



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD119/2011
NNTT Number: WCD2012/003

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

Date(s) of Effect: 27/11/2012

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: 27/11/2012

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Wanjina-Wungurr (Native Title) Aboriginal Corporation RNTBC
Trustee Body Corporate
C/ 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:

4. The native title is held by the members of the Wanjina Wungurr Community for their respective communal, group and individual rights and interests in the Determination Area. The members of the Wanjina-Wungurr Community are the persons referred to in Sch Five.

SCHEDULE 5 - DESCRIPTION OF THE NATIVE TITLE HOLDERS

Members of the Wanjina-Wungurr Community (referred to in para 4) are descendants of the following persons:

1. Manumordja, Bulun, Muduu, Banganjaa, Djanghara, Yamara, Baangngayi, Miyaawuyu, Juugaariitor, Djurog-gal, Gilingii, Buunduunguu, Awololaa, Baarrbarrnguu, Angaarambuu, Liinyang, Maanduu-Nuunda, Yuulbal, Freddie Yaubidi, Djalalamarra, Biljimbirii, Didjingul and Jimmy Manguubangguu;

2. Bandilu, Jarara, Garnag, Momolindij, Galadna, Wanbalug, Burrimbalu, Niyalgarl, Janggara, Ngambijmoro Birramang-nguray, Marala, Gayroog, Buunbuun, Bunnngn-guuluu, Djanban, Ngaul-gnarli, Wuungulaa, Maamaandil, Djalanoo, Djilawalaa, Gunagang-ngarii, Mirngala., Wabilu, Babirri, Morndignali, Wulagudan, Balangurr, Nyolgodil, Bagumaya, Banggulmoro, Bundungumen, Bagurrngumen, Jilbidij, Bulyuriyali, Branngun, Moundi Nirrin, Molabayng, King O'Malley, Ulinji, Nyaminjenman, Nyalangun, Nalawaru, Bumangul Jarngulay, Bandibej, Munbara, Didburr, Gungala, Wundij, Larburr, Mandi Bandumar, Omboni, Wama, Jalimburr, Bundanali, Umbawinali, Dinamoro, Yalwamurrngarri, Milarbiyar, Mudarwin, Larungumen, Gunduran, Warrwarr, Dandangumen, Didburrngomen, Naranyalgan, Jimmy Bird, Monarriyali, Ngarburrngu, Yanbongu, Dudungungga, Jimmy Wawawawarri, together with the descendants of Dalbi, who was adopted into the native title claimant group; and

3. Bulun/Mauckie, Luwirr, Binjirrngu/Kadi, Djamai, Marnpiny, Munguwadawoi, Kanaway, Arai Djinbari, Maudie Kaiimbinya, Nyanggawana, Ernie Nyimandum and Ruby, Manumortja, Peter Malanaby, Old Jacob, Miyardu, Jerry Jangoot, Jabadayim, Nalawaru, Junggara and Murunguny together with Kenny Oobagooma, Jacob Sesar and Evelyn Bandora, who were adopted into the native title claimant group, and their descendants.

For the avoidance of doubt, those persons who are Native Title Holders have the right to pass on to, and inherit from, other Native Title Holders, the native title rights and interests set out in paras 5, 7 and 8 of this Determination in accordance with traditional law and custom.

MATTERS DETERMINED:

BEING SATISFIED that a determination of native title in the terms set out in Attachment A would be within the power of the Court and, it appearing to the Court appropriate to do so, pursuant to ss 87 and 94A of the Native Title Act 1993 (Cth) and by the consent of the parties:

THE COURT ORDERS THAT:

1. There be a determination of native title in WAD 119 of 2011 in terms of the Determination as provided for in Attachment A hereof.

2. The Wanjina-Wunggurr (Native Title) Aboriginal Corporation RNTBC shall hold the determined native title in trust for the native title holders pursuant to s 56(2)(b) of the Native Title Act 1993 (Cth).

ATTACHMENT A DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

EXISTENCE OF NATIVE TITLE (s 225 NATIVE TITLE ACT)

1. The Determination Area is the land and waters described in Sch One and depicted on the map at Attachment One to Sch One.

2. Subject to para 3, native title exists in the Determination Area in the manner set out in paras 5, 7 and 8 of this Determination.

3. Native title does not exist in those parts of the Determination Area the subject of the interests identified in the Sch Two which are shown as shaded green on the map at Attachment One to Sch One.

