



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): WAD6006/2002; WAD6016/1996; WAD6015/1999  
NNTT Number: WCD2004/001

**Determination Name:** [Neowarra v State of Western Australia](#)

**Date(s) of Effect:** 27/08/2004

**Determination Outcome:** Native title exists in parts of the determination area

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

**Determination Date:** 27/08/2004

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

Please note that the native title determination made on 27 August 2004 was amended by Court order on 6 September 2012 in which Annexure 1, Attachment 1 of the determination orders (i.e. the determination area map) was replaced. The map attachments to the determination have been amended as ordered.

### REGISTERED NATIVE TITLE BODY CORPORATE:

Wanjina-Wunggurr (Native Title) Aboriginal Corporation RNTBC  
Trustee Body Corporate  
C/ Kimberley Land Council  
P.O. Box 2145  
BROOME Western Australia 6725

*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](http://www.oric.gov.au)*

### COMMON LAW HOLDER(S) OF NATIVE TITLE:

The native title is held by the members of the Wanjina-Wunggurr Community for their respective communal, group and individual rights and interests in the determination area. The members of the Wanjina-Wunggurr Community are the people referred to in Schedule 9.

### MATTERS DETERMINED:

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of Native Title (s225)

1. Native title exists in relation to the determination area.
2. Native title does not exist in the areas set out in Schedule 3.

The Native Title Holders (s225(a))

3. The native title is held by the members of the Wanjinna-Wunggurr Community for their respective communal, group and individual rights and interests in the determination area. The members of the Wanjinna-Wunggurr Community are the people referred to in Schedule 9.

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

4. Subject to Order 9, the nature and extent of native title rights and interests in relation to each part of the determination area referred to in Schedule 4 [being areas where there has been no extinguishment of native title or areas where any extinguishment must be disregarded] are an entitlement against the whole world to possession, occupation, use and enjoyment of the land and waters of that part.
5. Subject to Order 9, the nature and extent of the native title rights and interests in relation to each part of the determination area referred to in Schedule 5 [being current and historical pastoral lease areas other than areas where any extinguishment is required to be disregarded] are:
  - (a) the right to engage in the following activities:
    - (i) having access to the determination area but so that Native Title Holders may seek sustenance in their accustomed manner only from:
      - (A) unenclosed and unimproved parts of land that is or has previously been the subject of a pastoral lease granted after 1934; or
      - (B) unenclosed or enclosed but otherwise unimproved parts of land that is or has previously been the subject of a pastoral lease granted before 1934;
    - (ii) camping;
    - (iii) hunting for the purpose of satisfying the Native Title Holders' personal, domestic or non commercial communal needs from:
      - (A) unenclosed and unimproved parts of land that is or has previously been the subject of a pastoral lease granted after 1934; or
      - (B) unenclosed or enclosed but otherwise unimproved parts of land that is or has previously been the subject of a pastoral lease granted before 1934;
    - (iv) having access to painting sites in order to freshen or repaint images there;
    - (v) having the use of land adjacent to those painting sites for the purpose of engaging in the preceding activity;
    - (vi) gathering and fishing for the purpose of satisfying the Native Title Holders' personal, domestic or non commercial communal needs from:
      - (A) unenclosed and unimproved parts of land that is or has previously been the subject of a pastoral lease granted after 1934; or
      - (B) unenclosed or enclosed but otherwise unimproved parts of land that is or has previously been the subject of a pastoral lease granted before 1934;
    - (vii) using traditional resources for the purpose of satisfying the Native Title Holders' personal, domestic or non commercial communal needs;
    - (viii) conducting and taking part in ceremonies;
    - (ix) visiting places of importance and protecting them from physical harm;
    - (x) manufacturing traditional items (such as spears and boomerangs) from resources of the land and waters for the purpose of satisfying personal, domestic or non commercial communal needs.
  - (b) the right to pass on and inherit the native title rights in (a).
6. Subject to Order 9, the nature and extent of the native title rights and interests in relation to each part of the

determination area referred to in Schedule 6 [non vested reserve areas] are:

