



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): WAD124/2004  
NNTT Number: WCD2006/002

**Determination Name:** [Ward v Western Australia](#)

**Date(s) of Effect:** 24/11/2006

**Determination Outcome:** Native title exists in parts of the determination area

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

**Determination Date:** 24/11/2006

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

Not Applicable

### REGISTERED NATIVE TITLE BODY CORPORATE:

Miriuwung and Gajerrong #4 (Native Title Prescribed Body Corporate) Aboriginal Corporation RNTBC  
Trustee Body Corporate  
C/- MG Corporation,  
10 Coolibah Drive,  
KUNUNURRA WA 6743

*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:

The Determination Area comprises countries or parts of countries variously identified with the Miriuwung, Gajerrong, Doolboong, Wardenybeng and Gija languages or dialects.

Each of Miriuwung, Gajerrong, Doolboong, Wardenybeng and Gija is a group identified with those languages or dialects. The members of those groups are those Aboriginal persons who:

(a) are descended from a person who is also identified with such language or dialect and country or by adoption by such a person, in accordance with traditional laws and customs; and

(b) identify themselves as Miriuwung, Gajerrong, Doolboong, Wardenybeng or Gija (as the case may be), under traditional law and custom; and

(c) are so identified by other members of the respective Miriuwung, Gajerrong, Doolboong, Wardenybeng or Gija groups.

Persons identified with such language or dialect and country include those described in Schedule 5.

Native title rights and interests in the Determination Area are held by:

(a) the members of the Miriuwung, Gajerrong, Doolboong, Wardenybeng and Gija groups in respect of Miriuwung, Gajerrong, Doolboong, Wardenybeng and Gija country respectively in accordance with traditional law and custom; and

(b) other Aboriginal persons who are acknowledged by the respective Miriuwung, Gajerrong, Doolboong, Wardenybeng or Gija groups as having rights in the Native Title Area through descent, marriage, spiritual conception, birth or responsibility for sites of significance.

#### **MATTERS DETERMINED:**

BY CONSENT OF THE PARTIES THE COURT ORDERS THAT:

(1) There be a determination of native title in the terms set out below (the determination).

(2) In accordance with section 56(2)(b) of the Native Title Act 1993 (Cth), the rights and interests from time to time comprising the native title be held in trust by the Miriuwung and Gajerrong # 4 (Native Title Prescribed Body Corporate) Aboriginal Corporation for the common law holders, being the persons referred to in paragraph 7 of the determination.

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of native title (s225)

1. The Determination Area is the land and waters described in Schedule 1.
2. Native title exists in those parts of the Determination Area identified in Schedules 2 and 3 (Native Title Area).
3. Native title does not exist in those parts of the Determination Area identified in Schedule 4.

Native title holders (s225(a))

4. The Determination Area comprises countries or parts of countries variously identified with the Miriuwung, Gajerrong, Doolboong, Wardenybeng and Gija languages or dialects.

5. Each of Miriuwung, Gajerrong, Doolboong, Wardenybeng and Gija is a group identified with those languages or dialects. The members of those groups are those Aboriginal persons who:

(a) are descended from a person who is also identified with such language or dialect and country or by adoption by such a person, in accordance with traditional laws and customs; and

(b) identify themselves as Miriuwung, Gajerrong, Doolboong, Wardenybeng or Gija (as the case may be), under traditional law and custom; and

(c) are so identified by other members of the respective Miriuwung, Gajerrong, Doolboong, Wardenybeng or Gija groups.

6. Persons identified with such language or dialect and country include those described in Schedule 5.

7. Native title rights and interests in the Determination Area are held by:

(a) the members of the Miriuwung, Gajerrong, Doolboong, Wardenybeng and Gija groups in respect of Miriuwung, Gajerrong, Doolboong, Wardenybeng and Gija country respectively in accordance with traditional law and custom; and

(b) other Aboriginal persons who are acknowledged by the respective Miriuwung, Gajerrong, Doolboong, Wardenybeng or Gija groups as having rights in the Native Title Area through descent, marriage, spiritual conception,

birth or responsibility for sites of significance.

