

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6100/1998
NNTT Number: WCD2002/001

Determination Name: John Dudu Nangkiriny & Others on behalf of the Karajarri People -v- The State of Western Australia & Others

Date(s) of Effect: 12/02/2002

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 12/02/2002

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Karajarri Traditional Lands Association (Aboriginal Corporation)
RNTBC
Trustee Body Corporate
C/- Kimberley Land Council
PO Box 2145
BROOME WA 6725

COMMON LAW HOLDER(S) OF NATIVE TITLE:

Karajarri People

MATTERS DETERMINED:

The Court notes that the area covered by the Native Title Determination Application is that area of land and waters set out in the First Schedule to this determination, and in the map and enlargements accompanying the First Schedule.

The Court orders, declares and determines pursuant to Order 29 of the Federal Court Rules, with consent of the parties, that:

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

"Determination Area A" means those parts of the claim area which are landward of the mean high water mark (not including any tidal waters landward of the mean high water mark) and which comprise:

- (a) pastoral leases 3114/483, 398/744, 398/761 and 398/681 together comprising Frazier Downs Station, but not including the site of the telecommunications regenerator site at Dampier Location 319;
- (b) Reserves 41648, 20704, 38399 and 11175 for the Use and Benefit of Aboriginal People;
- (c) The two parcels of unallocated Crown land surrounding Reserve 32603 (one being Pardu location 8) within pastoral lease 398/770 (southern part of Nita Downs);
- (d) The unallocated Crown land comprising Dampier Location 222 adjacent to reserve 36472 and surrounded by Reserve 38399;
- (e) Two areas of unallocated Crown land adjacent to special lease 3116/11698 (not including Dampier Location 255);
- (f) Those areas of unallocated Crown land between mean high water mark and the pastoral lease boundaries (not including any tidal waters landward of the mean high water mark); and
- (g) The unallocated Crown land to the east of Anna Plains, Nita Downs and Shamrock.

All of the above areas being areas to which section 47, 47A and 47B of the Native Title Act 1993 (Cth) apply, as set out more specifically in the Second Schedule.

Determination Area A is depicted generally as the area hatched green on the map and enlargements accompanying the First Schedule;

"the land" means the land within Determination Area A;

"the waters" means the waters within Determination Area A excluding flowing and subterranean waters;

"flowing and subterranean waters" means those waters within Determination Area A which are:

(a) waters which flow, whether permanently, intermittently or occasionally, within:

- (i) any river, creek, stream or brook; and
- (ii) any natural collection of water into, through, or out of which a river, creek, stream or brook flows; and
- (b) waters from and including an underground water source, including water that percolates from the ground;

"the land and waters" means "the land" and "the waters" as defined collectively.

2. Native title exists in Determination Area A.

3. The communal or group rights and interests comprising the native title in Determination Area A are held in trust by the Karajarri Traditional lands Association (Aboriginal Corporation), a prescribed body corporate for the purposes of section 56 of the Native Title Act 1993 (Cth), for the Karajarri people as common law holders of native title. The Karajarri people are those people described in the Fourth Schedule.

4. Subject to paragraphs 5, 6, 7, 8 and 9:

(1) the nature and extent of the native title rights and interests in Determination Area A held by the Karajarri people are:

(a) The right to possess, occupy, use and enjoy the land and waters to the exclusion of all others, including:

- (i) the rights to live on the land;
- (ii) the right to make decisions about the use and enjoyment of the land and waters;
- (iii) the right to hunt, gather and fish on the land and waters in accordance with their traditional laws and customs for personal, domestic, social, cultural, religious, spiritual, ceremonial and communal needs;
- (iv) the right to take and use the waters and other resources accessed in accordance with their traditional laws and customs for personal, domestic, social, cultural, religious, spiritual, ceremonial and communal needs;
- (v) the right to maintain and protect important places and areas of significance to the Karajarri people under their traditional laws and customs on the land and waters; and
- (vi) the right to control access to, and activities conducted by others on, the land and waters, including the right to give permission to others to enter and conduct activities on the land and waters on such conditions as the Karajarri people see fit; and

(b) the right to use and enjoy the flowing and subterranean waters, including;

(i) the right to hunt on gather and fish from the flowing and subterranean waters in accordance with their traditional laws and customs for personal, domestic, social, cultural, religious, spiritual, ceremonial and communal needs; and

(ii) the right to take and use the flowing and subterranean waters and other resources accessed in accordance with their traditional laws and customs for personal, domestic, social, cultural, religious, spiritual, ceremonial and communal needs.

(2) The native title rights and interests are exercisable in accordance with the traditional laws and customs of the Karajarri people.