- (a) the right to engage in the following activities:
  - (i) having access to the determination area with liberty to seek sustenance therefrom in their accustomed manner;
  - (ii) camping;
  - (iii) hunting on the land for the purpose of satisfying the Native Title Holders' personal, domestic or non commercial communal needs;
  - (iv) having access to painting sites in order to freshen or repaint images there;
  - (v) having the use of land adjacent to those painting sites for the purpose of engaging in the preceding activity;
  - (vi) gathering and fishing on the land for the purpose of satisfying the Native Title Holders' personal, domestic or non commercial communal needs;
  - (vii) using traditional resources for the purpose of satisfying the Native Title Holders' personal, domestic or non commercial communal needs;
  - (viii) conducting and taking part in ceremonies;
  - (ix) visiting places of importance and protecting them from physical harm;
  - (x) manufacturing traditional items (such as spears and boomerangs) from resources of the land and waters for the purpose of satisfying the Native Title Holders' personal, domestic or non commercial communal needs.
- (b) the right to pass on and inherit the native title rights in (a).

7. Subject to Order 9, the nature and extent of the native title rights and interests in relation to the part of the determination area referred to in Schedule 7 [reserve subject to by-laws 13 and 15 made in 1963 pursuant to s 8 of the Parks and Reserves Act 1895] are:

- (a) the right to engage in the following activities:
  - (i) having access to the determination area;
  - (ii) camping;
  - (iii) having access to painting sites in order to freshen or repaint images there;
  - (iv) having the use of land adjacent to those painting sites for the purpose of engaging in the preceding activity;
  - (v) using traditional resources for the purpose of satisfying the Native Title Holders' personal, domestic or non commercial communal needs;
  - (vi) conducting and taking part in ceremonies;
  - (vii) visiting places of importance and protecting them from physical harm;
  - (viii) manufacturing traditional items (such as spears and boomerangs) from resources of the land and waters for the purpose of satisfying the Native Title Holders' personal, domestic or non commercial communal needs; and
- (b) the right to pass on and inherit the native title rights in (a);

provided that the exercise of the native title rights in (a) and (b) do not involve hunting, fishing, or the taking of flora.

8. Subject to Order 9, the nature and extent of the native title rights and interests in relation to such part (if any) of the determination area as consists of land and waters seaward of the high water mark and referred to in Schedule 8 are:

- (a) the right to engage in the following activities:
  - (i) having access to the area;
  - (ii) moving freely through and within the area;
  - (iii) hunting for the purpose of satisfying the Native Title Holders' personal, domestic or non commercial communal needs;

- (iv) gathering and fishing for the purpose of satisfying the Native Title Holders' personal, domestic or non commercial communal needs;
- (v) using traditional resources of the area for the purpose of satisfying the Native Title Holders' personal, domestic or non commercial communal needs;
- (vi) manufacturing traditional items from the resources of the area for the purpose of satisfying the Native Title Holders' personal, domestic or non commercial communal needs;
- (vii) conducting and taking part in ceremonies within the area;
- (b) the right to pass on and inherit the native title rights in (a).

9. The native title rights and interests are subject to and exercisable in accordance with:

- (a) the laws of the State and the Commonwealth, and
- (b) traditional laws acknowledged and traditional customs observed by the Native Title Holders.

The nature and extent of any other interests in relation to the determination area (s225(c))

10. The nature and extent of other interests in relation to those parts of the determination area where native title exists are:

