



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6100/1998
NNTT Number: WCD2004/002

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

Date(s) of Effect: 08/09/2004

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

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

Determination Date: 08/09/2004

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Karajarri Traditional Lands Association (Aboriginal Corporation)
RNTBC
Trustee Body Corporate
C/- Kimberley Land Council
PO Box 2145
BROOME WA 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

COMMON LAW HOLDER(S) OF NATIVE TITLE:

Karajarri people.

MATTERS DETERMINED:

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

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

"Determination Area B" means those parts of the claim area which comprise:

(a) pastoral leases 398/770, 3114/789 and 398/682 together comprising Nita Downs Station; 3114/604 being Shamrock Station and portion of 3114/1154 being Anna Plains Station;

(b) that part of reserve 39139 for the purpose of the foreshore which was not covered by the grant of special lease 3116/5247, reserve 9697 for the purpose of the Kimberley De Grey Stock Route, reserves 32602 to 32608 for the purposes of geodetic stations and reserve 36473 for the purpose of school site;

(c) that part of reserve 35918 for the purpose of conservation of flora and fauna which was included in reserve 35918 by Government Gazette notice on 20 December 1994 pursuant to the Reserves Act (No. 2) 1994 (WA) and which is hatched in red on the plan attached to the First Schedule;

(d) the area of the land and waters between the mean high water mark and the lowest astronomical tide, and any other tidal waters;

(e) the strip of unallocated Crown land between the north western corner of pastoral lease 398/770 and the eastern boundary of pastoral lease 3114/1154 and the areas of unallocated Crown land previously the subject of reserves 1519 to 1527 for the purposes of watering places, being described in the First Schedule and which are hatched in red on the plan attached to the First Schedule; and

(f) the Nita Optical Fibre Regenerator Site (Pardu Location 65) and the Injudinah Optical Regenerator Site (Dampier Location 319).

"the land" means the land within Determination Area B;

"flowing and subterranean waters" means those waters within Determination Area B which are:

(a) waters which flow, 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) waters from and including an underground water source, including water that percolates from the ground;

"the waters" means the waters within Determination Area B excluding flowing and subterranean waters;

"the land and waters" means "the land" and "the waters" as defined collectively.

2. Native title exists in Determination Area B to the extent and in the nature of the interests set out in paragraph 5 of this determination.

3. Native title has been wholly extinguished in relation to Determination Area B in the areas set out in paragraph 6 of this determination.

4. The communal or group rights and interests comprising the native title in Determination Area B are held in trust by the Karajarri Traditional Lands Association (Aboriginal Corporation), a prescribed body corporate for the purposes of section 56 of the Native Title Act 1993 (Cth), for the Karajarri people as common law holders of native title. The Karajarri people are those people described in the Third Schedule.

5. Subject to paragraphs 6, 7, 8, 9 and 10:

(1) the nature and extent of the native title rights and interests in Determination Area B held by the Karajarri people are:

(A) WITH RESPECT TO PASTORAL LEASES 398/770, 3114/789 AND 398/682 TOGETHER COMPRISING NITA DOWNS STATION, PASTORAL LEASE 3114/604 BEING SHAMROCK STATION, AND PORTION OF PASTORAL LEASE 3114/1154 BEING ANNA PLAINS STATION, NON-EXCLUSIVE RIGHTS TO USE AND ENJOY THE LAND AND WATERS AS FOLLOWS:

(i) the right to enter and remain on the land and waters;

(ii) the right to camp and erect temporary shelters;

(iii) the right to take fauna and flora from the land and waters;

(iv) the right to take other natural resources of the land such as ochre, stones, soils, wood and resin;

(v) the right to take the waters including flowing and subterranean waters;

(vi) the right to engage in ritual and ceremony; and

(vii) the right to care for, maintain and protect from physical harm, particular sites and areas of significance to the Karajarri people.

(B) WITH RESPECT TO RESERVE 9697 FOR THE PURPOSE OF THE KIMBERLEY DE GREY STOCK ROUTE, RESERVES 32602 TO 32608 FOR THE PURPOSES OF GEODETIC STATIONS, RESERVE 36473 FOR THE PURPOSE OF SCHOOL SITE, THAT PART OF RESERVE 39139 FOR THE PURPOSE OF THE FORESHORE WHICH WAS NOT COVERED BY THE GRANT OF SPECIAL LEASE 3116/5247, THAT PART OF RESERVE 35918 FOR THE PURPOSE OF CONSERVATION OF FLORA AND FAUNA WHICH WAS INCLUDED IN RESERVE 35918 BY GOVERNMENT GAZETTE NOTICE ON 20 DECEMBER 1994 PURSUANT TO THE RESERVES ACT (NO.2) 1994 (WA), AND THE AREAS OF UNALLOCATED CROWN LAND PREVIOUSLY THE SUBJECT OF RESERVES 1519 TO 1527 FOR THE PURPOSES OF WATERING PLACES, ALL OF WHICH AREAS ARE HATCHED IN RED ON THE PLAN ATTACHED TO THE FIRST SCHEDULE, NON-EXCLUSIVE RIGHTS TO USE AND ENJOY THE LAND AND WATERS AS FOLLOWS:

(i) the right to enter and remain on the land and waters;

(ii) the right to camp and erect temporary shelters;

(iii) the right to take fauna and flora from the land and waters;

(iv) the right to take other natural resources of the land such as ochre, stones, soils, wood and resin;

(v) the right to take the waters including flowing and subterranean waters;

(vi) the right to engage in ritual and ceremony; and

(vii) the right to care for, maintain and protect from physical harm, particular sites and areas of significance to the Karajarri people.

(C) WITH RESPECT TO THE AREA OF THE LAND AND WATERS BETWEEN THE MEAN HIGH WATER MARK AND THE LOWEST ASTRONOMICAL TIDE, AND ANY OTHER TIDAL WATERS, NON-EXCLUSIVE RIGHTS TO USE AND ENJOY THE LAND AND WATERS AS FOLLOWS:

(i) the right of access to the land and waters;

(ii) the right to take fauna, flora, fish and other traditional resources;

(iii) the right to take the waters including flowing and subterranean waters;

(iv) the right to engage in ritual and ceremony; and

(v) the right to care for, maintain and protect from physical harm, particular sites and areas of significance to the Karajarri people.

(2) The native title rights and interests set out in sub-paragraphs (1)(a), (b) and (c) are exercisable in accordance with the traditional laws and customs of the Karajarri people for personal, domestic and non-commercial communal purposes (including social, cultural, religious, spiritual and ceremonial purposes).

(3) The native title rights and interests set out in sub-paragraphs (1)(a), (b) and (c) do not confer possession, occupation, use and enjoyment on the Karajarri people to the exclusion of all others.

6. Native title rights and interests have been wholly extinguished:

(a) in the strip of unallocated Crown land between the north western corner of pastoral lease 398/770 and the eastern boundary of pastoral lease 3114/1154, being described in the First Schedule, and which is hatched in red on the plan attached to the First Schedule; and

(b) in respect of the Nita Optical Fibre Regenerator Site (Pardu Location 65) and the Injudinah Optical Fibre Regenerator Site (Dampier Location 319).

7. 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), Mining Act 1978 (WA), the Petroleum Act 1936 (WA) and the Petroleum Act 1967 (WA).

8. The native title rights and interests are subject to and exercisable in accordance with the laws of the State and the Commonwealth including the common law.

9. The nature and extent of other rights and interests in relation to Determination Area B in existence at the date of

this determination are those set out in the Second Schedule.

10. The relationship between the native title rights and interests in the land and waters and the flowing and subterranean waters described in paragraph 5 and the other rights and 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 is :

(i) a category D past act (s.232 Native Title Act 1993 (Cth));

(ii) a category D intermediate period act (s.232e Native Title Act 1993 (Cth)); or

(iii) a future act (s.233 Native Title Act 1993 (Cth)),

and 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 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;

otherwise,

(b) save in relation to the other rights and interests referred to in paragraphs 5(c) and 5(e) of the Second Schedule (as to which see paragraph (c) below):

(i) the other rights and interests prevail over the native title rights and interests but do not extinguish them, and

(ii) the doing of any activity required or permitted to be done by or under the other rights and interests prevails over the native title rights and interests and the exercise of them, but does not extinguish them, and the existence, enjoyment and exercise of the native title rights and interests does not prevent the doing of any activity required or permitted to be done by or under the other rights and interests;

(c) the other rights and interests referred to in paragraphs 5(c) and 5(e) of the Second Schedule co-exist with the native title rights and interests.

FIRST SCHEDULE

DESCRIPTION OF KARAJARRI DETERMINATION AREA B

All those portions of land being:

The whole of Pastoral Leases 398/682, 398/770, 3114/604 (Shamrock), 3114/789 (Nita Downs).

