



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD23/2019
NNTT Number: WCD2019/002

Determination Name: [O'Connor on behalf of the Palyku People v State of Western Australia](#)

Date(s) of Effect: 5/03/2020

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: 12/03/2019

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

The native title holders had 12 months from the determination date, or until such further time as the Court may allow, to nominate a Prescribed Body Corporate. On 5 March 2020 the Palyku-Jartayi Aboriginal Corporation was nominated to be the prescribed body corporate for this determination, and therefore this determination is in effect from 5 March 2020.

REGISTERED NATIVE TITLE BODY CORPORATE:

Palyku-Jartayi Aboriginal Corporation
Trustee Body Corporate
PO Box 8185
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 Palyku People. The Palyku People are the people referred to in Schedule Six.

SCHEDULE SIX

NATIVE TITLE HOLDERS (Paragraph 3)

The Palyku People are those Aboriginal persons who:

(a) are the cognatic descendants of, or are culturally reared up (adopted) by such cognatic descendants of, one or more of the following apical ancestors:

(i) Pitawanu;

(ii) Pupu;

(iii) Winnie;

(iv) Wilyarpirna;

(v) Puyungayi;

(vi) Yurramara;

(vii) Munjarnpirna and Jukukayi;

(viii) Jujuna;

(ix) Fannie, Annie Patawani and Chinaman Janjanamarlu;

(x) Pijipangu;

(xi) Kijiempa;

(xii) Maggie Kuntuwarrpangu;

(xiii) Peter Long Wayalpa;

(xiv) Julimanga;

(xv) Wantungu;

(xvi) Kalurru;

(xvii) Alec Weatherall;

(xviii) Major and Judy;

(xix) Mary Barrdi; or

(xx) Sophie Bunbry; and

(b) identify themselves, and are recognised by a substantial number of the descendants of the above apical ancestors as, a Palyku person; and

(c) have rights and interests in, and a connection with, the land and waters of the Determination Area, in accordance with the traditional laws acknowledged and the traditional customs observed by the Palyku People.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. In relation to the Determination Area, there be a determination of native title in WAD 23 of 2019 in terms of the Determination as provided for in Attachment A.

2. The Determination is to take effect immediately upon the making of a determination under s 56(1) or 57(2) of the *Native Title Act 1993* (Cth) as the case may be.

3. Within 12 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 or by an agent. They are invited to do so by:

(a) nominating in writing to the Federal Court a prescribed body corporate to be trustee or agent 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 or as agent (as the case may be), 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 *Native Title Act*)

1. Subject to paragraph 2, native title exists in the Determination Area in the manner set out in paragraph 4 of this Determination.

2. Native title does not exist in those parts of the Determination Area the subject of the interests identified in Schedule Three which are shown as generally shaded pink on the maps at Schedule Two.

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

3. The native title in the Determination Area is held by the Palyku People. The Palyku People are the people referred to in Schedule Six.

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

4. Subject to paragraphs 2, 5, 6, 7 and 10, 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 Palyku People, including the right to conduct activities necessary to give effect to them:

(i) the right to enter and remain on the land, camp, erect temporary shelters and travel over and visit any part of the land and waters of the Determination Area;

(ii) the right to hunt, fish, gather, take and use the traditional resources of the land;

(iii) the right to take and use water;

(iv) the right to engage in cultural activities and the transmission of cultural knowledge on the Determination Area, including:

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

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

(v) the right to be accompanied on to the Determination Area by those people who, though not Palyku People and who (for the avoidance of doubt) cannot themselves exercise any native title right in the Determination Area, are:

(i) the non-Palyku spouses, parents or children of the Palyku People; or

(ii) people entering in connection with, and subject to, traditional law and custom for the performance of ceremonies or cultural activities on the Determination Area.

Qualifications on the native title rights and interests

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

6. 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 captured by the holders of the Other Interests pursuant to those Other Interests.

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

- (a) possession, occupation, use and enjoyment on the Palyku People to the exclusion of all others; or
- (b) a right to control the access to, or use of, the land and waters of the Determination Area or its resources.

Areas to which ss 47, 47A or 47B of the *Native Title Act* apply

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

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

9. The nature and extent of the Other Interests are described in Schedule Four.

Relationship between native title rights and other interests (s 225(d) *Native Title Act*)

10. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraph 4 and the Other Interests described in Part A of Schedule Four is that:

(i) 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,

(ii) 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.

11. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraph 4 and the Other Interests described in Part B of Schedule Four is that 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 Other Interests continue to exist in their entirety, but are invalid to the extent of the inconsistency with the native title rights and interests during the currency of the Other Interests, pursuant to s 240A of the *Native Title Act*.

Liberty to Apply

12. The parties have liberty to apply to establish the precise location and boundaries of the public works and adjacent land and waters identified in relation to any part or parts of the Determination Area referred to in clause 4 of Schedule Three of this Determination.

Definitions and Interpretation

13. 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;

"land" has the same meaning as in the *Native Title Act* 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 Palyku People as described in Schedule Six and referred to in paragraph 3;

"Other Interests" means the legal or equitable estates or interests and other rights in relation to the Determination Area described in Schedule Four and referred to in paragraph 9;

"resources" means flora, fauna, and other natural resources such as charcoal, stone, soil, wood, 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));

"use" includes by way of share and exchange but does not include use by way of trade; and

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

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

REGISTER ATTACHMENTS:

1. WCD2019/002 Schedule One - Determination Area, 3 pages - A4, 12/03/2019
2. WCD2019/002 Schedule Two - Maps of the Determination Area, 4 pages - A4, 12/03/2019
3. WCD2019/002 Schedule Three - Areas Where Native Title Does Not Exist, 3 pages - A4, 12/03/2019
4. WCD2019/002 Schedule Four - Other Interests, 9 pages - A4, 12/03/2019
5. WCD2019/002 Schedule Five - Areas to Which Section 47A of the Native Title Act Applies, 1 page - A4, 12/03/2019

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.