- (a) the interests comprised in or pursuant to the pastoral leases listed in Schedule 5;
- (b) the interests comprised in or pursuant to the reserves listed in Schedule 6;
- (c) the rights and interests comprised in, conferred under or in accordance with or pursuant to the Alumina Refinery (Mitchell Plateau) Agreement Act 1971 (WA) ("the Act") and/or the Alumina Refinery (Mitchell Plateau) Agreement as amended and ratified by the Act;
- (d) the interests comprised in or pursuant to the following mining tenements within the following areas as shown on Map 1: TR70/5610 (Areas 82 and 89), M04/90 (Area 24), G04/20 (Area 25), G04/31 (Area 5), M04/84 (Area 25), M04/86 (Area 25), M04/88 (Area 25), M04/91 (Areas 25 and 54), M04/161 (Areas 25 and 68), M04/162 (to the extent not covered by Special Lease 3116/10534) (Area 25);
- (e) the interests comprised in or pursuant to the following mining tenements within the following areas as shown on Map 1: M04/262 (to the extent covered by Special Lease 3116/10534) (Area 68), M80/329 (Area 17), and M80/331 (Area 17);
- (f) the interests comprised in or pursuant to licences or permits issued by the Commonwealth or State and in effect at the date of this determination;
- (g) the public right to fish in any waters seaward of the high water mark;
- (h) the public right to navigate over any waters seaward of the high water mark;
- (i) the interests comprised in or pursuant to the following by laws made 12 June 1957 under the Country Areas Water Supply Act 1947 (WA) in their application to the King River Pools Water Supply Reserve (affecting Area 16): by laws 31, 34, 35, 36, 38, 39 and 40;
- (j) the interests comprised in or pursuant to by laws 13 and 15 made under the Parks and Reserves Act 1895 (WA) in their application to Reserve R32853 (affecting Area 29 as shown on Map 1);
- (k) the interest of the Crown in the Fitzroy River Catchment Area (proclamation dated 28 October 1959 and affecting all of Areas 19, 41, 42, 57, 59, 60, 69, 70, 71, 73, 86 and 87 and parts of Areas 13, 17, 18, 20, 58 and 64 as shown on Map 1), the Ord River Catchment Area (proclamation dated 15 February 1960 and affecting part of Area 16 as shown on Map 1) and the Wyndham Water Supply Surface Water Area (proclamation dated 25 March 1997 and affecting part of Area 16 as shown on Map 1);
- (l) the interests of Telstra Corporation Limited:
  - (i) in the Mt Deborah DRCS Repeater Site in Area 23 (noted on Map 2), being a square shaped area of 0.25 hectares (50 metres by 50 metres), with a station mark located at Longitude 125-05'52.76 Latitude 16-01'00.89. From the station mark, the northern corner points of the site are at a distance of approximately 39.7 metres;
  - (ii) created pursuant to the Post and Telegraph Act 1901 (Cth), the Telecommunications Act 1975 (Cth), the

Australian Telecommunications Corporation Act 1989 (Cth), the Telecommunications Act 1991 (Cth) and the Telecommunications Act 1997 (Cth);

(m) rights of access to the determination area provided by a law of the State or the Commonwealth in force on the date of the determination.

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

11. The relationship between the native title rights and interests and the other interests described in paragraph 10 ("the other interests") is that:

- (a) in relation to the other interests referred to in Order 10(a) and (c) - the rights and interests under the other interest, and the doing of any activity in giving effect to them, prevail over the native title rights and interests, and
  - (i) both the rights under the other interest and the native title rights and interests must be exercised reasonably, and
  - (ii) the native title right to hunt may only be exercised on pastoral leases:
    - (A) if hunting is conducted with rifles or other firearms, in areas where stock are not present; and
    - (B) if the pastoral lessee or a person otherwise responsible for the management of the pastoral lease is given sufficient advance notice of the intention to hunt in order that safety issues can be addressed;
- (b) in relation to the other interests referred to in Order 10(a), (c),(d) - (f), (i), (j) (l)(ii) and (m) - where the doing of any activity is required or permitted by any lease, licence, permit or authority referred to in Order 10, then:
  - (i) the requirement or permission and the doing of the activity prevail over the native title rights and interests and any exercise of those rights and interests;
  - (ii) the existence and exercise of the native title rights and interests do not prevent the doing of the activity;
  - (iii) both the rights under the other interest and the native title rights and interests must be exercised reasonably, and
  - (iv) the native title right to hunt may only be exercised on pastoral leases:
    - (A) if hunting is conducted with rifles or other firearms, in areas where stock are not present; and
    - (B) if the pastoral lessee or a person otherwise responsible for the management of the pastoral lease is given sufficient advance notice of the intention to hunt in order that safety issues can be addressed;
- (c) in relation to the other interests referred to in Order 10(d), (e), (k) and (l)(i) native title is not extinguished but to the extent that the other interest is inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title rights and interests continue to exist but have no effect except to the extent that the other interest or its effects are later removed;
- (d) in relation to the other interests referred to in Order 10(g) and (h) - those rights co exist with the native title rights and interests, and both the rights under the other interest and the native title rights and interests must be exercised reasonably.

#### Definitions and Interpretation

12. The words and expressions used in this determination have the same meaning as in Part 15 of the Native Title Act except for the following defined expressions:

"determination area" means the area described in Schedule 1 and excluding those things and areas described in Schedule 2;

"laws of the State and the Commonwealth" means the common law and the laws of the State of Western Australia and the Commonwealth of Australia.

"Map" and "Maps 1 and 2" means the maps attached as Annexure 1 to Schedule 1.

