIONSHIP BETWEEN NATIVE TITLE RIGHTS AND OTHER INTERESTS (s 225(d) NATIVE TITLE ACT)

11. The relationship between the native title rights and interests described in paragraph 5 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 section 24JB(2) of the Native Title Act, do not extinguish them.

12. Nothing in paragraph 11 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.

DEFINITIONS AND INTERPRETATION

13. In this determination, unless the contrary intention appears:

"Determination Area B" means the land and waters described in the First Schedule and depicted on the maps at Attachment 1 to the First Schedule;

"flowing and subterranean waters" means the following water within Determination Area B:

(a) water which flows, whether permanently, intermittently or occasionally, within any river, creek, stream or brook;

(b) any natural collection of water into, through, or out of which a river, creek, stream or brook flows; and

(c) water from and including an underground water source, including water that percolates from the ground.

"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 the Fifth Schedule;

"Other Interests" means the legal or equitable estates or interests and other rights in relation to Determination Area B described in the Fourth Schedule and referred to in paragraph 10;

"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;

"UCL" means unallocated Crown land; and

"waters" has the same meaning as in the Native Title Act, and includes flowing and subterranean waters as defined in this Determination.

14. In the event of any inconsistency between the written description of an area in the First, Second, Third or Fourth Schedules and the area as depicted on the maps at Attachment 1 to the First Schedule, the written description prevails.

FIRST SCHEDULE - EXTERNAL BOUNDARY OF DESCRIPTION OF DETERMINATION AREA B

[Schedule referred to in Paragraph 1]

Determination Area B, generally shown as bordered in blue on the maps at Attachment 1 to this Schedule, comprises all that land and waters bounded by the following description of the External Boundaries:

All those lands and waters commencing at the northeastern corner of Lot 3006 as shown on Deposited Plan 44794 and extending easterly to the westernmost, northwestern corner of the northeastern severance of Lot 26 as shown on Deposited Plan 241873; Then easterly and southeasterly along boundaries of that severance to the northernmost corner of Lot 335 as shown on Deposited Plan 243224; Then southeasterly and southwesterly along the boundaries of that lot and onwards to the northernmost corner of the southeastern severance of Lot 26 as shown on Deposited Plan 241873; Then southeasterly along the eastern boundary of that severance to the northeastern corner of Lot 3008 on Deposited Plan 58290; Then southeasterly along the eastern boundary of that lot to the northeastern corner of the southernmost southeastern severance of Lot 26 as shown on Deposited Plan 241873; Then southeasterly and northwesterly along boundaries of that severance to the southernmost corner of Lot 337 as shown on Deposited Plan 243224; Then northwesterly along the southwestern boundary of that lot to the southernmost corner of Lot 56 as shown on Deposited Plan 216344; Then northwesterly along the southwestern boundary of that lot to the southernmost corner of a southwestern severance of Lot 26 as shown on Deposited Plan 241873; Then northwesterly along the southwestern boundary of that severance to the southwestern corner of Lot 3008 as shown on Deposited Plan 58290; Then northwesterly along the eastern boundary of that lot again to the southernmost corner of a southwestern severance of Lot 26 as shown on Deposited Plan 241873; Then northwesterly along the southwestern boundary of that severance to the southernmost corner of the western severance of Lot 36 as shown on Deposited Plan 51845; Then northwesterly along the southwestern boundary of that severance and onwards to a western boundary of Lot 9 as shown on Deposited Plan 47815; Then generally northerly along boundaries of that lot to the southernmost, southeastern corner of Lot 57 as shown on Deposited Plan 216345; Then generally northwesterly, westerly, northerly, again generally northwesterly and again northerly along boundaries of that lot to the southwestern corner of a western severance of Lot 26 as shown on Deposited Plan 241873; Then northerly along the western boundary of that severance and onwards to and along the western boundary of the northwestern severance of Lot 26 as shown on Deposited Plan 241873 to the southernmost corner of Lot 3006 as shown on Deposited Plan 44794; Then northerly along the eastern boundary of that lot back to the commencement point.

Notes:

Geographic Coordinates provided in Decimal Degrees.

Cadastral boundaries sourced from Landgate's Spatial Cadastral Database dated February 2012.

All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.

