

REVISIONS AND RESOLUTIONS

MANY LAWS, ONE LAND

AIATSIS NATIVE TITLE CONFERENCE – BROOME 2018

SUSAN PHILLIPS – NSW AND QUEENSLAND BARS

Native Title Determinations and Claimant Applications

Schedule of Native Title
Determination Applications

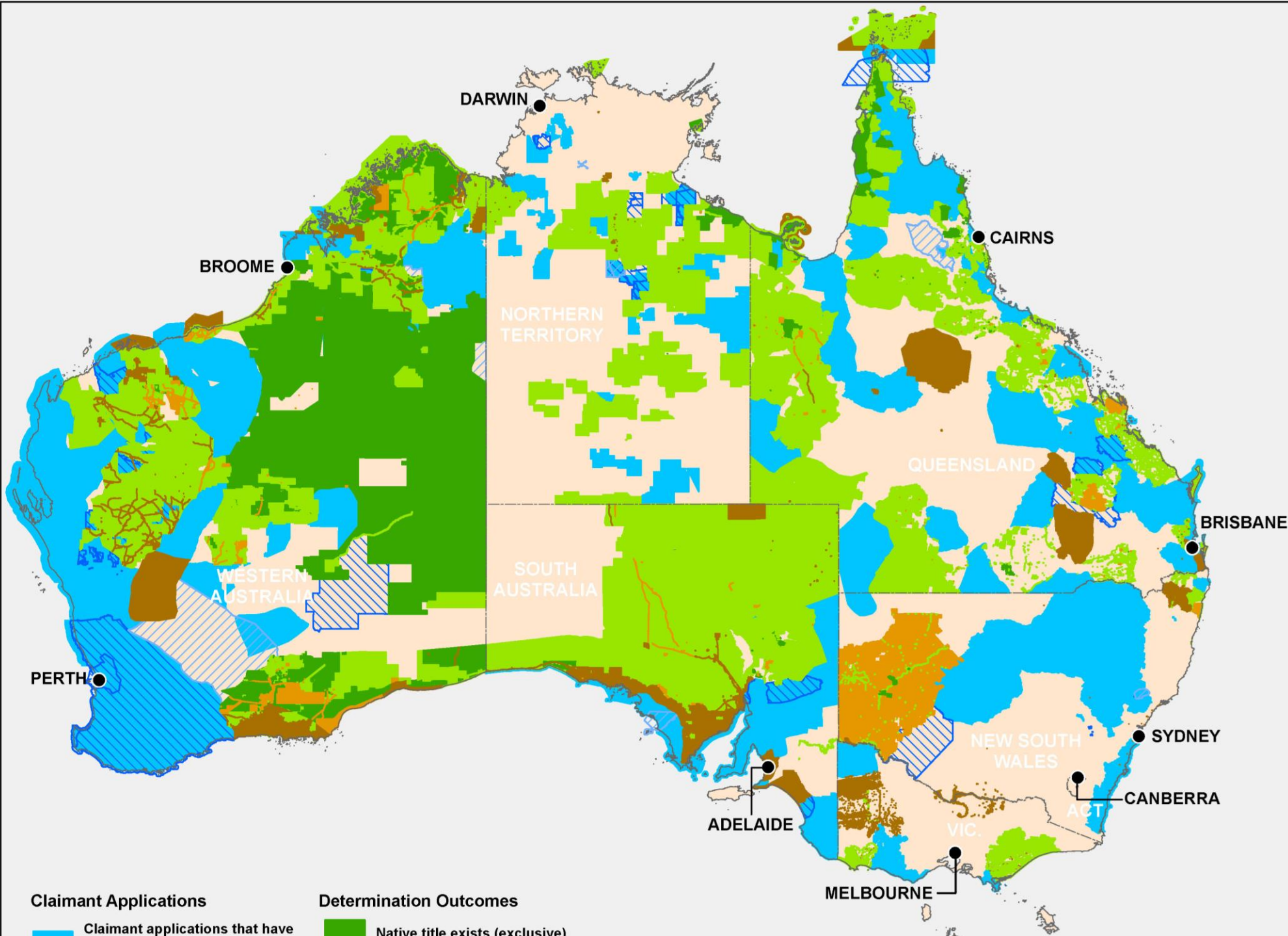
As at 31 March 2018

Some or parts of some determinations may not yet be in effect or on the National Native Title Register (NNTR). The court may decide that the determination of native title will take effect conditional upon some future event occurring, for example, the registration of an Indigenous Land Use Agreement or the establishment and registration of a prescribed body corporate (PBC). In these cases the determination, or relevant part, will not be registered on the NNTR until the condition has been met. Areas not claimed such as private freehold, within an application are not necessarily depicted.

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Claimant Applications

Determination Outcomes

Claimant applications that have

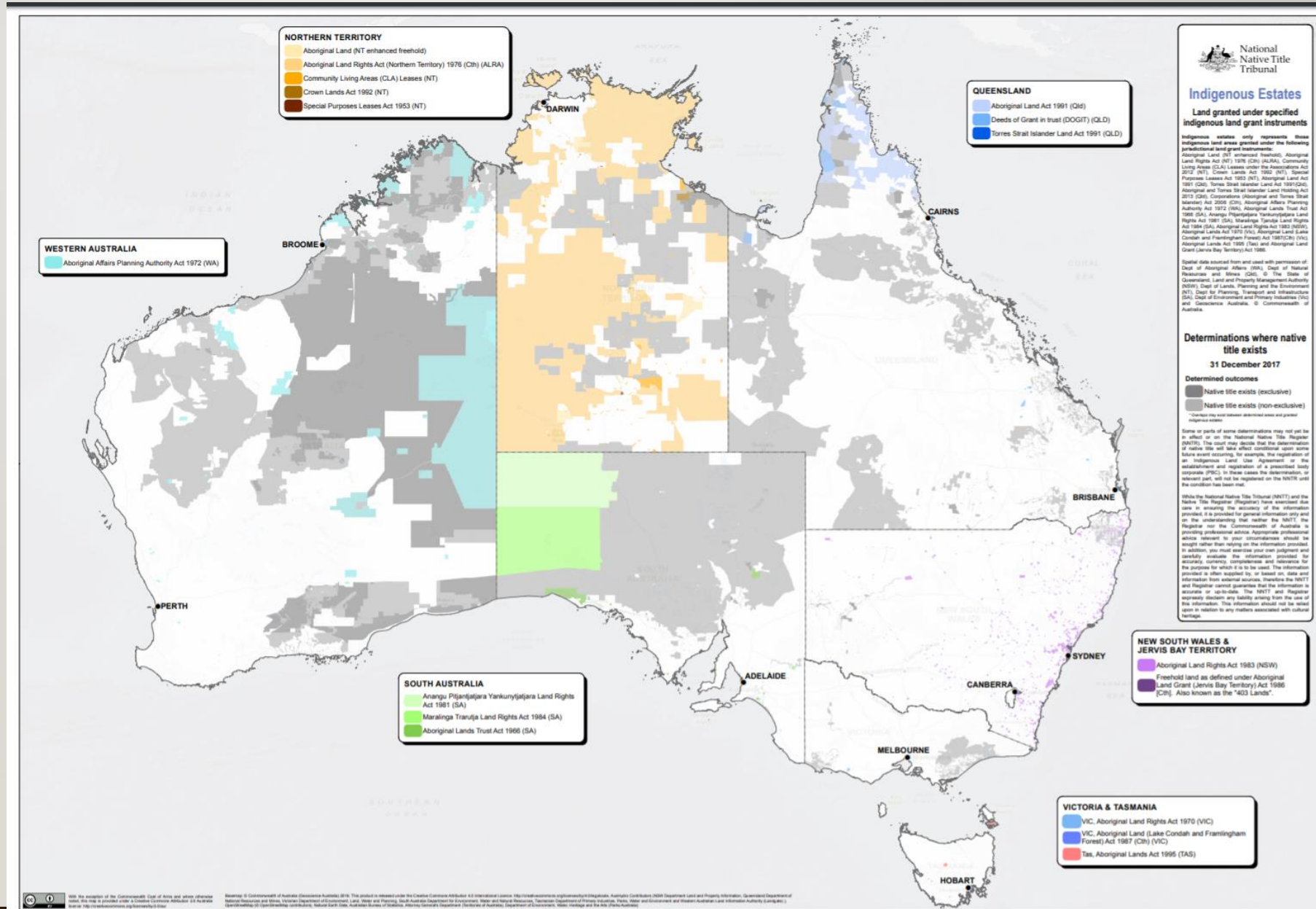
Native title exists (exclusive)

Percentage of land covered

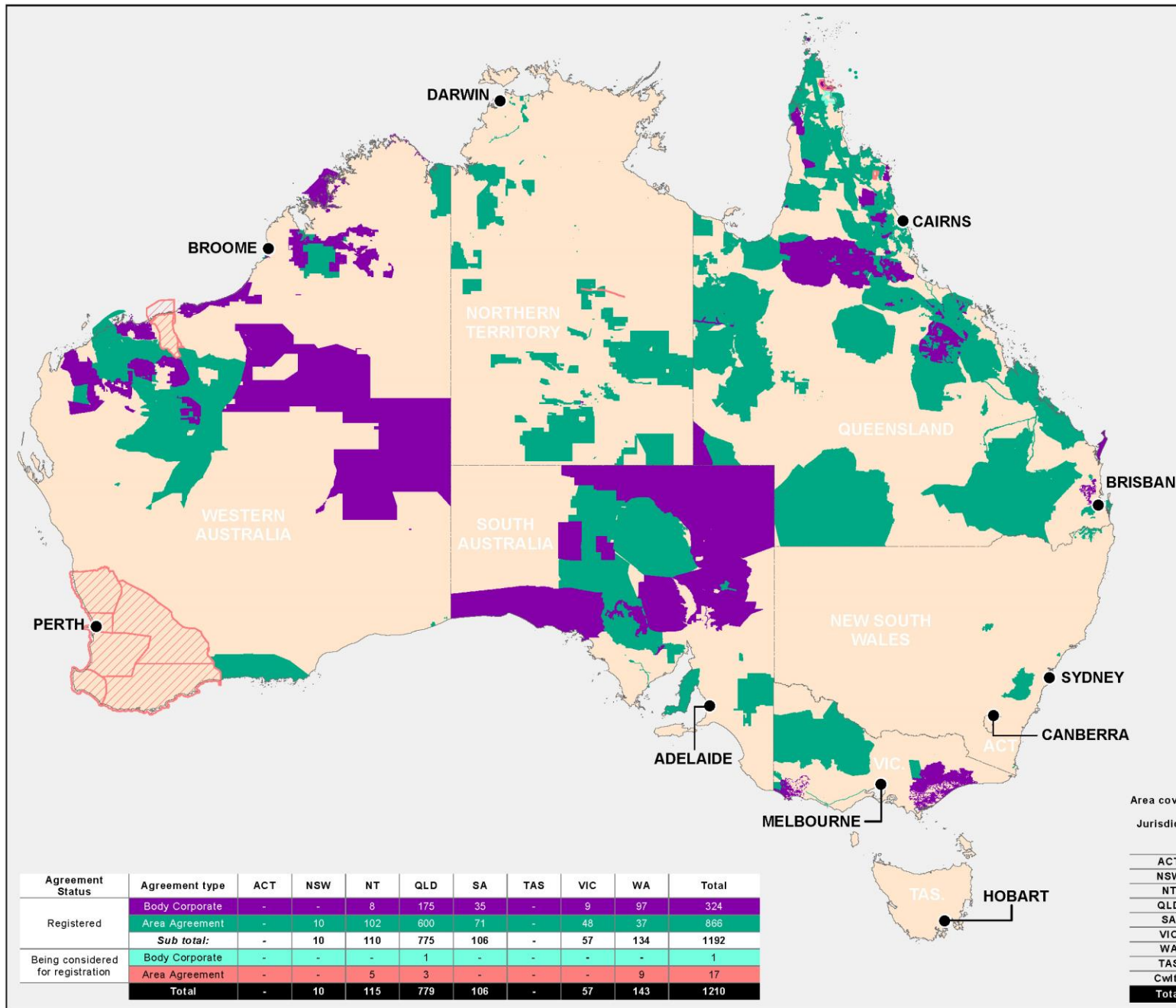
Jurisdiction	Subject to a determination	Subject to a claimant application
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INDIGENOUS ESTATE

AREAS HELD UNDER NATIVE TITLE OR STATE AND TERRITORY LAND RIGHTS REGIMES



ILUAS:



Indigenous Land Use Agreements

As at 31 December 2017

- Registered Body Corporate Agreement
- Registered Area Agreement
- Body Corporate Agreement being considered for registration (where notice has been given)
- Area Agreement being considered for registration (where notice has been given)

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Areas have been calculated using Australian Albers projection (EPSG 3577) in square kilometres. Reference to ACT also include Jervis Bay Territory.

