



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD410/2012; WAD326/2015;
NNTT Number: WCD2017/004

Determination Name: [Helicopter Tjungarrayi on behalf of the Ngurra Kyanta People v State of Western Australia \(No 3\)](#)

Date(s) of Effect: 18/10/2017

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 15/08/2017

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 15 August 2017 the Federal Court of Australia made orders which stated the following:

2. There be a determination of native title in the terms of the Determination as provided for in Attachment "A". The Determination is to take effect immediately upon the making of a determination under s 56(1) or s 57(2) of the *Native Title Act 1993* (Cth) as the case may be. [i.e. determination of a prescribed body corporate].

7. Section 47B of the *Native Title Act* applies to disregard any prior extinguishment in relation to the whole of the Determination Area.

On 18 October 2017 further orders were made which stated the following:

1. Pursuant to sections 55 and 56 of the *Native Title Act 1993* (Cth) the Court determines that the Ngurra Kayanta (Aboriginal Corporation) RNTBC (ICN: 8571) is to hold the native title rights and interests from time to time comprising the native title as determined by Barker J on 15 August 2017 in Part B of WAD 410/2012 and Part B of WAD 326/2015, in trust for the common law holders.

On 16 March 2018 the Full Court of the Federal Court allowed an appeal relating to the determination of native title in proceeding WAD444 of 2017 and made orders which stated the following:

2. Attachment "A" to the orders of 15 August 2017 be amended as set out in Attachment "A" to these reasons for judgment.

See *Attorney-General v Helicopter-Tjungarrayi (Ngurra Kayanta & Ngurra Kayanta #2)* [2018] FCAFC 35.

On 17 April 2019 the High Court of Australia allowed an appeal and made orders which stated the following:

2. Set aside the orders of the Full Court of the Federal Court of Australia made on 16 March 2018 in proceeding WAD444 of 2017 and, in their place, order that the appeal to the Full Court be dismissed.

See See *Tjungarrayi v Western Australia* [2019] HCA 12.

Details of Attachment "A" have been updated to reflect the orders of the High Court made on 17 April 2019.

REGISTERED NATIVE TITLE BODY CORPORATE:

Ngurra Kayanta Aboriginal Corporation RNTBC
Trustee Body Corporate
76 Wittenoom Street
East Perth Western Australia 6004

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:

2. The native title in the Determination Area is held by the persons described in Schedule 3 (**native title holders**).

Schedule 3 'Description of the Native Title Holders' states:

The persons referred to in para 2 of the Determination (native title holders) are:

1. Those persons who hold native title rights and interests in part or all of the Determination Area according to traditional law and custom through:

- (a) birth *ngurra* on the Determination Area;
- (b) birth *ngurra* of an ancestor on the Determination Area;
- (c) having religious, sacred, ritual, practical and/or historical knowledge/ authority of the Determination Area;
- (d) having one's conception site on the Determination Area;
- (e) having burial sites of ancestors on the Determination Area;
- (f) long traditional association with the Determination Area through occupation, custodianship or use by one's self and/or relevant kin; or
- (g) asserting connection with the Determination Area and having that assertion accepted by others.

2. At the date of this Determination, this includes the following persons who are recognised under the relevant traditional laws and customs by the other native title holders as having rights in the Determination Area:

- (a) those people who are the descendants of:
 - (i) the siblings Walparpakanu and Tjinatjunku;
 - (ii) Tjukul;
 - (iii) Old Mosquito;
 - (iv) Wurtajeri;
 - (v) Puyoga;
 - (vi) Nakinya;
 - (vii) Jinny James and Jimmy Wirili James;
 - (viii) Loa Loa and Tjatjiba;
 - (ix) Nyirpirr and Nindiya;
 - (x) Piinyuka;
 - (xi) the siblings Tjiltjikurta, Tjinaminayi and Yawartajungka;

