



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: WAD91/2020
NNTT number: WR2020/002

Application Name: Robe River Kuruma Aboriginal Corporation RNTBC and State of Western Australia

Application Type: Revised Native Title Determination

Application filed with: Federal Court of Australia

Date application filed: 09/04/2020

Current status: Full Approved Determination - 27/01/2021

Applicants: Robe River Kuruma Aboriginal Corporation RNTBC

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Additional Information

Not applicable

Grounds for Varying/Revoking Determination:

(1) In relation to the variation proposed to areas at Portion of UCL 51 (Jungarri) and Portions of UCL 12 (Kangaroo Trap Pool and Payering's Cave) in paragraphs (1(a), (b), (d) and (e) of Attachment H1 and as described at paragraphs 2 and 3 of Schedule 3 of Attachment H2:

The recitals G to J to the RRK determination record the agreement of the parties to an application for a variation of determination being made in the event that the High Court; or another Full Federal Court from which there is no pending appeal or application for special leave to appeal to the High Court, decides subsequently to this determination that the presence of exploration or prospecting licences or permits does not prevent the disregarding of extinguishment under section 47B(2) of the *Native Title Act* in respect of land or waters covered by such licences

or permits. The RRK determination was consented to by the then Applicants and native title claim group on the basis that such a variation of the determination could be made in the event that a decision such as that in *Tjungarrayi [(Ngurra Kayanta and Tjiwarl) v State of Western Australia]* [2019] HCA 12] was made. The variation sought would also reflect the proper native title rights and interests of the Robe River Kuruma common law holders in the relevant areas the subject of the variation. It is therefore in the interests of justice for the variation to be allowed.

(2) In relation to the variation proposed to paragraph an area being part of the known as Marti Marti Yinta in paragraph 1(c) and (f) of Attachment H1 and paragraph 4 of Schedule Three in Attachment H2:

(a) The Marti Marti Yinta was recognised by consent of all the parties in the determination made by Justice Barker on 1 November 2016 in *Finlay on behalf of the Robe River Kurrama v State of Western Australia (No 2)* [2016] FCA 1260 (known as the Kuruma Marthudunera Part A determination) as an area, being a significant site, where the Robe River Kuruma People have exclusive possession native title rights in Schedule 3 of that determination and as an area to which s47B applied in Schedule 5 of that determination. The Marti Marti Yinta site was described in that Kuruma Marthudunera Part A determination as an area within a 2 kilometre radius of a point at Longitude East: 116.535511, Latitude South: 21.933067, to the extent that it falls within the determination area.

(b) The Kuruma Marthudunera native title application WAD 6090 of 1998 had been separated into Part A and B as Part A so that Part A could be the subject of a consent determination and Part B could be programmed to hearing. While most of the Marti Marti Yinta falls within the Kuruma Marthudunera Part A determination, part of the Marti Marti Yinta area fell within the RRK hearing and determination area. This was not realised at the time of the RRK determination and the part of the Marti Marti Yinta was not included in the RRK determination as an area of exclusive possession in that determination as well as it had been assumed that the Marti Marti Yinta fell entirely within the Kuruma Marthudunera Part A determination.

(c) The failure to include that part of the Marti Marti Yinta that falls within the RRK determination is a result of an accident slip or omission which could be corrected by a Court under Rule 39.05(h) of the Federal Court Rules 2011 rather than by way of a variation application under s13(1)(b) the *Native Title Act 1993* (Cth). However, as this variation application is being brought, it is convenient to include it in this application in the interests of justice rather than bring a separate slip rule variation application.

(d) Further, it is in the interests of justice that a site of significance agreed by consent of the parties to be an area of exclusive possession should not be divided into an exclusive possession part and a non-exclusive part by reason of being dissected in the separation of the application WAD 6090 of 1998 into Parts A and B in circumstances where there are no reasons to separate it either under traditional laws and customs or by other granted tenure.

Application Area: **State/Territory:** Western Australia
Brief Location: Pilbara Region of Western Australia
Primary RATSIB Area: Pilbara
Approximate size: 5688.8527 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 Attachment A.

Attachments: 1. Application Area Boundaries, Attachment A of the application, 7 pages - A4, 09/04/2020
2. Map of the Application Area, Attachment B of the application, 1 page - A4, 09/04/2020

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