The nature and extent of native title rights and interests (s225(b)) and exclusiveness of native title (s225(e))

#### Exclusive rights and interests

8. Subject to paragraphs 10, 12 and 13, the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule 2 are an entitlement against the whole world to possession, occupation, use and enjoyment of the land and waters of that part to the exclusion of all others.

#### Non-exclusive rights and interests

9. Subject to paragraphs 10, 11, 12 and 13, 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 are that they confer the following non-exclusive rights on the Native Title Holders, including the right to conduct activities necessary to give effect to them:

(a) the right to access and move about the land;

(b) the right to hunt and fish, to gather and use the resources of the land and waters such as food and medicinal plants and trees, timber, charcoal, ochre, stone and wax, and to have access to and use of water on or in the land and waters;

(c) the right to live, being to enter and remain on the land, to camp and erect temporary shelters and other structures for that purpose, and to travel over and visit any part of the land and waters;

(d) the right to light camp fires;

(e) the right to do the following activities:

(i) engage in cultural activities on the land;

(ii) conduct ceremonies;

(iii) hold meetings;

(iv) teach the physical and spiritual attributes of places and areas of importance on or in the land and waters;

(v) participate in cultural practices relating to birth and death, including burial rights; and

(vi) record, conserve, maintain and curate sites and activities arising in subparagraphs (i) to (v) above;

(f) the right to have access to, maintain and protect places and areas of importance on or in the land and waters, including rock art, engraving sites and stone arrangements;

(g) the right to make decisions about the use and enjoyment of the land and waters by the Native Title Holders; and

(h) the right to share or exchange subsistence and other traditional resources obtained on or from the land and waters.

10. The nature and extent of the native title rights and interests in relation to the flowing, tidal and underground waters of the Determination Area are that they confer on the Native Title Holders non-exclusive rights to:

(a) hunt, gather and fish on, in and from the flowing, tidal and underground waters for personal, domestic, social, cultural, religious, spiritual, ceremonial or communal needs but not for commercial purposes;

(b) take, use and enjoy the flowing, tidal and underground waters and natural resources and fish in such waters for personal, domestic, social, cultural, religious, spiritual, ceremonial or communal needs but not for commercial purposes.

11. The native title rights and interests referred to in paragraphs 9 and 10 do not confer possession, occupation, use and enjoyment to the exclusion of all others.

12. Notwithstanding anything in this determination the native title rights and interests include the right to take and use ochre to the extent that ochre is not a mineral pursuant to the Mining Act 1904 (WA), but do not include other minerals and petroleum as defined in the Mining Act 1904 (WA), the Mining Act 1978 (WA) as in force at the date of this determination, the Petroleum Act 1936 (WA) and the Petroleum Act 1967 (WA) as in force at the date of this determination.

13. 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) but not for commercial purposes.

Areas to which s47A of the Native Title Act applies

14. Section 47A of the Native Title Act applies to disregard any prior extinguishment in relation to the areas described in Schedule 6.

The nature and extent of any other interests

15. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 7.

Relationship between native title rights and other interests

16. The relationship between the native title rights and interests described in paragraphs 8, 9 and 10 and the other interests referred to in paragraph 15 ("the other rights and interests") is that, subject to paragraph 17:

(a) to the extent that any of the other rights and 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 rights and interests to the extent of the inconsistency during the currency of the other rights and 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 rights and interests, and the other rights and interests, and the doing of any activity required or permitted to be done by or under the other rights and interests, prevail over the native title rights and interests and any exercise of the native title rights and interests, but do not extinguish them.

17. If an act is done under or in accordance with the Ord Final Agreement then that act may affect native title in the manner provided for in the Ord Final Agreement.

