



# Extract from Schedule of Native Title Applications

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**Application Reference:** Federal Court number: WAD108/2016  
NNTT number: WR2016/001

**Application Name:** Tarlka Matuwa Piarku (Aboriginal Corporation) RNTBC v State of Western Australia

**Application Type:** Revised Native Title Determination

**Application filed with:** Federal Court of Australia

**Date application filed:** 10/03/2016

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**Current status:** Full Approved Determination - 01/02/2017

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**Applicants:** Tarlka Matuwa Piarku (Aboriginal Corporation) RNTBC

**Address(es) for Service:** Malcolm O'Dell  
Central Desert Native Title Services Ltd  
76 Wittenoom St  
EAST PERTH WA 6004  
**Phone:** 9425 2000  
**Fax:** 9425 2001

## Additional Information

Not applicable

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## Grounds for Varying/Revoking Determination:

14. Insofar as the determination (order 2) orders and determines that native title does not exist in the areas described in Part 2 of Schedule 1, being areas of land and waters within the Determination Area where it is said that native title does not exist as a result of pastoral improvements, the determination is based on an incorrect legal ruling and / or is otherwise incorrect as a matter of law.

15. Contrary to the determination, native title exists in the areas described in Part 2 of Schedule 1, in the manner and to the extent which but for order 2 would otherwise be provided by the determination.

16. The determination was made in accordance with a *Minute of Proposed Consent Determination of Native Title*

dated 5 July 2013. The Minute records in its recitals, and it is the case, that at the time the determination was made the parties agreed that:

(a) The common law holders or the registered native title body corporate may seek a variation of the determination of native title in this matter, as it relates to pastoral improvements, in accordance with s 13(1) and 13(5) of the *Native Title Act* in the event that the ruling of the Federal Court of Australia in *De Rose v South Australia (No 2)* [2005] FCAFC 110; (2005) 145 FCR 290 with respect to pastoral improvements is overturned, set aside or otherwise found to be an incorrect legal ruling by the High Court of Australia in the context of an appeal to the High Court of Australia from the decision of the Federal Court of Australia in *Brown (on behalf of the Ngarla People) v State of Western Australia* [2012] FCAFC 154.

(b) In the event of a variation application being made within 12 months of delivery of the High Court of Australia decision, each of the parties to the proceeding, that is a party to the variation application, will consent to that application being argued on its merits.

17. The applicant repeats paragraph 13 in Schedule F:

On 12 March 2014 the High Court of Australia handed down judgment in *Western Australia v Brown* [2014] FCA 8; (2014) 253 CLR 507. In their unanimous judgment the Court held that the decision of the Full Court of the Federal Court of Australia in *De Rose v South Australia (No 2)* (2005) 145 FCR 290 was an incorrect legal ruling insofar as that Court held that construction of improvements by the holders of a pastoral lease extinguished native title rights and interests in the land on which the improvements were constructed and in any adjacent land reasonably necessary for or incidental to the operation or enjoyment of the improvements.

18. On 17 February 2015, legal representatives for Tarlka Matuwa Piarku (Aboriginal Corporation) RNTBC wrote to the respondents to the determination, and sought their agreement to extend the period in which parties consented to a variation application being argued on its merits by a further twelve months, to 12 March 2016.

19. All respondent parties, bar one, consented to the extension of the twelve month period for the application of the agreement embodied in Recitals G to I of the *Minute of Proposed Consent Determination of Native Title* to 12 March 2016. No consent was received from Newmont Yandal Operations Pty Ltd, the third respondent to WAD 6164/1998, who advised that they had since sold their interests in the determination area to Northern Star Resources Limited and, on that basis, did not consider it appropriate to provide any comment on the extension.

**Application Area:**  
**State/Territory:** Western Australia  
**Brief Location:** Central Desert region  
**Primary RATSIB Area:** Central Desert  
**Approximate size:** 40663.8974 sq km  
(Note: There may be areas within the external boundary of the application that are not claimed.)  
**Does Area Include Sea:** No

**Area covered by the claim (as detailed in the application):**

See Attachments 1 and 2

**Attachments:**

1. Schedule A - Area Description, 10 pages - A4, 10/03/2016
2. Attachment A - Map, 1 page - A4, 10/03/2016
3. Attachment B - Copy of the Wiluna Determination, 108 pages - A4, 10/03/2016
4. NNTT Interpretative Map, 1 page - A4, 06/04/2016

**NNTT Contact Details**

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