NATIVE TITLE HOLDERS (s 225(a) NATIVE TITLE ACT)

4. The native title is held by the members of the Wanjina Wunggurr Community for their respective communal, group and individual rights and interests in the Determination Area. The members of the Wanjina-Wunggurr Community are the persons referred to in Sch Five.

THE NATURE AND EXTENT OF NATIVE TITLE RIGHTS AND INTERESTS (s.225(b) NATIVE TITLE ACT) AND EXCLUSIVENESS OF NATIVE TITLE (s.225(e) NATIVE TITLE ACT)

EXCLUSIVE RIGHTS IN RELATION TO CERTAIN LAND

5. Subject to para 10, the Native Title Holders have the rights to possession, occupation, use and enjoyment of land within the Determination Area which:

(a) has not been the subject of prior extinguishment of native title (as described in Sch Two); and

(b) has been the subject of prior extinguishment of native title but which extinguishment must be disregarded by operation of s 47B of the Native Title Act (as described in Sch Three),

to the exclusion of all others (and which land is shown as shaded orange on the map at Attachment One to Sch One).

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

NON-EXCLUSIVE RIGHTS IN RELATION TO INTERTIDAL AREAS

7. Subject to paras 10 and 11, the Native Title Holders have the following rights in relation to Intertidal Areas within the Determination Area:

(a) the right to enter, travel over and remain on the Intertidal Area;

(b) the right to live and camp on the Intertidal Area (including erecting shelters and other structures for those purposes);

(c) the right to hunt, fish, gather and use the resources of the Intertidal Area including:

(i) sharing and exchanging those resources; and

(ii) manufacturing traditional items from those resources

for personal, domestic and communal needs (including, but not limited to cultural or spiritual needs) but not for commercial purposes (as in accordance with para (ii));

(d) the right to light fires for domestic purposes;

(e) the right to take and use water from the Intertidal Area; and

(f) the right to engage in cultural activities on the Intertidal Area including:

(i) visiting places of cultural or spiritual importance and protecting those places by carrying out lawful activities to preserve their physical or spiritual integrity;

(ii) conducting ceremony and ritual;

(iii) holding meetings;

(iv) participating in cultural practices relating to birth and death, including burial rights;

(v) passing on knowledge about the physical and spiritual attributes of the Determination Area and areas of importance on or in the Determination Area; and

(vi) maintaining, and protecting from physical harm, places and areas of importance including, for the avoidance of doubt, freshening or repainting images at painting sites.

NON-EXCLUSIVE RIGHTS IN RELATION TO WATERS

8. Subject to paras 10 and 11, the Native Title Holders have the following rights in relation to waters within the Determination Area:

(a) the right to enter, travel over and remain on the waters;

(b) the right to hunt, fish, gather and use the resources of the waters for personal, domestic and communal needs (including, but not limited to, cultural or spiritual needs) but not for commercial purposes (as in accordance with para (ii)); and

(c) the right to take and use water.

OTHER

9. For the avoidance of doubt, and subject to paras 10 and 14, in exercising the native title rights and interests referred to in para 7 any question of:

(a) whether a place or area in the Determination Area is a place or area of cultural or spiritual importance to the Native Title Holders;

(b) whether an activity or practice is a cultural activity or practice of the Native Title Holders;

(c) the location, timing and content of any cultural activity, practice, ceremony or ritual of the Native Title Holders; and

(d) the use, exchange, sharing, or manufacture of traditional items by the Native Title Holders

is to be determined in accordance with the Native Title Holders' traditional laws and customs.

QUALIFICATIONS ON NATIVE TITLE RIGHTS AND INTERESTS

10. The native title rights and interests described in paras 5, 7 and 8:

(a) are exercisable in accordance with:

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

(ii) the traditional laws and customs of the Native Title Holders for their personal, domestic and communal needs (including, but not limited to, cultural or spiritual needs) but not for commercial purposes; and

(b) do not confer any rights in relation to:

(i) minerals as defined in the Mining Act 1904 (WA) (repealed) and the Mining Act 1978 (WA);

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

(iii) geothermal energy resources and geothermal energy as defined in the Petroleum and Geothermal Energy Resources Act 1967 (WA); or

(iv) water captured by the holders of the Other Interests pursuant to those Other Interests.