13. A reference in this Determination to an "Area No." or to the word "Area" followed by a number, is a reference to a part of the determination area or to another area referred to in the following table and as generally shown by the numbers on Map 1. References to "Name" and "Purpose" in the following table and in the tables in the Schedules are for convenience only and do not form part of the Determination:

Area - Description - Name - Purpose

Area 1 - Reserve R08248 - - Watering place for travellers and stock

Area 2 - Reserve R08247 - - Watering place for travellers and stock

Area 3 - Reserve R41886 - Maranbabidi Community - Use and benefit of Aboriginal inhabitants

Area 4 - Unallocated Crown land

Area 5 - Pastoral Lease 398/0844 - Drysdale River (Extension) - Pastoral

Area 6 - Reserve R27164 - - Conservation of flora and fauna

Area 7 - Reserve R21969 - - Use and benefit of Aborigines

Area 8 - Reserve R23079 - - Use and benefit of Aborigines

Area 9 - Pastoral Lease 3114/0833 - Theda - Pastoral

Area 10 - Pastoral Lease 3114/1174 - - Doongan - Pastoral

Area 11 - Pastoral Lease 398/0446 - Drysdale River - Pastoral

Area 12 - Pastoral Lease 3114/1190 - Ellenbrae - Pastoral

Area 13 - Pastoral Lease 3114/1204 - Mt Elizabeth - Pastoral

Area 14 - Pastoral Lease 3114/0918 - Pentecost Downs, Karunjie - Pastoral

Area 15 - Pastoral Lease 398/0790 - Kachana - Pastoral

Area 16 - Pastoral Lease 3114/1180 - El Questro - Pastoral

Area 17 - Pastoral Lease 3114/0980 - Mt Barnett, Kupungarri - Pastoral

Area 18 - Pastoral Lease 3114/1042 - Marion Downs - Pastoral

Area 19 - Pastoral Lease 3114/0785 - Glenroy - Pastoral

Area 20 - Pastoral Lease 3114/0786 - Mt House - Pastoral

Area 21 - Pastoral Lease 3114/0865 - Beverley Springs - Pastoral

Area 22 - Pastoral Lease 398/0691 - Charnley River - Pastoral

Area 23 - Pastoral Lease 3114/0723 - Pantijan - Pastoral

Area 24 - Pastoral Lease 3114/1045 - Mt Hart - Pastoral

Area 25 - Pastoral Lease 3114/0682 - Napier Downs - Pastoral

Area 26 - Pastoral Lease 3114/0648 - Durack River - Pastoral

Area 27 - Reserve R41320 - Morgan DRCS - Doongan 11 - Repeater station site

Area 28 - Reserve R08258 - - Watering place for travellers and stock

Area 29 - Reserve R32853 - Drysdale River National Park - Class "B" Reserve

Area 30 - Reserve R08260 - - Watering place for travellers and stock

Area 31 - Reserve R41369 - - Domestic satellite ground station

Area 32 - Reserve R41740 - Dale DRCS - Doongan 14 - Repeater station site

Area 33 - Reserve R33706 - Government requirements

Area 34 - Reserve R41402 - Ellen DRCS - Omalinde 6 - Repeater station site

Area 35 - Reserve R08237 - - Watering place for travellers and stock

Area 36 - Reserve R17423 - - Camping

Area 37 - Reserve R17424 - - Camping

Area 38 - Reserve R08238 - - Watering place for travellers and stock

Area 39 - Reserve R22279 - - Stopping place for travellers and stock

Area 40 - Reserve R17422 - - Camping

Area 41 - Reserve R42999 - Dodnun Community - Use and benefit of Aboriginal inhabitants

Area 42 - Reserve R41687 - Lacy DRCS - Marndoc 6 - Repeater station site

Area 43 - Reserve R41921 - - Use and benefit of Aboriginal inhabitants

Area 44 - Reserve R21328 - - Use and benefit of Aborigines

Area 45 - Reserve R08254 - - Watering place for travellers and stock

Area 46 - Reserve R19751 - Munja - Use and benefit of Aborigines

Area 47 - Reserve R21968 - Munja painting reserve - Use and benefit of Aborigines