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Area covered by Registered Indigenous Land Use Agreements

Jurisdiction	Total Area of Land covered (sqkm)	% of Land covered	Total Area of Sea covered (sqkm)
ACT	-	0.0%	-
NSW	8,921	1.1%	5
NT	178,163	13.2%	2
QLD	852,012	49.3%	6,944
SA	558,156	56.7%	125
VIC	85,046	37.4%	270
WA	625,569	24.8%	15,713
TAS	-	0.0%	-
Cwth	-	0.0%	1,049
Total	2,307,867	30.0% (Aust)	24,108

Agreement Status	Agreement type	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
Registered	Body Corporate	-	-	8	175	35	-	9	97	324
	Area Agreement	-	10	102	600	71	-	48	37	866
	Sub total:	-	10	110	775	106	-	57	134	1192
Being considered for registration	Body Corporate	-	-	-	1	-	-	-	-	1
	Area Agreement	-	-	5	3	-	-	-	9	17
	Total	-	10	115	779	106	-	57	143	1210

MORE COMPLEX CHALLENGES

- Filling in the gaps
- Resolving overlapping claims
- Compensation applications

Aspects of these objectives may require:

- Revising determinations

THREE AREAS FOR REVISION

Illusory Categories

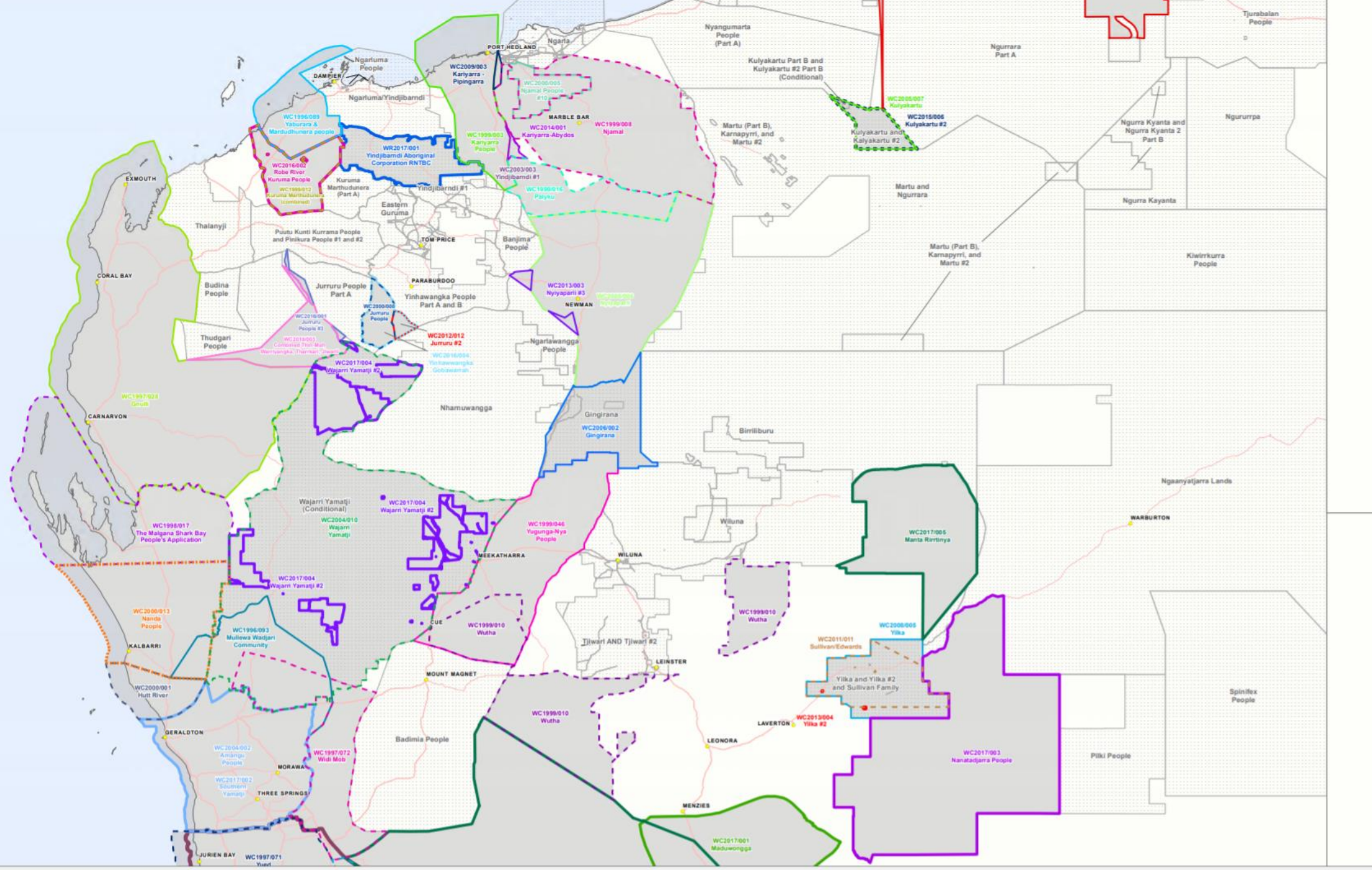
-
- Boundaries of claim area
 - Description of native title holders
 - Rights and Interests

THE ACQUIRED RIGIDITY OF BORDERS



EXAMPLE OF DETERMINATION AREAS DEFINED BY PROPERTY BOUNDARIES NOT CULTURAL BOUNDARIES

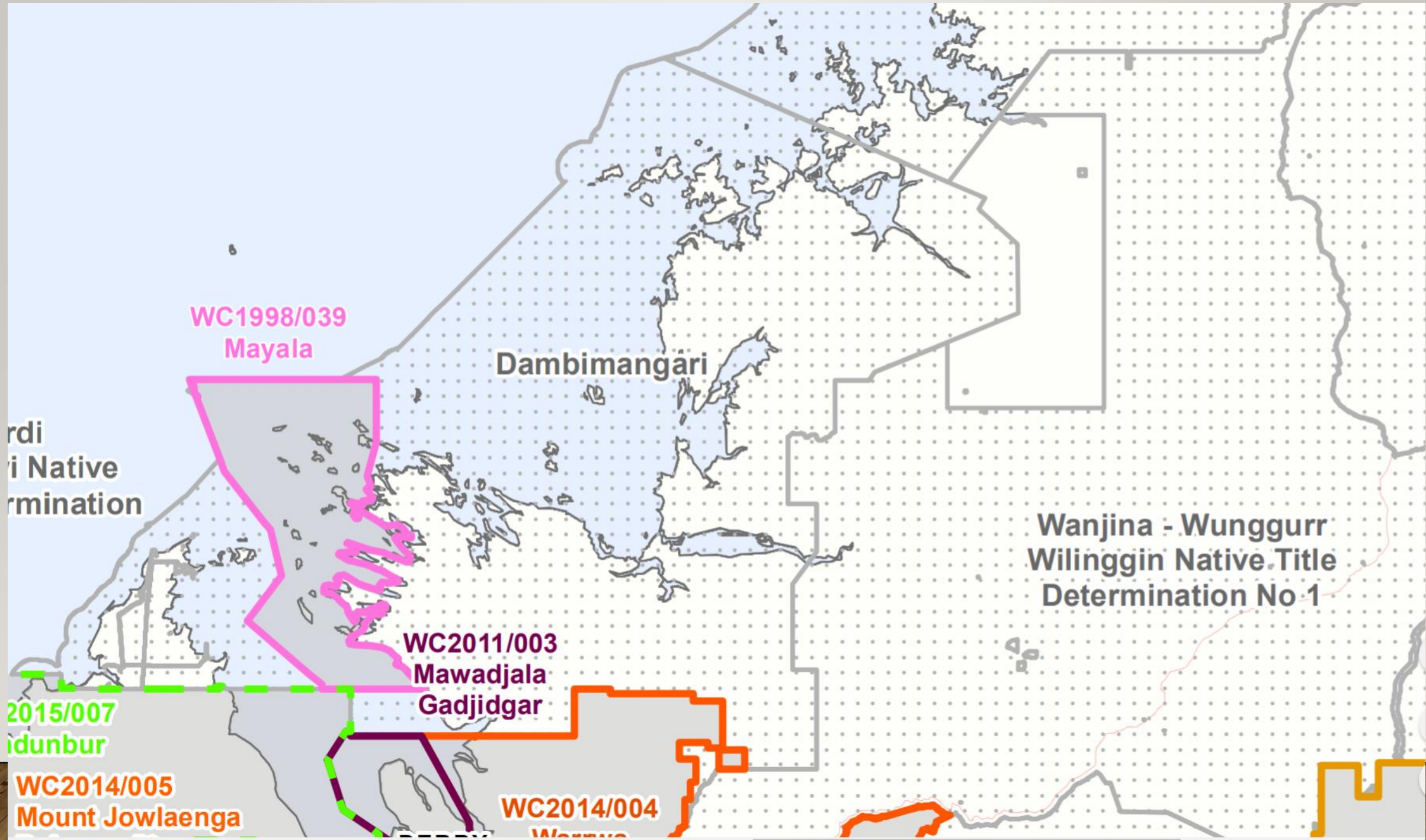
- Excised area of Western Australia



BARUNGA V STATE OF WESTERN AUSTRALIA (NO 2)

[2011] FCA 755

- Gilmour J at [182] – [183]
- I accept, that any interests of one group that are asserted in the other application area are reciprocal such that a hard boundary is not an appropriate delineation between them. And certainly, in my opinion, there is evidence to support the view that the exercise of those rights may be the subject of negotiation.
- The agreement reached on 9 October 1996 to which I have referred between the Dambimangari native title claim group and the Bardi Jawi precursors of the Mayala native title claim group, to the effect that members of the two groups who have customarily exercised rights in the other area will be recognised by the other claimant group as being entitled to continue to exercise those rights in the other area...