For the avoidance of doubt the application excludes any land and waters already claimed by Native Title Determination Application WAD6208/1998 Eastern Guruma (WC97/89) as Determined in the Federal Court on 1 March 2007.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Prepared By: Native Title Spatial Services (Landgate) 14th March 2012

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 to the custodians of cadastral and topographic 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.

FIRST SCHEDULE ATTACHMENT 1 MAPS OF DETERMINATION AREA B

[See NNTR Attachment 1: "First Schedule Attachment 1 - Maps of Determination Area B"]

SECOND SCHEDULE - AREAS WHERE NATIVE TITLE DOES NOT EXIST

[Schedule referred to in Paragraph 3]

Native title does not exist in relation to land and waters the subject of the following interests within Determination Area B which (with the exception of public works which are captured by the definition at paragraph 2 of this Schedule) are generally shown as shaded in green on the maps at Attachment 1 to the First Schedule:

1. FORMER SPECIAL LEASES

(1) Former special lease 3116/3464 granted on 4 November 1966 to Hamersley Iron Pty Ltd ("the Company") pursuant to section 116 of the Land Act 1933 (WA) and the Iron Ore (Hamersley Range) Agreement Act 1963-1964 for the special purpose of the laying out, development, operation and use of a townsite by the Company;

(2) Former special lease 3116/3465 granted on 4 November 1966 to Hamersley Iron Pty Ltd ("the Company") pursuant to section 116 of the Land Act 1933 (WA) and the Iron Ore (Hamersley Range) Agreement Act 1963-1964 for the special purposes of (a) the establishment and maintenance of a green belt or rural zone for the townsite; (b) the use of that land in respect of or in connection with the control by the Company of any undesirable elements who are or may be attracted or would otherwise be attracted to that townsite or to the other operations of the Company in the vicinity; and (c) the Company constructing and using roads;

(3) Former special lease 3116/3467 granted on 4 November 1966 to Hamersley Iron Pty Ltd pursuant to section 116 of the Land Act 1933 (WA) and the Iron Ore (Hamersley Range) Agreement Act 1963-1964 for the special purpose of boring for, conserving, reticulating and drawing water;

(4) Former special lease 3116/4984 granted on 13 October 1975 to Hamersley Iron Pty Ltd pursuant to section 116 of the Land Act 1933 (WA) and the Iron Ore (Hamersley Range) Agreement Act 1963-1972 for the special purpose of the construction, upgrading, realignment, operation and use of a railway and roads (including all ancillary works, facilities and services), and of power transmission and communications system and other facilities and services to and from townships, the mine and the port.

2. PUBLIC WORKS

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 section 251D of the Native Title Act) and to which section 12J of the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) or section 23C(2) of the Native Title Act applies.

THIRD SCHEDULE - AREAS TO WHICH SECTION 47B OF THE NATIVE TITLE ACT APPLIES

[Schedule referred to in Paragraph 9]

Section 47B of the Native Title Act applies to disregard any extinguishment over the following areas, including any extinguishment by the creation of the following interests (to the extent that they were not covered by an interest described in sections 47B(1)(b)(i) or (ii) or subject to a resumption process as described in section 47B(1)(b)(iii) of the Native Title Act when the relevant native title determination application was made), generally shown as shaded orange on the maps at Attachment 1 to the First Schedule:

(1) Part of general lease GE J184853 between the Minister for Lands (Lessor) and Hamersley Iron Pty Ltd (Lessee) granted pursuant to section 80 of the Land Administration Act 1997 (WA) on 9 February 2005 for the purposes of development and subdivision for recreational lots; demountable and transportable workers accommodation units; recreational facilities; development of services for future tourism purposes; and development for future use as a public road;