11. The native title rights and interests described in paras 7 and 8 do not confer:

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

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

AREAS TO WHICH s 47B OF THE NATIVE TITLE ACT APPLIES

12. Section 47B of the Native Title Act applies to disregard any prior extinguishment in relation to the areas described in Sch Three.

The nature and extent of any other interests (s 225(c) Native Title Act)

13. The nature and extent of the Other Interests in relation to the Determination Area are described in Sch Four.

RELATIONSHIP BETWEEN NATIVE TITLE RIGHTS AND OTHER INTERESTS (s 225(d) NATIVE TITLE ACT)

14. The relationship between the native title rights and interests described in paras 5, 7 and 8 and the Other Interests 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 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 s 24JB(2) of the Native Title Act, do not extinguish them.

DEFINITIONS AND INTERPRETATION

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

"Determination Area" means the land and waters described in Sch One and depicted on the maps at Attachment One to Sch One;

"Intertidal Area" means:

- (a) the shore, or subsoil under or airspace over the shore between the mean low water mark and the mean high water mark; and
- (b) any intertidal or navigable waters between the mean low water mark and mean high water mark;

"land" includes the airspace over, or subsoil under, land, but does not include "waters" or "Intertidal Areas" and, for the avoidance of doubt, includes any natural collection of water found on the land which does not fall within the definition of "waters";

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

"Native Title Holders" means the persons described in para 4;

"Other Interests" means the legal or equitable estates or interests and other rights in relation to the determination area described in Sch Four and referred to in para 13;

"resources" means flora, fauna and other natural resources such as ochre (except ochres for use in the manufacture of porcelain, fine pottery or pigments), charcoal, stone, soil, wood and resin;

"waters" means:

- (a) sea, a river, a lake, a tidal inlet, a bay, an estuary, a harbour or subterranean waters;
- (b) a creek, a stream or brook;
- (c) any natural collection of water into, through, or out of which a river, creek, stream or brook flows;
- (d) waters which percolate from the ground; or
- (e) the bed or subsoil under, or airspace over, any waters (including waters mentioned in paras (a), (b), (c) and (d))

16. In the event of any inconsistency between the written description of an area in Sch One to Four and the area as depicted on the map at Attachment One to Sch One, the written description prevails.

SCHEDULE ONE - DETERMINATION AREA

The Determination Area, shown as bordered in blue on the map at Attachment One to Sch One, comprises all that land and waters bounded by the following description:

All that land comprising Lot 502 as shown on Deposited Plan 56683 (previously part of former Special Lease 3116/11277).

NOTE:

- Geographic Coordinates provided in Decimal Degrees
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- All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.

- Cadastral boundaries sourced from Landgate's SCDB as at May 2009.
- 3 Nautical Mile Limit is based on and sourced from AMB data, 6th Edition released in February 2006.
- Native Title Determination WAD6015/99 Wanjina-Wungurr Willinggin (WC99/011), as determined by the Federal Court on 27 August 2004.

DATUM:

Geocentric Datum of Australia 1994 (GDA94)

PREPARED BY:

Native Title Spatial Services (Landgate) 18 August 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.

SCHEDULE ONE ATTACHMENT ONE MAP OF THE DETERMINATION AREA

[See NNTR Attachment 1: "Schedule One Attachment One - Map of the Determination Area"]

SCHEDULE TWO - AREAS WHERE NATIVE TITLE DOES NOT EXIST

Native title does not exist in relation to areas the subject of the following interests within the Determination Area which, with the exception of public works (para 2 of this Sch), are shown as shaded in green on the map at Attachment One to Sch One:

1. EASEMENT

Easement J/979574 (which area previously formed part of former Special Lease 3116/11277).

2. 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) and to which s 12J of the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) or s 23C(2) of the Native Title Act applies, within the external boundary of the Determination Area including the land and waters defined in s 251D of the Native Title Act.

SCHEDULE THREE - AREAS TO WHICH s 47B OF THE NATIVE TITLE ACT APPLIES (Para 12)

Section 47B of the Native Title Act applies to disregard any extinguishment over the following areas, including any extinguishment by the creation of the following interests (to the extent that they were not covered by an interest described in ss 47B(1)(b)(i) or (ii) or subject to a resumption process as described in s 47B(1)(iii) of the Native Title Act when the relevant native title determination application was made):

(a) That portion of Lot 502 as shown on Deposited Plan 56683 not subject to Easement J/979574 (which area was previously subject to former Special Lease 3116/11277 and is currently unallocated Crown land).

