



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): WAD6212/1998  
NNTT Number: WCD2009/002

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

**Date(s) of Effect:** 18/11/2009

**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:** 18/11/2009

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

On 5 December 2013 the Delegate of the Registrar of Aboriginal and Torres Strait Islander Corporations issued a certificate of registration, recording that the Wyamba Aboriginal Corporation RNTBC (the original RNTBC for this determination) is now registered under the new name of Kulyamba Aboriginal Corporation RNTBC.

### REGISTERED NATIVE TITLE BODY CORPORATE:

Kulyamba Aboriginal Corporation RNTBC  
Trustee Body Corporate  
C/- Karin Kenkel  
Unit1/9 Finnerty Street  
Carnarvon Western Australia 6701

*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 Holders are the Thudgari people who:

(1) are the descendants of people who belonged to the Tharrkari, Warriyangka, Jiwarli and Thiin language groups, in particular the descendants of the following ancestors:

- (a) Maldurdari and Jiraguru;
- (b) Balgonyunga and Wurajulba;

- (c) Yagaraja and Kurmainma;
- (d) Thaldungu and Jigura;
- (e) Larry Brewer and Nancy Cameron;
- (f) Togo Griffin and Agnes Barron;
- (g) Marigold; and
- (h) Warngarri and Didibirri;

or who are adopted by such biological descendants in accordance with the traditional laws acknowledged and the traditional customs observed by the Thudgari; and

(2) identify themselves as Thudgari under traditional law and custom and are so identified by other Native Title Holders as Thudgari; and

(3) have a connection with the land and waters in the Determination Area, in accordance with traditional laws acknowledged and the traditional customs observed by the Thudgari.

#### **MATTERS DETERMINED:**

##### THE COURT ORDERS THAT:

1. In relation to the Determination Area, there be a determination of native title in WAD 6212 of 1998 in terms of the attached Minute of Proposed Consent Determination of Native Title.
2. Any part of the Thudgari Application that lies outside the external boundaries of the Determination Area be discontinued and no determination is made in respect of that part.
3. The Wyamba Aboriginal Corporation shall hold the determined native title in trust for the native title holders pursuant to s 56(2) of the Native Title Act 1993 (Cth).

##### DETERMINATION

##### THE COURT ORDERS, DECLARES AND DETERMINES:

##### EXISTENCE OF NATIVE TITLE (s225)

1. Subject to paragraph 2, native title exists in the Determination Area.
2. Native title does not exist in relation to those parts of the Determination Area identified in the Second Schedule and shaded green in the maps at Attachment 1 to the First Schedule.

##### NATIVE TITLE HOLDERS (s225(a))

3. The common rights comprising the native title in the Determination Area are held by the Thudgari people being the people referred to in the Fourth Schedule.

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

4. Subject to paragraphs 5, 6 and 7, the nature and extent of the native title rights and interests in relation to the Determination Area are that they confer the following non-exclusive rights on the Native Title Holders:

- (a) access the land and waters;
- (b) enter and remain on the land, camp, erect shelters and light fires for cooking, heating and lighting purposes;
- (c) take flora, fauna, fish and other traditional resources (excluding minerals) from the land and waters;
- (d) take and use water, and for the sake of clarity and the avoidance of doubt this right does not include the right to take or use water captured or controlled by the holders of the Pastoral Leases pursuant to those leases or other valid permit or authority;
- (e) engage in ritual and ceremony;

f) care for, maintain and protect from physical harm, particular sites and areas of significance to the Native Title Holders; and

(g) be accompanied on to the Determination Area by those people who, though not Native Title Holders, are spouses, parents or descendants of Native Title Holders.

5. The native title rights and interests set out in paragraph 4 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 or non-commercial communal purposes (including social, medicinal, cultural, religious, spiritual and ceremonial purposes).