5. Notwithstanding anything in this determination 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).

6. Nothing in paragraph 5 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.

7. The nature and extent of other rights and interests in relation to Determination Area A are those set out in the Third Schedule.

8. The relationship between the native title rights and interests recognised by this Order and other rights and interests referred to in paragraph 7 ("the other rights and interests") is that:

(a) 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, the native title rights and interests continue to exist, but have no effect in relation to the other rights and interests to the extent of the inconsistency for so long as the other rights and interests exist; and

(b) to avoid doubt, the existence and exercise of the native title rights and interests do not prevent the doing of the 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, prevails over the native title rights and interests and any exercise of the native title rights and interests, but does not extinguish them.

9. 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.

FIRST SCHEDULE

EXTERNAL BOUNDARY DESCRIPTION

WAG6100/98 KARAJARRI (WC00/002)

Please note: The following description and corresponding map and accompanying enlargements depicts the area covered by the application and not the determination.

The area covered by the Native Title Determination Application is all those areas of land and waters in the State of Western Australia described as follows.

Starting at the northeast corner of pastoral lease 398/761 and extending generally south westerly along the south eastern boundaries (north western sides of the Great Northern Highway) of that lease to its southeastern corner. Then easterly to the westernmost south west corner of pastoral lease 3114/604 (Shamrock). Then generally north easterly along the north western boundaries (south eastern sides of the Great Northern Highway) of that lease to a south west corner of pastoral lease 3114/635 (Thangoo). Then easterly and northerly along the boundaries of that lease to Latitude 18.410557 South. Then easterly to the westernmost south western corner of pastoral lease 3114/844 (Dampier Downs). Then easterly, southerly, again easterly, again southerly and again easterly along the boundaries of that lease to Longitude 123.380030 East. Then generally southerly, and generally westerly passing through the following co-ordinate positions

LATITUDE (SOUTH) LONGITUDE (EAST)

18.710093 123.367358

18.732793 123.337920

18.762486 123.326057

18.781612	123.326302
18.793400	123.334635
18.904111	123.412903
19.044947	123.421026
20.90213	123.481307
19.732093	121.890109

Then west along that last mentioned line of Latitude to an eastern boundary of pastoral lease 3114/1154 (Anna Plains). Then westerly to Latitude 19.730458 South, Longitude 121.461824 East, then northeasterly to a southern boundary of Reserve 38936 at Longitude 121.614920 East, then easterly, northerly and westerly along boundaries of that Reserve to Longitude 121.614975 East, then northeasterly and westerly passing through the following co-ordinate position

LATITUDE (SOUTH) LONGITUDE (EAST)

19.197809	121.625577
19.196344	121.442371

Then westerly to the Lowest Astronomical Tide at Latitude 19.196054 South. Then generally northwesterly along that lowest astronomical tide to Latitude 18.456532 South. Then southeasterly to the westernmost southwest corner of pastoral lease 3114/635 (Thangoo). Then easterly, southerly, and again easterly along the boundaries of that lease to the starting point.

Note: Geographic Co-ordinates provided in Decimal Degrees

Cadastral Boundaries sourced from DOLA (SCDB) January 2001

Lowest Astronomical Tide sourced from the Australian Maritime Boundary Information Systems (AMBIS) Data, January 2001

Datum: Geocentric Datum of Australia 1994 (GDA1994)

Prepared by: Land Claims Mapping Unit, Department of Land Administration 8 August 2001

The following areas are excluded from the Determination Area in accordance with section 61A of the Native Title Act 1993 (Cth) (and section 23C of the Native Title Act 1993 (Cth) and sections 12I and 12J of the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)) because they are areas where previous exclusive possession acts have occurred, native title has been extinguished in relation to the whole of these areas, and no claim to these areas can be made.

Freehold Grants:

- a) Dampier Location 296 (CT 2099/606)
- b) Dampier location 22 (CT 1040/610)
- c) Dampier location 65 (CT 1249/828)
- d) Dampier Location 129 (CT 1480/181)

all of the above locations being subject to grants in fee simple, and

- e) the area now encompassed by Reserve 45835 which was formerly the subject of a Crown Grant to the Commonwealth of Australia (CT 11245/277)

Crown Grants in Trust:

- f) Dampier location 248 (CT 3094/800) Crown Grant in Trust to the Bishop of Broome.

