



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6229/1998
NNTT Number: WCD2007/002

Determination Name: [Cox on behalf of the Yungngora People v State of Western Australia](#)

Date(s) of Effect: 27/04/2007

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 27/04/2007

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Yungngora Aboriginal Corporation RNTBC
Trustee Body Corporate
Noonkanbah Station
PMB 400
Fitzroy Crossing Western Australia 6765

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:

The Yungngora people.

MATTERS DETERMINED:

BEING SATISFIED that a determination in the terms sought by the parties would be within the power of the Court, and it appearing to the Court appropriate to do so and by the consent of the parties:

THE COURT ORDERS, DECLARES AND DETERMINES BY CONSENT:

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

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

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

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

(a) waters which flow, whether permanently, intermittently or occasionally, within:

(i) any river, creek, stream or brook; and

(ii) any natural collection of water into, through or out of which a river, creek, stream or brook flows; and

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

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

2. The Determination Area is the land and waters and the flowing and subterranean waters, the external boundary of which is described and depicted in the First Schedule and the area of which is shown on the plan annexed to the First Schedule.

3. Native title exists in the Determination Area in the manner set out in paragraph 5 of this determination.

4. The native title rights and interests are held by the Yungngora people ("the common law holders"). The Yungngora people are those people described in the Third Schedule.

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

(1) The nature and extent of the native title rights and interests held by the common law holders in the Determination Area are:

(a) with respect to the area covered by Pastoral Lease 3114/576 and the portion of unallocated Crown land, having been resumed and notified in the Government Gazette on 24 July 1980, and which is shown on the inset to the Plan attached to the First Schedule:

(i) the communal right to possess, occupy, use and enjoy the land and waters to the exclusion of all others; and

(ii) the communal right to take, use and enjoy the flowing and subterranean waters for personal, domestic and non-commercial communal purposes (including social, cultural, religious, spiritual and ceremonial purposes).

(b) With respect to the area covered by Reserve 23226 and Reserve 26355, non-exclusive communal 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 shelters and other structures and to travel over and visit any part of the land and waters;

(iii) the right to take fauna and flora from the land and waters for personal, domestic and non-commercial communal purposes (including social, cultural, religious, spiritual and ceremonial purposes);

(iv) the right to take other natural resources of the land such as ochre, stones, soils, wood and resin for personal, domestic and non-commercial communal purposes (including social, cultural, religious, spiritual and ceremonial purposes);

(v) the right to take, use and enjoy the waters and flowing and subterranean waters for personal, domestic and non-commercial communal purposes (including social, cultural, religious, spiritual and ceremonial purposes);

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

(vii) the right to have access to, care for, maintain and protect from physical harm, particular sites and areas of significance to the common law holders.

(c) The native title rights and interests set out in sub-paragraphs (1)(a) and (b) are exercisable in accordance with the traditional laws and customs of the common law holders.

(d) The native title rights and interests set out in sub-paragraph (1)(a)(ii) do not confer the right of use and enjoyment on the common law holders to the exclusion of all others.

(e) The native title rights and interests set out in sub-paragraph (1)(a)(i) confer possession, occupation, use and

enjoyment on the common law holders to the exclusion of all others.

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

7. 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.

8. The nature and extent of the other rights and interests in relation to the Determination Area are those set out in the Second Schedule.

9. 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 8 ("the other rights and interests") is that:

(a) the other rights and interests co-exist with the native title rights and interests except to the extent that the other rights and interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests in which case the native title continues to exist in its 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; and

(b) for the avoidance of doubt, the existence 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 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.

FIRST SCHEDULE

The Determination Area (which is outlined in blue on the plan annexed to this First Schedule) comprises all of the land and waters and flowing and subterranean waters within the following description, save for the exclusions set out in the native title determination application filed by the Yungngora people, and the exclusions set out in this Schedule.

Commencing at the westernmost south western corner of Pastoral Lease 3114/576 (Noonkanbah Station) and extending northerly, easterly, southerly, again easterly, again southerly, again easterly, again southerly and generally westerly along boundaries of that pastoral lease to the south eastern corner of Fitzroy Location 4. Then northerly, westerly and southerly along boundaries of that location to a south eastern corner of Pastoral Lease 3114/576 (Noonkanbah Station), aforesaid and then generally westerly, generally northerly and again generally westerly along boundaries of that pastoral lease to the starting point.

