



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD541/2018
NNTT Number: WCD2019/017

Determination Name: [Mulardy on behalf of the Birriman-gan Native Title Claim Group v State of Western Australia](#)

Date(s) of Effect: 2/07/2022

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 19/12/2019

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 16 March 2022, the Federal Court determined that the rights and interests comprising the native title of the Karajarri people, the Yawuru people and the Nyikina people set out in the Court's Orders of 19 December 2019 in proceeding WAD 541 of 2018 be held, pursuant to s 56(2)(c) of the *Native Title Act 1993* (Cth), by the common law holders described in Schedule 4 of those Orders.

The Federal Court ordered the nomination of a prescribed body corporate (PBC) to be filed in the Court by 1 July 2022 as required by Order 5 of 16 March 2022 (as amended on 2 May 2022). By operation of Order 6 of 16 March 2022, the Indigenous Land and Sea Corporation is now determined to be appointed as the PBC under s 57(2)(c) of the *Native Title Act 1993* (Cth) and must perform the functions mentioned in s 57(3) of the *Native Title Act 1993* (Cth) after becoming the registered native title body corporate for the Birriman-gan common law holders.

Copies of the orders dated 16 March and 2 May 2022 are available from the Federal Court.

REGISTERED NATIVE TITLE BODY CORPORATE:

Indigenous Land and Sea Corporation
Agent Body Corporate
PBC Unit
Level 7
70 Franklin Street
Adelaide South Australia 5000

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))

3. The native title in the Determination Area is held by the native title holders. The native title holders are the people referred to in Schedule 4.

SCHEDULE 4

DESCRIPTION OF THE NATIVE TITLE HOLDERS

The native title holders comprise the Karajarri people, the Yawuru people and the Nyikina people, defined as follows:

Karajarri People

Those people who refer to themselves as Karajarri, being persons who:

- (a) are of Karajarri descent;
- (b) identify as Karajarri and are accepted as such by the Karajarri;
- (c) adhere to Karajarri customs and traditions; and
- (d) are by Karajarri laws and customs entitled to the use or occupation of the Karajarri lands irrespective of whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission and includes those persons having native title thereto under common law.

Yawuru People

(a) the descendants of Nyobing Babere, Chimbere Sitocay, Aloysius Louis Dolby, Jirawina, Jack and Pollyanna Mangain, Lija (wife of Phillip O'Brien Taylor), Nyilandin, Joseph Mary, Paddy Djiagween, Lucy Marcella Roe, Mary Mynyal, Cecilia Ngangon, Nyingula, Annie Mawunga, Milangka, Lena Charlie, Lucia 'Lija' (daughter of Borna and Gurdan), Minbal Ester, Philomena Carter, Aubrey Kelly Edar, John Two fingers, Mary Budjinka, Yungula (first wife of George Harriot Roe), Yungula (second wife of George Harriot Roe), Tommy Roe 'Guminy', Dorothy Kelly, Lydia Kanagai, Solong Archill, Jiriny, Dockan Harry Minbal, Maggie Kanado (Kangode), Lucy Warrdarr and Philomena 'Polly' Vincent (nee Pedro) save that where a person has only one Yawuru parent, that person self-identifies as Yawuru; and

(b) Aboriginal persons who have been adopted as children or been grown up by a Yawuru person as members of the Yawuru community under the traditional laws and customs of the community and who self-identify and are generally accepted by other members of the community as Yawuru persons; and

(c) Aboriginal persons who possess high cultural knowledge and responsibilities in relation to the area described in Schedule 2 and:

- (i) were born in; or
- (ii) have a long term physical association with,

that area under the traditional laws and customs of the Yawuru community and who self-identify and are generally accepted by other members of the community, as Yawuru persons; and

(d) the descendants of persons referred to in (b) or (c) save that where a person has only one Yawuru parent, that person self-identifies as Yawuru.

Nyikina people

The descendants of Karlmurl, Ngurkwan, Yayika and Minyang, Polly Wurrayin and Charlie Djawali, Bundangurra and Jambo, Kitty Kujaja and Charlie Mangurl, Lucy Muninga and Edward Yedawarra and Wadadarl 'Brumby', Maggie Nimbanirl, Dim and the mother of Bobby Ah Choo, Bundangurra and Mabel Ah Chee, Jimgula, Niyna Philomena, Ngamariny, Gurupirin, Nani, Jinangkal and Nyuntunga, Andy Marunjari and Marjory Spratt and her unnamed mother, Bulu, and Joe Nangan.

MATTERS DETERMINED:

IN THESE CIRCUMSTANCES AND WITH THE CONSENT OF THE PARTIES, THE COURT DETERMINES, DECLARES AND ORDERS THAT:

1. It is satisfied that an order in the terms proposed in the attached Minute of Consent Determination of Native Title is within the power of the Court and is appropriate to be made pursuant to section 87 of the *Native Title Act 1993* (Cth).
2. There be a determination of native title in the terms of the Minute of Consent Determination of Native Title attached. The determination is to take effect immediately upon the making of a determination under section 56(1) or 57(2) of the *Native Title Act 1993* (Cth) as the case may be.
3. Within nine 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 or prescribed bodies corporate to be trustee of the native title rights and interests; and
 - (b) including within the nomination the written consent of the body corporate or bodies corporate.
4. If a prescribed body corporate or bodies corporate are 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. The Determination Area is the land and waters described in Schedule 1 and depicted on the map comprising Schedule 2.
2. Native title exists in the whole of the Determination Area identified in Schedule 3.

Native title holders (s 225(a))

3. The native title in the Determination Area is held by the native title holders. The native title holders are the people referred to in Schedule 4.

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

4. Subject to paragraphs 5, 6 and 7 the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule 3 (being areas where any extinguishment must be disregarded) is the right to possession, occupation, use and enjoyment of that part of the Determination Area as against the whole world.
5. 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);
 - (b) petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and 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); orexcept the right to take and use ochre to the extent that ochre is not a mineral pursuant to the *Mining Act 1904* (WA).
6. 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.
7. 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.

Areas where extinguishment is disregarded (s 47B)

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

Other interests (s 225(c) and s 225(d))

9. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 5.

10. The relationship between the native title rights and interests described in paragraph 4 and the other interests is as follows:

(a) the Other Interests co-exist with the native title rights and interests;

(b) this Determination does not affect the validity of those Other Interests; and

(c) to the extent of any inconsistency, the native title rights and interests yield to the Other Interests and the existence and exercise of native title rights and interests cannot prevent activities permitted under the Other Interests.

Definitions and interpretation

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

'**Determination Area**' means the land and waters described in Schedule 1 and depicted on the map at Schedule 2;

'**land**' and '**waters**' respectively have the same meanings as in the *Native Title Act*,

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

In the event of any inconsistency between the written description of an area in Schedule 1 or Schedule 3 and the area as depicted on the map at Schedule 2, the written description prevails.

REGISTER ATTACHMENTS:

1. WCD2019/017 Schedule 1 - Determination Area, 1 page - A4, 19/12/2019
2. WCD2019/017 Schedule 2 - Map Of The Determination Area, 1 page - A4, 19/12/2019
3. WCD2019/017 Schedule 3 - Exclusive Native Title Areas, 1 page - A4, 19/12/2019
4. WCD2019/017 Schedule 5 - Other Interests, 2 pages - A4, 19/12/2019

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.