



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6185/1998; WAD77/2005
NNTT Number: WCD2013/001

Determination Name: [AB \(deceased\) & Ors on behalf of the Ngarla People v State of Western Australia & Ors](#)

Date(s) of Effect: 19/02/2013

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 19/02/2013

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Wanparta Aboriginal Corporation RNTBC
Trustee Body Corporate
C/- Maclean Legal
Suite 156, Level 2, Equus Building, 580 Hay Street
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:

SCHEDULE FIVE

NATIVE TITLE HOLDERS

The Native Title Holders are those persons who refer to themselves as Ngarla, being persons who:

1. are the cognatic descendants of persons recognised under traditional laws and customs to be members of the Ngarla language group (including persons who have been adopted into the group according to those laws and customs), in particular the descendants of the following individuals:

- (a) Paparumarra (Alec);
 - (b) Miriny-Mirinymarra (Horse-boy Jimmy);
 - (c) Yintilypirna (Shaw River Smiler);
 - (d) Jarnpa (the father of Warrjirungu);
 - (e) Wangkunuru (Cissie);
 - (f) Makanykarra (Willy);
 - (g) Jurrayingi (Frank);
 - (h) Kurlijirri (De Grey Smiler); and
 - (i) Yilpiwarna (Arthur Kitil); and
2. have been incorporated into the Ngarla group under traditional laws and customs, in particular Wiparu (Stephen Stewart) and his children, Stephen Stewart Jnr and Margaret Stewart.

MATTERS DETERMINED:

BEING SATISFIED that a determination of native title in the terms set out in the attached Annexure One in respect of WAD 6185 of 1998 and WAD 77 of 2005 would be within the power of the Court pursuant to section 94A of the *Native Title Act 1993* (Cth):

THE COURT ORDERS THAT:

1. There be a determination of native title in WAD 6185 of 1998 and WAD 77 of 2005 in terms of Annexure One attached to these orders.
2. The Wanparta 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).
3. Application WAD 82 of 1998 be dismissed to the extent that it overlaps with applications WAD 6185 of 1998 and WAD 77 of 2005.
4. There be no order as to costs.

ANNEXURE ONE

DETERMINATION OF NATIVE TITLE

NGARLA OVERLAP PROCEEDING

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of native title (section 225 *Native Title Act*)

1. Native title exists in the Determination Area in the manner set out in paragraphs 3 and 4 of this Determination.

Native Title Holders (section 225(a) *Native Title Act*)

2. The native title rights and interests are held in trust by the Wanparta Aboriginal Corporation, as prescribed body corporate for the purposes of section 56 of the *Native Title Act*, for the Native Title Holders as the common law holders of native title.

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

Non-exclusive rights and interests

3. Subject to paragraphs 5, 6 and 9 the nature and extent of the native title rights and interests in relation to the Determination Area are non-exclusive rights of the Native Title Holders to:
 - (a) access, and to camp on, the land and waters;
 - (b) take flora, fauna, fish, water and other traditional resources (excluding minerals) from the land and waters;
 - (c) engage in ritual and ceremony on the land and waters;
 - (d) care for, maintain and protect from physical harm, particular sites and areas of significance to the Native Title Holders on the land and waters; and
 - (e) be accompanied on to the Determination Area by those people who, though not Native Title Holders and who (for the avoidance of doubt) cannot themselves exercise any native title right in the Determination Area, are:
 - (i) spouses of the Native Title Holders; or

- (ii) people required by traditional law and custom for the performance of ceremonies or cultural activities on the Determination Area.

Additional rights and interests in relation to Special Lease 3116/9217

- 4. Subject to paragraphs 5 and 9, in addition to the native title rights and interests set out in paragraph 3, in respect of those parts of the Determination Area which are the subject of Special Lease 3116/9217 (which areas are generally shaded orange on the map in Schedule Two) the Native Title Holders have the right to prevent Aboriginal people who are not Native Title Holders but who recognise themselves as governed by the traditional laws and customs of the Native Title Holders in respect of the matters in subparagraphs (a) - (c) below from:
 - (a) opening Law or other ceremonial grounds in the land and waters subject to Special Lease 3116/9217;
 - (b) accessing Law or other ceremonial grounds in the land and waters subject to Special Lease 3116/9217 for the purpose of participating in Law ceremonies, contrary to the traditional law and custom of the Native Title Holders; and
 - (c) gathering resources from the land and waters subject to Special Lease 3116/9217 for use in ceremonies or cultural activities.

