

Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk native title determinations

WHAT THEY MEAN FOR THE WIMMERA REGION

Freecall: 1800 640 501

Website: www.nntt.gov.au

Published by the National Native Title Tribunal

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The Wimmera River photograph by Jeremy Daalder.



NATIONAL NATIVE TITLE TRIBUNAL

Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk determinations

These native title determinations marked a turning point in Victoria because they were the first to be made by agreement or consent. A consent determination was able to be reached because all parties agreed, through mediation, that the native title claimants have native title rights and interests over part of the area they claimed.

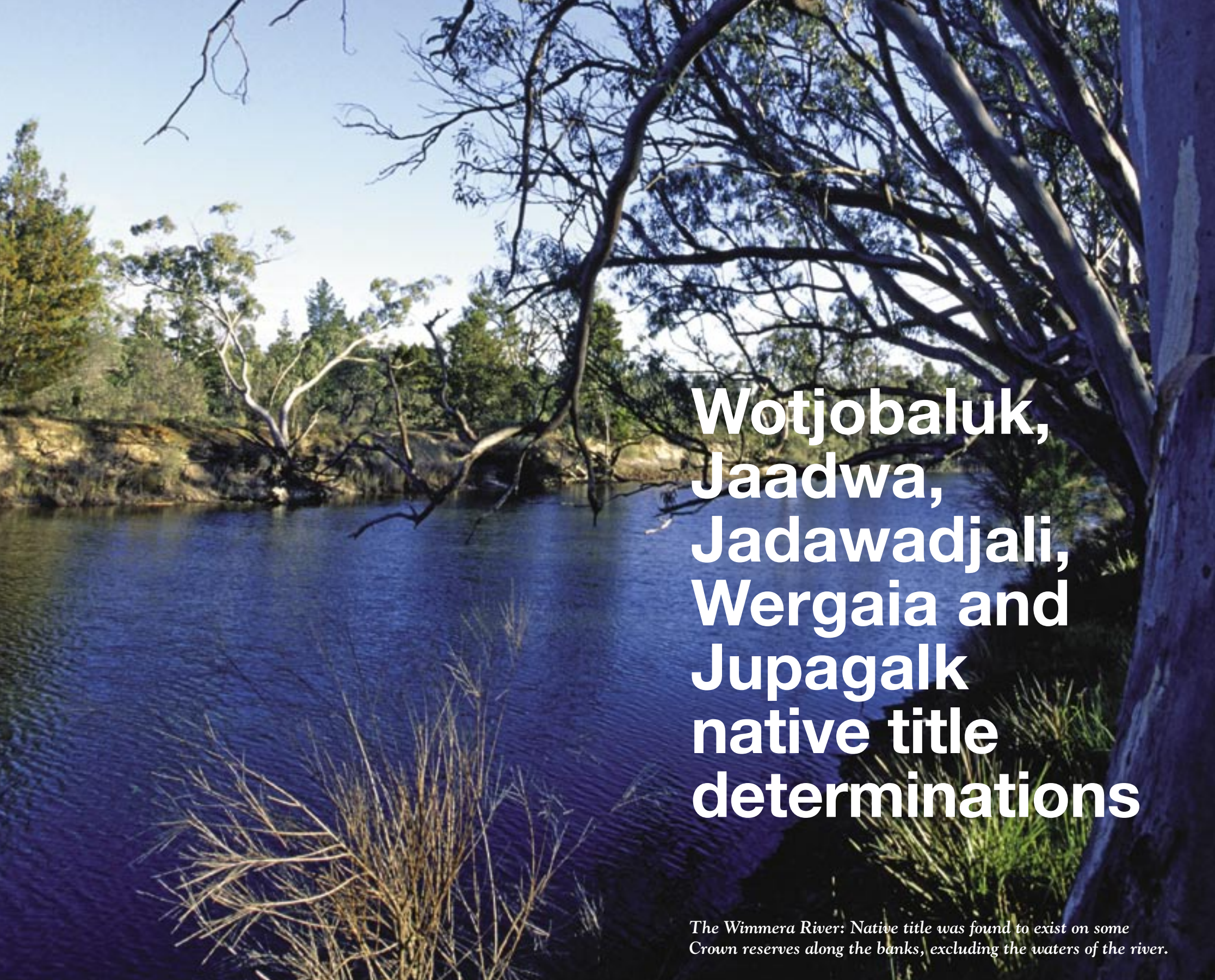
In making the determinations, the Federal Court recognised the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples' non-exclusive native title rights over a part of their original claim area (Area A on the map). The court also determined that the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples did not have native title rights in the remainder of the claimed area (Area B on the map).

