



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD281/2008
NNTT Number: WCD2012/004

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

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

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 27/11/2012

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

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:

3. The native title in Determination Area "C" is held communally by the Ngurrara People. The Ngurrara People are the people referred to in Sch Three.

SCHEDULE THREE - DESCRIPTION OF THE NATIVE TITLE HOLDERS

Ngurrara People (referred to in para 3) 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, Wamukarrajarti, 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 Karrupal, Jukajuka, Nujnuj, Kipi, Papilparri, Ulayi, Mimi, Marra, Kakartuku, Kinkarraajarti, 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, Ngartaya, 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 para 4 of this Determination in accordance with traditional law and custom.

MATTERS DETERMINED:

BEING SATISFIED that a determination 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 87A and 94A of the Native Title Act

THE COURT ORDERS THAT:

1. There be a determination of native title in WAD 281 of 2008 in terms of the Determination as provided for in Attachment A hereof.
2. The Yanunijarra 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.
3. The proceeding otherwise be dismissed.

ATTACHMENT A DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

EXISTENCE OF NATIVE TITLE (s 225 NATIVE TITLE ACT)

1. Determination Area "C" is the land and waters described in Sch One and depicted on the map comprising Sch Two.
2. Native title exists in Determination Area "C".

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

3. The native title in Determination Area "C" is held communally by the Ngurrara People. The Ngurrara People are the people referred to in Sch Three.

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 NATIVE TITLE RIGHTS AND INTERESTS

4. Subject to paras 5, 6 and 7 the nature and extent of the native title rights and interests in relation to the Determination Area 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 para 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 para 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, petroleum and geothermal energy resources 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 and Geothermal Energy Resources 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.

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

9. Section 47A of the Native Title Act applies to disregard any prior extinguishment in relation to the areas described in Sch Five.

THE NATURE AND EXTENT OF ANY OTHER INTERESTS

10. The nature and extent of other rights and interests in relation to Determination Area "C" are those set out in Sch Four.

RELATIONSHIP BETWEEN NATIVE TITLE RIGHTS AND OTHER INTERESTS

11. The relationship between the native title rights and interests described in para 4 and the other rights and interests referred to in para 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

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

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

"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 para 3;

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

13. In the event of any inconsistency between the written description of an area in Sch One and the area as depicted on the map at Sch Two, the written description prevails.

SCHEDULE ONE - DETERMINATION AREA

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

All those lands and waters commencing at the intersection of the northern boundary of Reserve 5279 with Longitude 125.900131 East; Then westerly along the northern boundary of that reserve to Longitude 125.671541 East; Then southeasterly to Latitude 21.783416 South, Longitude 125.786128 East; Then northeasterly back to the commencement point.

All that land comprising Reserve 5280.

All that land comprising Reserve 22956.

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 TWO - MAP OF DETERMINATION AREA

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

SCHEDULE THREE - DESCRIPTION OF THE NATIVE TITLE HOLDERS

Ngurrara People (referred to in para 3) 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, Wamukarrajarti, Pinijarti, Wintiki, Witikirriny, Jack Pindan, Charlie Wirramin, Maramimi, Pulyukupulyuky, Bidy Tipultipul, Parrangali, Jiyapa, Warrapan, Jinaparralyaparralya, Kilankara, Jimmy Milmilinpiri, Shovel, Piluwulu, Yalyayi, Tampitampi, Wamakulangu, Kurumanyu, Kunyu, Paju, Tommy Kampuranti, Waji Karpipal, 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, Upatirri, Nyapita, Wayanjarri, Yurungu, Purngurrkarrajiti, Milal, Warrmala, Kujiman, Jalal, Manjankarri, Liramilin, Jarlanyja, Yanji, Kumparrngarla, Wangkarrkura, Mukula, Nyintakura, Paralirl, Kulurr, Pika, Kingkarraji, Ngaramgarapungu, Ngartaya, 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 para 4 of this Determination in accordance with traditional law and custom.

SCHEDULE FOUR - OTHER INTERESTS

1. RESERVES

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:

Reserve 5279 for the Use and Benefit of Aboriginal Inhabitants

Reserve 5280 for the Use and Benefit of Aboriginal Inhabitants

Reserve 22956 for the Use and Benefit of Aboriginal Inhabitants

2. Existing petroleum interests under the Petroleum and Geothermal Energy Resources Act 1967 (WA)

Tenement ID	Holder	Date of Initial Grant
Petroleum	New Standard Onshore	22 February 2000.
Exploration Permit	Pty Ltd and Buru Energy Ltd	Title renewed on
417 R1 (EP 417 R1)		17 September
		2010.
Petroleum	Buru Energy (Acacia) Pty Ltd	28 April 2011
Exploration Permit	and Diamond Resources	
477 (EP 477)	(Canning) Pty Ltd	

3. 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 "C" 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, including that portion of the Canning Stock Route that traverses Reserves 5279 and 5280.

(e)

(i) Without limiting the operation of any other para in the Sch 4 but subject to para

(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 "C" existing as at the date of this determination, in order to have access to such petroleum interests.

(ii) Nothing in para (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) So far as confirmed pursuant to 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:

(i) waterways; or

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

(iii) stock routes.

SCHEDULE FIVE - AREAS TO WHICH SECTION 47A OF THE NATIVE TITLE ACT 1993 (CTH) APPLIES

Land subject to Reserve 5279 for the Use and Benefit of Aboriginal Inhabitants

Land subject to Reserve 5280 for the Use and Benefit of Aboriginal Inhabitants

Land subject to Reserve 22956 for the Use and Benefit of Aboriginal Inhabitants

REGISTER ATTACHMENTS:

1. Schedule 2 - Map of 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.