

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6004/2004
NNTT Number: WCD2008/001

Determination Name: [Stanley Mervyn, Adrian Young, and Livingston West and Ors, on behalf of the Peoples of the Ngaanyatjarra Lands v The State of Western Australia and Ors](#)

Date(s) of Effect: 3/06/2008

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 03/06/2008

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Yarnangu Ngaanyatjarraku Parna (Aboriginal Corporation) RNTBC
Trustee Body Corporate
Level 12
221 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:

The People of the Ngaanyatjarra Lands, being the identified people and their descendants AND the descendants (only) of other identified people, as detailed in Schedule 3 (see Attachment 2).

MATTERS DETERMINED:

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of Native Title (s225)

1. Native title exists in relation to the Determination Area.

The Native Title Holders (s225(a))

2. The native title is held by the persons described in Schedule 3 (native title holders).

The nature and extent of native title rights and interests (s225(b) and s225(e))

3. Subject to paragraphs 5, 6 and 7 the nature and extent of the native title rights and interests held in relation to Reserve 24980 (Warburton Range Stock Route) [being an area where there has been partial extinguishment of native title] are:

- (a) the right to enter and remain;
- (b) the right to take fauna and flora;
- (c) the right to take water for personal, domestic, or non-commercial communal purposes;
- (d) the right to take other natural resources such as ochre, stones, soils, wood and resin; and
- (e) the right to care for, maintain and protect from physical harm, particular sites and areas of significance to the native title holders.

4. Subject to paragraphs 5, 6 and 7 the nature and extent of the native title rights and interests in each other part of the Determination Area [being areas where there has been no extinguishment of native title or areas where any extinguishment must be disregarded] are:

- (a) except in relation to flowing and subterranean water - the right of possession, occupation, use and enjoyment to the exclusion of all others; and
- (b) the right to take flowing and subterranean water for personal, domestic, or non-commercial communal purposes.

5. The native title rights and interests described in paragraphs 3 and 4(b) do not confer possession, occupation, use and enjoyment on the native title holders to the exclusion of all others.

6. The native title rights and interests described in paragraph 4(a) confer possession, occupation, use and enjoyment on the native title holders to the exclusion of all others.

7. The native title rights and interests are:

- (a) exercisable in accordance with the traditional laws and customs of the native title holders; and
- (b) subject to the laws of the State and the Commonwealth including the common law.

8. Notwithstanding anything in this determination the native title rights and interests 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 do not include other minerals and petroleum as defined in the Mining Act 1904 (WA), the Mining Act 1978 (WA) as in force at the date of this determination, the Petroleum Act 1936 (WA) and the Petroleum and Geothermal Energy Resources Act 1967 (WA) as in force at the date of this determination.

Areas to which ss47A and 47B apply

9. Sections 47A and 47B of the Native Title Act apply to disregard any prior extinguishment in relation to the areas described in Schedule 5.

Nature and extent of other rights and interests in relation to the Determination Area (s225(c))

10. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 4.

Relationship between the native title rights and interests and other interests (s225(d))

11. The relationship between the native title rights and interests described in paragraph 3 and the other interests referred to in paragraph 9 ("the other rights and interests") is that:

- (a) to the extent that any of 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 in

their 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 during the currency of the other rights and 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 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.

Definitions and interpretation

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

"Determination Area" means the land and waters described in Schedule 1 and depicted on the plans attached to Schedule 1 (see Attachment 1);

"flowing and subterranean water" means the following water within the Determination Area:

(a) water which flows, whether permanently, intermittently or occasionally, within any river, creek, stream or brook;

(b) any natural collection of water into, through, or out of which a river, creek, stream or brook flows; and

(c) water from and including an underground water source, including water that percolates from the ground;

"land" and "waters" respectively have the same meanings as in the Native Title Act 1993 (Cth);

"Native Title Act" means the Native Title Act 1993 (Cth);

"water" includes flowing and subterranean water.

SCHEDULE 1 - DETERMINATION AREA (see Attachment 1)

SCHEDULE 2 - EXCLUSIONS

Exclusions from the Determination Area

[Areas excluded from the claim]

The following areas are excluded from the Determination Area:

(a) any public works as that expression is defined in the Native Title Act and the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) 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, within the external boundary of the Determination Area including the land and waters defined in section 251D of the Native Title Act.

