



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD142/2018
NNTT Number: WCD2022/002

Determination Name: [Harrington-Smith on behalf of the Darlot Native Title Claim Group v State of Western Australia \(No 2\)](#)

Date(s) of Effect: 5/07/2022

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: 05/07/2022

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Watarra Aboriginal Corporation
Trustee Body Corporate
Level 10, 16 St Georges Terrace
PERTH Western Australia 6000

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:

Native title holders (section 225(a) Native Title Act)

3. The native title in the Determination Area is held by the Native Title Holders as identified in Schedule Seven.

SCHEDULE SEVEN

NATIVE TITLE HOLDERS

Paragraph 3

The Native Title Holders are:

(a) Those Aboriginal people who are recognised under traditional law and custom as having rights in some or all of the Determination Area on one or more of the following bases:

(i) biological and/or socially recognised descent from one or more of the owners, under traditional law and custom, of some or all of the Determination Area at the time of non-Aboriginal settlement;

(ii) their own or an ancestor's birth on the Determination Area;

(iii) their own or an ancestor's long association with the Determination Area; or

(iv) the holding of religious, sacred or ritual authority under traditional law and custom for one or more places on the Determination Area.

(b) The descendants of the following ancestors are recognised under traditional law and custom as having rights in some or all of the Determination Area under categories (i) and (ii) above:

(i) Majjika mother's mother of Telpha Ashwin, Jumbo Harris and Kweelah;

(ii) Siblings Peter Inkie, Jilyu Fanny and Titjipu – Peter Foley;

(iii) Billy and his two wives Mary Ann and Mary parents of Daisy Cordella, Maggie (aka Wilgie), Julia aka Mundai, Amy aka Jinan Rex, Annie, Maniwa and Winnie;

(iv) Inyarndi mother of Big Paddy Wheelbarrow, Little Paddy Wheelbarrow and Jimmy Wheelbarrow;

(v) Ruby Shea;

(vi) Siblings Andy Fisher and Natha;

(vii) Siblings Beaman aka Charlie, Thadi and Dinah Evans;

(viii) Nobby Nixon and his sister Milibindi;

(ix) Mary Naringa;

(x) Queenie Swan;

(xi) Sarah Ashwin nee Brown (Marakali); and

(xii) Minnie Narrier.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. In relation to the Determination Area, there be a determination of native title in WAD 142 of 2018 in the terms of the Determination as provided for in Attachment A.

2. The Watarra Aboriginal Corporation (ICN 9712) shall hold the determined native title in trust for the native title holders pursuant to s 56(2)(b) of the *Native Title Act 1993* (Cth).

ATTACHMENT A

DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of native title (section 225 Native Title Act)

1. Subject to paragraph 2, native title exists in the Determination Area in the manner set out in paragraphs 4 and 5 of this determination.

2. Native title does not exist in those parts of the Determination Area set out in Schedule Four.

Native title holders (section 225(a) Native Title Act)

3. The native title in the Determination Area is held by the Native Title Holders as identified in Schedule Seven.

Nature and extent of native title rights and interests and exclusiveness of native title (sections 225(b) and 225(e) Native Title Act)

Exclusive rights and interests

4. Subject to paragraphs 2, 6 and 10, the nature and extent of the native title rights and interests in relation to the Exclusive Area are the right to possession, occupation, use and enjoyment of the Exclusive Area to the exclusion of all others.

Non-exclusive rights and interests

5. Subject to paragraphs 2, 6, 7 and 10, the nature and extent of the native title rights and interests in relation to the Non-Exclusive Area are that they confer non-exclusive rights to:

- (a) access, traverse, remain in and move about the area;
- (b) camp and erect shelters on the area;
- (c) access, use and take for any purpose the resources of the area;
- (d) hold meetings, participate in cultural activities and conduct ceremonies;
- (e) maintain and protect places of significance on the area; and
- (f) receive a portion of any resources (not including minerals or petroleum) taken from the Determination Area by Aboriginal people who are also governed by Western Desert traditional laws and customs.

Qualifications on the native title rights and interests

6. Notwithstanding anything in this determination, the native title rights and interests set out in paragraphs 4 and 5:

- (a) are subject to and exercisable in accordance with:
 - (i) the traditional laws and customs of the Native Title Holders; and
 - (ii) the laws of the State and the Commonwealth, including the common law;
- (b) do not confer exclusive rights in relation to water in any watercourse, wetland or underground water source as is defined in the *Rights in Water and Irrigation Act 1914* (WA); and
- (c) do not confer any rights in relation to:
 - (i) minerals as defined in the *Mining Act 1904* (WA) (repealed) and in the *Mining Act 1978* (WA), except to the extent that ochre is not a mineral pursuant to the *Mining Act 1904* (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 lawfully 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 on the Native Title Holders to the exclusion of all others; or
- (b) a right to control the access to, or use of, the Non-Exclusive Area or its resources.

Areas to which ss 47A or 47B of the Native Title Act apply

8. Sections 47A and 47B of the Native Title Act apply to disregard any prior extinguishment in relation to those parts of the Determination Area identified in Schedule Five.

The nature and extent of any other interests

9. The nature and extent of the Other Interests are described in Schedule Six.

Relationship between native title rights and other interests

10. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraphs 4 and 5 and the Other Interests is that:

(a) the determination does not affect the validity of those Other Interests;

(b) 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,

(c) 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 do 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 One and depicted on the maps in Schedule Two;

“**Exclusive Area**” means those lands and waters of the Determination Area described in Schedule Three (which areas are shaded green on the maps in Schedule Two);

“**Native Title Holders**” means the people described in Schedule Seven and referred to in paragraph 3;

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

“**Non-Exclusive Area**” means those lands and waters of the Determination Area which are not Exclusive Areas or described in paragraph 2 as an area where native title does not exist (which areas are shaded yellow on the maps in Schedule Two);

“**Other Interests**” means the legal or equitable estates or interests and other rights in relation to the Determination Area described in Schedule Six and referred to in paragraph 9;

“**resources**” means flora, fauna, and other natural resources such as charcoal, stone, soil, sand, clay, gravel, timber, resin and ochre (except, for the avoidance of doubt, ochres for use in the manufacture of porcelain, fine pottery or pigments which are minerals pursuant to the *Mining Act 1904* (WA) (repealed));

“**Titles Validation Act**” means the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA).

12. In the event of any inconsistency between the written description of an area in Schedule One, Three, Four, Five or Six and the area depicted on the maps in Schedule Two, the written description prevails.

REGISTER ATTACHMENTS:

1. WCD2022/002 Schedule One – Determination Area, 5 pages - A4, 05/07/2022
2. WCD2022/002 Schedule Two – Maps of Determination Area, 28 pages - A4, 05/07/2022
3. WCD2022/002 Schedule Three – Exclusive Areas, 2 pages - A4, 05/07/2022
4. WCD2022/002 Schedule Four – Areas Where Native Title Does Not Exist, 26 pages - A4, 05/07/2022
5. WCD2022/002 Schedule Five – Areas To Which Sections 47A and 47B of the Native Title Act Apply, 2 pages - A4, 05/07/2022
6. WCD2022/002 Schedule Six – Other Interests, 33 pages - A4, 05/07/2022

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.