



## Extract from the National Native Title Register

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### Determination Information:

**Determination Reference:** Federal Court Number(s): WAD160/1997  
NNTT Number: WCD2001/001

**Determination Name:** [Palmer Gordon Ngapil & Others -v- The Premier & State of Western Australia & Others](#)

**Date(s) of Effect:** 20/08/2001

**Determination Outcome:** Native title exists in parts of the determination area

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

**Determination Date:** 20/08/2001

**Determining Body:** Federal Court of Australia

#### ADDITIONAL INFORMATION:

Not Applicable

#### REGISTERED NATIVE TITLE BODY CORPORATE:

Tjurabalan Native Title Land Aboriginal Corporation RNTBC  
Trustee Body Corporate  
C/ Kimberley Land Council  
P.O. Box 2145  
BROOME Western Australia 6725

*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](http://www.oric.gov.au)*

#### COMMON LAW HOLDER(S) OF NATIVE TITLE:

The common law holders known as the "Tjurabalan People" are those people who hold in common the body of traditional law and culture governing the Determination Area and who:

- (a) are members of the Walmajarri, Jaru or Nyininy language groups; and
  
- (b) have a common and inclusive cultural and geographic association with the Determination Area which includes: Gregory Salt Lake (Paruku) and Sturt Creek (Tjurabalan) and the adjacent portions of the Tanami Desert (Ngaluwan) and Gardiner Range (Lirrankarni).

**MATTERS DETERMINED:**

THE COURT NOTES THAT:

A. Pursuant to section 87(1)(b) of the Native Title Act the parties have filed with this Court a 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 a determination of native title in relation to the land and waters the subject of these proceedings pursuant to section 87(2) and section 94A of the Native Title Act.

C. The Applicants have yet to establish and nominate a prescribed body corporate which will perform the functions required by either section 56 or 57 of the Native Title Act.

D. The parties have agreed that the registered native title body corporate which will hold the native title in trust, or will perform the functions referred to in sections 57(3) and 58 of the Native Title Act as the case may be, may seek a variation of the determination of native title in this matter (as it relates to minerals and petroleum) in accordance with sub-sections 13(1) and (5) of the Native Title Act 1993 in the event that the ruling in the Federal Court in *Western Australia v Ward* (2000) 99 FCR 316 with respect to minerals and petroleum is, in High Court Appeals Registry Nos P59 of 2000 (*State of Western Australia v Ward & Ors*), P62 of 2000 (*Attorney-General of the Northern Territory v Ward & Ors*), P63 of 2000 (*Ningmarmara & Ors v Northern Territory of Australia & Ors*) and P67 of 2000 (*Ward & Ors v Crosswalk Pty Ltd & Ors*), overturned, set aside, remitted to the Federal Court or is otherwise found to be an incorrect legal ruling.

E. Subject to F. below, if the Applicants make such an application within 3 months of the delivery of the High Court decision, the parties to this consent determination will consent to that application being argued on its merits.

F. Upon such application being made, nothing in E. above or otherwise prevents any party from opposing a variation to the determination on the basis of the merits of such application.

Being satisfied that a determination in the terms sought by the parties would be within the power of the Court and, it appearing to the Court appropriate to do so and by the consent of the parties:

THE COURT ORDERS, DECLARES AND DETERMINES BY CONSENT THAT:

1. Native title exists in relation to the Determination Area, other than those areas referred to in paragraph 2 below. The Determination Area is the land and waters described in the First Schedule.

2. Native title has been wholly extinguished, and no native title exists, in relation to land and waters within reserves 41056 and 41065.

3. The communal or group rights and interests comprising the native title are held by those people described in the Third Schedule ("the common law holders") who are known for the purposes of this determination as the "Tjurabalan People".