Qualifications on the native title rights and interests

- 5. The native title rights and interests set out in paragraphs 3 and 4:
 - (a) are 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 non-commercial communal purposes (including cultural or spiritual purposes); and
 - (b) 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 otherwise do not include 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); or

(iii) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA).

6. The native title rights and interests set out in paragraph 3 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 land and waters of the Determination Area or their resources.

Areas to which s 47A of the Native Title Act applies

7. Section 47A of the *Native Title Act* applies to disregard any extinguishment by the creation of prior interests in relation to the land and waters within the Determination Area the subject of Special Lease 3116/9217 (which areas are generally hatched orange on the map in Schedule Two).

The nature and extent of any Other Interests

8. The nature and extent of the Other Interests are described in Schedule Four.

Relationship between native title rights and Other Interests

9. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraphs 3 and 4 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 do not extinguish them.

Definitions and Interpretation

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

“**Determination Area**” means the land and waters described in Schedule One and depicted on the map at Schedule Two **other than** the Unclaimed Areas;

“**land**” has the same meaning as in the *Native Title Act* and, for the avoidance of doubt, includes any water found on the land which does not fall within the definition of "waters";

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

“**Native Title Holders**” means the persons described in Schedule Five;

“**Other Interests**” means the legal or equitable estates or interests and other rights in relation to the Determination Area described in Schedule Four and referred to in paragraph 8;

“**resources**” means flora, fauna, water 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;

“**Unclaimed Areas**” means the land and waters described in Schedule Three and shaded pink on the map in Schedule Two;

“**waters**” has the same meaning as in the *Native Title Act* but also includes:

- (a) a creek, a stream or brook;
- (b) any natural collection of water into, through, or out of which a river, creek, stream or brook flows; and
- (c) waters which percolate from the ground.

11. In the event of any inconsistency between the written description of an area in Schedules One, Three or Four and the area as depicted on the map in Schedule Two, the written description prevails.

SCHEDULE ONE

DETERMINATION AREA

The **Determination Area**, generally shown as bordered in blue on the map in Schedule Two, comprises all those land and waters within applications WAD 6185 of 1998 and WAD 77 of 2005 which are also the subject of WAD 82 of 1998, being:

All those lands and waters commencing at a point on a western boundary of pastoral lease 3114/1281 (Strelley) at Latitude 20.448278 South, Longitude 118.871155 East, and extending generally northerly, generally easterly and generally southerly along boundaries of that pastoral lease to a point on an eastern boundary at Latitude 20.499104 South, Longitude 119.184376 East. Thence generally westerly passing through the following co-ordinate positions:

LATITUDE (South)	LONGITUDE (East)
20.420334	118.972580
20.442694	118.964722
20.441334	118.887665

Thence south westerly back to the commencement point.

Exclusion - Excludes any land and waters covered by Reserve 38564 that fall within the external boundary.

Note: Geographic Coordinates provided in Decimal Degrees

Cadastral Boundaries sourced from Landgate

Spatial Cadastral Data dated 16 February 2007

Datum: Geocentric Datum of Australia (1994)

Prepared by: Native Title Spatial Services (Landgate) 16 February 2007

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.

SCHEDULE TWO

MAP OF THE DETERMINATION AREA

(refer to Register Attachment 1)

SCHEDULE THREE

UNCLAIMED AREAS

The following areas, being land and waters where *previous exclusive possession acts* have occurred and native title has been completely extinguished, have been excluded from the applications for native title in WAD 6185 of 1998 and WAD 77 of 2005 and are excluded from the Determination Area in accordance with section 61A of the *Native Title Act* (and section 23C of the *Native Title Act*, and sections 12I and 12J of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA)).