The native title rights of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples are the right to hunt, fish, gather and camp for personal, domestic and non-commercial purposes, under their traditional laws and customs. These rights are also subject to the laws of the State of Victoria and the

Commonwealth of Australia and the terms and conditions of a co-existence protocol between the parties.

Those people or organisations who currently have rights to use the area (whether under leases, licences or permits issued by government or as rights of public access held by all members of the community) will be able to continue to exercise those rights.

The consent determinations finalise the three native title claims made on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples. They also acknowledge that in Area B—the remainder of the area covered by the three claims—all native title rights have been extinguished.



Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk native title determinations

The Wimmera River: Native title was found to exist on some Crown reserves along the banks, excluding the waters of the river.

BACKGROUND ON THE CLAIMS

Interested parties

After the claims were originally lodged, the Native Title Registrar (the Registrar) notified people with an interest in the claim area, inviting them to become parties and have involvement in associated discussions. Almost 450 people and organisations chose to do so and these included:

- the Victorian Government
- the Australian Government
- eight local government councils
- telecommunications and other utilities
- holders of leases, licences and permits to use the land and water for purposes such as mining, forestry, agriculture, beekeeping, fishing, tourism and recreation.

The claims did not, and could not, include privately-owned ('freehold') land. Despite this, the general community had some reservations about the effects of a native title claim.

Bringing people together: the Tribunal holds a mediation conference for the claims in March 2003.



Mediation of the claims

The Federal Court referred the matters to the National Native Title Tribunal for mediation in September 1999 and, at first, the focus was on the native title claimants providing evidence that their native title rights existed. They were required to show that the group continued to hold rights and interests in their traditional country, under their traditional laws and customs, and that those rights and interests had not been extinguished since the British claimed sovereignty over Victoria in 1788.

Most of these early discussions about the evidence were just between the native title claimants and the Victorian Government. In October 2002, the government announced that it had reached an agreement-in-principle with the claimant group about the broad terms on which the three claims could be settled. The agreement-in-principle could only be finalised with the endorsement of all other parties to the claim, including the Australian Government, which consented to an agreement in November 2003.

Other parties followed suit and a comprehensive drafting of documents occurred over the next two years—with the focus on the Wimmera River area. The parties agreed that the native title claimants were best able to demonstrate their continual connection with their country in this part of the claim area.



During this time, the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples and other native title claim groups in the north, east and south of the claim area also met to resolve other matters relevant to their groups.

What the determinations mean

The Federal Court of Australia makes decisions about whether or not the common law of Australia recognises that native title exists. When parties agree that native title claimants do or do not have native title rights and interests in a particular area, they can approach the court and ask it to make determinations with their consent.

In one of the three consent determinations made by the court in this case, the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples were recognised as having non-exclusive native title rights over a part of their original claim area. This area is limited to some Crown reserves along the banks of the Wimmera River, between a point north of Lake Albacutya, to the junction of the Wimmera River with Yariambiak Creek (Area A) and does not include the waters of the river. Area A is approximately 26,900 hectares and represents about two to three per cent of the original claim area.

The court also determined that the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples did not have native title rights in the remainder of the claimed area (Area B).