4. Subject to paragraphs 5, 6, 7 and 8:

(i) the nature and extent of the native title rights and interests held by the common law holders in relation to the Determination Area are the right to possess, occupy, use and enjoy the land and waters of the Determination Area to the exclusion of all others, including:

(a) the right to live on the Determination Area;

(b) the right to make decisions about the use and enjoyment of the Determination Area;

(c) the right to hunt and gather, and to take water and other traditionally accessed resources (including ochre) for the purpose of satisfying their personal, domestic, social, cultural, religious, spiritual and communal needs;

(d) the right to control access to, and activities conducted by others on, the land and waters of the Determination Area;

(e) the right to maintain and protect sites which are of significance to the common law holders under their traditional laws and customs; and

(f) the right as against any other Aboriginal group or individual to be acknowledged as the traditional Aboriginal owners of the Determination Area.

(ii) the native title rights and interests are exercisable in accordance with the traditional laws and customs of the common law holders.

5. Notwithstanding anything in this determination:

(a) the native title rights and interests (in accordance with the decision of the Federal Court in *Western Australia v Ward* (2000) 99 FCR 316) include ochre 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); and

(b) the native title rights and interests only confer on the common law holders such rights in relation to flowing and subterranean waters as exist at law;

(c) nothing in this paragraph is intended to affect the rights of the common law holders (including any registered native title body corporate) under sub-sections 13(1) and 13(5) and the item "Revised native title determination application" in the table in sub-section 61(1) of the Native Title Act.

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

7. The native title rights and interests are subject to and exercisable in accordance with the laws of the State of Western Australia and the Commonwealth of Australia including the common law.

8. The relationship between the native title rights and interests in the land and waters described in paragraph 4 and

the other rights and interests referred to in paragraph 6 ("the other rights and interests") is that:

(a) the other rights and interests and the doing of any activity in exercise of the rights conferred by or held under the other rights and interests co-exist with the native title rights and interests except to the extent that the other rights and interests are inconsistent with the continued existence enjoyment or exercise of the native title rights and interests in which case the native title continues to exist in its 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; and

(b) for the avoidance of doubt, the existence and exercise of the native title rights and interests does 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.

9. A representative of the common law holders of the native title rights and interests is requested to indicate within three months of the date these orders are made whether they intend to have the native title held in trust and if so by whom. That representative is invited to do so by:

(a) nominating in writing 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.

10. If a prescribed body corporate is nominated in accordance with Order 9, it will hold the native title rights and interests, referred to in Order 1, from time to time comprising the native title in trust for the common law holders of the native title rights and interests.

11. If a prescribed body corporate is not nominated in accordance with Order 9, the native title rights and interests, referred to in Order 1, from time to time comprising the native title will be held by the Tjurabalan People (as defined in this determination) in respect of the Determination Area as the common law holders of the native title rights and interests.

12. If a prescribed body corporate is not nominated in accordance with Order 9 and native title is therefore held by the Tjurabalan People in accordance with Order 11, then the matter is to be relisted by the Registrar in order that the Court can consider the making of orders in accordance with section 57(2) of the Native Title Act.

13. Until such time as there is a registered native title body corporate in relation to the Determination Area, any notices required under the Native Title Act 1993 (Cth) or otherwise to be served on the common law holders may be served upon the Ngaanyatjarra Council Aboriginal Corporation, and such service shall be deemed to be sufficient.

14. There be liberty to any party to apply in respect of orders 9-13 on 7 days written notice.

15. There be no order as to costs.

## FIRST SCHEDULE

The Determination Area (which is outlined in blue on the plan annexed to this First Schedule) comprises all of the land and waters within the following two boundary descriptions, save for those areas described below as "Exclusions":

#### Area 1

Commencing at the westernmost south western corner of pastoral lease 3114/643 (Gordon Downs) and extending generally easterly along the boundaries of that pastoral lease to its eastern most south eastern corner, then east to the Western Australia - Northern Territory border at latitude 19.18924 south, then southerly along the border to latitude 20.436899 south, then generally westerly passing through the following coordinate positions:

Latitude South	Longitude East
20.436900	128.905451
20.498567	128.855452
20.498578	128.167954
20.360245	128.001287
20.498581	127.649624

then north westerly to the southern boundary of pastoral lease 3114/1106 (Lake Gregory) at longitude 127.417971 east, then westerly along that boundary to the south western corner of the aforesaid pastoral lease, then westerly to latitude 20.360254 south longitude 127.001290 east, then northerly to the southern boundary of pastoral lease 398/533 (Madigan) at longitude 127.001283, then easterly and northerly along boundaries of that pastoral lease to the southern boundary of pastoral lease 3114/1155 (Carranya), then generally easterly and generally northerly along boundaries of that pastoral lease to the southern most south western corner of pastoral lease 3114/1162 (Sturt Creek), then generally easterly and northerly along boundaries of that pastoral lease back to the commencement point.

#### Area 2

All of the land comprising Crown Reserve 39049.

#### Exclusions

Excluded from Area 1 are all of the land comprising Reserve 27333 (C/T 1324/960) and all of the land comprising special lease 3116/10533.

See Attachment A for the map of the Determination Area.

## SECOND SCHEDULE

The nature and extent of other interests in relation to the Determination Area are:

Reserves for the "use and benefit of Aboriginal inhabitants"

(a) Reserve 37670 for the "use or benefit of Aboriginal inhabitants" created in accordance with sections 41, 281(2) and section 14(2) schedule 2 of the Land Administration Act 1997 and vested in the Aboriginal Lands Trust created pursuant to section 20 of the Aboriginal Affairs Planning Authority Act 1972;

(b) Reserve 39049 for the "use and benefit of Aboriginal inhabitants" created in accordance with the Land Administration Act 1997 and vested in the Aboriginal Lands Trust created pursuant to section 20 of the Aboriginal Affairs Planning Authority Act 1972;

(c) Reserve 38974 for the "use and benefit of Aboriginal inhabitants" created in accordance with the Land Administration Act 1997 and vested in the Aboriginal Lands Trust created pursuant to section 20 of the Aboriginal Affairs Planning Authority Act 1972;

(d) Reserve 39102 for the "use and benefit of Aboriginal inhabitants" created in accordance with the Land Administration Act 1997 and vested in the Aboriginal Lands Trust created pursuant to section 20 of the Aboriginal Affairs Planning Authority Act 1972;

(e) Reserve 26399 for the "use and benefit of Aboriginal inhabitants" created in accordance with the Land Administration Act 1997 and vested in the Aboriginal Lands Trust created pursuant to section 20 of the Aboriginal Affairs Planning Authority Act 1972;

#### Pastoral leases

(f) Pastoral Lease No. 3114/1105 ("Bililluna") created pursuant to sections 101 and 143 of the Land Administration Act 1997 and held by the Aboriginal Lands Trust;

(g) Pastoral Lease No. 3114/1106 ("Lake Gregory") created pursuant to sections 101 and 143 of the Land Administration Act 1997 and held by the Aboriginal Lands Trust;

#### Existing mineral and resource interests

(h) The following exploration licences granted under the Mining Act 1978;

E 8001481	E 8001993
E 8001482	E 8001994
E 8001483	E 8001995
E 8001484	E 8002004
E 8001512	E 8002005
E 8001513	E 8002036
E 8001514	E 8002037
E 8001515	E 8002091
E 8001516	E 8002390
E 8001518	E 8002391
E 8001526	E 8002416
E 8001677	E 8002417

E 8001678      E 8002452  
E 8001679      E 8002453  
E 8001735      E 8002455  
E 8001737      E 8002456  
E 8001738      E 8002481  
E 8001802      E 8002509  
E 8001905      E 8002513  
E 8001936      E 8002514  
E 8001965      E 8002515  
E 8001976      E 8002528  
E 8001986

(i) Petroleum exploration permit EP 417 granted under the Petroleum Act 1967 (W.A.).