The areas to which s 47B of the Native Title Act applies are shown as hatched orange on the map at Attachment One to Sch One.

SCHEDULE FOUR - OTHER INTERESTS (Para 13)

The nature and extent of the Other Interests in relation to the Determination Area as at the date of this determination are:

(a) Rights and interests, including licences and permits, granted by the Crown in right of the State or of the Commonwealth pursuant to statute or otherwise in the exercise of its executive power including, but not limited to, the rights and interests of the holders of licences granted under the Jetties Act 1926 (WA) and the rights and interests of the holders of statutory fishing and pearling 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;

(b) Rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth, including but not limited to, 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 common law including but not limited to:

(i) the public right to fish;

(ii) the public right to navigate; and

(iii) the right of any person to use any road in the determination area (subject to the laws of the State) over which, as at the date of this determination, members of the public have a right of access under common law.

(d) The right to access the Determination Area by:

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

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

(iii) an employee, agent or instrumentality of any local government authority,

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

(e) So far as confirmed pursuant to s 212(2) of the Native Title Act and s 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, the following places in the Determination Area:

(i) waterways;

(ii) beds and banks or foreshores of waterways;

(iii) coastal waters;

(iv) beaches;

(v) stock routes; and

(vi) areas that were public places at the end of 31 December 1993; and

(f) Any other valid:

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

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

A. the land or waters; or

B. an estate or interest in the land or waters; or

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

SCHEDULE 5 - DESCRIPTION OF THE NATIVE TITLE HOLDERS

Members of the Wanjina-Wungurr Community (referred to in para 4) are descendants of the following persons:

1. Manumordja, Bulun, Muduu, Banganjaa, Djanghara, Yamara, Baangngayi, Miyaawuyu, Juugaariitor, Djurog-gal, Gilingii, Buunduunguu, Awololaa, Baarrbarrnguu, Angaarambuu, Liinyang, Maanduu-Nuunda, Yuulbal, Freddie Yauubidi, Djalalamarra, Biljimbirii, Didjingul and Jimmy Manguubangguu;

2. Bandilu, Jarara, Garnag, Momolindij, Galadna, Wanbalug, Burrimbalu, Niyalgarl, Janggara, Ngambijmoro Birramang-nguray, Marala, Gayroog, Buunbuun, Bunnngn-guuluu, Djanban, Ngaul-gnarli, Wuungulaa, Maamaandil, Djalanoo, Djilawalaa, Gunagang-ngarii, Mirnggala,, Wabilu, Babirri, Morndignali, Wulagudan, Balangurr, Nyolgodi, Bagumaya, Banggulmoro, Bundungumen, Bagurrngumen, Jilbidij, Bulyuriyali, Brarnggun, Moundi Nirrin, Molabayng, King O'Malley, Ulinji, Nyaminjenman, Nyalangun, Nalawaru, Bumangul Jarngulay, Bandibej, Munbara, Didburr, Gungala, Wundij, Larburr, Mandi Bandumar, Omboni, Wama, Jalimburr, Bundanali, Umbawinali, Dinamoro, Yalwamurrngarri, Milarbiyar, Mudarwin, Larungumen, Gunduran, Warrwarr, Dandangumen, Didburrngomen, Naranyalgan, Jimmy Bird, Monariyali, Ngarburrngu, Yanbongu, Dudungungga, Jimmy Wawawawarri, together with the descendants of Dalbi, who was adopted into the native title claimant group; and

3. Bulun/Mauckie, Luwirr, Binjirnggu/Kadi, Djamai, Marnpiny, Munguwadawoi, Kanaway, Arai Djinbari, Maudie Kaiimbinya, Nyanggawana, Ernie Nyimandum and Ruby, Manumortja, Peter Malanaby, Old Jacob, Miyardu, Jerry Jangoot, Jabadayim, Nalawaru, Junggara and Murunguny together with Kenny Oobagooma, Jacob Sesar and Evelyn Bandora, who were adopted into the native title claimant group, and their descendants.

For the avoidance of doubt, those persons who are Native Title Holders have the right to pass on to, and inherit from, other Native Title Holders, the native title rights and interests set out in paras 5, 7 and 8 of this Determination in accordance with traditional law and custom.

REGISTER ATTACHMENTS:

1. Schedule 1 - Map of the Determination Area , 1 page - A4, 27/11/2012

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.