WC1998/039
Mayala

Dambimangari

rdi
i Native
termination

Wanjina - Wungurr
Wilinggin Native Title
Determination No 1

WC2011/003
Mawadjala
Gadjidjar

2015/007
idunbur

WC2014/005
Mount Jowlaenga

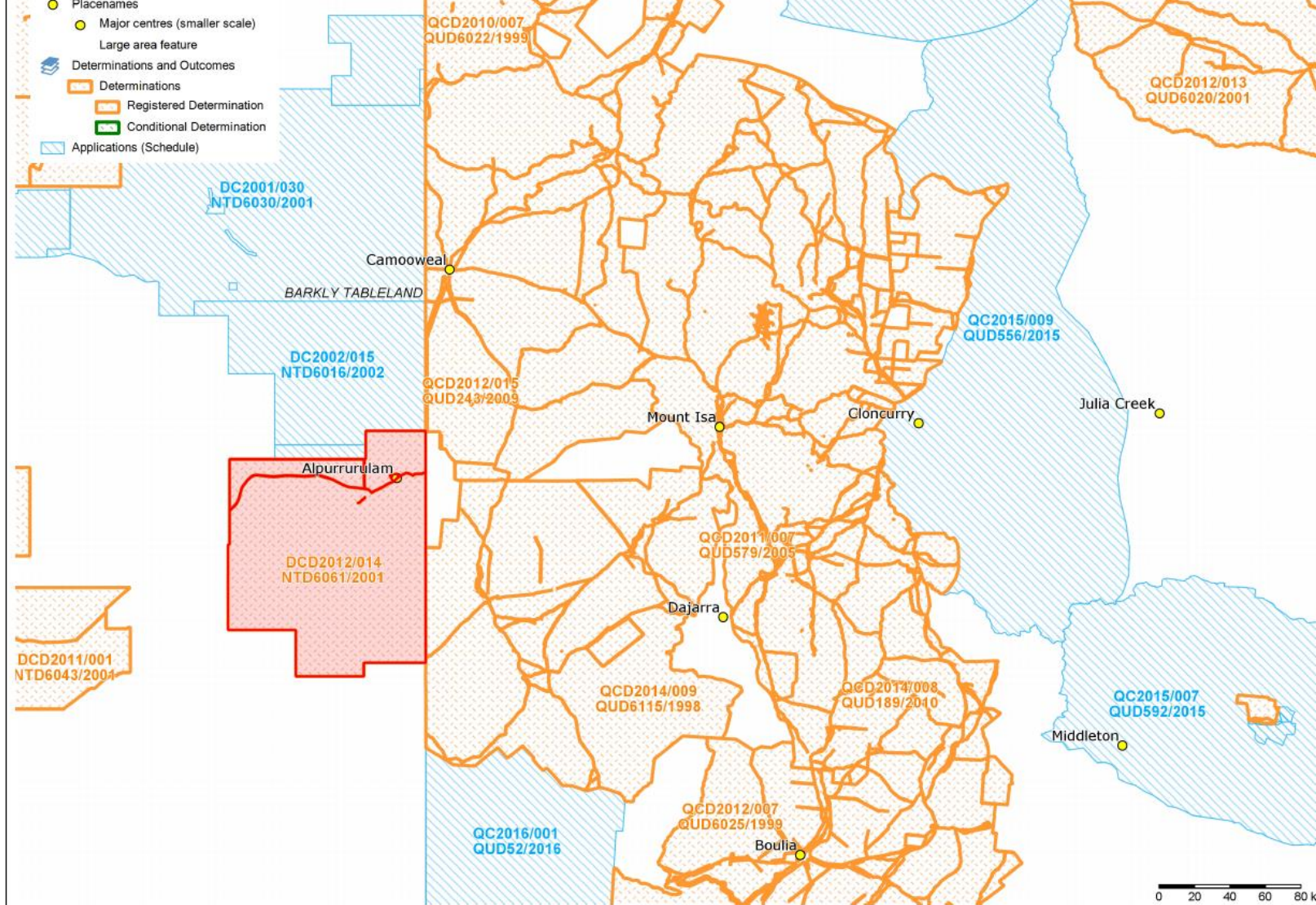
WC2014/004
Werrup

LACK OF CONNECTION/COMMUNICATION BETWEEN CLAIMS ON BEHALF OF THE SAME GROUP INTERSECTED BY A BORDER

- The determination affecting three interconnected groups in *Dempsey on behalf of the Bularnu, Waluwarra and Wangkayujuru People v State of Queensland (No 2)* [2014] FCA 528, (2014) 317 ALR 432 and the related
- Lake Nash determination *Samardin on behalf of the Ilperrelhelam, Malarrarr, Nwerrarr, Meyt, Itnwerrengayt and Ampwertety Landholding Groups v Northern Territory of Australia* [2012] FCA 845.

Native TitleVision

Lake Nash determination area



Selection information

Determinations

Name	Lake Nash
Tribunal No	DCD2012/014
Fed Court No	NTD6061/2001
Determined	15/08/2012
Method	Consent
Outcome	Native title exists in parts of the determination area

Date Registered	15/08/2012
Area Sq Km	12087.0704
Fed Court Name	Smardin on behalf of the Ilperrelhelam, Malarrarr, Nwerrarr, Meyt, Itnwerrengayt and Ampwertety Landholding Groups v Northern Territory of Australia

Related NTDA	DC2001/061
Status	In effect - Finalised
Determination Document	AustLII
Register Extract	Register extract

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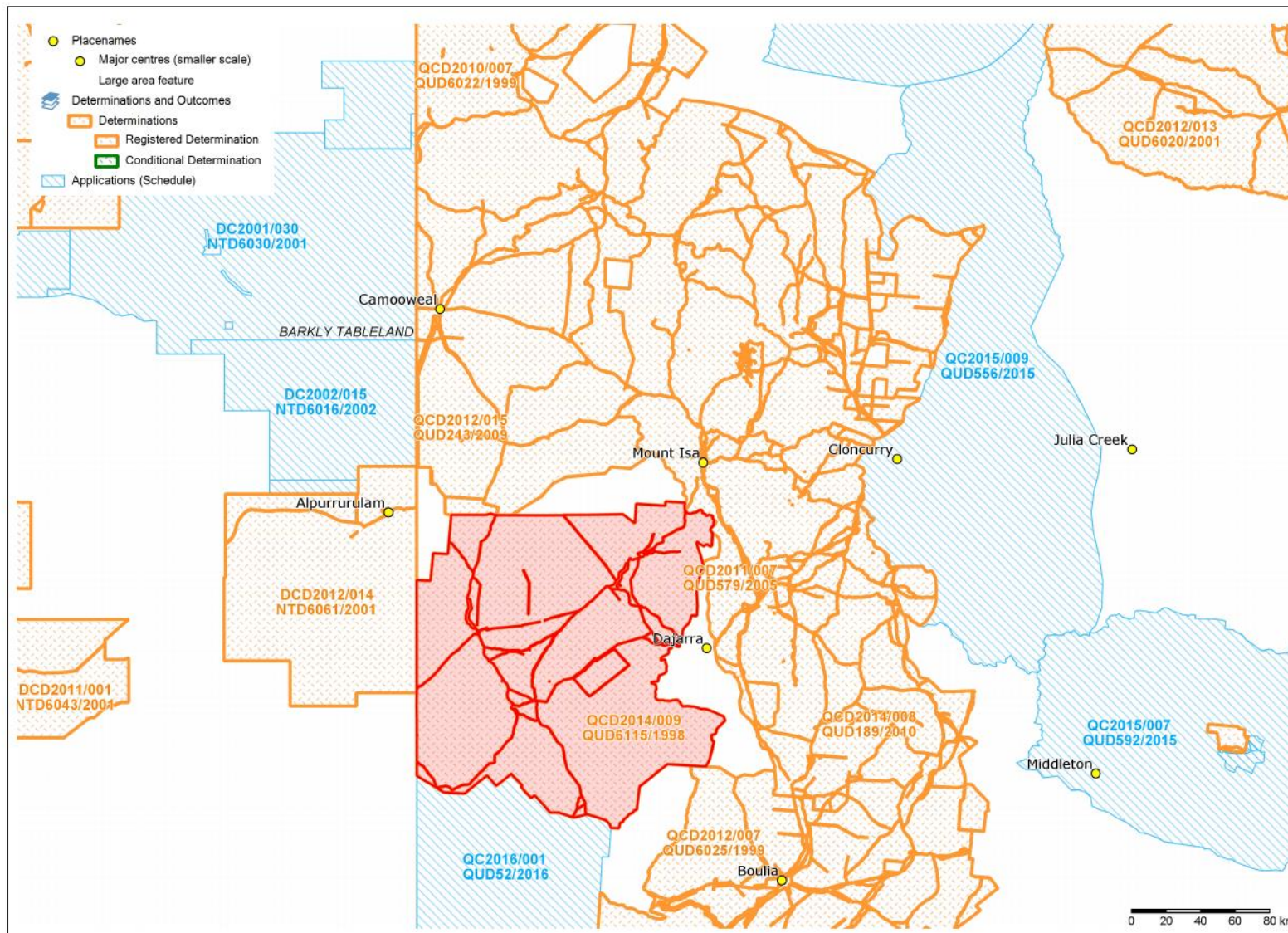


Native TitleVision

BUlarnu Waluwarra
Wangkayujuru determination
area

Selection information

Determinations	
Name	Bularnu Waluwarra & Wangkayujuru People
Tribunal No	QCD2014/009
Fed Court No	QUD6115/1998
Determined	27/05/2014
Method	Litigated
Outcome	Native title exists in the entire determination area
Date Registered	23/06/2014
Area Sq Km	23665.4131
Fed Court Name	Elizabeth Dempsey & Ors on behalf of the Bularnu Waluwarra & Wangkayujuru People v State of Queensland & Ors
Related NTDA Status	QCD2013/001 In effect - Finalised
Determination Document	AustLII
Register Extract	Register extract



