



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD464/2016
NNTT Number: WCD2019/003

Determination Name: [Eagles on behalf of the Combined Thiin-Mah, Warriyangka, Tharrkari and Jiwarli People v State of Western Australia](#)

Date(s) of Effect: 16/04/2019

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: 16/04/2019

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Woodgoomungoooh Aboriginal Corporation
Trustee Body Corporate
PO Box 3072
249 Hay Street
East Perth Western Australia 6892

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 common rights comprising the native title in the Determination Area are held by the *Thiin-Mah, Warriyangka, Tharrkari* and *Jiwarli* people, being the people referred to in Schedule Five.

SCHEDULE FIVE – NATIVE TITLE HOLDERS

[Schedule referred to in paragraphs 3 and 12]

The Native Title Holders:

(1) are the descendants of people who belonged to the *Thiin Mah, Warriyangka, Tharrkari* and *Jiwarli (TMWTJ)* language groups, in particular the descendants of the following ancestors:

- (a) Maldurdari and Jiraguru;
- (b) Balgonyunga and Wurajulba;
- (c) Yagaraja and Kurmainma;
- (d) Thaldungu and Jigura;
- (e) Larry Brewer and Nancy Cameron;
- (f) Togo Griffin and Agnes Barron;
- (g) Marigold; and
- (h) Warngarri and Didibirri;

or who are adopted by such biological descendants in accordance with the traditional laws acknowledged and the traditional customs observed by the TMWTJ groups; and

(2) identify themselves as members of the TMWTJ groups under traditional law and custom and are so identified by other Native Title Holders as members of the TMWTJ groups; and

(3) have a connection with the land and waters in the Determination Area, in accordance with traditional laws acknowledged and the traditional customs observed by the TMWTJ groups.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. In relation to the Determination Area, there be a determination of native title in WAD 464 of 2016 in the terms provided for in Attachment A.
2. The Woodgoomungoooh Aboriginal Corporation shall hold the determined native title in trust for the native title holders pursuant to section 56(2) of the *Native Title Act*.

ATTACHMENT A

DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES:

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 relation to those parts of the Determination Area identified in Schedule Three and which are shown as generally shaded pink on the maps at Schedule Two.

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

3. The common rights comprising the native title in the Determination Area are held by the *Thiin-Mah, Warriyangka, Tharrkari* and *Jiwarli* people, being the people referred to in Schedule Five.

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

4. Subject to paragraphs 5, 6 and 7, 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 Native Title Holders:
 - (a) access the land and waters;
 - (b) enter and remain on the land, camp, erect shelters and light fires for cooking, heating and lighting purposes;
 - (c) take flora, fauna, fish and other traditional resources (excluding minerals) from the land and waters;

(d) take and use water, and for the sake of clarity and the avoidance of doubt this right does not include the right to take or use water captured or controlled by the holders of the Pastoral Leases pursuant to those leases or other valid permit or authority;

(e) engage in ritual and ceremony;

(f) care for, maintain and protect from physical harm, particular sites and areas of significance to the Native Title Holders; and

(g) be accompanied on to the Determination Area by those people who, though not Native Title Holders, are spouses, parents or descendants of Native Title Holders.

5. The native title rights and interests set out in paragraph 4 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 or non-commercial communal purposes (including social, medicinal, cultural, religious, spiritual and ceremonial purposes).

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

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

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

7. Notwithstanding anything in this determination the native title rights and interests set out in paragraph 4 include the right to take and use ochre to the extent that ochre is not a mineral pursuant to the *Mining Act 1904 (WA)* (repealed), but do not confer any rights in relation to:

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

(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)*.

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

8. Sections 47, 47A and 47B of the *Native Title Act* do not apply to disregard any prior extinguishment in relation to the Determination Area.

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

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

Relationship between native title rights and Other Interests (s 225(d) *Native Title Act*)

10. Except as provided 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:

(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 and cannot be enjoyed or exercised 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 section 24JB(2) of the *Native Title Act*, 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 section 24OA of the *Native Title Act*.

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;

"**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 persons described in Schedule Five and referred to in paragraph 3;

"**Pastoral Leases**" means Pastoral Leases N049418, N049430, N049605, N049994, N050129, N050211, N050329, N050359, N050360, N050477, N050594, N050650; and

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

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

REGISTER ATTACHMENTS:

1. WCD2019/003 Schedule One - Determination Area, 3 pages - A4, 16/04/2019
2. WCD2019/003 Schedule Two - Maps of the Determination Area, 2 pages - A4, 16/04/2019
3. WCD2019/003 Schedule Three - Areas Where Native Title Does Not Exist, 2 pages - A4, 16/04/2019
4. WCD2019/003 Schedule Four - Other Interests, 6 pages - A4, 16/04/2019

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.