



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6077/1998
NNTT Number: WCD2007/005

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

Date(s) of Effect: 22/11/2010

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 09/11/2007

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

This determination was made on 9 November 2007 and was conditional on the determination of the prescribed body corporate (Kogolo v State of Western Australia [2007] FCA 1703). The prescribed body corporate was determined on 22 November 2010. The conditions attached to the determination have therefore now been met.

REGISTERED NATIVE TITLE BODY CORPORATE:

Yanunijarra Aboriginal Corporation RNTBC
Trustee Body Corporate
c/o 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

COMMON LAW HOLDER(S) OF NATIVE TITLE:

The native title in Determination Area "A" is held communally by the Ngurrara people. The Ngurrara people are the people referred to in Schedule 3.

MATTERS DETERMINED:

BEING SATISFIED that a determination in the terms sought by the parties is 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 THAT:

EXISTENCE OF NATIVE TITLE (s 225)

1. Determination Area "A" is the land and waters described in Schedule 1 and depicted on the map comprising Schedule 2.

2. Native title exists in Determination Area "A".

NATIVE TITLE HOLDERS (s 225(a))

3. The native title in Determination Area "A" is held communally by the Ngurrara people. The Ngurrara people are the people referred to in Schedule 3.

THE NATURE AND EXTENT OF NATIVE TITLE RIGHTS AND INTERESTS (s225(b)) AND EXCLUSIVENESS OF NATIVE TITLE (s225(e))

EXCLUSIVE NATIVE TITLE RIGHTS AND INTERESTS

4. Subject to paragraphs 5, 6 and 7 the nature and extent of the native title rights and interests in relation to Determination Area "A" are:

(a) except in relation to flowing and subterranean waters, an entitlement as against the whole world to possession, occupation, use and enjoyment of the land and waters of that part to the exclusion of all others; and

(b) in relation to flowing and subterranean waters, the right to use and enjoy the flowing and subterranean waters, including:

(i) the right to hunt on and gather and fish from the flowing and subterranean waters for personal, domestic or non-commercial communal needs; and

(ii) the right to take and use the flowing and subterranean waters for personal, domestic or non-commercial communal needs.

5. For the avoidance of doubt, the native title rights referred to in paragraph 4 include the right to make decisions about the manner of exercise of those rights and interests in relation to the land and waters (and activities pursuant to them) by the Native Title Holders.

6. The native title rights and interests referred to in paragraph 4(b) do not confer possession, occupation, use and enjoyment on the Native Title Holders to the exclusion of all others.

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), the Mining Act 1978 (WA) as in force at the date of this determination, the Petroleum Act 1936 (WA) and the Petroleum Act 1967 (WA) as in force at the date of this determination.

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

(a) the laws of the State and the Commonwealth, including the common law; and

(b) the traditional laws and customs of the Native Title Holders for personal, domestic and communal purposes (including social, cultural, religious, spiritual and ceremonial purposes) but not for commercial purposes.

THE NATURE AND EXTENT OF ANY OTHER INTERESTS

9. The nature and extent of other rights and interests in relation to Determination Area "A" are those set out in Schedule 4.

RELATIONSHIP BETWEEN NATIVE TITLE RIGHTS AND OTHER INTERESTS

10. The relationship between the native title rights and interests described in paragraph 4 and the other rights and interests referred to in paragraph 9 is that:

(a) to the extent that any of the other rights and interests are 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

11. In this Determination, unless the contrary intention appears:

"Determination Area "A"" means the land and waters described in Schedule 1 and depicted on the maps at Schedule 2;

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

(a) water which flows, whether permanently, intermittently or occasionally, within any river, creek, stream or brook; and

(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 percolates from the ground

"land" has the same meaning as in the Native Title Act, and includes those parts of islands which are above the high water mark;

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

"Native Title Holders" means the persons described in paragraph 0;

"waters" has the same meaning as in the Native Title Act; and includes flowing and subterranean water;

12. In the event of any inconsistency between the written description of an area in Schedule 1 and the area as depicted on the map at Schedule 2, the written description prevails.