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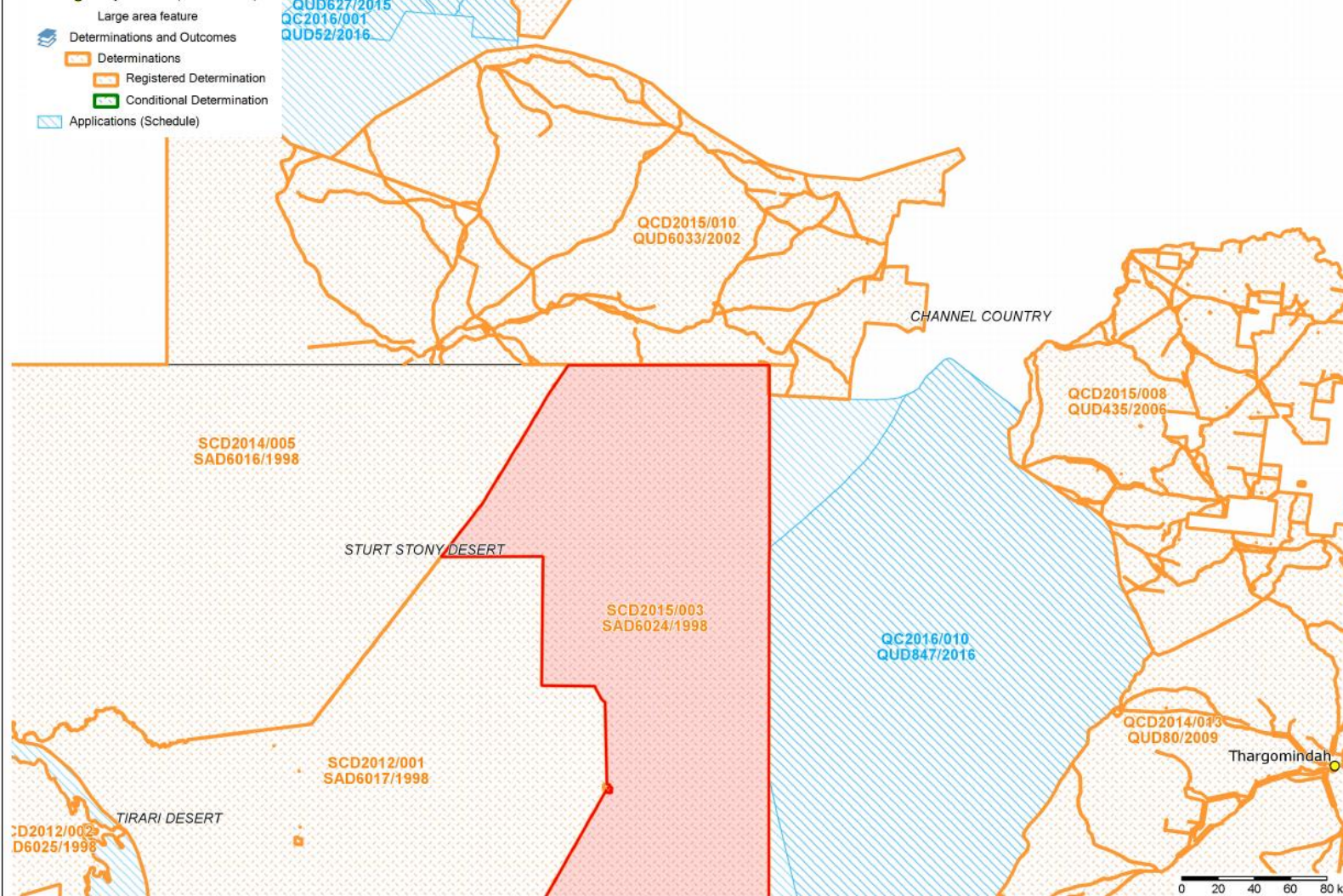
AGREEMENT BETWEEN BULARNU WALUWARRA AND WANGKAYUJURRU WITH INDJALANDJI-DHIDANU

- See for example Clause [5(l)] of the Bularnu, Waluwarra and Wangkayujuru determination acknowledging the need for the presence of Indjalandji-Dhidhanu men for law business:
- *Dempsey on behalf of the Bularnu, Waluwarra and Wangkayujuru People v State of Queensland (No 2)* [2014] FCA 528, (2014) 317 ALR 432



Native TitleVision

Yandruwandha/Yawarrarrka
determination area



Selection information

Determinations

Name Yandruwandha/Yawarrarrka Native Title Claim
Tribunal No SCD2015/003
Fed Court No SAD6024/1998
Determined 16/12/2015
Method Consent
Outcome Native title exists in parts of the determination area

Date Registered 16/12/2015
Area Sq Km 40245.5209
Fed Court Name Yandruwandha/Yawarrarrka Native Title Claim and The State of South Australia & ors (Yandruwandha/Yawarrarrka)

Related NTDA Status SC1998/001 In effect - Finalised
Determination Document [AustLII](#)
Register Extract [Register extract](#)

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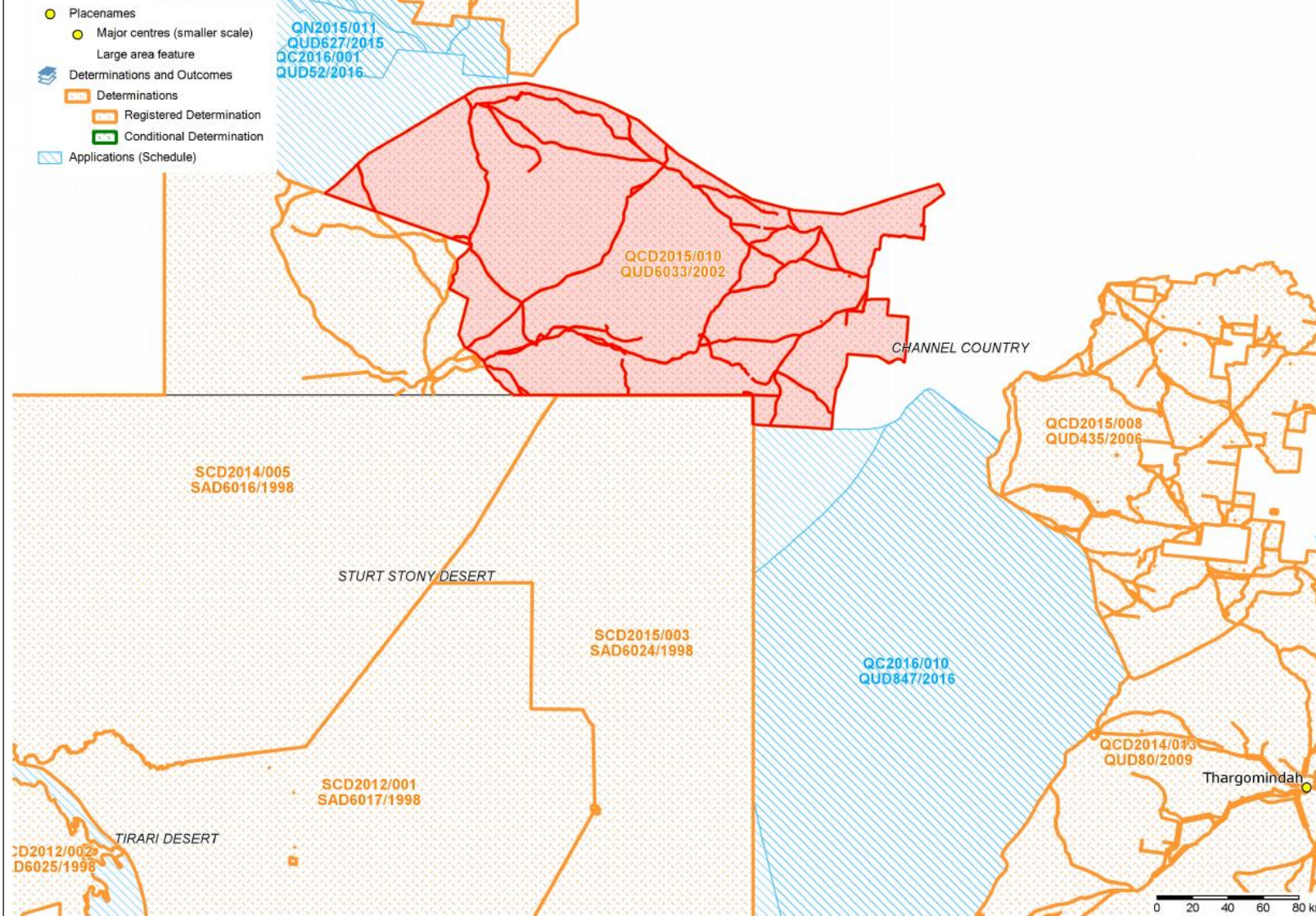
Top right: 143.937928809813,-23.9143033771569

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Native TitleVision

Mithaka determination area



Selection information

Determinations

Name	Mithaka People
Tribunal No	QCD2015/010
Fed Court No	QUD6033/2002
Determined	27/10/2015
Method	Consent
Outcome	Native title exists in the entire determination area

Date Registered	29/10/2015
Area Sq Km	33645.8706
Fed Court Name	Gorringe on behalf of the Mithaka People v State of Queensland

Related NTDA	QC2002/035
Status	In effect - Finalised
Determination Document	Austlii
Register Extract	Register extract

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THE PLASTICITY OF BORDERS OVER TIME

Review old boundaries for often multiple claims over time by the same group in the effort to secure recognition of native title it will show the compromises made in order to secure a consent determination.

There is a need for tenure information much earlier in order that claim groups can see what is at stake.

ALMOST EVERY SINGLE CLAIM FILED STOPS AT THE STATE BORDERS

- The role of the border and the role of the NTRBs and lack of communication, co-operation and adaptable funding models is not explored here but the effect is shown so clearly by the map of new claims filed in, for example, southern Queensland

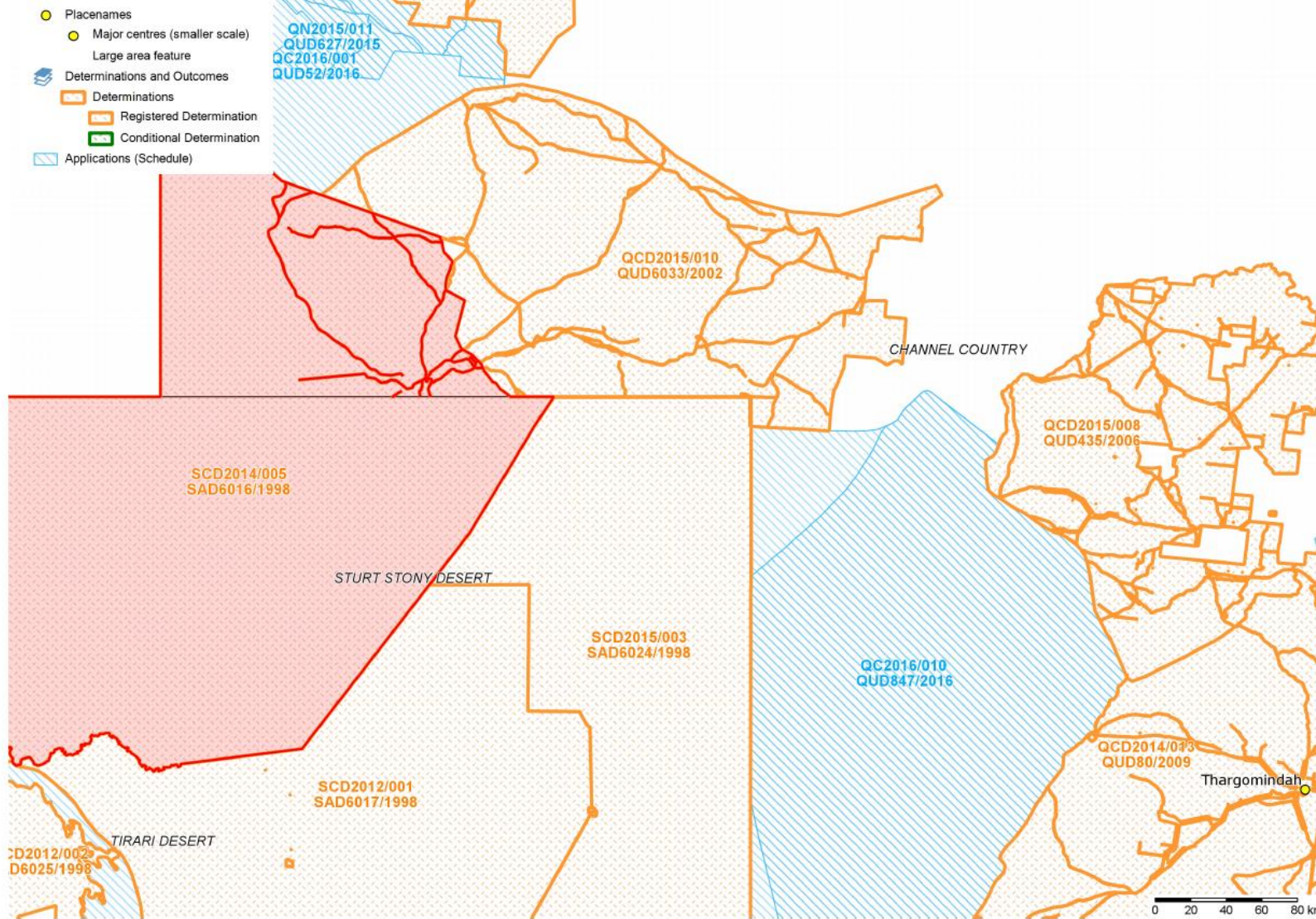
- The only determination to straddle a State border is Wangkangurru Yarluyandi – South Australia to Queensland with a hard border with the Northern Territory





