



# Extract from the National Native Title Register

---

## Determination Information:

**Determination Reference:** Federal Court Number(s): WAD22/2019, WAD366/2018, WAD261/2019  
NNTT Number: WCD2019/016

**Determination Name:** [Peck on behalf Gnulli Native Title Claim Group v State of Western Australia](#)

**Date(s) of Effect:** 17/12/2019

**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:** 17/12/2019

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

Not Applicable

### REGISTERED NATIVE TITLE BODY CORPORATE:

Nganhurra Thanardi Garrbu Aboriginal Corporation  
Trustee Body Corporate  
Level 8  
12-14 The Esplanade  
Perth Western Australia 6000

Yinggarda Aboriginal Corporation  
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](http://www.oric.gov.au)*

### COMMON LAW HOLDER(S) OF NATIVE TITLE:

#### Native title holders: section 225(a) Native Title Act

3. The native title in the Baiyungu and/or Thalanyji Area is held by the Baiyungu and/or Thalanyji native title holders.

4. The native title in the Yinggarda Area is held by the Yinggarda native title holders.

## **SCHEDULE SEVEN**

### **NATIVE TITLE HOLDERS**

#### **Paragraphs 3 and 4**

##### ***Baiyungu and/or Thalanyji native title holders***

Baiyungu and/or Thalanyji native title holders are those Aboriginal persons who:

(a) have a connection to those lands and waters within the Baiyungu and/or Thalanyji Area through the traditional laws and customs applicable there; and

(b) are descended from one or more of the following forebears:

(i) *Kanjuguru/Mammy* (mother of Milly, Kitty, *Kaja* & Maryanne);

(ii) *Biriji* (brother to *Kanjuguru/Mammy* & father of Jean & Michael);

(iii) *Weelbayarra*/Frank Hughes (father of Tommy, May & Billy Hughes);

(iv) Sarah (mother of *Gunggum*/Sam Dazzler & siblings); or

(v) *Janya*, Jubilee, *Nyardu*/Tim Dodd, Maggie Dodd, or Mary Harvey (siblings),

where descent can be either by birth or being culturally 'grown up' from a young age by one or more of these persons or such descendants in accordance with the traditional laws acknowledged and the traditional customs observed by the Baiyungu and/or Thalanyji native title holders; and

(c) whose connections through (a) and (b) above are recognised by those Baiyungu and/or Thalanyji native title holders with authority under Baiyungu and/or Thalanyji traditional law and custom.

##### ***Yinggarda native title holders***

Yinggarda native title holders are those Aboriginal persons who:

(a) have a connection to those lands and waters within the Yinggarda Area through the traditional laws and customs applicable there; and

(b) are descended from one or more of the following forebears:

(i) *Janya*, Jubilee, *Nyardu*/Tim Dodd, Maggie Dodd, or Mary Harvey (siblings);

(ii) Caroline & Sambo (parents of Dolly Bidgemia);

(iii) Tom Dodd (from the Wooramel side, husband of *Jinabudja*/Mary Anne);

(iv) *Kalaman*/Mary (mother of Paddy Dowker);

(v) *Culamire*/Fred (father of *Ngaa Ngaa*/Lucy Bulley);

(vi) *Jilba*/Harry (father of *Binthamurra*/Stella Snowball);

(vii) Annie & Joe Kimberley (parents of Bob Kimberley);

(viii) John Friday (husband of Edie Noble);

(ix) Mary Anne or Jinny Windie (sisters, mothers of Windie families);

(x) *Gooyoongardi*/Tom Dodd;

(xi) Copper (mother of Norcia, Maude & Tommy Mortimer);

(xii) *Bunadjada*/Panna (mother of Darby Winder & siblings); or

(xiii) *Gunywardu*/George Arthur Cooyou (father of *Bujiguru*/George Eric Cooyou),

where descent can be either by birth or being culturally 'grown up' from a young age by one or more of these persons

or such descendants in accordance with the traditional laws acknowledged and the traditional customs observed by the Yinggarda native title holders; and

(c) whose connections through (a) and (b) above are recognised by those Yinggarda native title holders with authority under Yinggarda traditional law and custom.

## **MATTERS DETERMINED:**

### **THE COURT ORDERS THAT:**

1. In relation to the Determination Area, there be a determination of native title in WAD 22 of 2019, WAD 366 of 2018 and WAD 261 of 2019 in the terms provided for in Attachment A.

2. In respect of the Baiyungu and/or Thalanyji Area (as defined in paragraph 15 of the determination), the Nganhurra Thanardi Garrbu Aboriginal Corporation (ICN 9183) shall hold the determined native title in trust for the Baiyungu and/or Thalanyji native title holders pursuant to section 56(2)(b) of the *Native Title Act 1993* (Cth).