Exclusions from the Determination Area:

1. The following areas are excluded from the Determination Area in accordance with section 61A of the Native Title Act (and section 23C of the Native Title Act and sections 12I and 12J of the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)):

(a) Any valid public works as that expression is defined in the Native Title Act and the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) within the Determination Area including the land and waters defined in section 251D of the Native Title Act.

(b)(i) the Calwynyardah-Noonkanbah Road; and

(ii) the Camballin-Noonkanbah Road as shown on the plan annexed to this First Schedule.

SECOND SCHEDULE

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

1. The rights and interests of the Yungngora Association Inc, the holder of Pastoral Lease 3114/576.

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 23226 for the purpose of a stock route; and

(b) Reserve 26355 for the purpose of an aerodrome.

3. Existing mining tenements under the Mining Act 1978 (WA)

Tenement ID Holder Date Granted

E04/1386 Blackfin Pty Ltd 21 January 2004

E04/1551 Graynic Metals Ltd 23 January 2007

4. Existing petroleum interests under the Petroleum Act 1967 (WA)

Tenement ID Holder Date of Initial Grant

EP371 (R1) Arc Energy Limited 18 March 1993

5. Other Rights and Interests

(a) Rights and interests granted by the Crown in right of the Commonwealth or the State pursuant to statute or otherwise in the exercise of its executive power;

(b) Rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth including the force and operation of the Rights in Water and Irrigation Act 1914 (WA);

(c) Rights and interests of members of the public arising under the common law;

(d) The right to access land by:

(i) an employee or agent or instrumentality of the State;

(ii) an employee or agent or instrumentality of the Commonwealth;

(iii) an employee or agent or instrumentality 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) Rights of any person to access and enjoy (subject to the laws of the State) any roads within the Determination Area existing as at the date of this determination where members of the public have access to such roads according to the common law.

(f)(i) Without limiting the operation of any other paragraph in the Second Schedule, but subject to paragraph (f)(ii), rights of the holders from time to time of mining tenements under the Mining Act 1978 (WA) and petroleum interests under the Petroleum Act 1967 (WA) to use (including by servants, agents and contractors) the roads and tracks in the Determination Area existing as at the date of this determination, in order to have access to such mining tenements and petroleum interests.

(ii) Nothing in paragraph (f)(i) above 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.

(g) The right of the Shire of Derby (West Kimberley) to take gravel from the gravel pits shown on the plan annexed to the First Schedule for the purpose of maintenance works for the Calwynyardah-Noonkanbah Road and the Camballin-Noonkanbah Road.

THIRD SCHEDULE

1. The Yungngora people are those Aboriginal people who:

(a) hold in common the body of traditional law and custom governing the Determination Area;

(b) identify themselves as, and are accepted as such by, the holders in common of that body of traditional law and custom; and

(c) are:

(i) descended from any one or more of the following apical ancestors (listed in broad family groups): Jinmangkal, Rangku, Palpulanjanka, Tukulaji, Pinjaji, Nyuntuka, Tiliwali, Pulpalipu, Potara (Miller Cox), Yulatpa, Nancy Juganyi,

Mick Michael, Walgu, Amy, Sylvia Yamalulu, Daisy Yamalulu, Peter Yamalulu, Maisie Yakai, Albert Magic, Purupuru, Kuramia, Nairi (Big Paddy), Bessie Nargoodah, Thelma Wangella, Tojo Wanterija, Nancy Buck, Billy Buck, Wita Costaine, Ginger Ngumila, Nyiti, Yapiki, Tjaranti, Wintili, Tjilua, Kuntjiwu, Toby Bulagardie, Honey Bulagardie, Freddy Puti, Maisie Lomparta, Topsy Pakatai, Yirinji, Tolwai, Kinjinpi, Pularimir, Minyin, Bob Mululby, May Jarrah, Friday Mulamula, Betty Marmaga, Tommy King, Dora Pintjaparta, Colin Wasi, Tommy Butler, Nipper Tabagee, Tjaba, Lucy Cubby, Snodger Bowmallie, Marie Elsie, Mick Nicki, Penny Bunghi, Dennis Boke, Dandy Buck, Norman Hawkins, Joe Pindan, Toby Pindan, Judy Yato, Jimmy Skinner, Nita Skinner; or

(ii) in accordance with traditional law and custom, adopted into the group holding in common that body of traditional law and custom.

REGISTER ATTACHMENTS:

1. Attachment 1 - Map of Determination Area - Schedule 1, 1 page - A4, 27/04/2007

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.