Native TitleVision

Wangkangurru/Yarluyandi
determination area



Selection information

Determinations

Name	The Wangkangurru/Yarluyandi Native Title Claim
Tribunal No	SCD2014/005
Fed Court No	SAD6016/1998
Determined	03/10/2014
Method	Consent
Outcome	Native title exists in parts of the determination area
Date Registered	03/10/2014
Area Sq Km	79617.7181
Fed Court Name	Wangkangurru/Yarluyandi Native Title Claim and The State of South Australia & ors (Wangkangurru/Yarluyandi)
Related NTDA Status	SC1997/003
Determination Document	Austlii
Register Extract	Register extract

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DC2015/005

DCD2018/002

DC2014/004

QC2016/001

QCD2015/010

DCD2017/004

SCD2008/003

SCD2008/001

SCD2008/002

SCD2014/005

SCD2011/003

SCD2011/004

SCD2006/001

SC2013/001

SCD2011/001

-27.076568 139.164638 Degrees

0 30 60km

SCD2012/002

Determinations: The Wangkangurru/Yarluyandi Native Title Claim

Name The Wangkangurru/Yarluyandi Native Title Claim

Tribunal No SCD2014/005

Fed Court No SAD6016/1998

Fed Court Name Wangkangurru/Yarluyandi Native Title Claim and The State of South Australia & ors (Wangkangurru/Yarluyandi)

Determined 3 Oct 2014

Method Consent

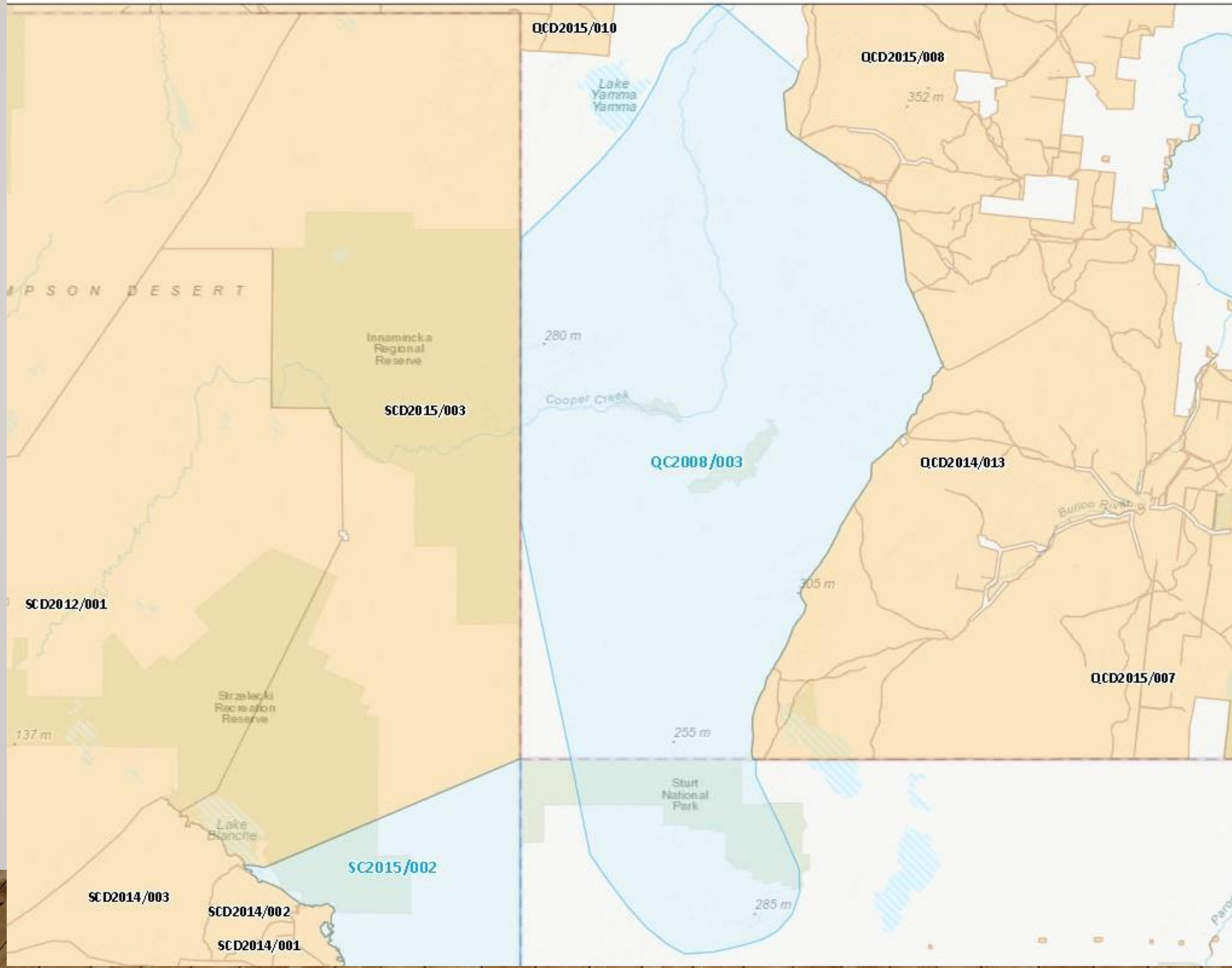
Outcome Native title exists in parts of the determination area

Zoom to



The only **claim** (in the whole country) to straddle the border (Queensland to NSW) is **Wongkumara**





THE MECHANICS: PROVISIONS WHICH ALLOW FOR REVISION

- Section 13(1)(b) NTA
- Section 61(1) – Item 2 NTA
- Rule 39.05(f) – (h) Federal Court Rules
2011

SECTION 13(1)(b)

- **13 Approved determinations of native title**
- *Applications to Federal Court*
- (1) An application may be made to the Federal Court under Part 3:
- (a) for a determination of native title in relation to an area for which there is no approved determination of native title; or
- (b) to revoke or vary an approved determination of native title on the grounds set out in subsection (5).

SECTION 13(5)

- *Grounds for variation or revocation*
- (5) For the purposes of subsection (4), the grounds for variation or revocation of an approved determination of native title are:
 - (a) that events have taken place since the determination was made that have caused the determination no longer to be correct; or
 - (b) that the interests of justice require the variation or revocation of the determination.

SECTION 13(4) (the consequences)

- *Variation or revocation of determinations*
- (4) If an approved determination of native title is varied or revoked on the grounds set out in subsection (5) by:
 - (a) the Federal Court, in determining an application under Part 3; or
 - (b) a recognised State/Territory body in an order, judgment or other decision;
- then:
 - (c) in the case of a variation—the determination as varied becomes an **approved determination of native title** in place of the original; and
 - (d) in the case of a revocation—the determination is no longer an approved determination of native title.

SECTION 61(1) ITEM 2

<p>Revised native title determination application</p>	<p>Application, as mentioned in subsection 13(1), for revocation or variation of an approved determination of native title, on the grounds set out in subsection 13(5).</p>	<p>(1) The registered native title body corporate; or (2) The Commonwealth Minister; or (3) The State Minister or the Territory Minister, if the determination is sought in relation to an area within the jurisdictional limits of the State or Territory concerned; or (4) The Native Title Registrar.</p>
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FIVE REVISION APPLICATIONS HAVE BEEN MADE

Name	NNTT file no	Federal Court file no	Date filed	Application status
<u>Warra Peoples/Hopevale</u>	QR2004/001	QUDI09/2004	05/07/2004	Struck-out
<u>Ngurrara A Revised Determination Application</u>	WR2011/001	WAD220/2011	10/06/2011	Discontinued
<u>Wintawari Guruma Aboriginal Corporation (RNTBC)</u>	WR2015/001t	WAD434/2015	18/08/2015	Dismissed
<u>Tarlka Matuwa Piarku (Aboriginal Corporation) RNTBC</u>	WR2016/001	WADI08/2016	10/03/2016	Determined
<u>Yindjibarndi Aboriginal Corporation RNTBC</u>	WR2017/001	WAD215/2017	15/05/2017	Active

FIRST REVISION APPLICATION

In Re Yoren [2004] FCA 916 – STRUCK OUT

- Application by one PBC to revise the Hopevale determination where there were several prescribed bodies corporate
- Beaumont J held for the purposes of s 61(1)(b), at [15]:
- *Where, as here, several bodies corporate hold the native title, it is plain that the evident object sought to be achieved by s 61(1)(b) in not permitting any of them to move, on a free-standing basis, for a revision, is the fact that all of those bodies initially joined in, and together became, parties to the approved determination. On the face of it, it would be wrong for any one of them to proceed, independently, to apply to revise their joint determination, unless of course all of them later agree to join in the claim for revision. This accords with general (and universal) practice (see e.g. O 6 r 8 of the Federal Court Rules), that a person shall not be added as an applicant without consent.*

SECOND REVISION APPLICATION

Yanunijarra Aboriginal Corporation RNTBC ICN 7478 v Western Australia (Ngurrara A Revised Determination Application) WAD220/2011 – DISCONTINUED

- Application that it was in the interests of justice that the Court vary the Ngurrara Part A Determination to apply s 47B to UCL areas that had been excluded due to a wrongly held view of the tenure status of that area. A determination of exclusive native title rights and interests in respect of the area was sought. Application discontinued June 2011.