All that portion of Pastoral Lease 3114/1154 (Anna Plains) commencing at the intersection of the southernmost southern boundary of Pastoral Lease 398/770 with a eastern boundary of Pastoral Lease 3114/1154 (Anna Plains) and extending southerly along boundaries of that pastoral lease to Latitude 19.732093 South; Thence westerly to Latitude 19.730458 South, Longitude 121.461824 East; Thence northeasterly to Latitude 19.197809 South, Longitude 121.625577 East; Thence westerly to a eastern boundary of Reserve 9697 at Longitude 121.481358 East; Thence generally northeasterly along boundaries of that reserve to a northern boundary of Pastoral Lease 3114/1154 (Anna Plains); Thence easterly, generally southerly, again easterly, southerly, again easterly and again southerly along boundaries of that pastoral lease back to the commencement point.

All that portion of Pastoral Lease 3114/1154 (Anna Plains) bound in the east by Reserve 9697 (Kimberley De Grey Stock Route) and in the south by the line extending between Latitude 19.196344 South, Longitude 121.442371 East and Latitude 19.197809 South, Longitude 121.625577 East.

All that portion of Reserve 39139 which was not previously covered by the grant of Special Lease 3116/5247.

All those portions of Reserve 9697 (Kimberley De Grey Stock Route) south of the line extending between Latitude 18.458671 South, Longitude 121.922071 East and Latitude 18.458677 South, Longitude 121.957191 East and north of the line extending between Latitude 19.196344 South, Longitude 121.442371 East and Latitude 19.197809 South, Longitude 121.625577 East.

The whole of Reserve 36473 and Reserves 32602 to 32608 inclusive.

All that portion of Reserve 35918 which was included in Reserve 35918 by Government Gazette notice on 20 December 1994 pursuant to the Reserves Act (No. 2) 1994 (WA).

The whole of the areas of former reserves 1519 to 1527 inclusive.

All those lands and waters, below High Water Mark, commencing from the intersection of the Lowest Astronomical Tide with Latitude 18.456532 South and extending southeasterly to the High Water Mark at Latitude 18.458264 South; Thence generally southwesterly along that water mark to Latitude 19.196349 South; Thence westerly to the Lowest Astronomical Tide at Latitude 19.196054 South; Thence generally northeasterly along the lowest astronomical tide back to the commencement point.

All that portion of Unallocated Crown Land bounded in the north by Pastoral Lease 3114/789 (Nita Downs), in the east by Pastoral Lease 398/770 and in the west and south by Pastoral Lease 3114/1154 (Anna Plains).

The Whole of Pardu Location 65 (Nita Optical Fibre Regenerator Site) and Dampier Location 319 (Injudinah Optical Regenerator Site).

Note: Geographic Co-ordinates provided in Decimal Degrees

Cadastral boundaries sourced from Department of Land Administration Spatial Cadastral Data dated August 2001.

Lowest Astronomical Tide sourced from the Australian Maritime Boundary Information System (AMBIS) Data. January 2001.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Prepared By: Land Claims Mapping Unit, Department of Land Information

EXCLUSIONS FROM THE DETERMINATION AREA:

The following areas, hatched in orange on the plan attached to the First Schedule, having been excluded from the native title determination application, are excluded from Determination Area B in accordance with section 61A of the Native Title Act 1993 (Cth) (and section 23C of the Native Title Act 1993 (Cth), and sections 12I and 12J of the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)) because they are areas where previous exclusive possession acts have occurred and native title has been completely extinguished in relation to the whole of these areas:

1. Reserves:

- (a) Reserve 16721 (Dampier Location 383) for the purpose of water vested pursuant to section 42 of the Land Act 1898 (WA) in the Minister for Water Supply, Sewerage, and Drainage on 13 July 1917;
- (b) Reserve 16722 (Dampier Location 385) for the purpose of water vested pursuant to section 42 of the Land Act 1898 (WA) in the Minister for Water Supply, Sewerage, and Drainage on 13 July 1917;
- (c) Reserve 16723 (Pardu Location 73) for the purpose of water vested pursuant to section 42 of the Land Act 1898 (WA) in the Minister for Water Supply, Sewerage, and Drainage on 13 July 1917;
- (d) That part of reserve 35918 (Jamura Location 1, Dragon Tree Soak) for the purpose of conservation of flora and fauna vested pursuant to section 33 of the Land Act 1933 (WA) in the Western Australian Wildlife Authority on 30 March 1979 (but not that part of the reserve that was included by Government Gazette notice on 20 December 1994 pursuant to the Reserves Act (No. 2) 1994 (WA));
- (e) Reserve 36472 (Dampier Location 137) for the purposes of a health clinic and associated staff housing vested pursuant to section 33 of the Land Act 1933 (WA) in the Aboriginal Lands Trust on 10 August 1990;
- (f) Reserve 42063 (Dampier Location 231) for the purpose of gravel vested pursuant to section 33 of the Land Act 1933 (WA) in the Commissioner of Main Roads on 5 June 1992; and
- (g) Part of Reserve 38936 (Pardu Location 15) for the purpose of a microwave translator site vested pursuant to section 33 of the Land Act 1933 (WA) in the Commonwealth of Australia on 16 November 1984.