6. The native title rights and interests set out in paragraph 4 do not confer:

(a) possession, occupation, use and enjoyment on the Native Title Holders to the exclusion of all others; nor

(b) a right to control access to, or use of, the land and waters of the Determination Area or their resources.

7. Notwithstanding anything in this determination the native title rights and interests set out in paragraph 4 include the right to take and use ochre to the extent that ochre is not a mineral pursuant to the Mining Act 1904 (WA) (repealed), but do not confer any rights in relation to:

(a) minerals as defined in the Mining Act 1904 (WA) (repealed), Mining Act 1978 (WA);

(b) petroleum as defined in the Petroleum Act 1936 (WA) (repealed) and the Petroleum and Geothermal Energy Resources Act 1967 (WA); or

(c) geothermal energy resources and geothermal energy as defined in the Petroleum and Geothermal Energy Resources Act 1967 (WA).

#### NO APPLICATION OF s47A OR s47B OF THE NATIVE TITLE ACT

8. For the avoidance of doubt, sections 47A and 47B of the Native Title Act do not apply in relation to the Determination Area.

#### THE NATURE AND EXTENT OF ANY OTHER INTERESTS (s225(c))

9. The nature and extent of the other rights in the Determination Area are described in the Third Schedule.

#### RELATIONSHIP BETWEEN NATIVE TITLE RIGHTS AND OTHER INTERESTS (s225(d))

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

(a) to the extent that any of the other 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 interests and cannot be enjoyed or exercised to the extent of the inconsistency during the currency of the other 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 interests, and the other interests, and the doing of any activity required or permitted to be done by or under the other interests, prevail over the native title rights and interests and any exercise of the native title rights and interests, but subject to the operation of section 24JB(2) of the Native Title Act, do not extinguish them.

#### DEFINITIONS AND INTERPRETATION

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

"Determination Area" means the land and waters described in the First Schedule and depicted on the maps at Attachment 1 to the First Schedule;

"land" has the same meaning as in the Native Title Act;

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

"Native Title Holders" means the persons described in the Fourth Schedule;

"Pastoral Leases" means Pastoral Leases 3114/547, 3114/580, 3114/647, 3114/656, 3114/728, 3114/946, 3114/1014, 3114/1041, 3114/1055, 3114/1096, 3114/1122, 3114/1225, 3114/1236, 3114/1249, and 398/593; and

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

12. In the event of any inconsistency between the written description of an area in the First, Second or Third Schedules and the area as depicted on the maps at Attachment 1 to the First Schedule, the written description prevails.

#### FIRST SCHEDULE ' DESCRIPTION OF THE DETERMINATION AREA

[Schedule referred to in paragraphs 11 and 12]

The Determination Area, generally shown as bordered in blue on the maps at Attachment 1 to this Schedule, comprises all that land and waters bounded by the following description:

All those lands and waters commencing at Latitude 22.955968 South, Longitude 115.544976 East, being a point on the southern boundary of Native Title Determination WAD6113/98 Thalanyji (WC99/45), and extending generally north easterly along boundaries of that application passing through the following coordinate points:

LATITUDE (SOUTH)	LONGITUDE (EAST)
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22.953287	115.551983
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22.950748	115.556466
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22.941664	115.570612
-----------	------------

22.933875	115.580977
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22.928773	115.591392
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22.925860	115.598225
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22.922348	115.607402
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22.920782	115.614079
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22.918173	115.622912
-----------	------------

22.911998	115.644183
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22.908100	115.656435
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22.906162	115.665280
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22.903211	115.674467
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22.902831	115.675554
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Then easterly to Latitude 22.904084 South, Longitude 115.702487 East, being the southernmost south western corner of the western severance of Native Title Determination Application WAD126/05 Puutu Kunti Kurrama and Pinikura 2 (WC05/4), then generally north easterly and southerly along boundaries of that application passing through the following coordinate points:

LATITUDE (SOUTH)	LONGITUDE (EAST)
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22.846112	115.826423
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22.768033	116.062305
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22.774669	116.062249
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Then southerly and south easterly passing through the following coordinate points:

LATITUDE (SOUTH)	LONGITUDE (EAST)
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22.938565 116.060854

23.382180 116.381016

Then south westerly to Latitude 23.417207 South, Longitude 116.345406 East, being a point on a northern boundary of Native Title Determination Application WAD6161/98 Gnulli (WC97/28); then generally south westerly along boundaries of that application passing through the following coordinate points:

LATITUDE (SOUTH) LONGITUDE (EAST)

23.961106 115.792466

24.108411 114.879798

24.108442 114.879608

Then generally north westerly passing through the following coordinate points:

LATITUDE (SOUTH) LONGITUDE (EAST)

23.861637 114.857708

23.835836 114.859866

23.822332 114.858373

23.782944 114.850282

23.744511 114.843217

23.719354 114.841252

23.689987 114.836214

23.659704 114.823453

23.636574 114.810665

23.609130 114.793333

Then south easterly to a point on the boundary of Native Title Determination Application WAD131/04 Budina People (WC04/5) at Latitude 23.639774 South, Longitude 114.978912 East; then again south easterly, north westerly and northerly along boundaries of that application passing through the following coordinate points:

LATITUDE (SOUTH) LONGITUDE (EAST)

23.752225 115.659886

23.497482 115.500866

22.957428 115.544568

Then north easterly back to the commencement point.

Data Reference and Sources:

Native Title Determination Applications:

- WAD6113/98 Thalanyji (WC99/45) as determined by the Federal Court on the 18/09/2008.
- WAD6161/98 Gnulli (WC97/28) as accepted for Registration on the 20/10/2000.
- WAD131/04 Budina People (WC04/5) as accepted for Registration on the 22/08/2005.
- WAD126/05 Puutu Kunti Kurrama and Pinikura 2 (WC05/4) as accepted for Registration on the 15/08/2006.

Extent of western most western boundary sourced from Geospatial Services, National Native Title Tribunal.

Note: Geographic Co-ordinates provided in Decimal Degrees

Datum: Geocentric Datum of Australia (1994)

Prepared by: Native Title Spatial Services, Landgate, 23 September 2009

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.

## FIRST SCHEDULE ' ATTACHMENT 1

### MAPS OF THE DETERMINATION AREA

(See NNTR Attachment 1: 'First Schedule ' Attachment1: Maps of the Determination Area')

### SECOND SCHEDULE ' AREAS WHERE NATIVE TITLE DOES NOT EXIST

[Schedule referred to in paragraph 2]

Native title does not exist in relation to land and waters the subject of the following interests within the Determination Area which, with the exception of public works (paragraph 5 of this Schedule), are generally shown as shaded in green on the maps at Attachment 1 to the First Schedule:

#### 1. FREEHOLDS

Grants of estates in fee simple within the Determination Area including, but not limited to, the following:

(a) Gascoyne Location 17 (CT 1940/873).

#### 2. VESTED RESERVES

(a) Reserve 26808 ("Barlee Range Nature Reserve") 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 29 August 1969 and 14 September 1984 (currently vested in the Conservation Commission of Western Australia);

(b) Reserve 40852 (Gascoyne Location 365) for the purpose of natural gas pipeline purposes vested pursuant to section 33 of the Land Act 1933 (WA) in the State Energy Commission on 17 March 1989 (currently vested in the Dampier to Bunbury Natural Gas Pipeline Land Access Minister); and

(c) Reserve 41058 (Hardey Location 6) for the purpose of a repeater station site vested pursuant to section 33 of the Land Act 1933 (WA) in the Australian Telecommunications Commission on 1 September 1989.