SCHEDULE 3 - NATIVE TITLE HOLDERS (see Attachment 2)

SCHEDULE 4 - OTHER INTERESTS

Other Interests referred to in Paragraph 10

The nature and extent of other interests in relation to the Determination Area are the following as they exist as at the date of this determination:

Reserves

1. The interests of persons who have the care, control and management of the following reserve, and the interests of persons entitled to access and use this reserve for the purpose for which it is reserved, subject to any statutory limitations upon those rights:

Reserve 24980 for the purpose of the "Warburton Range Stock Route".

Lease

2. The rights and interests of the holders of the following leases:

(a) Special Lease 3116/10903 between the Minister for Lands (Lessor) and the Aboriginal Lands Trust (Lessee) for the special purposes of "Use and Benefit of Aboriginal Inhabitants" granted pursuant to section 116 of the Land

Act 1933 (WA) on 20 August 1992; and

(b) Sub-lease 3116/10903:

Sub-lease made 29 November 1988 between the Aboriginal Lands Trust and Ngaanyatjarra Land Council (Aboriginal Corporation).

Exploration Licence

3. The rights and interests of the holder of the following Exploration Licence:

Tenement ID	Holder	Date Granted
3801786	Encounter Resources Ltd	28/02/2006

Access to Tenement Area

4. (a) Without limiting the operation of any paragraph in Schedule 4, but subject to paragraphs 4(b) and 4(c) of Schedule 4 - the right of the holder of the mining tenement under the Mining Act 1978 (WA) referred to in paragraph 3 of Schedule 4 to use (including by servants, agents and contractors) such portions of existing roads and tracks in the Determination Area as necessary in order to have access to the mining tenement for the purpose of exercising the rights granted by the tenement.

(b) Nothing in paragraph 4(a) of Schedule 4 allows any upgrade, extension, widening or other improvement to a road or track or any work on a road or track other than work done to maintain it in reasonable repair and in order to leave it in substantially the same condition as it was prior to its use pursuant to paragraph 4(a).

(c) The right in paragraph 4(a) of Schedule 4 is subject to compliance with the laws of the State, including the Aboriginal Affairs Planning Authority Act 1972 (WA) and the terms of any agreement between the holder of the mining tenement referred to in paragraph 3 of Schedule 4 and any or all of the Ngaanyatjarra Land Council (Aboriginal Corporation), the Ngaanyatjarra Council (Aboriginal Corporation) and the registered native title claimants for the native title group.

Shire of Laverton

5. Rights and interests of the Shire of Laverton pursuant to statute or otherwise in that part of the Determination Area within the boundaries of the Shire including the maintenance of the following roads:

- (a) Hunt Oil Road; and
- (b) David Carnegie Road.

Other

6. The following rights and interests:

(a) rights and interests granted by the Crown pursuant to statute or otherwise in the exercise of its executive power;

(b) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth including the force and operation of the Rights in Water and Irrigation Act 1914 (WA);

(c) the right to access the Determination Area by:

- (i) an employee or agent or instrumentality of the State;
- (ii) an employee or agent or instrumentality of the Commonwealth;
- (iii) an employee or 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; and

(d) the right of any person to use (subject to the laws of the State, in particular the Aboriginal Affairs Planning Authority Act 1972 (WA) and Regulations) the David Carnegie Road and any road in the Determination Area over which, as at the date of the Determination, the public has a right of way according to the common law.

SCHEDULE 5 - AREAS TO WHICH ss47A AND 47B APPLY

Section 47A

1. Section 47A of the Native Title Act applies to the following areas within the Determination Area:

(a) Special Lease 3116/10903 between the Minister for Lands (Lessor) and the Aboriginal Lands Trust (Lessee) for the special purposes of "Use and Benefit of Aboriginal Inhabitants" granted pursuant to section 116 of the Land Act 1933 (WA) on 20 August 1992; and

(b) Sub-lease for Special Lease 3116/10903:

Sub-lease made 29 November 1988 between the Aboriginal Lands Trust and Ngaanyatjarra Land Council (Aboriginal Corporation).

Section 47B

2. Section 47B of the Native Title Act applies to the areas of unallocated Crown land shown on the plans attached to Schedule 1 within the Determination Area.

REGISTER ATTACHMENTS:

1. Attachment 1 - SCHEDULE 1 - DETERMINATION AREA, 11 pages - A4, 03/06/2008

2. Attachment 2 - SCHEDULE 3 - NATIVE TITLE HOLDERS, 34 pages - A4, 03/06/2008

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.