Definitions and interpretation

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

"Determination Area" means the land and waters described in Schedule 1 and depicted on the map attached to Schedule 1;

"flowing waters" 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;

"land" and "waters" respectively have the same meanings as in the Native Title Act; and "water" includes flowing and underground water;

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

"Native Title Holders" means the persons described in paragraph 7 above;

"Ord Final Agreement" means the agreements which are other rights and interests referred to in paragraph (11)(g) of Schedule 7;

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

## SCHEDULE 1

### DETERMINATION AREA

The Determination Area comprises all of the following land and waters generally shown as bordered in dark green on

the map which is Attachment 1 to this schedule (the Map):

Leases

Pastoral Lease 3114/1176 (Carlton Hill)

Pastoral Lease 3114/0640 (Ivanhoe)

Pastoral Lease 3114/0599 (Rosewood)

Lease GE I/126901 (formerly special lease 3116/10690)

Reserves

Reserve 20679

Reserve 21316

Reserve 30727

Reserve 30728

Reserve 39972

Reserve 40010

Reserve 40745

Reserve 41312 (Formerly Special Lease 3116/9924)

Reserve 41527

Reserve 41535

Reserve 42304

Reserve 42564

SCHEDULE 2

AREAS WHERE NATIVE TITLE COMPRISES THE RIGHTS SET OUT IN PARAGRAPH 8

The following land and waters (generally shown as shaded in pink on the Map):

Area

Reserve 41312

Reserve 41527

Reserve 42564

Lease GE I/126901 (formerly special lease 3116/10690)

SCHEDULE 3

AREAS WHERE NATIVE TITLE COMPRISES THE RIGHTS SET OUT IN PARAGRAPH 9

The following land and waters (generally shown as shaded in green on the Map), but not including the areas in Schedule 4:

Area

Pastoral Lease 3114/1176 (Carlton Hill)

Pastoral Lease 3114/0640 (Ivanhoe)

Pastoral Lease 3114/0599 (Rosewood)

Reserve 20679

Reserve 21316

#### SCHEDULE 4

##### AREAS WHERE NATIVE TITLE DOES NOT EXIST

Native title does not exist in the following land and waters:

(1) The areas the subject of the following interests (generally shown as shaded in blue on the Map):

Tenure Purpose Date created/granted

Reserve 30727 Gravel (29.25 hectares) 8 January 1971

Reserve 30728 Gravel (94 hectares) 8 January 1971

Reserve 39972 Gravel (10 hectares) 7 October 1988

Reserve 40010 Depot Site (1 hectare) 22 May 1987

Reserve 40745 Repeater Station (0.8 hectares) 11 November 1988

Reserve 41535 Gravel (43.8 hectares) 28 December 1990

Reserve 42304 Gravel (5.7 hectares) 13 November 1992

Special lease 3116/3010 Grazing (36,654 hectares) 1 April 1962

(2) The area of the following works (generally shown as shaded in blue on the Map):

Area

Weaber Telecommunications Site, being a square shaped area of 11,236 m<sup>2</sup> (106 metres by 106 metres), the corner points of which are located 74.95 metres from a central station mark located approximately at Longitude 128o59'02" Latitude 15o22'20"

Quirk Telecommunications Site, being a square shaped area of 19,600 m<sup>2</sup> (140 metres by 140 metres), the corner points of which are located 96.15 metres from a central station mark located approximately at Longitude 128o55'16" Latitude 16o29'09"

(3) Any other public works as that expression is defined in the Native Title Act and the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) and to which section 12J of the Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA) or section 23C(2) of the Native Title Act applies, within the external boundary of the Determination Area including the land and waters defined in section 251D of the Native Title Act.

#### SCHEDULE 5

##### DESCRIPTION OF THE NATIVE TITLE HOLDERS

Persons identified with Miriuwung, Gajerrong, Doolboong, Wardenybung and Gija language or dialect and country as at the date of this determination include descendants of the following persons, which persons were identified as:

Gajerrong/Doolboong/Wardenybeng

Linmirr, Dambilik, Noongmarria, Bungara Boongara, Ngabitj, Jerad Djerad, Goolingin and Clement Tjulan

Miriuwung

Mialiny, Tjebelying Djibulyerring, Nilkbarria, Kulalbainy, Waniwung, Biwugin Biwoogin, Kutji, Wulgoi, Wungawyi, Gulbuk, Yirrimaliny, Djuburl, Gubering, Gungui, Dandji, Wunmi, Birrwi, Dunmi, Wumbi, Argylar, Wiyuga, Jungurangan and Kneevil