THIRD REVISION APPLICATION

*Wintawari Guruma
Aboriginal
Corporation RNTBC
v Western Australia*
[2015] FCA 1053 -
DISMISSED

- Revision application on the basis that events that have taken place since the determination was made to have caused the determination to be no longer correct (s 13(5)(a) NTA).
- The Wintawari Guruma Aboriginal Corporation (WGAC), claimed to have discovered that the boundaries of the Eastern Guruma Determination were incorrect, when a member of WGAC was watching a documentary on television. The alleged discovery concerned the location of a site said to be of particular significance to the applicant, known as Satellite Springs. The Applicant claimed to have believed at the time of the Eastern Guruma Determination (see *Hughes on behalf of the Eastern Guruma People v Western Australia* [2007] FCA 365 and (No 2) [2012] FCA 1267) Satellite Springs was located within the Determination area. Further investigation alleged the site was located within the area the subject of the variation application.
- Application dismissed by Rares J see [25] – [26]:
- *The capacity of any person entitled to apply to the Court to revoke or vary an approved determination of native title on the grounds set out in s 13(1)(b) and (5) cannot be invoked in respect of any area of land and waters other than the actual area that was included in the application as originally filed. That is because s 64(1) precludes the inclusion of any such area in an amended application.*
- *I am of opinion that no amendment to the original application made by the Eastern Guruma people in 1997 could have been made to include an area of land and waters not covered by that application. Accordingly, no application to vary or revoke the 2007 or 2012 applications, so as to include a greater or extraneous area than had originally been claimed, is capable of being made under the Act.*

FOURTH
REVISION
APPLICATION
*Tarlka Matuwa
Piarku (Aboriginal
Corporation) RNTBC
v Western Australia*
[2017] FCA 40 -
REVISED

- The variation was sought following judgment in *Western Australia v Brown* [2014] HCA 8, to vary the Wiluna determination made on 29 July 2013, (*WF (Deceased) on behalf of the Wiluna People v Western Australia* [2013] FCA 755) to include areas of pastoral improvements as areas where native title exists.
- A minute in the Wiluna consent determination had provided that a variation could be sought in relation to pastoral improvements, in the event that *De Rose v South Australia (No 2)* (2005) 145 FCR 290 was overturned, set aside or otherwise found to be incorrect by the High Court in the appeal in *Brown (on behalf of the Ngarla People) v Western Australia* (2012) 203 FCR 505. The parties agreed that in the event of a variation application being made within 12 months of the High Court decision, each of the parties to that variation application will consent to the variation application being argued on its merits. The agreement did not prevent any party from opposing a variation to the determination.
- As a result of *WA v Brown* it was agreed that the determination required variation as the Wiluna determination incorrectly determined areas of pastoral improvements were areas where native title does not exist even though the revision application was made after the expiry of the 12 month period post determination.
- On 1 February 2017, the Federal Court ordered the determination be varied with effect from that date.

INCLUDING A PROVISION THAT ALLOWS FOR A REVISION APPLICATION IN CONSENT DETERMINATIONS

- A minute of the kind relied upon in the *Tarlka Matuwa Piarku* revision, in relation to the outcome of *Brown v WA* appears in the consent determination in *Wurrunmurra v Western Australia* [2012] FCA 1399 .
- In *Bandjalang People No 1 and No 2 v Attorney General of New South Wales* [2013] FCA 1278 provision was made for a variation to be sought in the event that the appeal to the High Court in *Queensland v Congo* (2015) 256 CLR 239 meant native title was extinguished over land subject to Commonwealth control per Regulation 54:
- *The parties have also agreed that the NSW Attorney General may seek to vary the Consent Determination Area in accordance with s.13(1)(b) and (5) Native Title Act 1993 (Cth) in the event that the High Court decision (or a Full Federal Court decision in respect of which either special leave to appeal to the High Court is refused or is not sought) that an order under Regulation 54 of the National Security (General) Regulations wholly extinguishes any native title rights and interests by seeking to remove from the Consent Determination Area that part of the Consent Determination Area that was subject to an order made under Regulation 54 at Recital C. It did not have to be invoked due to the outcome of Congo.*

FIFTH REVISION APPLICATION

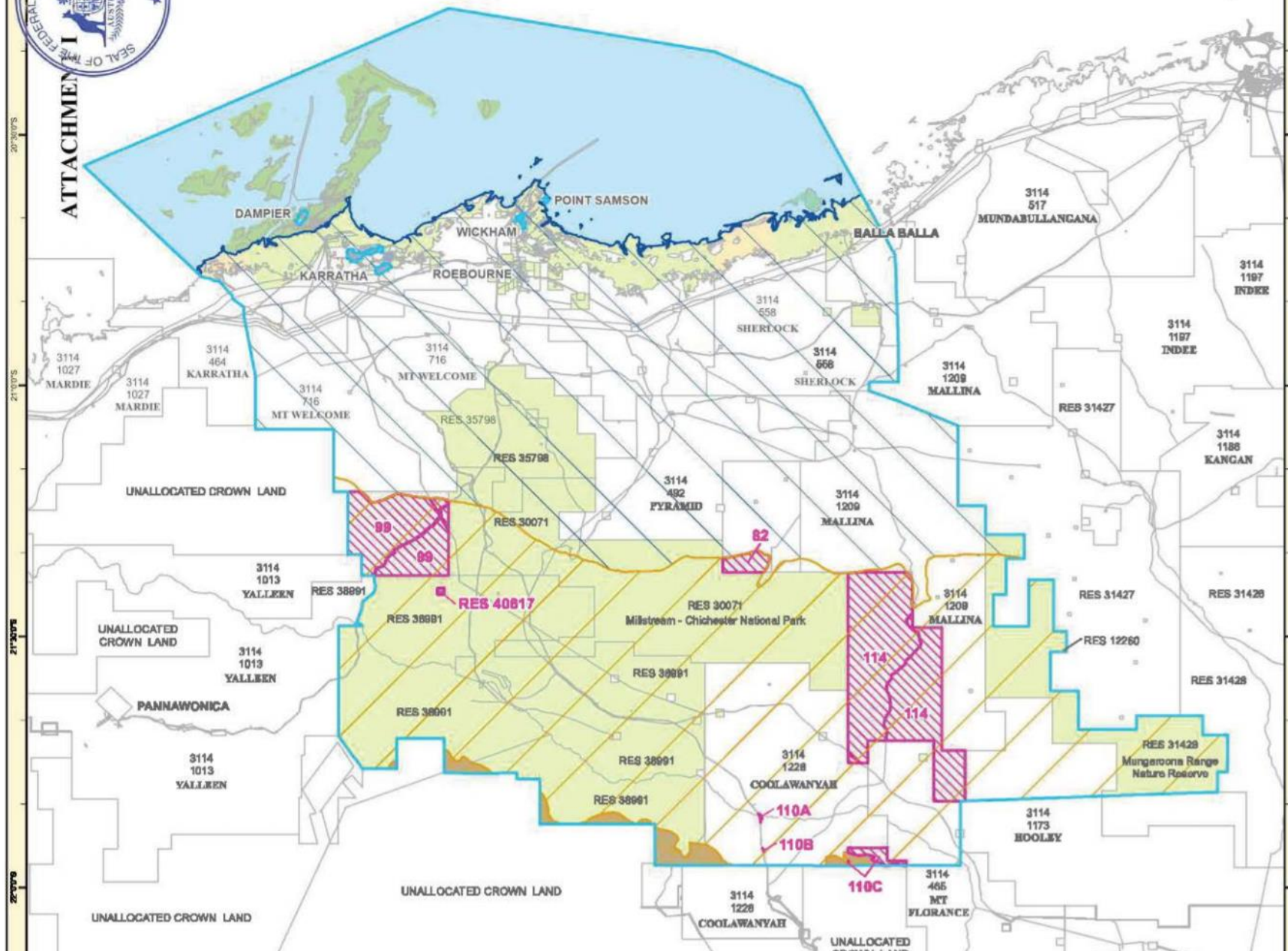
Yindjibarndi Aboriginal Corporation RNTBC v Western Australia *WAD215/2017 filed 15 May 2017 - ACTIVE*

- Application by Yindjibarndi Aboriginal Corporation RNTBC to vary the determination of native title in *Moses v State of Western Australia* [2007] FCAFC 78 by adding all or parts of six UCL parcels within the Yindjibarndi Native Title Area to the Schedule of parcels of land in which extinguishment would be disregarded, per s 47B. The variation would recognise the Yindjibarndi people as holding exclusive native title rights and interests in those areas.
- The other substantive effects of the variation sought would no longer subject the non-exclusive native title rights and interests to the qualification that they are not exercisable otherwise than for personal, domestic and non-commercial communal purposes following the High Court's decision in *Akiba v Commonwealth* [2013] HCA 33, where the High Court held that qualifying native title rights and interests by reference to the various purposes for which those rights might be exercised represented a flawed approach, see [66].



INDIAN OCEAN

ATTACHMENT B



**Daniel v Western Australia
 WAD6017 of 1996
 Determination Areas**
 As amended by the Full Federal Court in
 Moses v State of Western Australia [2007] FCAFC 78
 Section 47A and 47B Areas
 LAND TENURE AS AT
 31/12/1999

LEGEND
 Additional 47A and 47B Areas



DATA SOURCES
 Determination and Tenure Information sourced from Landgate Spatial Database (SDB)
 Administrative boundaries are sourced from the Landgate Administrative Boundaries Dataset
 Topographic data sourced from the PIMA Dataset
 Road names sourced from Landgate Road Centreline Dataset
 Coordinates and boundary information from aerial photography or recorded from ground surveys
 Local Authority boundaries of Local Water Work (LWW) zones otherwise specified
 Federal Lines (within 40 metres above High Water Mark (HWM)) unless otherwise specified
 State lines are Unallocated Crown Land (UCL) unless otherwise specified



This determination Areas as shown on this map is based on the Daniel v Western Australia WAD6017 of 1996 Determination Areas as amended by the Full Federal Court in Moses v State of Western Australia [2007] FCAFC 78, in the event of any discrepancy between the printed Determination Areas and the areas depicted in this map the printed Determination Areas shall prevail unless otherwise specified.
 Contents created from Landgate SDB Dec 1999.

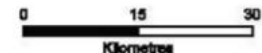
DISCLAIMER
 For information purposes only. This map is a graphical representation of data collected from Landgate Databases and is intended to be an overview of general geographical information.
 This map shows an 80m map scale but does not necessarily reflect an exact cadastral boundary.
 Under the application boundary information is sourced from the Landgate Spatial Database (SDB) and Federal Court.
 Reference should be made to the 1997 for the conditions of this boundary for any legal purposes.
 In the event of any discrepancy between the printed Determination Areas and the areas depicted on this map the printed Determination Areas shall prevail unless otherwise specified.