Telstra Corporation Ltd

(j) The interests of Telstra Corporation Limited:

(i) 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 Telecommunications Act 1997 (Cth); and

(ii) under a Deed of Agreement dated 15 August 2001 between it and the representatives of the native title holders.

Other rights and interests

(k) Any other rights and interests validly granted by the Crown pursuant to statute or by any valid executive or legislative act, which are current at the date of this determination.

(l) Any other rights or interests held by or under the Crown by the force and operation of the laws of the State or the Commonwealth as may be current at the date of this determination, including the force and operation of the Rights in Water and Irrigation Act 1914.

(m) Rights and interests of members of the public arising under the common law as may be current at the date of this determination.

(n) A right of any employee or agent of the State, its agencies and instrumentalities, and of the Shire of Halls Creek, its employees and agents, to have access to the Determination Area (subject to the laws of the State and the Commonwealth) in the bona fide performance of their duties (for the avoidance of doubt, such rights include rights of the Shire of Halls Creek, its employees and agents, relating to the construction, maintenance, repair and use of the Tanami Track/Road, the Selby Hills Track/Road and the Balgo-Mulan Track/Road including periodical realignments and the gathering of sand, gravel and water as road-building materials from the Determination Area which are

referred to in a Deed of Agreement between the Shire of Halls Creek and the Applicants tendered on 17 July 2001); and

(o) Rights of any person to have access to and enjoy (subject to the laws of the State):

(i) the Canning Stock route;

(ii) the Tanami Track/Road, Selby Hills Track/Road and Balgo-Mulan Track/Road controlled and managed by the Shire of Halls Creek as indicated in red on the map annexed to the Second Schedule; and

(iii) the other road and tracks indicated in green on the map annexed to the Second Schedule not controlled, managed or maintained by the Shire of Halls Creek, to the extent they are common law roads.

(p) (1) Without limiting the operation of any other paragraph in the Second Schedule, but subject to paragraph (p)(3), rights of the holder from time to time of the mining tenements described in paragraph (p)(2) of the Second Schedule to use (including by servants, agents and contractors) the existing roads and tracks indicated on the map annexed to the Second Schedule in order to have access to such tenement.

(2) The tenements to which paragraph (p)(1) applies are:

(i) the exploration licences listed in paragraph (h) of the Second Schedule;

(ii) any extension of term by operation of section 61(2) and section 67(2) of the Mining Act 1978 (WA), of any tenement referred to in sub-paragraph (i); and

(iii) any tenement granted as a replacement of or in substitution for any tenement referred to in sub-paragraphs (i) and (ii), including a tenement granted as a replacement or substitute which confers more extensive rights (but over no greater area) than the original tenement, but not including when the replacement or substituted tenement is a mining lease, general purpose lease or other tenement conferring similar rights or any fresh application for an exploration licence.

(3) Nothing in paragraph (p)(1) above allows any upgrade, extension, widening or other improvement to the road or track other than work done to maintain such road or track in reasonable repair.

(4) Nothing in this paragraph (p) derogates from the requirements of Part III of the Aboriginal Affairs Planning Authority Act 1972 (WA).

See Attachment B for the Map of the Undedicated Roads and Tracks.

### THIRD SCHEDULE

The common law holders known as the "Tjurabalan People" are those people who hold in common the body of traditional law and culture governing the Determination Area and who:



(a) are members of the Walmajarri, Jaru or Nyininy language groups; and

(b) have a common and inclusive cultural and geographic association with the Determination Area which includes: Gregory Salt Lake (Paruku) and Sturt Creek (Tjurabalan) and the adjacent portions of the Tanami Desert (Ngaluwan) and Gardiner Range (Lirrankarni).

**REGISTER ATTACHMENTS:**

1. Attachment A - Map of Determination Area - First Schedule, 1 page - A3, 20/08/2001

2. Attachment B - Map of Undedicated Roads and Tracks - Second Schedule, 1 page - A3, 20/08/2001

*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.*