



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6136/1998; WAD286/2018; WAD30/2019
NNTT Number: WCD2018/011

Determination Name: [Drury on behalf of the Nanda People v State of Western Australia](#)

Date(s) of Effect: 28/11/2018

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: 28/11/2018

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 28 November 2018, the Federal Court of Australia made a determination in relation to the whole of WAD286 of 2018 Nanda #2 application and part of the land and waters covered by WAD6136 of 1998 Nanda application. No determination is made at present in relation to the balance of the land and waters subject of WAD6136 of 1998 Nanda application, which is geographically overlapped by native title determinations WAD6119 of 1998 Mullewa Wadjari Community and WAD339 of 2018 Malgana #2 - see *Drury on behalf of the Nanda People v State of Western Australia* [2018] FCA 1849.

On 21 December 2018, the Federal Court ordered that '[t]he reference to co-ordinate point "27.630981" which appears in the first sentence of the technical description contained in Schedule One of Attachment A to the orders and determination of the Court made on 28 November 2018 (being "*All those lands and waters commencing at a point on the eastern boundary of Pastoral Lease N049576 (Tamala) at Latitude 26.635591 South and extending easterly to Latitude 27.630981 South, Longitude 114.031482 East*") be replaced with co-ordinate point "26.630981".'

On 20 May 2019, the Honourable Justice Mortimer amended the orders made on 28 November 2018 by consent pursuant to Rule 39.05 of the *Federal Court Rules 2011* to include reference to PL N049576 Tamala Station in clause 2(a) of Schedule Five of Attachment A.

REGISTERED NATIVE TITLE BODY CORPORATE:

Nanda Aboriginal Corporation RNTBC
Trustee Body Corporate
Level 8, 12-14 The Esplanade
Perth Western Australia 6000

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:

Native title holders: s 225(a) *Native Title Act*

3. The native title in the Determination Area is held by the Nanda People.

SCHEDULE SEVEN

NANDA PEOPLE (PARAGRAPH 3)

The Nanda People are those Aboriginal persons who:

(a) are descended from at least one of the following Nanda apical ancestors:

- (i) Jilba;
- (ii) Venus;
- (iii) Mary Jane Batt;
- (iv) Brindy;
- (v) Alice McMurray; or
- (vi) Polly

Descent includes adoption in accordance with traditional Nanda laws and customs;

(b) identify themselves as Nanda under Nanda traditional law and custom and are so identified by other Nanda People as Nanda; and

(c) have a connection with the land and waters in the Determination Area in accordance with traditional Nanda laws and customs.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. In so far as native title determination application WAD 6136 of 1998 relates to land and waters also overlapped by native title determination application WAD 286 of 2018, it is dismissed.
2. In relation to the Determination Area, there be a determination of native title in WAD 6136 of 1998 and WAD 286 of 2018 in the terms provided for in Attachment A.
3. The Nanda Aboriginal Corporation (ICN 8871) 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. Native title exists in the Determination Area in the manner set out in paragraphs 4 and 5 of this determination.
2. Native title does not exist in those parts of the Determination Area that are identified in Schedule Four.

Native title holders: s 225(a) *Native Title Act*

3. The native title in the Determination Area is held by the Nanda People.

The nature and extent of native title rights and interests: ss 225(b) and 225(e) *Native Title Act*

Exclusive Rights and Interests

4. Subject to paragraphs 6, 7 and 8, the nature and extent of the native title rights and interests in relation to the Exclusive Area is:

(a) except in relation to flowing and underground water, the right to possession, occupation, use and enjoyment of the Exclusive Area to the exclusion of all others; and

(b) in relation to flowing and underground water, the right to use and enjoy the flowing and underground water, including:

(i) the right to hunt on, fish from, take and use the resources of the flowing and underground water; and

(ii) the right to take and use the flowing and underground water.