3. In respect of the Yinggarda Area (as defined in paragraph 15 of the determination), the Yinggarda Aboriginal Corporation (ICN 9184) shall hold the determined native title in trust for the Yinggarda native title holders pursuant to section 56(2)(b) of the *Native Title Act 1993* (Cth).

## **ATTACHMENT A**

### **DETERMINATION**

#### **THE COURT ORDERS, DECLARES AND DETERMINES THAT:**

##### **Existence of native title: section 225 Native Title Act**

1. Subject to paragraph 2, native title exists in the Determination Area in the manner set out in paragraphs 5 and 6 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: section 225(a) Native Title Act**

3. The native title in the Baiyungu and/or Thalanyji Area is held by the Baiyungu and/or Thalanyji native title holders.

4. The native title in the Yinggarda Area is held by the Yinggarda native title holders.

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

###### ***Exclusive rights and interests***

5. Subject to paragraphs 2, 7, 8, 9, 12 and 13, the nature and extent of the native title rights and interests in relation to the Exclusive Area are:

(a) except in relation to flowing and underground water, the right to possession, occupation, use and enjoyment 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 traditional 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***

6. Subject to paragraphs 2, 7, 8, 9 and 12, the nature and extent of the native title rights and interests in relation to the Non-Exclusive Area are that they confer the following non-exclusive rights, including the right to conduct activities necessary to give effect to them:

(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, take 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, protecting and maintaining those places by carrying out activities to preserve their physical or spiritual integrity; and
  - (ii) conducting and participating in ceremony and ritual, including burials, burial rites and the transmission of cultural knowledge;
- (e) the right to light contained and controlled fires for domestic, cultural and spiritual purpose but not for the clearance of vegetation;
- (f) the right to be accompanied on to the area by those people who, though not native title holders and who (for the avoidance of doubt) cannot themselves exercise any native title right in the area, are:
  - (i) the 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 Non-Exclusive 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**

7. 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).

8. 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.

9. The native title rights and interests set out in paragraphs 5(b) and 6 do not confer:

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

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

10. Sections 47, 47A and 47B of the Native Title Act apply to disregard any prior extinguishment in relation to those parts of the Determination Area identified in Schedule Five.

### **The nature and extent of any other interests**

11. The nature and extent of the Other Interests are described in Schedule Six.

### **Relationship between native title rights and other interests**

12. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraphs 5 and 6 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.

13. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraph 5 and mining lease M0900086 is that, to the extent that is inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, M0900086 continues to exist in its entirety, but is invalid to the extent of the inconsistency with the native title rights and interests during the currency of M0900086, pursuant to section 24OA of the Native Title Act.

### **Liberty to Apply**

14. 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 8 of Schedule Four of this determination

### **Definitions and Interpretation**

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

**"Baiyungu and/or Thalanyji Area"** means the land and waters described in Part 1 of Schedule Eight as depicted on the Map in Part 2 of Schedule Eight;

**"Baiyungu and/or Thalanyji native title holders"** means the people described in Schedule Seven and referred to in paragraph 3;

**"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 in Schedule Two)

**"native title holders"** means the people described in Schedule Seven and referred to in paragraphs 3 and 4;

**"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 Six and referred to in paragraph 11;

**"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 the *Mining Act 1904 (WA)* (repealed));

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

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

**"Yinggarda Area"** means the land and waters described in Part 1 of Schedule Eight as depicted on the Map in Part 2 of Schedule Eight;

**"Yinggarda native title holders"** means the people described in Schedule Seven and referred to in paragraph 4;

16. 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 maps at Schedule Two the written description prevails.

### **REGISTER ATTACHMENTS:**

1. WCD2019/016 Schedule One - Determination Area, 4 pages - A4, 17/12/2019
2. WCD2019/016 Schedule Two - Maps Of The Determination Area, 65 pages - A4, 17/12/2019
3. WCD2019/016 Schedule Three - Exclusive Areas, 5 pages - A4, 17/12/2019

4. WCD2019/016 Schedule Four - Areas Where Native Title Does Not Exist, 108 pages - A4, 17/12/2019
5. WCD2019/016 Schedule Five - Areas To Which Sections 47A And 47B Of The Native Title Act Apply, 2 pages - A4, 17/12/2019
6. WCD2019/016 Schedule Six - Other Interests, 17 pages - A4, 17/12/2019
7. WCD2019/016 Schedule Eight - Part 1 - Prescribed Body Corporate Areas and Part 2 - Map of Prescribed Body Corporate Areas, 6 pages - A4, 17/12/2019

*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.*