SCHEDULE 1

DETERMINATION AREA "A"

Determination Area "A", generally shown as bordered in blue on the map at Schedule 2, comprises all that land and waters bounded by the following description:

PORTION 1

All those lands and waters commencing at the northwestern corner of Pastoral Lease 398/817 and extending southerly and easterly along boundaries of that lease and easterly along the southern boundary of Pastoral Lease 398/812 to the northwest corner of Pastoral Lease 398/813; Thence southerly and easterly along boundaries of that lease and easterly along the southern boundary of Pastoral Lease 3114/1261 (Bulka) to Longitude 126.008231 East; Thence southerly and easterly through the following co-ordinate positions:

LATITUDE(SOUTH)	LONGITUDE(EAST)
-----------------	-----------------

19.864743	126.008750
-----------	------------

19.863984	126.306221
-----------	------------

Thence southerly to the northern boundary of Reserve 5280 at Longitude 126.306528 East; Thence westerly, southerly, easterly and northerly along boundaries of that reserve to its northernmost northeastern corner; Thence generally easterly through the following co-ordinate positions:

LATITUDE(SOUTH)	LONGITUDE(EAST)
-----------------	-----------------

20.126176	126.672678
-----------	------------

20.125479	126.682892
-----------	------------

20.130352	126.723403
-----------	------------

20.131761	126.742533
-----------	------------

Thence northerly to the southern boundary of Pastoral Lease 398/533 (Madigan) at Longitude 126.743028 East; Thence easterly along the southern boundary of that pastoral lease to Longitude 127.001283 East; Thence southerly

to Latitude 20.371921 South, Longitude 127.001290 East; Thence easterly to the western boundary of Reserve 26399 at Latitude 20.371920 South; Thence southerly along the western boundary of that reserve to Latitude 20.498587 South; Thence southwesterly to a northern boundary of Reserve 5279 at Longitude 125.900131 East; Thence westerly along the northern boundary of that reserve to Longitude 125.671541 East; Thence generally northwesterly, northerly and generally easterly through the following co-ordinate positions:

LATITUDE(SOUTH) LONGITUDE(EAST)

21.498604	125.501314
21.081941	124.667979
21.498617	124.001319
21.498617	123.926319
20.998619	123.501315
19.044946	123.501304
19.045139	123.667889
18.975387	123.667426
18.975380	123.667969
18.974332	123.743929
18.859663	123.743533
18.858337	124.047518
18.858444	124.084632
18.858804	124.209726
18.935238	124.209474
18.933931	124.299151
19.029545	124.298924
19.029903	124.614831
19.016241	124.614742

Thence easterly to a western boundary of Pastoral Lease 3114/1210 (Milljiddee) at Latitude 19.016027 South; Thence southerly and easterly along boundaries of that pastoral lease back to the commencement point.

PORTION 2

All those lands and waters commencing at the intersection of the northern boundary of Reserve 5280 with Longitude 126.561465 East and extending generally northeasterly and generally southeasterly through the following co-ordinate positions:

LATITUDE(SOUTH) LONGITUDE(EAST)

20.123893	126.565905
20.121309	126.572574
20.120804	126.575443
20.118428	126.588946
20.117987	126.599605
20.116854	126.611501
20.118139	126.626959

20.121225 126.643011

20.122745 126.649631

Thence southeasterly to the northern boundary of Reserve 5280 at Longitude 126.663914 East; Thence westerly along the northern boundary of that reserve back to the commencement point.

The area defined by the following co-ordinates, formerly Pastoral Lease 595/98, is excluded from the determination.

