



## Extract from the National Native Title Register

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### Determination Information:

**Determination Reference:** Federal Court Number(s): WAD223/2004; WAD6006/1998  
NNTT Number: WCD2006/001

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

**Date(s) of Effect:** 28/04/2006; 08/09/2008

**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:** 28/04/2006

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

This native title determination was made on 28 April 2006 and came into effect in 2 stages. To the extent that native title was determined not to exist (ie paragraphs 2 and 10) the determination was effective immediately and was registered on the National Native Title Register on 23 May 2006. The remainder of the determination dealing with areas where native title was determined to exist was to come into effect when the prescribed body corporate was nominated. The determination was amended by consent on 23 November 2006. Paragraph 4 of those orders was further amended on 7 December 2006 to correct a typographical error. On 9 May 2007 the determination was further amended by consent. The outcome of an appeal to the Full Court of the Federal Court was handed down on 2 May 2008. Orders giving effect to those reasons for judgement were delivered on 18 July 2008. A prescribed body corporate was nominated on 8 September 2008. The determination in relation to areas where native title was determined to exist therefore came into effect on 8 September 2008. The determination to that extent was registered on the National Native Title Register on 11 September 2008. An application to the High Court for leave to appeal certain aspects of the judgement was withdrawn by the West Australian government.

### REGISTERED NATIVE TITLE BODY CORPORATE:

Yawuru Native Title Holders Aboriginal Corporation RNTBC  
Trustee Body Corporate  
PO Box 425  
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](http://www.oric.gov.au)*

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

3. The native title is held by the "Yawuru Community", being the persons described in Schedule 1 (native title holders).

## SCHEDULE 1 - THE NATIVE TITLE HOLDERS

The native title holders, the persons referred to in Order 3, are:

(a) the descendants of Nyobing Babere, Chimbere Sitocay, Aloysius Louis Dolby, Jirawina, Jack and Pollyanna Mangain, Lija (wife of Phillip O'Brien Taylor), Nyilandin, Joseph Mary, Paddy Djiagween, Lucy Marcella Roe, Mary Minyal, Cecilia Ngangon, Nyingula, Annie Mawunga, Milangka, Lena Charlie, Lucia "Lija" (daughter of Bernal and Gurdan), Minbal Ester, Philomena Carter, Aubrey Kelly Edar, John Two fingers, Mary Budjinka, Yungula (first wife of George Harriot Roe), Yungula (second wife of George Harriot Roe), Tommy Roe "Guminy", Dorothy Kelly, Lydia Kanagai, Solong Archill, Jiriny, Dockan Harry Minbal, Maggie Kanado (Kangode), Lucy Warrdarr and Philomena "Polly" Vincent (nee Pedro) save that where a person has only one Yawuru parent, that person self-identifies as Yawuru; and

(b) Aboriginal persons who have been adopted as children or been grown up by a Yawuru person as members of the Yawuru community under the traditional laws and customs of the community and who self-identify and are generally accepted by other members of the community, as Yawuru persons; and

(c) Aboriginal persons who possess high cultural knowledge and responsibilities in relation to the area described in Schedule 2 and:

(i) were born in; or

(ii) have a long term physical association with,

that area under the traditional laws and customs of the Yawuru community and who self identify and are generally accepted by other members of the community, as Yawuru persons; and

(d) the descendants of persons referred to in (b) or (c) save that where a person has only one Yawuru parent, that person self-identifies as Yawuru.

### **MATTERS DETERMINED:**

THE COURT DETERMINES THAT:

EXISTENCE OF NATIVE TITLE (s.225)

1. Native title exists in relation to the land and waters described in Schedules 4, 5 and 6.
2. Native title does not exist in relation to the land and waters described in Schedule 3.

THE NATIVE TITLE HOLDERS (s.225(a))

3. The native title is held by the "Yawuru Community", being the persons described in Schedule 1 (native title holders).

NATIVE TITLE RIGHTS AND INTERESTS (s225(b) and (e))

4. Subject to Orders 8 to 9 the nature and extent of the native title rights and interests in the land and waters described in Schedule 4 [being areas where there has been no extinguishment of native title or areas where any extinguishment must be disregarded] is:

(a) except in relation to flowing and subterranean water - the right of possession and occupation against the whole world; and

(b) the right to take flowing and subterranean water for personal, domestic or non-commercial communal purposes (including social, cultural, religious, spiritual and ceremonial purposes).