Gija

Jungurangan, Kneevil, Wajali, Djuderriny, Nadurur, Banggarrabainy, Lammuiy Lamoin, Ngarri and Biyuwin

Dundun

Polly Munbi and King O'Malley

## SCHEDULE 6

### AREAS TO WHICH SECTION 47A NATIVE TITLE ACT 1993 (CTH) APPLIES

Area

Reserve 41312

Reserve 41527

Reserve 42564

Lease GE I/126901 (formerly special lease 3116/10690)

## SCHEDULE 7

### OTHER INTERESTS

(1) Pastoral leases:

Lease no.	Current Lessee	Commence date	Last date
3114/599	Hooker Corporation Ltd	8 October 1965	30 June 2015
3114/599	Sublease to Rosewood Station Pty Ltd 29 June 1984 29 June 2015		
3114/640	Crosswalk Pty Ltd	11 December 1974	30 June 2015
3114/1176	Carlton Hill Pty Ltd	9 February 1983	30 June 2015

(2) Reserves:

The interests of persons who have the care, control and management of the following reserves, and the interests of persons entitled to access and use the reserves for the respective purposes for which they are reserved, subject to any statutory limitations upon those rights:

Reserve no. Purpose

20679 Aerial Landing Ground  
21316 Stock Route  
41312 Use and Benefit of Aboriginal Inhabitants  
41527 Use and Benefit of Aboriginal Inhabitants  
42564 Use and Benefit of Aboriginal Inhabitants

(3) The following leases of reserves:

Reserve Lessee Commence date Last Date

41312 Wijilawarrim Aboriginal Corporation 25 March 1990 24 March 2089

(4) Other leases:

Lease: GE I/126901 (formerly 3116/10690)

Lessee: Aboriginal Lands Trust

Purpose: Use and Benefit of Aboriginal Inhabitants

Commence Date: 16 October 1991

Last Date: 30 September 2041

Lease: GE I/126901 (formerly 3116/10690)

Lessee: Sublease to Worrworum Ningguwung Aboriginal Corporation

Purpose: Use and Benefit of Aboriginal Inhabitants

Commence Date: 1 September 1992

Last Date: 29 September 2041

(5) The following mining tenements under the Mining Act 1904 (WA) and the Mining Act 1978 (WA):

Tenement Holder Date granted Last date

E 80/01187 Triako Resources Ltd 07/04/1991 06/04/2006

E 80/02583 Bonaparte Diamond Mines NL 16/05/2003 15/05/2008

M 80/00017 Young, Howard Laurence 22/06/1983 21/06/2025

M 80/00029 Boral Resources WA Ltd 15/09/1983 14/09/2025

M 80/00196 Triako Resources Ltd 22/01/1988 21/01/2009

M 80/00197 Triako Resources Ltd 22/01/1988 21/01/2009

M 80/00285 Triako Resources Ltd 29/03/1989 28/03/2010

M 80/00286 Triako Resources Ltd 29/03/1989 28/03/2010

M 80/00287 Triako Resources Ltd 29/03/1989 28/03/2010

M 80/00441 JSW Holdings Pty Ltd 09/04/1999 08/04/2020

M 80/00476 JSW Holdings Pty Ltd 08/04/1999 07/04/2020

M 80/00528 Martinjinni Pty Ltd 28/08/2003 27/08/2024

M 80/00310 Woodhead, John Leslie 03/08/1990 02/08/2011



M 80/00333 Argyle Concrete And Quarry  
Supplies Pty Ltd 12/11/1991 11/11/2012

M 80/00360 Guerinoni, Carmillo 29/11/1994 28/11/2015

M 80/00392 Skoglund, Eleanor May 18/07/1994 17/07/2015

M 80/00392 Costeo, Peter George 18/07/1994 17/07/2015

M 80/00397 JSW Holdings Pty Ltd 07/01/1995 06/01/2016

M 80/00505 Guerinoni, Mick 04/10/2000 03/10/2021

M 80/00520 Peak Environmental Pty Ltd 28/08/2003 27/08/2024

M 80/00530 Jab Management Pty Ltd 10/03/2006 09/03/2027

TR 7005977 Minister for Mines 26/02/1975 Until cancelled

(6) The following petroleum tenement under the Petroleum Act 1967 (WA):

Tenement	Holder	Date granted	Last date
EP 386 R2	Advent Energy Ltd	15/10/2004	14/10/2009

(7) Deed of Easement between the State of Western Australia and Alan Maxwell Wilson and Susan Wilson dated 31 July 2002.