Non Exclusive Rights and Interests

5. Subject to paragraphs 6, 7 and 8 the nature and extent of the native title rights and interests in relation to the Non-Exclusive Area is that they confer the following non-exclusive rights on the Nanda People:

(a) the right to enter and remain on the Non-Exclusive Area, camp, erect temporary shelters and to travel over and visit any part of the Non-Exclusive Area;

(b) the right to hunt, fish, gather and use the resources of the Non-Exclusive Area;

(c) the right to take and use water;

(d) the right to engage in cultural activities on the Non-Exclusive 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; and

(ii) conducting ceremony and ritual, including burial rites; and

(e) the right to be accompanied onto the Non-Exclusive Area by those persons who, though not native title holders, are:

(i) spouses, partners, parents or children of the native title holders;

(ii) people who are members of the immediate family of a spouse, partner, parent or child of a native title holder; or

(iii) people entering the Determination Area in connection with the performance of ceremonies or cultural activities in accordance with traditional laws and customs.

Qualifications on the native title rights and interests

6. 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 Nanda People for personal, domestic, and communal purposes (including social, cultural, religious, spiritual and ceremonial purposes) but not for commercial purposes.

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

(a) minerals as defined in the *Mining Act 1904 (WA)* (repealed) and in the *Mining Act 1978 (WA)*, except to the extent that ochre is not a mineral pursuant to the *Mining Act 1904 (WA)*;

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

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

(d) water lawfully captured by the holders of the Other Interests.

8. The native title rights and interests set out in paragraphs 4(b) and 5 do not confer:

(a) possession, occupation, use and enjoyment of those parts of the Determination Area on the Nanda People to the exclusion of all others; nor

(b) a right to control the access to, or use of, those parts of the Determination Area or its resources.

Sections 47A or 47B of the *Native Title Act*

9. Sections 47A and 47B of the *Native Title Act* apply to disregard any prior extinguishment in relation to the areas described in Schedule Six.

The nature and extent of any Other Interests

10. The nature and extent of the Other Interests are described in Schedule Five.

Relationship between native title rights and Other Interests

11. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraphs 4 and 5 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 do not extinguish them.

Definitions and Interpretation

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

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

"**Exclusive Area**" means those lands and waters of the Determination Area described in Schedule Three (which areas are generally shown as shaded green on the maps at Schedule Two);

"**flowing water**" 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;

"**Nanda People**" means the people described in Schedule Seven and referred to in paragraph 3;

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

"**Non-Exclusive Area**" means those lands and waters of the Determination Area which are not Exclusive Areas or described in paragraph 2 as an area where native title does not exist (which areas are generally shown as shaded yellow on the maps at Schedule Two);

"**Other Interests**" means the legal or equitable estates or interests and other rights in relation to the Determination Area described in Schedule Five and referred to in paragraph 10;

"**resources**" means flora, fauna, and other natural resources such as charcoal, stone, soil, sand, clay, gravel, timber, resin and ochre (except, for the avoidance of doubt, ochres for use in the manufacture of porcelain, fine pottery or pigments which are minerals pursuant to the *Mining Act 1904* (WA) (repealed));

"**Titles Validation Act**" means the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA);

"**underground water**" means water from and including an underground water source, including water that percolates from the ground; and

"**use**" does not include use by way of trade.

13. In the event of any inconsistency between the written description of an area in Schedule One, Three, Four, Five or Six and the area as depicted on the map at Schedule Two the written description prevails.

REGISTER ATTACHMENTS:

1. Schedule One - Determination Area, 8 pages - A4, 28/11/2018
2. Schedule Two - Maps Of The Determination Area, 19 pages - A4, 28/11/2018
3. Schedule Three - Exclusive Areas, 3 pages - A4, 28/11/2018
4. Schedule Four - Areas Where Native Title Does Not Exist (Paragraph 2), 61 pages - A4, 28/11/2018
5. Schedule Five - Other Interests (Paragraph 10), 9 pages - A4, 20/05/2019
6. Schedule Six - Areas To Which SS 47A Or 47B Apply (Paragraph 9), 2 pages - A4, 28/11/2018

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.