Special Leases:

- g) Lease H281045 under section 79 of the Land Administration Act 1997 held over an area previously subject to special lease 3116/10253 under section 116 of the Land Act 1933 for the special purpose of horticulture and cattle breeding which was still in force on 23 December 1996.

h) Special lease 3116/11698 under section 116 of the Land Act 1933 was granted for the special purposes of airstrip and grazing and was still in force on 23 December 1996.

i) Special lease 3116/9183 under section 116 of the Land Act 1933 was granted for the special purposes of tropical garden and bird park and was still in force on 23 December 1996.

j) Former Special lease 3116/10564 under section 116 of the Land Act 1933 was granted for the special purposes of land base in support of pearl oyster hatchery and/or pearling activities and was still in force on 23 December 1996 (Dampier Location 255)

k) Lease H5780 under section 79 of the Land Administration Act 1997 is held over an area previously subject to special lease 3116/9944 under section 116 of the Land Act 1933 for the special purposes of caravan park which was still in force on 23 December 1996.

Public Works:

l) Reserve 40658 (Dampier Location 159) which was vested in the Commonwealth of Australia for the purpose of a microwave translator site on 21 October 1988 on which fixtures were validly constructed by a statutory authority of the Crown on or before 23 December 1996 (being a previous exclusive possession act under section 23B(7) of the Native Title Act 1993 and having extinguished native title to the whole of the reserve pursuant to section 23C(2) of the Native Title Act 1993).

m) Reserve 38984 (Dampier Location 158) which was vested in the Commonwealth of Australia for the purposes of a microwave translator site on 28 December 1984 on which fixtures and a road were validly constructed by a statutory authority of the Crown on or before 23 December 1996 (being a previous exclusive possession act under section 23B(7) of the Native Title Act 1993 and having extinguished native title to the whole of the reserve pursuant to section 23C(2) of the Native Title Act 1993).

n) Reserve 38936 (Pardu Location 15) which was vested in the Commonwealth of Australia for the purpose of a microwave translator site on 16 November 1984, on which fixtures and a road were validly constructed by a statutory authority of the Crown on or before 23 December 1996 (being a previous exclusive possession act under section 23B(7) of the Native Title Act 1993 and having extinguished native title to the whole of the reserve pursuant to section 23C(2) of the Native Title Act 1993).

o) The Bidyadanga/La Grange Mission Telephone Exchange and Customer Radio Terminal Site (Latitude 18o 14' 07.84" S, Longitude 121o 46' 44.58" E; AMG Zone 51, North 7933.548m, East 371.247m), on which fixtures were validly constructed by a statutory authority of the Crown on or before 23 December 1996 (being a previous exclusive possession act under section 23B(7) of the Native Title Act 1993 and having extinguished native title to the whole of the site pursuant to section 23C(2) of the Native Title Act 1993).

Public Roads or Streets used by the public, including:

p) Great Northern Highway

q) Port Smith Road

r) Bidyadanga Road

SECOND SCHEDULE

Section 47 of the Native Title Act 1993 (Cth) applies to the following areas within the Determination Area:

Pastoral leases 3114/483, 398/744, 398/761 and 398/681 together comprising Frazier Downs Station, but not including the site of the telecommunications regenerator site at Dampier Location 319.

Section 47A of the Native Title Act 1993 (Cth) applies to the following areas within the Determination Area:

Reserves 41648, 20704, 38399 and 11175

Section 47B of the Native Title Act 1993 (Cth) applies to the following areas within the Determination Area:

The Unallocated Crown Land to the east of Anna Plains, Nita Downs and Shamrock Stations;

Two parcels of unallocated Crown land surrounding Reserve 32603 (one being Pardu location 8) within pastoral lease 398/770 (southern part of Nita Downs);

The unallocated Crown land comprising Dampier Location 222 adjacent to reserve 36472 and surrounded by Reserve 38399;

The two areas of unallocated Crown land adjacent to special lease 3116/11698 (not including Dampier Location 255)'

Those areas of unallocated Crown land between high water mark and the pastoral lease boundaries (not including any tidal waters landward of the mean high water mark).

THIRD SCHEDULE

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

Pastoral Leases:

a) 3114/483, 398/744, 398/761 and 398/681 together comprising Frazier Downs Station;

Reserves:

b) Reserve 36472 Health Clinic and Associated Staff Housing.

c) Reserve 36473 School Site.

d) Reserves 41648, 20704, 38399 and 11175 for the Use and benefit of Aboriginal People.