With the exception of public works (as described in clause 3 of this Schedule), all of the following areas are shown generally as shaded pink on the map in Schedule Two.

1. Leases

- (a) Special Lease 3116/3449 granted on 26 April 1966 pursuant to section 116 of the *Land Act 1933* (WA) and the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* (WA) for the special purpose of the construction upgrading re-alignment operation and use of a railway [subsequently the subject of Special Lease 3116/6235; currently the subject of Lease GE J/998591]; and
- (b) Special Lease 3116/4543 granted on 8 April 1971 pursuant to section 116 of the *Land Act 1933* (WA) for the special purpose of mining operations (railway re-alignment) [subsequently the subject of Special Lease 3116/5872; currently the subject of Lease GE J/998590];

2. Dedicated Roads and roads set aside, taken or resumed

- (a) Road No. 432 (with a width of 20.12 metres), known as the Condon and Roebourne Road, dedicated pursuant to the *Roads Act 1888* (WA), gazetted on 22 June 1894, p587;
- (b) Road No. 6441 (with a width of 20.12 metres) set aside, taken or resumed under section 17 of the *Public Works Act 1902* (WA), gazetted on 29 April 1921, p699;
- (c) Road No. 14821 (with a width of 125.29 metres) dedicated pursuant to section 288 of the *Local Government Act 1960* (WA), gazetted on 17 November 1972, p4383; and
- (d) Roads No. 107/106 (with a width of 20.12 metres) dedicated pursuant to section 106 of the *Land Act 1933* (WA), gazetted on 1 November 1968, p3267.

3. Public Works

- (a) Subject to clause 3(b), any other public work as that expression is 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 251 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.
- (b) For the avoidance of doubt, no public works exist in the area of Mikurrunya Hills site registered with the Department of Indigenous Affairs (DIA Site ID 9904, Site No. P02286) insofar as the registered site boundary is north of the Great Northern Highway.

SCHEDULE FOUR

OTHER INTERESTS

The nature and extent of the Other Interests in relation to the Determination Area as at the date of this determination are:

1. Pastoral Leases:

Pastoral Lease 3114/1281 (De Grey Location 113, Forrest Location 252, Lot 181 on DP 51043 and Lot 182 on DP 51844), being Strelley Station, and rights and interests of the holder from time to time of that pastoral lease.

2. Special Leases:

Special Lease 3116/9217, granted on 15 May 1986 pursuant to section 116 of the *Land Act 1933* (WA) for the special purpose of the housing agriculture and grazing [currently for the special purpose of residential] and rights and interests of the holder from time to time of that special lease.

3. Roads:

Marble Bar Road (being Lots 300 on DP 58181 and Lot 301 on DP 58182) dedicated as a road pursuant to section 56 of the *Land Administration Act 1997* (WA) on 22 March 2011 and the rights and interests of the persons having the care, control and management of that road from time to time.

4. Mining Interests

- (a) The rights and interests of the holders of the following mining tenements granted under the *Mining Act 1978* (WA):

(i) **Exploration Licences**

Tenement ID	Holder	Date Granted
E 4502380	Atlas Iron Limited	24/10/2003
E 4502569	Shaw River Manganese Limited	27/07/2005
E 4502857	FMG Pilbara Pty Ltd	02/10/2012
E 4503114	Polaris Metals Pty Ltd	01/12/2009
E 4503115	Polaris Metals Pty Ltd	01/12/2009
E 4503551	Macpherson, David Hugh	08/09/2010
E 4503612	Pilbara Logistics Pty Ltd	08/04/2011
E 4503788	Polaris Metals Pty Ltd	29/11/2011

(ii) **General Purpose Lease**

Tenement ID	Holder	Date Granted
G 4500257	Boral Contracting Pty Ltd	12/01/2010

(iii) **Miscellaneous Licences**

Tenement ID	Holder	Date Granted
L 4500110	Newcrest Mining Limited	23/10/2003
L 4500197	Boral Resources (WA) Ltd	27/11/2009