#### 3. DEDICATED ROADS AND ROADS SET ASIDE, TAKEN OR RESUMED

(a) Road No. 314, described as a Main Road, one chain wide, from Carnarvon to Williamberg and gazetted on 24 September 1890 at p.712;

(b) Road No. 440 (one chain wide), dedicated pursuant to section 58 of the Roads Act 1888 (WA) and gazetted on 7 September 1894 at p.890;

(c) Road No. 566, described as "Westward No. 2" road, dedicated pursuant to section 58 of the Roads Act 1888 (WA) and gazetted on 24 April 1896 at p.660;

(d) Road No. 3609, dedicated pursuant to section 5 of the Road Districts Act 1919 (WA) and marked on Plan No. 503091;

(e) Road No. 3626 (one chain wide), set apart, taken or resumed under section 17 of the Public Works Act 1902 (WA) and gazetted on 6 September 1935 at p.1764;

(f) Road No. 5432, dedicated pursuant to section 5 of the Road Districts Act 1919 (WA) and marked on Plan No. 503085;

(g) Road No. 5993 (one chain wide), dedicated pursuant to the Roads Act 1911 and gazetted on 3 May 1918 at p.569;

(h) Road No. 8475 (one chain wide), set apart, taken or resumed under section 17 of the Public Works Act 1902 (WA) and gazetted on 4 April 1930 at pp.997-998;

(i) Road No. 9476 (one chain wide), set apart, taken or resumed under section 17 of the Public Works Act 1902 (WA) and gazetted on 10 May 1935 at p.945; and

(j) Public Road shown on Deposited Plan 105762 and dedicated pursuant to section 5 of the Road Districts Act 1911 (WA).

#### 4. EASEMENTS CONTAINING PUBLIC WORKS

Easements containing public works granted to the State Energy Commission of Western Australia (and currently held by the Dampier to Bunbury Natural Gas Pipeline Land Access Minister) for the purposes of access to, and the construction, use and maintenance of, a natural gas pipeline and associated apparatus and appurtenances (Dampier to Bunbury Natural Gas Pipeline) for the transmission and conveyance of natural gas, including the following:

- (a) Easement 3134B/219 granted on 13 September 1988;
- (b) Easement 3134B/234 granted on 25 October 1988;
- (c) Easement 3134B/239 granted on 13 September 1988; and
- (d) Easement 3134B/785 granted on 20 March 1992.

#### 5. PUBLIC WORKS

Any other 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) (including the land and waters on which a public work is constructed, established or situated as described in section 251D of the Native Title Act) and to which section 12J of the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) or section 23C(2) of the Native Title Act applies.

#### THIRD SCHEDULE ' OTHER INTERESTS

[Schedule referred to in paragraph 9]

(See NNTR Attachment 2: 'Third Schedule ' Other Interests')

#### FOURTH SCHEDULE ' NATIVE TITLE HOLDERS

[Schedule referred to in paragraphs 3 and 11]

The Native Title Holders are the Thudgari people who:

(1) are the descendants of people who belonged to the Tharrkari, Warriyangka, Jiwarli and Thiin language groups, in particular the descendants of the following ancestors:

- (a) Maldurdari and Jiraguru;
- (b) Balgonyunga and Wurajulba;
- (c) Yagaraja and Kurmainma;
- (d) Thaldungu and Jigura;
- (e) Larry Brewer and Nancy Cameron;
- (f) Togo Griffin and Agnes Barron;
- (g) Marigold; and
- (h) Warngarri and Didibirri;

or who are adopted by such biological descendants in accordance with the traditional laws acknowledged and the traditional customs observed by the Thudgari; and

(2) identify themselves as Thudgari under traditional law and custom and are so identified by other Native Title Holders as Thudgari; and

(3) have a connection with the land and waters in the Determination Area, in accordance with traditional laws acknowledged and the traditional customs observed by the Thudgari.

**REGISTER ATTACHMENTS:**

1. Attachment 1 - First Schedule - Attachment 1 - Maps of the Determination Area, 2 pages - A4, 18/11/2009
2. Attachment 2 - Third Schedule - Other Interests, 8 pages - A4, 18/11/2009

*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.*