2. Special Lease:

Special lease 3116/5247 granted pursuant to section 116 of the Land Act 1933 (WA) for the special purpose of cultured pearl industry.

3. Public Roads or Streets used by the public, including:

- (a) Great Northern Highway; and
- (b) Road number 3658.

SECOND SCHEDULE

The nature and extent of other rights and interests in relation to Determination Area B are:

1. The rights and interests of the holders from time to time of the following pastoral leases:

- (a) pastoral lease 398/770, 3114/789 and 398/682 together comprising Nita Downs Station;
- (b) pastoral lease 3114/604 being Shamrock Station; and
- (c) the portion of pastoral lease 3114/1154 being Anna Plains Station;

including the right to use and enjoy:

- (d) the waters; and
- (e) the flowing and subterranean waters which have their source in, or pass through, Determination Area B.

2. The interests of persons who have the care, control and management of the following reserves, and the interests of persons entitled to access and use these reserves for the respective purposes for which they are reserved, subject to any statutory limitations upon those rights:

- (a) Reserve 9697 for the purpose of the Kimberley De Grey Stock Route;
- (b) reserves 32602 to 32608 for the purposes of geodetic stations;
- (c) reserve 36473 for the purpose of school site; and
- (d) that part of reserve 39139 for the purpose of foreshore not covered by the grant of special lease 3116/5247.

3. The interests of the holder of the following mining tenement under the Mining Act 1978 (WA), including the right to use (including by servants, agents and contractors) the existing roads and tracks in Determination Area B in order to have access to the mining tenement.

Nothing in this paragraph allows any upgrade, extension, widening or other improvement to the road or track other than work done to maintain such road or track in reasonable repair.

Exploration Licence E 0401344 granted to Resource Development Company Ltd on 20 October 2003.

4. The interests of the holders of statutory fishing interests granted under the Fish Resources Management Act 1994 (WA), the Pearling Act 1990 (WA), and the Fisheries Management Act 1991 (Cth) and any regulations made pursuant to such legislation.

5. Other rights and interests:

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

(b) Rights and interests held by reason of the force and operation of the laws of the State or of the Commonwealth, including any right or interest created by or in relation to the proclamation of the Canning-Kimberley Groundwater Area on 22 April 1997 pursuant to section 26B(1) of the Rights in Water and Irrigation Act 1914 (WA).

(c) Rights and interests of members of the public arising under the common law, including:

(i) the public right to fish in tidal waters; and

(ii) the public right to navigate in tidal waters.

(d) Access to areas of previously unallocated Crown land by any:

(i) employee or agent of the State Government;

(ii) employee or agent of the Commonwealth Government;

(iii) employee or agent of any local government authority;

as required in the performance of his or her statutory or common law duties where such access would be permitted to private land.

(e) Existing rights of the public to access and enjoy:

- (i) waterways; or
- (ii) beds and banks or foreshores of waterways; or
- (iii) coastal waters; or
- (iv) beaches; or
- (v) stock routes.
- (f) The interests of Telstra Corporation Limited, being:
 - (i) rights and interests as the owner or operator of telecommunications facilities within Determination Area B, including customer radio terminals and overhead and underground cabling;
 - (ii) rights and interests 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); and
 - (iii) rights of access by employees, agents or contractors of Telstra Corporation Limited to its facilities in or surrounded by Determination Area B in the performance of their duties.

THIRD SCHEDULE

"Karajarri" means those people who refer to themselves as Karajarri, being persons who:

- (a) are of Karajarri descent;
- (b) identify as Karajarri and are accepted as such by the Karajarri;
- (c) adhere to Karajarri customs and traditions; and
- (d) 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, circumstance, purpose or permission and includes those persons having native title thereto under common law.

REGISTER ATTACHMENTS:

1. Map 1 - Native Title Determination Application, 1 page - A4, 08/09/2004
2. Map 2 - Enlargement 1 of 2, 1 page - A4, 08/09/2004
3. Map 3 - Enlargement 2 of 2, 1 page - A4, 08/09/2004

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.