(iv) **Mining Leases**

Tenement ID	Holder	Date Granted
M 4500023	Boral Resources (WA) Ltd	27/10/1983
M 4500025	Boral Contracting Pty Ltd	24/08/1983
M 4500098	Boral Contracting Pty Ltd	21/01/1986
M 4500103	Boral Contracting Pty Ltd	19/08/1985
M 4500450	Dampier Salt Limited	05/09/1989
M 4500652	Dampier Salt Limited	14/06/1995

- (b) The rights and interests of the holders of the following petroleum titles granted under the *Petroleum Pipelines Act 1969* (WA):

(i) **Pipeline Licence**

Tenement ID	Holder	Date Granted
PL60	Gas Transmission Services (WA) Operations Pty Ltd.	17/10/2003

5. Access to Mining Areas

Any rights of the holders from time to time of the mining tenements listed in clause 4 of this Schedule Four to use (including by servants, agents and contractors) such portions of existing roads and tracks in the Determination Area as are permitted by those rights.

6. Other

The following rights and interests in the Determination Area as at the date of this determination (other than rights and interests of a kind referred to in clauses 1 to 5 inclusive of this Schedule Four):

- (a) Rights and interests, including licences and permits, validly granted (including in accordance with the *Native Title Act*) by the Crown in right of the State or of the Commonwealth pursuant to statute or otherwise in the exercise of its executive power and any regulations made pursuant to such statutes;
- (b) Rights and interests held by reason of the force and operation of the laws of the State or of the Commonwealth including the *Rights in Water and Irrigation Act 1914* (WA);
- (c) The rights and interests of any person to use and enjoy any roads in the Determination Area (subject to the laws of the State) over which, as at the date of this determination, members of the public have a right of access under the common law;
- (d) The right to access the Determination Area by:
- (i) an employee, agent or instrumentality of the State;
 - (ii) an employee, agent or instrumentality of the Commonwealth;
 - (iii) an employee, agent or instrumentality of any local government authority,

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

- (e) So far as confirmed pursuant to section 212(2) of the *Native Title Act* and section 14 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)* as at the date of this determination, any existing public access to and enjoyment of:
 - (i) waterways;
 - (ii) beds and banks or foreshores of waterways;
 - (iii) stock routes; and
 - (iv) areas that were public places at the end of 31 December 1993; and
- (f) Any other validly granted or created (including in accordance with the *Native Title Act*):
 - (i) legal or equitable estate or interest in the land or waters of the Determination Area; or
 - (ii) right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with:
 - (A) the land or waters of the Determination Area; or
 - (B) an estate or interest in the land or waters of the Determination Area; or
 - (iii) restriction on the use of the land or waters of the Determination Area, whether or not annexed to other land or waters.

SCHEDULE FIVE

NATIVE TITLE HOLDERS

The Native Title Holders are those persons who refer to themselves as Ngarla, being persons who:

1. are the cognatic descendants of persons recognised under traditional laws and customs to be members of the Ngarla language group (including persons who have been adopted into the group according to those laws and customs), in particular the descendants of the following individuals:
 - (a) Paparumarra (Alec);
 - (b) Miriny-Mirinyarra (Horse-boy Jimmy);
 - (c) Yintilypirna (Shaw River Smiler);
 - (d) Jarnpa (the father of Warrjirungu);
 - (e) Wangkunuru (Cissie);
 - (f) Makanykarra (Willy);
 - (g) Jurrayingi (Frank);
 - (h) Kurlijirri (De Grey Smiler); and
 - (i) Yilpiwarna (Arthur Kitil); and
2. have been incorporated into the Ngarla group under traditional laws and customs, in particular Wiparu (Stephen Stewart) and his children, Stephen Stewart Jnr and Margaret Stewart.

REGISTER ATTACHMENTS:

1. Schedule Two - Map of the Determination Area, 1 page - A4, 19/02/2013

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.