The native title holders have set up a structure, called a prescribed body corporate, to manage their native title rights—as required under the *Native Title Act 1993* (Cwlth). The prescribed body corporate for these determinations is the Barengi Gadjin Land Council Aboriginal Corporation (BGLCAC). The land council will become the first point of contact for people wishing to discuss any issues with the native title holders.

Other agreements related to the determinations

The Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples and the BGLCAC entered into an indigenous land use agreement (ILUA) with the Victorian and Australian Governments. The Registrar registered this agreement in November 2005.

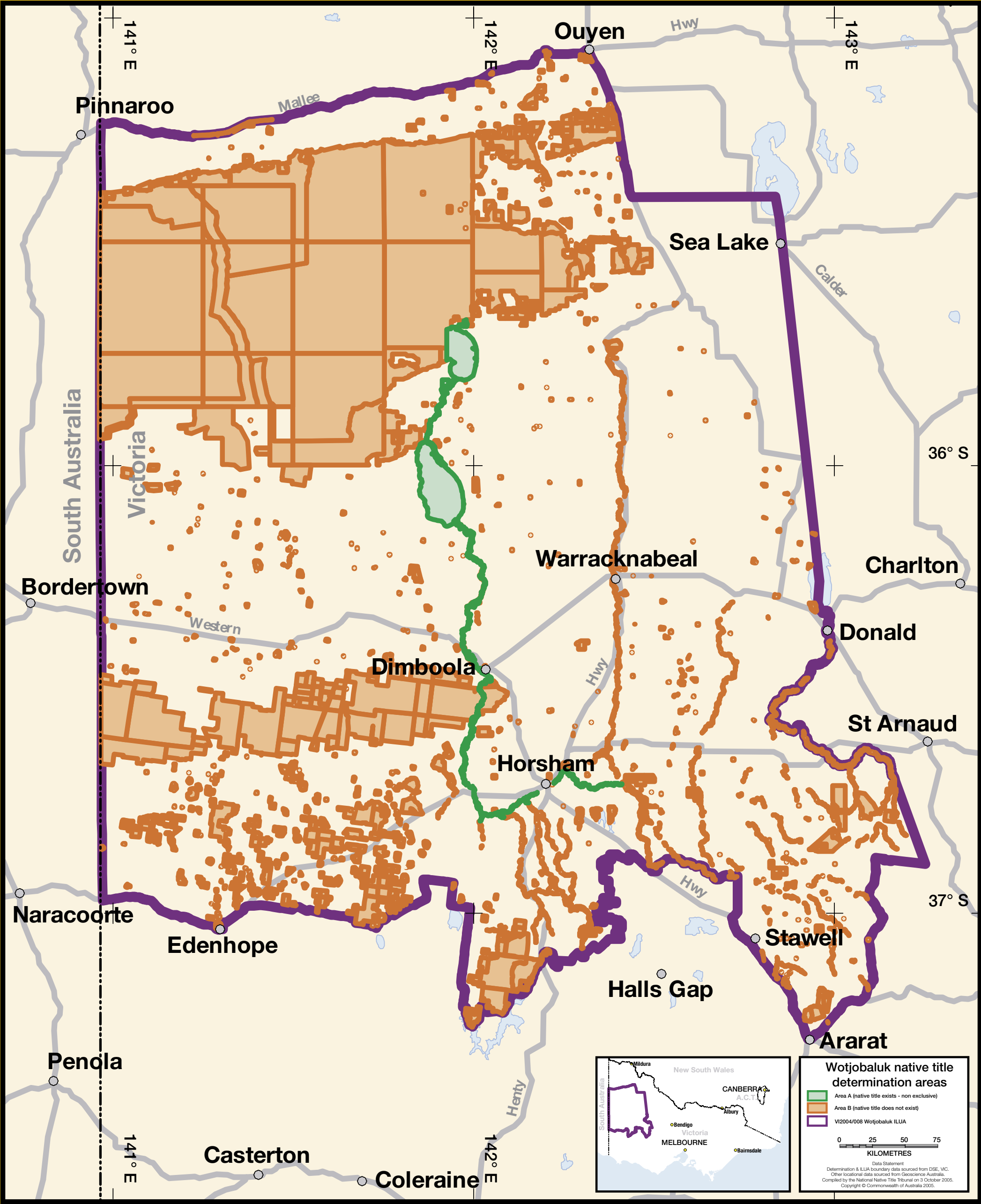
The ILUA is an agreement that sets out how and when the native title holders will engage with the Victorian and Australian Governments about future dealings in the agreement area. Among other things, the ILUA ensures that the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples will continue to have a say about certain types of developments in the area where their native title rights have been recognised.