(8) The rights and interests of Telstra Corporation Limited:

(a) as the owner or operator of telecommunications facilities installed within the Determination Area;

(b) as the holder of a carrier licence under the Telecommunications Act 1997 (Cth);

(c) created pursuant to the Post and Telegraph Act 1901 (Cth), the Telecommunications Act 1975 (Cth), the Australian Telecommunications Corporation Act 1989 (Cth), the Telecommunications Act 1991 (Cth) and the Telecommunications Act 1997 (Cth), including:

(i) the right to occupy the Jeremiah Hills Telecommunications Site, being a square shaped area of 6,400 m<sup>2</sup> (80 metres by 80 metres), the corner points of which are located 56.57 metres from a central station mark located approximately at Longitude 128o44'58.40" Latitude 15o26'16.30";

(ii) the right to occupy the Cumbarumba Telecommunications Site, located within Reserve 42564, being a square shaped area of 2,025 m<sup>2</sup> (45 metres by 45 metres), the station mark of which is located approximately at Longitude 128o58'50.55" Latitude 15o41'42.07";

(iii) the right to install customer radio terminals;

(iv) the right to install cabling; and

(d) for its employees, agents or contractors to enter the Determination Area in the performance of their duties, to access its telecommunications facilities in, and in the vicinity of, the Determination Area.

(9) Licenses issued under the:

(a) Land Act 1933 (WA) and the Land Administration Act 1997 (WA);

(b) Fish Resources Management Act 1994 (WA);

(c) Mining Act 1978 (WA);

(d) Jetties Act 1926 (WA);

(e) Wildlife Conservation Act 1950 (WA);

(f) Conservation and Land Management Act 1984 (WA);

(g) Rights in Water and Irrigation Act 1914 (WA);

(h) Transport Co-ordination Act 1966 (WA); and

(i) Water Services Coordination Act 1995 (WA).

(10) Permits issued under the:

(a) Land Act 1933 (WA);

(b) Land Administration Act 1997 (WA); and

(c) Ord Irrigation District By-laws under the Rights in Water and Irrigation Act 1914 (WA).

(11) Other

(a) Rights and interests granted by the Crown pursuant to statute or otherwise in the exercise of its executive power.

(b) Rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth including the force and operation of the Rights in Water and Irrigation Act 1914 (WA).

(c) The right to access the Determination Area by:

(i) an employee or agent or instrumentality of the State;

(ii) an employee or agent or instrumentality of the Commonwealth;

(iii) an employee or agent or instrumentality of any local government authority,

as required in the performance of his or her statutory or common law duty where such access would be permitted to private land.

(d) The right of any person to use (subject to the laws of the State, in particular the Aboriginal Affairs Planning Authority Act 1972 (WA) and Regulations) any road in the Determination Area over which, as at the date of the determination, the public has a right of way according to the common law.

(e) Rights and interests of members of the public arising under the common law, being:

(i) the public right to fish in tidal waters; and

(ii) the public right to navigate in tidal waters.

(f) Existing rights of the public to access and enjoy:

(i) waterways;

(ii) beds and banks or foreshores of waterways;

(iii) beaches; and

(iv) stock routes.

(g) The Deed for the Compulsory Acquisition of Native Title Rights and Interests (Ord) dated 6 October 2005 and the Ord Final Agreement dated 6 October 2005, as amended from time to time in accordance with their terms.

## **REGISTER ATTACHMENTS:**

1. 1. Schedule 1 - Map of Determination, 1 page - A3, 24/11/2006

*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.*