5. Subject to Orders 7 to 9 the nature and extent of the native title rights and interests in the land and waters described in Schedule 5 [being areas where there has been partial extinguishment of native title (for example by the creation of reserves and by the grant of pastoral and mining leases), where any extinguishment is not required to be disregarded and that are not intertidal areas] are:

(a) the right to live on the land;

(b) the right to access, move about in and on and use the land and waters;

(c) the right to hunt and gather on the land and waters for personal, domestic or non-commercial communal purposes

(including social, cultural, religious, spiritual and ceremonial purposes);

(d) the right to engage in spiritual and cultural activities on the land and waters;

(e) the right to access, use and take any of the resources of the land and waters (including ochre) for personal, domestic or non-commercial communal purposes (including social, cultural, religious, spiritual and ceremonial purposes); and

(f) the right to care for and maintain and protect the land and waters, including places of spiritual or cultural significance.

6. Subject to Orders 7 to 9 the nature and extent of the native title rights and interests in the land and waters described in Schedule 6 [being intertidal areas] are:

(a) the right to access, move about in and on and use the land and waters;

(b) the right to hunt and gather in and on the land and waters, including for dugong and turtle for personal, domestic or non-commercial communal purposes (including social, cultural, religious, spiritual and ceremonial purposes);

(c) the right to access, use and take any of the resources of the land and waters (including the fresh water) for personal, domestic or non-commercial communal purposes (including social, cultural, religious, spiritual and ceremonial purposes); and

(d) the right to maintain and protect the land and waters, including its places of spiritual significance.

7. The native title rights and interests in Orders 5 and 6 do not confer possession, occupation, use and enjoyment on the native title holders to the exclusion of all others.

8. The native title rights and interests are:

(a) exercisable in accordance with the traditional laws and customs of the native title holders; and

(b) subject to and exercisable in accordance with the laws of the State and the Commonwealth including the common law.

9. There are no native title rights and interests in or in relation to:

(a) such minerals as defined in the Mining Act 1904 (WA), or in the Mining Act 1978 (WA) as in force at the date of this Determination as are the property of the Crown;

(b) petroleum as defined in the Petroleum Act 1936 (WA), or in the Petroleum Act 1967 (WA), as in force at the date of this Determination.

#### NATURE AND EXTENT OF ANY OTHER INTERESTS (s.225(c))

10. The nature and extent of other interests in relation to the Determination Area are those set out in Schedule 7 ("other interests").

#### RELATIONSHIP BETWEEN NATIVE TITLE AND OTHER INTERESTS (s.225(d))

11. The relationship between the native title rights and interests described in Orders 4 to 6 and the other interests referred to in Order 10 is that the other rights and interests co-exist with the native title rights and interests, and:

(a) to the extent that any of the other rights and interests 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; and otherwise,

(b) the existence and exercise of the native title rights and interests do not prevent the doing of any activity required or permitted to be done by or under the other rights and interests, and the other rights and interests, and the doing of any activity required or permitted to be done by or under the other rights and interests, prevail over the native title rights and interests and any exercise of the native title rights and interests, but do not extinguish them.

#### DEFINITIONS AND INTERPRETATION

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

"Determination Area" means the land and waters referred to in Orders 1 and 2, being the land and waters of the areas described in Schedules 3 to 6, and also being certain lands and waters within the location described in Schedule 2;

"flowing and subterranean water" means the following water within the Determination Area:

- (a) water which flows, 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) water from and including an underground water source, including water that percolated from the ground;

"improvement" means any house, shed, other building, airstrip, constructed dam or constructed stock watering point;

"land" has the same meaning as in the Native Title Act except in Order 5(a);

"Native Title Act" means the Native Title Act 1993 (Cth);

"waters" has the same meaning as in the Native Title Act.

13. In the event of an inconsistency between the written description of an area in Schedules 2 to 7 and the area as depicted on the Maps in Schedule 8, the written description prevails.

#### SCHEDULE 1 - THE NATIVE TITLE HOLDERS

The native title holders, the persons referred to in Order 3, are:

(a) the descendants of Nyobing Babere, Chimbere Sitocay, Aloysius Louis Dolby, Jirawina, Jack and Pollyanna Mangain, Lija (wife of Phillip O'Brien Taylor), Nyilandin, Joseph Mary, Paddy Djiagween, Lucy Marcella Roe, Mary Mynal, Cecilia Ngangon, Nyingula, Annie Mawunga, Milangka, Lena Charlie, Lucia "Lija" (daughter of Bernal and Gurdan), Minbal Ester, Philomena Carter, Aubrey Kelly Edar, John Two fingers, Mary Budjinka, Yungula (first wife of George Harriot Roe), Yungula (second wife of George Harriot Roe), Tommy Roe "Guminy", Dorothy Kelly, Lydia Kanagai, Solong Archill, Jiriny, Dockan Harry Minbal, Maggie Kanado (Kangode), Lucy Warrdarr and Philomena "Polly" Vincent (nee Pedro) save that where a person has only one Yawuru parent, that person self-identifies as Yawuru; and

(b) Aboriginal persons who have been adopted as children or been grown up by a Yawuru person as members of the Yawuru community under the traditional laws and customs of the community and who self-identify and are generally accepted by other members of the community, as Yawuru persons; and

(c) Aboriginal persons who possess high cultural knowledge and responsibilities in relation to the area described in Schedule 2 and:

(i) were born in; or

(ii) have a long term physical association with,

that area under the traditional laws and customs of the Yawuru community and who self identify and are generally accepted by other members of the community, as Yawuru persons; and

(d) the descendants of persons referred to in (b) or (c) save that where a person has only one Yawuru parent, that person self-identifies as Yawuru.