Area 48 - Reserve R08255 - - Watering place for travellers and stock

Area 49 - Reserve R08256 - - Watering place for travellers and stock

Area 50 - Reserve R21327 - - Use and benefit of Aborigines

Area 51 - Reserve R08257 - - Watering place for travellers and stock

Area 52 - Reserve R09742 - - Government requirements

Area 53 - Reserve R17204 - - Stock route

Area 54 - Reserve R17205 - - Stock route

Area 55 - Reserve R41350 - Napier DRCS - Meda 18 - Repeater station site

Area 56 - Reserve R40911 - King DRCS - Numalgun 15 - Repeater station site

Area 57 - Reserve R40607 - Phillips DRCS - Numalgun 14 - Repeater station site

Area 58 - Pastoral Lease 3114/0997 - Gibb River, Ngallanguda - Pastoral

Area 59 - Reserve R22278 - - Stopping place for travellers and stock

Area 60a - Reserve R17421 - - Stock route - part only

Area 60b - Reserve R17421 - - Stock route - part only

Area 60c - Reserve R17421 - - Stock route - part only

Area 61a - Reserve R22256 - - Stock route - part only

Area 61b - Reserve R22256 - - Stock route - part only

Area 61c - Reserve R22256 - - Stock route - part only

Area 62 - Reserve R08239 - - Watering place for travellers and stock

Area 63 - Reserve R40770 - Synnot Range DCRS - Easton 5 - Repeater station site

Area 64 - Unallocated Crown land

Area 65 - Special Lease 3116/10335

Area 66 - Special Lease 3116/10869

Area 67 - Pastoral Lease 398/0836 - Mt Hart (former part) - Pastoral

Area 68 - Special Lease 3116/10534 - Winjingayr Community - Use and Benefit of Aboriginal Inhabitants

Area 69 - Special Lease 3116/11701

Area 70 - Special Lease 3116/10530

Area 71a - Reserve R10773 - - Road

Area 71b - Reserve R10773 - - Road

Area 72 - Reserve R41150 - Foster DCRS - Doongan 12 - Repeater station site

Area 73 - Reserve R40092 - Kupungarri Community - Use and benefit of Aboriginal inhabitants

Area 74 - Reserve R40571 - Imintji Community - Use and benefit of Aboriginal inhabitants

Area 75 - Pastoral Lease 398/0834 - Kimberley Downs (part) - Pastoral

Area 76 - Pastoral Lease 3114/0962 - Home Valley - Pastoral

Area 77 - Unallocated Crown land

Area 78 - Unallocated Crown land

Area 79 - Unallocated Crown land

Area 80 - Unallocated Crown land

Area 81 - Unallocated Crown land

Area 82 - Unallocated Crown land

Area 83 - Unallocated Crown land

Area 84 - Unallocated Crown land

Area 85 - Unallocated Crown land

Area 86 - Unallocated Crown land

Area 87 - Unallocated Crown land

Area 88 - Unallocated Crown land

Area 89 - Unallocated Crown land

Area 90 - Reserve R40701 - Pentecost DRCS - Marndoc 6 - Repeater station site

Area 16A - Special Leases 3102/209, 3107/470

Area 16B - Special Lease 3102/207

Tidal Waters

AND THE COURT FURTHER ORDERS THAT:

How the Native Title is Held

14. The native title is to be held in trust. (varied 24/1/07)

The Native Title Body Corporate

15. By 31 August 2006 the Registered Native Title Claimants are to nominate in writing to the Court a prescribed body corporate to:

(a) be the prescribed body corporate for the purposes of s57(2) of the Native Title Act; and



(b) perform the functions mentioned in s57(3) of the Native Title Act after becoming a registered native title body corporate,

as to which there is liberty to apply. (varied 25/7/06)

16. In the event that there is no nomination within the time specified in Order 14 or such later time as the Court may order, the Registered Native Title Claimants are to forthwith apply to the Court for further directions.

17. Until such time as there is a registered native title body corporate in relation to the determination area any notices required under the Native Title Act or otherwise to be served on the Native Title Holders, the native title claim group or the Registered Native Title Claimants may be served upon the solicitors for the Applicants and the representative Aboriginal body for the determination area, and such service shall be deemed to be sufficient.

18. In respect of land and waters other than that referred to in paragraph 2, Applications WAG 6016 of 1996, WAG 6015 of 1999 and WAG 6006 of 2002 are not "finalised" within the meaning of s190(4)(e) of the Native Title Act until a prescribed body corporate has been determined, in accordance with s57(2) of the Native Title Act, to perform the functions mentioned in s57(3) of that Act.

#### **REGISTER ATTACHMENTS:**

1. Map of Determination Area (varied by Court order 06/09/2012), 2 pages - A3, 27/08/2004

2. Schedule 1 - 10, 35 pages - A4, 27/08/2004

*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.*