NATIVE TITLE DETERMINATION APPLICATION

Yindjibarndi Area

Legend

- Application Area
- Land Tenure
 - Freehold is uncoloured
 - Aboriginal Freehold
 - Convertible Lease
 - Other Lease
 - Pastoral Lease
 - Reserve/Park
 - Unallocated Crown Land



Geospatial Datum of Australia 1984

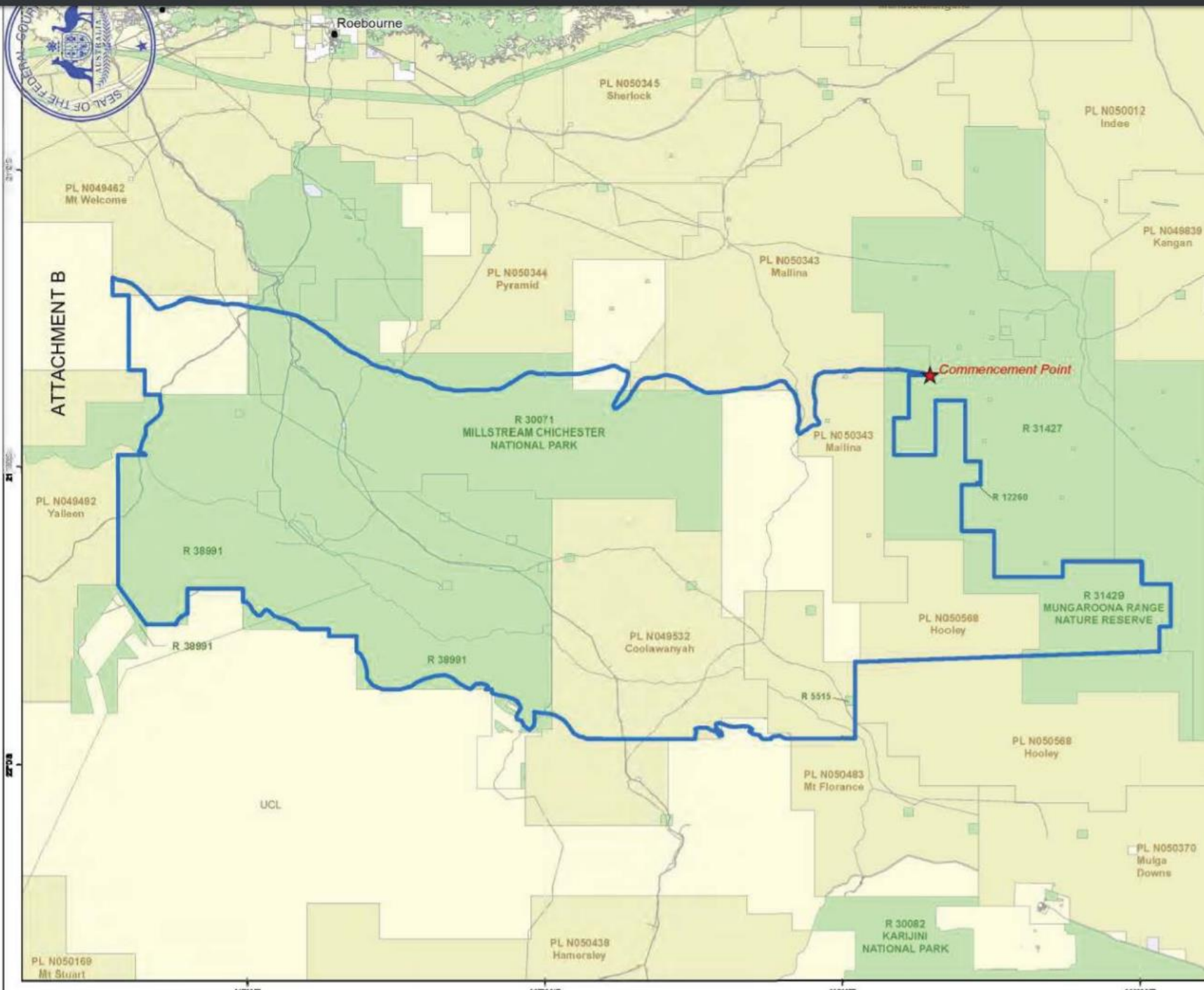
Prepared by:
Geospatial Services, National Native Title Tribunal
20/10/2017

Data Sources:

Application boundary compiled by National Native Title Tribunal based on information or instructions provided by the applicants. Cadastre data sourced from Landgate, WA (June 2017).

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-
- In *Croft on behalf of the Barngarla Native Title Claim Group v State of South Australia (No 3)* [2018] FCA 552
 - The earlier determination by Mansfield J in *Croft on behalf of the Barngarla Native Title Claim Group v State of South Australia (No 2)* [2016] FCA 724 was amended to include some corrections without reasons being published by White J. It appears to rely on s 13 NTA.

REVISION UNDER THE FEDERAL COURT RULES

- **39.05 Varying or setting aside judgment or order after it has been entered**
- The Court may vary or set aside a judgment or order after it has been entered if:
 - (a) it was made in the absence of a party; or
 - (b) it was obtained by fraud; or
 - (c) it is interlocutory; or
 - (d) it is an injunction or for the appointment of a receiver; or
 - (e) it does not reflect the intention of the Court; or
 - (f) the party in whose favour it was made consents; or
 - (g) there is a clerical mistake in a judgment or order; or
 - (h) there is an error arising in a judgment or order from an accidental slip or omission.

APPLICATION OF RULE 39

Lovett on behalf of the Gunditjmara People v Victoria (No 4) [2011] FCA 931 – North J

- A mistake was made in the Part A determination order as a result of an accidental omission. North J held an omission or mistake made by the legal representatives of a party fell within the ambit of (then) O 35 r 7(3).
- *A question arises whether the appropriate procedure to be adopted for variation of the Part A determination is the procedure under s 13(1)(b) of the Act, which allows the Court to revoke or vary an approved determination of native title on the grounds set out in s 13(5) of the Act. The proposed variations to the Part A determination would fall within s 13(5)(b) of the Act because the interests of justice would demand that the Part A determination be varied to include the omitted 11 parcels. However, if the s 13 procedure is invoked, the notification provisions in s 61, s 63 and s 66 of the Act would apply. At the time when the applications for a determination of native title were made there were numerous respondents. Consequently, the notification process under s 13 would be more onerous than if O 35 r 7 of the Federal Court Rules were relied upon. at [7]*

APPLICATION OF RULE 39

McLennan on behalf of the Jangga People v Queensland [2013]

FCA 795 - Rares J

- In circumstances where the State ascertained that there were three errors in the conveyancing descriptions forming part of the consent determination. It is generally the responsibility of the State or Territory Government party to ascertain and properly identify the title details of the lands intended to be affected by, or excluded from, a consent determination for inclusion in it. The State applied, by an interlocutory application filed on 2 July 2013, to correct those errors. All of the parties consent to the corrections being made
- *I raised with the parties whether it might be better to make the order pursuant to s 13(5)(b) of the Native Title Act 1993 (Cth). However, the State pointed out that this would involve the necessity of undertaking the notification procedure in ss 61, 63 and 66 of the Act for the reasons given by North J in Lovett v Victoria (No 4) (2011) 195 FCR 198 at 200 [7]-[9]. Given the relatively minor nature of the variations in the scheme of the consent determination as a whole, and the consent of all the parties, it is manifestly in the interests of justice that a speedy and efficient procedure be utilised with the minimum of expense. at [5]*

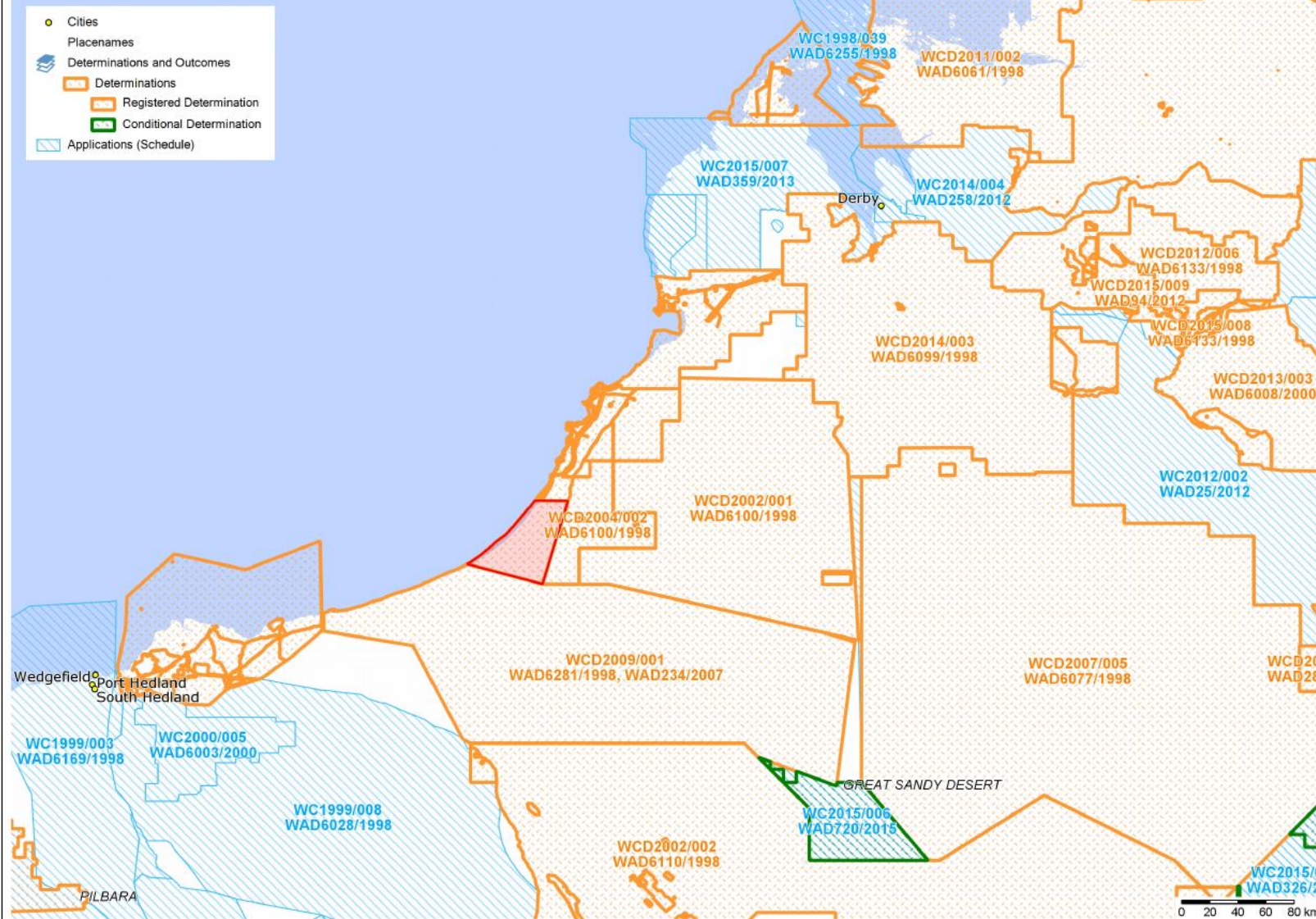
REVISION OF NATIVE TITLE HOLDER DESCRIPTIONS

- There is unreality about the description of membership both for claims, determinations and PBCs. It **never** includes everybody at any point in time (eg children, teenagers, incapacitated people).
- Depending on the context (NTCG, Registration tests, CDs, PBCs) descriptions adopted for any NT purpose are **representative** of the people who hold rights under surviving systems of traditional laws and customs.
- We need to take care about how we represent the status of the description. People need to understand it is a matter for their management consistently with traditional laws and customs – see *Aplin on behalf of the Waanyi Peoples v Queensland* [2010] FCA 625 Dowsett J at [256] and [267] holding it is a matter for the claim group.
- In Alice Springs native title holders defined their PBC membership as representative of the native title holders for the area for the purpose of the Lhere Artepe Aboriginal Corporation RNTBC.
- Over 80 Mile Beach between Broome and Port Hedland Nyangumarta and Karajarri Peoples who are both determined to be the native title holders for that same country, provided for nominated representatives to be the members of their joint PBC (see *Hunter v Western Australia* [2012] FCA 690)



Native TitleVision

Nyangumarta-Karajarri Overlap determination area



Selection information

Determinations

Name	Nyangumarta-Karajarri Overlap Proceeding (Yawinya)
Tribunal No	WCD2012/001
Fed Court No	WAD6281/1998, WAD280/2008
Determined	25/05/2012
Method	Consent
Outcome	Native title exists in parts of the determination area
Date Registered	30/05/2012
Area Sq Km	1994.5708
Fed Court Name	Hunter & Ors v State of Western Australia
Related NTDA	WC1998/065, WC2008/004
Status	In effect - Finalised
Determination Document	AustLII
Register Extract	Register extract

Disclaimer

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As the interpretation of any particular native title determination area provided is based upon the best information available to the Registrar at the time of creation, any effective analysis must include reference to both the relevant determination of native title made by the Federal Court of Australia and the entry made in relation to that determination on the National Native Title Register maintained by the Registrar.