- (xii) Wilkirbayi and Mamarka;
 - (xiii) Nyalali Napanangka;
 - (xiv) Lili/ Ikupani Tjapanangka;
 - (xv) Rosie Nanyuma;
 - (xvi) the siblings Papalya, Nyarnu and Wartungka;
 - (xvii) the siblings Winurru, Kurtakara, Ngayulan, Walalpayi, Tjatatji and Wayul;
 - (xviii) Tjipumaru Tjupurrula and Tjupantjarri Napanangka;
 - (xix) Kalpurta Tjakamarra;
 - (xx) the siblings Putanangarri Tjapaltjarri, Tjinapilpa Tjapaltjarri, Mantjarlin Tjapaltjarri and Parrkulya Tjapaltjarri;
 - (xxi) Mamutja Tjapanangka;
 - (xxii) Talitjarra/Charlie Watson;
 - (xxiii) Piyakurna;
 - (xxiv) Jujula;
 - (xxv) Pudji/Puji/Puju;
 - (xxvi) Kurtajiji Wilberforce;
 - (xxvii) Tjaparli /Tjapurti;
 - (xxviii) the siblings Wapiltjukur, Kulapurta and Tjarrpayi; and
 - (xxix) the siblings Ruby Button and Katararpa.
- (b) the following people:
- (i) Muuki Taylor; and
 - (ii) Wakka Taylor.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. Part B of WAD 410 of 2012 and Part B of WAD 326 of 2015 be determined together pursuant to s 67(1) of the *Native Title Act 1993* (Cth).
2. There be a determination of native title in the terms of the Determination as provided for in Attachment "A". The Determination is to take effect immediately upon the making of a determination under s 56(1) or s 57(2) of the *Native Title Act 1993* (Cth) as the case may be.
3. Within six months of the date upon which these orders are made, a representative of the common law holders of the native title rights and interests shall indicate whether they intend to have the native title rights and interests held in trust and, if so, by whom. They are invited to do so by:
 - (a) nominating in writing to the Federal Court a prescribed body corporate to be trustee of the native title rights and interests; and
 - (b) including within the nomination the written consent of the body corporate.
4. If a prescribed body corporate is nominated in accordance with order 3, it will hold the native title rights and interests described in order 1 in trust for the common law holders of the native title rights and interests.
5. In the event that there is no nomination within the time specified in order 3, or such later time as the Court may order, the matter is to be listed for further directions.

ATTACHMENT "A"

DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of native title (s 225)

1. Native title exists in relation to the whole of the Determination Area.

Native title holders (s 225(a))

2. The native title in the Determination Area is held by the persons described in Sch 3 (**native title holders**).

The nature and extent of native title rights and interests (s 225(b); s 225(e))

3. Subject to paras 4, 5 and 6 the nature and extent of the native title rights and interests in relation to the Determination Area is the right to possession, occupation, use and enjoyment of the Determination Area to the exclusion of all others.

Qualifications on native title rights and interests (s 225(b); s 225(e))

4. 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.

5. For the avoidance of doubt, the nature and extent of native title rights and interests in relation to water in any watercourse, wetland or underground water source as defined in the *Rights in Water and Irrigation Act 1914 (WA)* as at the date of this Determination, is the non-exclusive right to take, use and enjoy that water.

6. Notwithstanding anything in this Determination, there are no native title rights and interests in the Determination Area in or in relation to:

(a) minerals as defined in the *Mining Act 1904 (WA)* (repealed) and the *Mining Act 1978 (WA)*; or

(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)*,

except the right to take and use ochre to the extent that ochre is not a mineral pursuant to the *Mining Act 1904 (WA)*.

Areas to which s 47B of the Native Title Act apply

7. Section 47B of the *Native Title Act* applies to disregard any prior extinguishment in relation to the whole of the Determination Area.

The nature and extent of any other interests

8. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 4 (**other interests**).

Relationship between native title rights and other interests

9. The relationship between the native title rights and interests described in paragraph 3 and the other interests is as follows:

(a) to the extent of any inconsistency between the other interests and 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 interests; and

(b) otherwise the other interests co-exist with the native title rights and interests. To avoid doubt, the doing of an activity required or permitted under those other interests prevails over the native title rights and interests and their exercise, but does not extinguish them.

Definitions and interpretation

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

Determination Area means the land and waters described in Sch 1 and depicted on the maps at Sch 2. In the event of any inconsistency between the written description of an area in Sch 1 and the area as depicted on the map in Sch 2, the written description prevails;

land and **waters** respectively have the same meanings as in the *Native Title Act* to the extent that they refer to an area of land or waters;

Native Title Act means the *Native Title Act 1993* (Cth); and

State means the State of Western Australia.

SCHEDULE 1

DETERMINATION AREA PART B

The **Determination Area Part B** generally shown as

PORTION 1

All those lands and waters commencing at the intersection of a southeastern boundary of Native Title Determination WAD6077/1998 Ngurrara (Area A) (WCD2007/005) with a northern boundary of Petroleum Exploration Permit EP 477 (as defined by Department of Mines and Petroleum as at 30th June 2015) at approximate Latitude 20.665263 South; Then extending easterly, southerly, westerly, northerly and again westerly along the boundary of that petroleum exploration permit to the intersection with a southeastern boundary of Native Title Determination WAD6077/1998 Ngurrara (Area A) (WCD2007/005); Then northeasterly along the boundary of that native title determination back to the commencement point.

PORTION 2

All those lands and waters commencing at the intersection of a southeastern boundary of Native Title Determination WAD6077/1998 Ngurrara (Area A) (WCD2007/005) with a northern boundary of Petroleum Exploration Permit EP 451 (as defined by Department of Mines and Petroleum as at 30th June 2015) at approximate Latitude 21.331936 South; Then extending easterly, generally southeasterly, southerly and westerly along the boundary of that petroleum exploration permit to the intersection with a eastern boundary of Native Title Determination WAD6110/1998 Martu (Area A) (WCD2002/002); Then northwesterly along the boundary of that native title determination to the intersection with a western boundary of Petroleum Exploration Permit EP 477 (as defined by Department of Mines and Petroleum as at 30th June 2015) at approximate Longitude 125.917899 East; Then northerly and westerly along the boundary of that petroleum exploration permit to the intersection with a southeastern boundary of Native Title Determination WAD6077/1998 Ngurrara (Area A) (WCD2007/005); Then northeasterly along the boundary of that native title determination back to the commencement point.