The ILUA acts as an umbrella agreement for several other related agreements that form part of the settlement package between the native title claimants and the Victorian Government but which are not part of the consent determination.

These related agreements provide for a range of other measures, including:

- recognition of the close cultural ties of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples to an area of their traditional country that is significantly larger than the area where their native title rights were recognised (i.e. it takes in part of Area B)
- establishment of a consultation process under which the Victorian Government must seek the input of the BGLCAC about certain types of developments in this larger area
- signage recognising the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples as the traditional owners of this larger area
- streamlined processes for the approval of licences and permits to the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples to hunt, fish, gather and conduct cultural events in this larger area
- active involvement of the native title holders in the co-operative management of certain lands (chiefly national parks and wilderness areas)
- the grant of freehold title to three parcels of land (15.7 hectares in total) over which the native title holders have demonstrated a strong cultural and historical connection (including land near the former Ebenezer Mission site) and
- funding to support the operations of the BGLCAC (this funding will assist in the administrative expenses of running the land council and also includes capital funding for the establishment of an administrative/cultural centre and improvements to freehold lands granted).

Map of the determination area



Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples

As descendants of the original inhabitants of the Wimmera region, many members of the claim group can trace their ancestry back to the area prior to European settlement. The descendants can also be traced back to people who lived on the Ebenezer Mission, north of Dimboola, established in the 1860s. Despite the impact of European settlement, the members of the claim group remain an identifiable community that has maintained some of its traditional law and custom in part of the claim area.

Effect of the agreements on stakeholders

People with an interest in the area of the claim, including the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples themselves, now have some certainty over their future. They know what their rights are in the area and how they will co-exist with the rights of other people to use the area.

The rights that other people hold in those areas, whether covered by the agreements or the determination that native title exists, have not changed. All the non-native title interests in the area are recognised and protected by the determination. For example, a person with a grazing licence in the area is able to continue to operate according to their grazing licence. The only difference is that, in addition to the rights the grazier holds under that licence, the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk peoples have also been recognised as having limited native title rights in the area. How these two sets of rights will co-exist with each other has been the subject of an agreement between the parties to the claim. In addition, members of the public will continue to be able to access the areas in the same way they always have.

Further information

Copy of judgment and determination

You can find a copy of the judgment and determination on the Federal Court of Australia's website: www.fedcourt.gov.au under the sub-heading 'Judgments'.

Or contact:

Librarian
Federal Court of Australia
Commonwealth Law Courts
305 William Street
Melbourne VIC 3000
Telephone: (03) 8600 3333

Copies of the ILUA register extract

Victoria-Tasmania Registry
National Native Title Tribunal
Level 8, 310 King Street
Melbourne VIC 3000
Tel: (03) 9920 3000 or freecall: 1800 640 501

Prescribed Body Corporate

Barengi Gadjin Land Council Aboriginal Corporation
Tel: (03) 5381 0977

Other relevant contact details

Native Title Services Victoria:
Tel: (03) 9321 5300

Government of Victoria: Department of Justice
Tel: (03) 9651 0857