Spatial data used has been sourced from the relevant custodians in each jurisdiction - Commonwealth: Geoscience Australia, NNIT; ACT/ NSW: LPI; DFI; NT: DLPE, DME; QLD: DNRM; SA: DSD, DPTI; TAS: DIER; VIC: DELWP; WA: DAA, DMP, Landgate, Planning WA; National: PSMA Australia.



Map created: 31/05/2017

Map Extent:

Bottom left: 118.065054096633,-21.8795290268917

Top right: 126.457378595767,-15.9619576324463

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FOR EXAMPLE “THE MERIAM PEOPLE”

S 60AA NTA - Body corporate for Meriam people

S 60AA provides:

- (1) If:
 - (a) a body corporate is or becomes registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and
 - (b) all of the members of the body corporate are members of the Meriam people (see subsection (2)); and
 - (c) one of the objects of the body corporate is to become a registered native title body corporate in relation to native title held by the Meriam people; and
 - (d) a member of the Meriam people applies to the Federal Court for a determination under this section; and
 - (e) the Court is satisfied that the applicant represents the Meriam people;then:
 - (f) this Act applies as if the body corporate were a prescribed body corporate nominated under subsection 56(2) or 57(2) in relation to those native title holders; and
 - (g) the Court may make a determination under section 56 or 57, in relation to that native title, as if the Court were doing so at the same time as making an approved determination of native title as mentioned in section 55; and
 - (h) if the Court makes such a determination under section 56 or 57—the Native Title Registrar must enter the name and address of the body corporate on the National Native Title Register; and
 - (i) while those details are on the Register, the body corporate is taken to be a **registered native title body corporate** for the purposes of this Act.

(2) In this section:

Meriam people means the people who were described by the High Court in its declaration in *Mabo v Queensland [No. 2]* (1992) 175 CLR 1 as the Meriam people.

BRENNAN J FIRST PARA – 117 REFERENCES IN MABO TO “THE MERIAM PEOPLE”

- *The people who were in occupation of these Islands before first European contact and who have continued to occupy those Islands to the present day are known as the Meriam people.*
- Many of the earlier determinations are on behalf of “the XX People”

KARAJARRI PEOPLE

- In *Nangkiriny v State of Western Australia* (2002) 117 FCR 6, the Karajarri people were described in the fourth schedule as:
 - *‘those people who refer to themselves as Karajarri, being persons who:*
 - *are of Karrijarri descent;*
 - *identify as Karajarri and are accepted as such by Karajarri;*
 - *adhere to Karajarri customs and traditions; and*
 - *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, circumstances, purpose or permission and includes those persons having native title thereto under common law.’*

MARTU PEOPLE

- *James on behalf of the Martu People v State of Western Australia [2002]*
FCA 1208 – In the third schedule,:
 - *‘the common law holders are those people known as the Martu people. The Martu people are those Aboriginal people who hold in common the body of traditional law and culture governing the determination area and who identify as Martu and who, in accordance with their traditional laws and customs, identify themselves as being members of one, some or all of the following language groups:
...’*

DISPUTES ABOUT POST DETERMINATION MEMBERSHIP AND DECISION MAKING BY THE RNTBC

- May be a matter for amendment of the rules of the PBC or regulation under the CATSI Act or revision of the determination.
- ***Dunghutti Elders Council (Aboriginal Corporation) RNTBC v Registrar of Aboriginal and Torres Strait Islander Corporations [2011] FCAFC 88*** concerning a dispute over the validity of steps taken by the Registrar of ORIC to try to put the PBC into administration due to a number of disputes over several years particularly over persons who are, or claim to be, members of the Dunghutti people and the costs to Dunghutti People incurred in those disputes.
- ***Sandy v Yindjibarndi Aboriginal Corporation RNTBC [No 4] [2018] WASC 124*** in which the PBC resisted the appointment of a receiver arising from complaints about the conduct of the PBC in resisting the applications for membership by some Yindjibarndi people who were also members of the Wirilu-murra Yindjibarndi AC

TRAUMA IN TORRES STRAIT

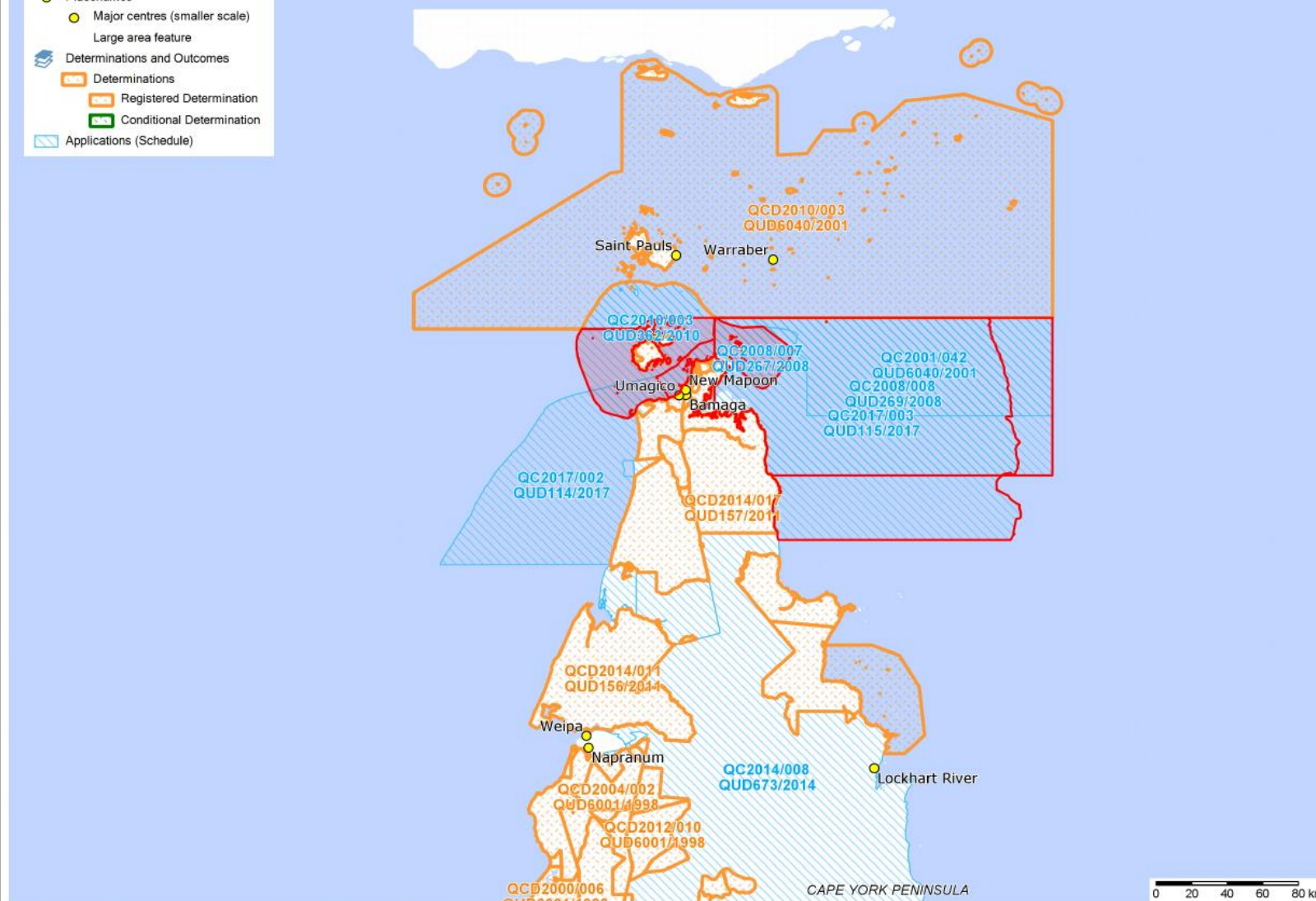
- Driven in part by proposed overall revision of the NT holder description



Native TitleVision

Torres Strait overlapping claims and determinations

- Placenames
- Major centres (smaller scale)
- Large area feature
- Determinations and Outcomes
 - Determinations
 - Registered Determination
 - Conditional Determination
 - Applications (Schedule)



Selection information

Applications (Schedule)

Name	Kaurareg People #2
Tribunal No	QC2008/007
Fed Court No	QUD267/2008
Type	Claimant
Status	Active
Lodged	28/08/2008
Reg Test Status	Accepted for registration
Reg Test Decision	13/02/2009
Date Registered	13/02/2009
Representative	Marawah Law Pty Ltd
Combined	N
Area Sq Km	3688.4262
Sea Claim	Y
More Information	NNTT website

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Map created: 2/06/2017
 Map Extent:
 Bottom left: 138.940162898797,-13.4648056479691
 Top right: 145.654022498103,-8.73074853241288

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RIGHTS AND INTERESTS

- Particularly in light of
 - commencement of compensation applications,
 - future act negotiations,
 - proposed agreements with neighbouring native title holders whose interests a group wishes to respect in a manner that accords with traditional laws and customs.
- Revision may need to be sought to change the definition of rights and interests. Following
 - *Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth* (2013) 250 CLR 209; and
 - *Western Australia v Brown* (2014) 253 CLR 507
- This forms part of the Yindjibarndi revision application.

-
- However the now over-ruled De Rose formula that the right to resources is to:
 - *“take, use, share and exchange Traditional Natural Resources from the Determination Area for **non-commercial cultural, spiritual, personal, domestic or communal purposes**”.*
 - is still part of the negotiation position pursued by the government parties when trying to settle the definition of non-exclusive rights

-
- Following the hearing of *Rrumburriya Borroloola Claim Group V Northern Territory* [2016] FCA 776; the determination made in *Rrumburriya Borroloola Claim Group v Northern Territory of Australia (No 2)* [2016] FCA 908 determines the right to resources as the right
 - **“to access and to take for any purpose the resources of the areas”**
 - at Clause [11] of the determination

-
- In *Murray on behalf of the Yilka Native Title Claimants v State of Western Australia (No 5)* [2016] FCA 752 (see [643] et ff) the Applicant pleaded their right to resources was to
 - **“take from the area anything that is useful and use it for any purpose”**
 - see the points of claim annexed to the judgment at Annexure I.

-
- See *Ward* HC at [32] – where group ceases observation of its traditional laws and customs then native title ceases to exist:
 - *Thus, an order in which the Federal Court makes a determination of native title has an indefinite character which distinguishes it from a declaration of legal right as ordinarily understood in such authorities as International General Electric Co of New York Ltd v Commissioners of Customs and Excise. That indefinite character reflects the requirement for the continuing acknowledgment and observance of traditional laws and customs and continuing connection with land implicit in the definition of "native title" in s 223(1) of the NTA.*
 - See also *Badimia* (2016) 240 FCR 466 at [45].
 - See *Western Australia v Fazeldean (Thalanyji People) (No 2)* (2011) 211 FCR 150, 156 [33]-[34] in relation to whether native title matters can ever be *res judicata*.
- 