- (2) Reserve 49455 (Lots 3014, 3015 and 3016 on Deposited Plan 51300) set apart as a public reserve for the purpose of "drainage" on 24 September 2008 (currently under the care, control and management of the Shire of Ashburton pursuant to section 46 of the Land Administration Act 1997 (WA));
- (3) Reserve 49456 (Lot 3012 on Deposited Plan 51300) set apart as a public reserve for the purpose of "pedestrian access" on 12 June 2008;
- (4) Public road (Lot 3017 on Deposited Plan 51300) dedicated pursuant to section 56 of the Land Administration Act 1997 (WA);
- (5) Public road (Lot 3012 on Deposited Plan 44793 and Lot 3002 on Deposited Plan 44794) dedicated pursuant to section 56 of the Land Administration Act 1997 (WA);
- (6) to the extent that it is not covered by miscellaneous licence L47119, unallocated Crown land number 6 (which was previously subject to special lease 3116/3465 and is currently partially subject to miscellaneous licence L471100 and exploration licence 47/1136);
- (7) to the extent that it is not covered by general purpose lease G3SA (AG70/3) and miscellaneous licence L47119, unallocated Crown land number 7 (which was previously subject to special lease 3116/3465 and is currently partially subject to miscellaneous licence L47/100 and exploration licence E47/1789);
- (8) to the extent that it is not covered by general purpose lease G3SA (AG70/3) and miscellaneous licence L47119, unallocated Crown land number 8 (which was previously subject to special lease 3116/3465 and is currently wholly subject to exploration licence E47/1789 and partially subject to miscellaneous licence L471100);
- (9) unallocated Crown land number 11 (which was previously subject to special lease 3116/3465);
- (10) unallocated Crown land number 12 (which was previously subject to special lease 3116/3465);
- (11) unallocated Crown land number 16 (which was previously subject to special lease 3116/3465);
- (12) unallocated Crown land number 23 (which was previously subject to special lease 3116/3464);
- (13) unallocated Crown land number 24 (which was previously subject to special lease 3116/3463 and 3116/3465);
- (14) unallocated Crown land number 25 (which was previously subject to special lease 3116/3464);
- (15) to the extent that it is not covered by general purpose lease G3SA (AG70/3), unallocated Crown land number 29 (which was previously subject to special lease 3116/3465);
- (16) to the extent that it is not covered by miscellaneous licence L47119, unallocated Crown land number 30 (which was previously subject to special lease 3116/3465 and is currently partially subject to miscellaneous licence L47/100);
- (17) unallocated Crown land number 31 (which was previously subject to special lease 3116/3465 and is currently wholly subject to exploration licence E4711789);
- (18) unallocated Crown land number 32 (which was previously subject to special lease 3116/3465 and is currently partially subject to exploration licence E47/1789 and miscellaneous licence L47/283);
- (19) unallocated Crown land number 33 (which was previously subject to special leases 3116/3465 and 3116/3467 and is currently partially subject to exploration licence E47/1789);
- (20) to the extent that it is not covered by general purpose lease G3SA (AG70/3), unallocated Crown land number 34 (which was previously subject to special lease 3116/3465 and is currently partially subject to exploration licence E47/1136);
- (21) unallocated Crown land number 35 (which was previously subject to special lease 3116/3465 and is currently wholly subject to exploration licence E47/1789);
- (22) unallocated Crown land number 36 (which was previously subject to special lease 3116/3465 and is currently wholly subject to exploration licence E47/1789 and partially subject to miscellaneous licence L47/100);
- (23) unallocated Crown land number 37 (which was previously subject to special lease 3116/3465 and is currently wholly subject to exploration licence E4711789);
- (24) unallocated Crown land number 38 (which was previously subject to special lease 3116/3465 and is currently partially subject to miscellaneous licences L47/137, L47/206 and L47/282 and exploration licences E47/1789,

E47/2062 and E47/2098);

(25) unallocated Crown land number 39 (which was previously subject to special lease 3116/3465 and is currently partially subject to exploration licences E47/2062 and E47/2098);

(26) unallocated Crown land number 40 (which was previously subject to special lease 3116/3465 and is currently partially subject to exploration licence E47/1789); and

(27) unallocated Crown land number 42 (which was previously subject to special lease 3116/3465).

FOURTH SCHEDULE - OTHER INTERESTS

[Schedule referred to in Paragraph 10]

[See NNTR Attachment 2: "Fourth Schedule - Other Interests"]

FIFTH SCHEDULE - NATIVE TITLE HOLDERS

[Schedule referred to in Paragraphs 4 and 13]

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 B, in accordance with the traditional laws acknowledged and the traditional customs observed by the Muntulgura Guruma;

(2) the descendants of Jack Smith to whom the Muntulgura Guruma accord the right to exercise rights and interests in Determination Area B in accordance with the traditional laws acknowledged and traditional customs observed by the Muntulgura Guruma.

REGISTER ATTACHMENTS:

1. Attachment 1 - First Schedule Attach 1 Maps of Determination Area B, 4 pages - A4, 20/11/2012

2. Attachment 2 - Fourth Schedule Other Interests, 5 pages - A4, 20/11/2012

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.