#### SCHEDULE 2 - LOCATION OF DETERMINATION AREA

The Determination Area is wholly within the following location:

Commencing at the eastern most northeastern corner of Pastoral Lease 3114/499 (Roebuck Plains) and extending generally southerly and generally westerly along boundaries of that Pastoral Lease to the eastern most eastern boundary of Pastoral Lease 3114/635 (Thangoo); Thence generally southerly and generally westerly along boundaries of that Pastoral Lease to the western most southwestern corner of that Pastoral Lease; Thence west along the northern boundary of the area subject to the determination of native title in *Nangkiriny v State of Western Australia* [2004] FCA 1156 to the Mean High Water Mark; Thence generally northeasterly along that Mean High Water Mark to Longitude 122.085986 East; Thence northerly to the Lowest Astronomical Tide (LAT) at Latitude 18.326161 South Longitude 122.086094 East; Thence generally northerly, generally easterly, again generally northerly, generally westerly and again generally northerly along that Lowest Astronomical Tide to Latitude 17.763873 South; Thence easterly to Latitude 17.763845 South Longitude 122.220035 East; Thence southeasterly to a western corner of Pastoral Lease 3114/499 (Roebuck Plains); Thence generally easterly along the northern boundaries of that Pastoral Lease back to the commencement point.

#### SCHEDULE 3 - AREAS WHERE NATIVE TITLE DOES NOT EXIST

Areas referred to in Order 2 [of the Determination]

1. The areas described and listed as being in Schedule 3 in the Determination Area Table, and generally shown on the Maps in Schedule 8.

2. Any part of an area (other than an area identified in the Determination Area Table as an area to which s47A or s47B of the Native Title Act applies to require prior extinguishment to be disregarded) upon which an improvement has been constructed pursuant to a right granted under a pastoral lease or a mining lease prior to the date of this determination and including any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvement.

#### SCHEDULE 4 - EXCLUSIVE NATIVE TITLE AREAS

Areas where native title comprises the exclusive rights set out in Order 4

The areas in which native title comprises the rights and interests set out in Order 4 are the areas described and listed as being in Schedule 4 in the

Determination Area Table, and generally shown on the Maps in Schedule 8.

#### SCHEDULE 5 -NON-EXCLUSIVE NATIVE TITLE AREAS

Areas where native title comprises the rights set out in Order 5

The areas in which native title comprises the rights and interests set out in Order 5 are the areas described and listed as being in Schedule 5 in the Determination Areas Table, and generally shown on the Maps in Schedule 8.

#### SCHEDULE 6 - TIDAL NATIVE TITLE AREAS

Areas where native title comprises the rights set out in Order 6

The areas in which native title comprises the rights and interests set out in Order 6 are the areas described and listed as being in Schedule 6 in the Determination Areas Table, and generally shown on the Maps in Schedule 8.

#### SCHEDULE 7 - OTHER INTERESTS

The interests referred to in Order 12

The nature and extent of other interests in relation to the Areas are the following as they exist as at the date of this determination:

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

(a) Thangoo Pastoral Lease 3114/0635;

(b) Roebuck Plains Station Pastoral Lease 3114/0499.

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 631 for the purpose of public purposes, adjoining Broome, Roebuck Bay - (removed on appeal on 18 July 2008);

Reserve 1647 for the purpose of Cemetery (Broome Cemetery) - (inserted on appeal on 18 July 2008)

(b) Reserve 1514 for the purpose of watering place (Thangoolunjal Well);

(c) Reserve 1515 for the purpose of watering place (Thangoo Well);

(d) Reserve 1516 for the purpose of watering place (Balyarrangunjal (or Goldwire) Well);

(e) Reserve 1517 for the purpose of watering place (Yardogarra Well);

(f) Reserve 1518 for the purpose of watering place (rock hole between Leura and Yardogarra);

(g) Reserve 1643 for the purpose of Cemetery (Pioneer Cemetery at Town Beach);

(h) Reserve 2551 for the purpose of Gaol (area at Hamersley Street, near Stewart Street);