Mining Leases:

e) M04/244 and M04/249

Exploration Permits:

f) EPs 353, 390 and 391

Other Rights and Interests:

g) Canning-Kimberley Groundwater Area proclaimed on 22 April 1997 pursuant to section 26B(1) of the Rights in Water and Irrigation Act 1914 (WA) which encompasses the entire claim area.

h) Lease from the Aboriginal Lands Trust to the Bidyadanga Aboriginal Community La Grange Inc. over Reserves 38399 and 11175 for a period of 99 years dates 22nd October 1988.

i) Rights and interests granted by the Crown pursuant to statute or otherwise in the exercise of its executive power.

j) Rights and interests held by reason of the force and operation of the laws of the State or of the Commonwealth, including by force and operation of the Rights in Water and Irrigation Act 1914.

k) Rights and interests of the pastoral lessees from time to time of pastoral leases 3114/1154 (Anna Plains Station), 398/770, 3114/789 and 398/682 (together comprising Nita Downs Station) and 3114/604 (Shamrock Station) to use and enjoy water on the pastoral leases, both flowing and subterranean, which has its source in, or passes through, Determination Area A.

l) Rights and interests of members of the public arising under the common law.

m) Access to areas previously unallocated Crown land by any:

i) employee or agent of the State Government;

ii) employee or agent of the Commonwealth Government;

iii) employee or agent of any local government authority;

as required in the performance of his or her statutory or common law duties where such access would be permitted to private land.

n) Existing rights of the public to access and enjoy:

i) waterways; or

ii) beds and banks or foreshores of waterways; or

iii) coastal waters; or

iv) beaches; or

v) stock routes.

o) The interests of Telstra Corporation Limited:

i) as the owner and operator of the telecommunications facilities installed within Determination Area A, including:

a) radio terminals; and

b) optical fibre and other cabling.

ii) 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).

p) Rights of access by employees, agents or contractors of Telstra Corporation Limited to its telecommunications facilities in Determination Area A in the performance of their duties where such access would be permitted to private land.

q) i) Rights of the holders from time to time of the mining tenements and petroleum

interests described in paragraphs (f) and (g) above to use (including by servants, agents and contractors) the existing roads and tracks in the determination area in order to have access to such mining tenements and petroleum interests.

ii) Nothing in paragraph q(i) 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.

(r) Access to and use of Bores (established by the Department of Main Roads) and Gravel pits used for maintenance of the Great Northern Highway (GNH) by the Department of Main Roads, its servants, agents and contractors, those bores and gravel pits being:

i) Nita Downs No 1 Water Bore is located at 1960.25 SLK, 19deg13'49"S, 121deg37'04"E, offset 100 metres to the right of the GNH, comprising an area of 6 hectares;

ii) Nita Downs No 2 Water Bore is located at 1971.02 SLK, 19deg08'20"S, 121deg38'23"E, offset 150 metres to the right of the GNH, comprising an area of 6 hectares;

iii) Stanley No 1 Water Bore is located at 1981.80 SLK, 19deg02'40"S, 121deg39'55"E, offset 272 metres to the right of the GNH, comprising an area of 8.25 hectares;

iv) Gravel Deposit is located at 2020.89 SLK, offset 2300 metres to the left of the GNH, comprising an area of 12.3 hectares (comprising a public work in accordance with section 251D of the Native Title Act 1993 (Cth));

v) Water Bore Rest Area is located at 2040.7 SLK, offset 350 metres to the left of the GNH, comprising an area of 4.9 hectares.

vi) La Grange No 1 Water Bore is located at 2045.65 SLK, 18deg34'24"S, 121deg56'35"E, offset 100 metres to the right of the GNH, comprising an area of 6 hectares;

vii) La Grange No 2 Water Bore is located at 2055.07 SLK, 18deg29'53"S, 122deg02'21"E, offset 150 metres to the left of the GNH, comprising an area of 6 hectares;

s) Access to Reserve 45835 "Historical Lighthouse Site" by employees or agents of the Shire of Broome, the State Government or the Commonwealth Government in the performance of their duties or member of the public for identified purposes.

t) The Access Agreement made between the Karajarri People, Western Agricultural Industries and the State of Western Australia, being Annexure A to the determination. (Please note that Annexure A is not attached to this Register. If you require a copy of Annexure A, please enquire at the National Native Title Tribunal by phoning the freecall number below).

FOURTH SCHEDULE

"Karajarri" means those people who refer to themselves as Karajarri, being persons who:

a) are of Karajarri descent;

b) identify as Karajarri and are accepted as such by the Karajarri;

c) adhere to Karajarri customs and traditions; and

d) are by Karajarri laws and customs entitled to the use or occupation of the Karajarri lands irrespective of whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission and includes those persons having native title thereto under common law.

REGISTER ATTACHMENTS:

1. Map 1 - Native Title Determination Application, 1 page - A4, 12/02/2002
2. Map 2 - Enlargement 1, 1 page - A4, 12/02/2002
3. Map 3 - Enlargement 2, 1 page - A4, 12/02/2002

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.