Note: Geographic Coordinates provided in Decimal Degrees.

Petroleum Tenements sourced from Department of Mines and Petroleum as at 30th June 2015.

For the avoidance of doubt the application excludes any land and waters already claimed by:

Native Title Determination Application WAD6077/1998 Ngurrara (Area A) (WCD2007/005) as Determined in the Federal Court on the 9th November 2007.

Native Title Determination Application WAD6110/1998 Martu (Area A) (WCD2002/002) as Determined in the Federal Court on the 27th September 2002.

Native Title Determination Application WAD410/2012 Ngurra Kayanta and Ngurra Kayanta 2 (Part A) (WCD2016/003) as Determined in the Federal Court on the 10th August 2016.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Use of Coordinates:

Where coordinates 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 THE DETERMINATION AREA - PART B

[See NNTR attachment 1: "Map of the Determination Area – Part B"]

SCHEDULE 3

DESCRIPTION OF THE NATIVE TITLE HOLDERS

The persons referred to in paragraph 2 of the Determination (native title holders) are:

1. Those persons who hold native title rights and interests in part or all of the Determination Area according to traditional law and custom through:

- (a) birth *ngurra* on the Determination Area;
- (b) birth *ngurra* of an ancestor on the Determination Area;
- (c) having religious, sacred, ritual, practical and/or historical knowledge/ authority of the Determination Area;
- (d) having one's conception site on the Determination Area;
- (e) having burial sites of ancestors on the Determination Area;
- (f) long traditional association with the Determination Area through occupation, custodianship or use by one's self and/or relevant kin; or
- (g) asserting connection with the Determination Area and having that assertion accepted by others.

2. At the date of this Determination, this includes the following persons who are recognised under the relevant traditional laws and customs by the other native title holders as having rights in the Determination Area:

- (a) those people who are the descendants of:
 - (i) the siblings Walparpakanu and Tjinatjunku;
 - (ii) Tjukul;
 - (iii) Old Mosquito;
 - (iv) Wurtajeri;
 - (v) Puyoga;
 - (vi) Nakinya;
 - (vii) Jinny James and Jimmy Wirili James;
 - (viii) Loa Loa and Tjatjiba;
 - (ix) Nyirpirr and Nindiya;
 - (x) Piinyuka;
 - (xi) the siblings Tjiltjikurta, Tjinaminayi and Yawartajungka;
 - (xii) Wilkirbayi and Mamarka;
 - (xiii) Nyalali Napanangka;

- (xiv) Lili/ Ikupani Tjapanangka;
 - (xv) Rosie Nanyuma;
 - (xvi) the siblings Papalya, Nyarnu and Wartungka;
 - (xvii) the siblings Winurru, Kurtakara, Ngayulan, Walalpayi, Tjatatji and Wayul;
 - (xviii) Tjipumaru Tjupurrula and Tjupantjarri Napanangka;
 - (xix) Kalpurta Tjakamarra;
 - (xx) the siblings Putanangarri Tjapaltjarri, Tjinapilpa Tjapaltjarri, Mantjarlin Tjapaltjarri and Parrkulya Tjapaltjarri;
 - (xxi) Mamutja Tjapanangka;
 - (xxii) Talitjarra/Charlie Watson;
 - (xxiii) Piyakurna;
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 - (xxv) Pudji/Puji/Puju;
 - (xxvi) Kurtajiji Wilberforce;
 - (xxvii) Tjaparli /Tjapurti;
 - (xxviii) the siblings Wapiltjukur, Kulapurta and Tjarrpayi; and
 - (xxix) the siblings Ruby Button and Katararpa.
- (b) the following people:
- (i) Muuki Taylor; and
 - (ii) Wakka Taylor.

SCHEDULE 4

OTHER INTERESTS

The nature and extent of other interests in relation to the Determination Area are the following as they exist as at the date of this Determination:

1. Other Rights and Interests

- (a) Rights and interests held under grants from the Crown in right of the Commonwealth or the State pursuant to statute or otherwise in the exercise of its executive power or otherwise conferred by statute;
- (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 the Determination Area by an employee or agent or instrumentality of:
 - (i) the State;
 - (ii) the Commonwealth;
 - (iii) 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; and
- (d) 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;
 - (ii) the beds and banks or foreshores of waterways; or

(iii) areas that were public places as at 31 December 1993.

REGISTER ATTACHMENTS:

1. Schedule 2 - Map of the Determination Area - Part B, 1 page - A4, 15/08/2017

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.