LATITUDE(SOUTH) LONGITUDE(EAST)

18.962419 124.002275

18.962418 124.098783

19.035331 124.098784

19.035333 124.002275

Note: Cadastral boundaries sourced from LANDGATE SCDB Apr 2006

Datum: Geocentric Datum of Australia (GDA94)

Prepared by: Native Title Spatial Services, LANDGATE, 25/09/2007

Use of Co-ordinates: Where co-ordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

SCHEDULE 2

MAP OF DETERMINATION AREA "A"

(See NNTR Attachment 1: "Schedule 2 Map of Determination Area "A"")

SCHEDULE 3

DESCRIPTION OF THE NATIVE TITLE HOLDERS

1. Ngurrara people (referred to in paragraph 0) are those Aboriginal people who:

(a) are the biological descendants of Charcoal Waluparlka, Marjorie Baldwin-Jones, Barney Barnes, Maggie Wipula, Possum Waja, Hairpin Marna, Milimili, Tiepin Forrest, Kinki, Pingana, Jutaji, Yurrijarti, Lirra, Yanparr, Wangala, Ngarpitangky, Jiminalajarti, Nyinyingka, Wamakarrajarti, Piniijarti, Wintiki, Witikiriny, Jack Pindan, Charlie Wirramin, Maramimi, Pulyukupulyuky, Bidy Tipultipul, Parrangali, Jiyapa, Warrapan, Jinaparralyaparralya, Kilankara, Jimmy Milmilipiri, Shovel, Piluwulu, Yalyayi, Tampitampi, Wamakulangu, Kurumanyu, Kunyu, Paju, Tommy Kampuranti, Waji Karripal, Jukajuka, Nujnuj, Kipi, Papilparri, Ulayi, Mimi, Marra, Kakartuku, Kinkarrajarti, Kurtinyja, Yita, Pampi, Jimmy Cherrabun, Parnayi, Puri, Kurukuru, Maramara, Kungayi, Napiya, Pukurli, Yijayi, Jijuru, Jarraly, Walkarr, Jarralyi, Nyinganyiga, Karljuwal, Yungkurla, Jinakurrji, Kakural, Mitanga, Upapatirri, Nyapita, Wayanjarri, Yurungu, Purngurrkarrajiti, Milal, Warrmala, Kujiman, Jalal, Manjankarri, Liramilin, Jarlanyja, Yanji, Kumparrngarla, Wangkarrkura, Mukula, Nyintakura, Paralirl, Kulurr, Pika, Kingkarraji, Ngaramgarapungu, Nartaya, Wawajati, Hector McClarty, Kakaji, Jack Butt, Janyi, Jimmy Kuku, Nat Beadell, Peter Francis and Roger Rakartu; or

(b) are acknowledged by the native title holders who are descendants of the apical ancestors listed in (a) above as having rights and interests in the Determination Area through a direct relationship by birth/finding and growing up in places ("Ngurrara") within the Determination Area.

For the avoidance of doubt, it is noted that those persons who are native title holders as defined above have the right to pass on and inherit the native title rights and interests set out in paragraph 4 of this Determination in accordance with traditional law and custom.

SCHEDULE 4

OTHER INTERESTS

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

TENEMENT ID	HOLDER	DATE OF INITIAL GRANT
EP 417	New Standard Exploration NL	22 February 2000
EP 429	Kingsway Oil Pty Ltd	6 September 2004
EP 431	Arc Energy Limited	7 October 2004
EP 442	New Standard Exploration NL	23 September 2005
EP 443	New Standard Exploration NL	23 September 2005
EP 449	Kingsway Oil Pty Ltd	23 June 2006
EP 450	New Standard Exploration NL	28 September 2006
EP 451	New Standard Exploration NL	28 September 2006

2. Other Rights and Interests

(a) Rights and interests, including licences and permits, 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) 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.

(d) Rights of any person to access and enjoy (subject to the laws of the State):

(i) any roads within Determination Area "A" existing as at the date of this determination where members of the public have access to such roads according to the common law;

(ii) the Canning Stock Route.

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

(ii) Nothing in paragraph (e)(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.

(f) The right of any Commonwealth, State or Local Government Authority or their agent to access the roads to the Kurlku and Purlawarla communities, and the communities themselves, as shown on the map at Schedule 2, for the purpose of maintenance works as required.

(g) 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:

(i) waterways; or

(ii) the beds and banks or foreshores of waterways; or

(iii) stock routes.

REGISTER ATTACHMENTS:

1. Attachment 1 - Schedule 2 Map of Determination Area A, 1 page - A4, 09/11/2007

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.