(i) Reserve 9697 for the purpose of Kimberley-De Gray Stock Route;

- (j) Reserve 11122 for the purpose of Aborigines (area at Djaigween Road);
- (k) Reserve 15019 for the purpose of police (area at Frederick and Hemmersley Street);
- (l) Reserve 21801 for the purpose of hospital for natives (area at Anne Street);
- (m) Reserve 25790 for the purpose of natives (area at Carnarvon and Frederick Streets (Kennedy Hill));
- (n) Reserve 31340 for the purpose of recreation bathing and caravan park (area at Town Beach);
- (o) Reserve 34937 for the purpose of Use and Benefit of Aboriginal inhabitants (area at Dora Street and Paddy Court (Mamabulanjin));
- (p) Reserve 35743 for the purpose of public utilities services (area near Port);
- (q) Reserve 40108 for the purpose of Use and Benefit of Aboriginal Inhabitants (area at Lawrence Road);
- (r) Reserve 41255 for the purpose of Recreation and Drainage (area at Gubinge Road);
- (s) Reserve 41256 for the purpose of Recreation and Drainage (area at Cable Beach Road East);
- (t) Reserve 43080 for the purpose of coastal park (recreation, conservation and protection of Aboriginal heritage) (area known as Minyirr Park, at Cable Beach); and
- (u) Reserve 45619 for the purpose of use and benefit of Aboriginal inhabitants (area north of Chinatown).

3. The interests of holders of tenements under the Mining Act 1978 (WA) including any entitlement to use (including by servants, agents and contractors) such portions of existing roads and tracks in the Determination Area as necessary in order to have access to the mining tenement for the purposes of exercising the rights granted by that tenement provided that such use does not include the upgrade, extension, widening or other improvement of a road or track or any work on a road or track other than work done to maintain it in reasonable repair and in order to leave it in substantially the same condition as it was prior to such use.

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. The interests of holders of any other valid or validated rights and interests granted by the Crown pursuant to statute or otherwise in the exercise of its executive power.

6. 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 Broome Groundwater Area on 1 November 1974 and the Canning-Kimberley Groundwater Area on 22 April 1997 pursuant to section 26B(1) of the Rights in Water and Irrigation Act 1914 (WA); and the constitution of the Broome Water Reserve pursuant to section 9 of the Country Water Supply Act 1947 (WA).

7. The rights of members of the public under the following:

- (a) the public right to fish in tidal waters; and
- (b) the public right to navigate in tidal waters.

8. The rights under the international right of innocent passage.

9. The right to access areas of previously unallocated Crown land by any:

- (a) employee or agent of the State Government;
- (b) employee or agent of the Commonwealth Government;
- (c) 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.

10. So far as confirmed pursuant to section 14 of the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) as at the date of this determination, any existing public access to and enjoyment of:

- (a) waterways; or

(b) beds and banks or foreshores of waterways; or

(c) coastal waters; or

(d) beaches; or

(e) stock routes.

11. The rights and interests of Telstra Corporation Limited:

(a) as the owner or operator of telecommunications facilities within the Determination Area, including customer radio terminals and overhead and underground cabling;

(b) as the holder of a carrier licence under the Telecommunications Act 1997 (Cth);

(c) 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); and

(d) for its employees, agents or contractors to enter the Determination Area to access its facilities in and in the vicinity of the Determination Area in the performance of their duties.

12. Any other:

(a) legal or equitable estate or interest in the land or waters; or

(b) any other right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with:

(i) the land or waters; or

(ii) an estate or interest in the land or waters; or

(c) restriction on the use of the land or waters, whether or not annexed to other land or waters.

#### SCHEDULE 8 - THE MAPS

The maps referred to in Schedules 2 -7

Note: Maps generally showing the various areas referred to in the Determination are to be added to the Determination in accordance with Order 3 [sic] of the Orders.

#### REGISTER ATTACHMENTS:

1. Attachment 1 - Determination Area Table - Attachment A of the Determination (consolidated on 18/07, 109 pages - A4, 18/07/2008

2. Attachment 2 - Determination Map 1, 1 page - A4, 08/08/2008

3. Attachment 3 - Enlargement Map 1, 1 page - A4, 08/08/2008

4. Attachment 4 - Enlargement Map 2, 1 page - A4, 08/08/2008

5. Attachment 5 - Enlargement Map 3, , 1 page - A4, 08/08/2008

6. Attachment 6 - Enlargement Map 4, 1 page - A4, 08/08/2008

7. Attachment 7 - Enlargement Map 5, 1 page - A4, 08/08/2008

8. Attachment 8 - Enlargement Map 6, 1 page - A4, 08/08/2008

9. Attachment 9 - Enlargement Map 7, , 1 page - A4, 08/08/2008

*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.*