



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6090/1998; WAD370/2016; WAD91/2020
NNTT Number: WCD2018/003

Determination Name: [Robe River Kuruma Aboriginal Corporation RNTBC v State of Western Australia](#)

Date(s) of Effect: 26/04/2018, 27/01/2021

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: 26/04/2018

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 26 April 2018, the Federal Court of Australia made a determination of native title by consent in [Finlay on behalf of the Kuruma Marthudunera Peoples v State of Western Australia \[2018\] FCA 548](#) (Federal Court File No: WAD6090/1998 and WAD370/2016, NNTT File No: WCD2018/003).

Among other things, the Federal Court ordered that:

1. WAD 6090 of 1998 and WAD 370 of 2016 are to be determined together.
2. In relation to the Determination Area, there be a determination of native title in WAD 6090 of 1998 and WAD 370 of 2016 in terms of Attachment A.
3. In so far as WAD 6090 of 1998 and WAD 370 of 2016 relate to land and waters outside the Determination Area, WAD 6090 of 1998 and WAD 370 of 2016 are dismissed and no determination is made in relation to the land and waters comprised in that area.
4. The Kuruma Marthudunera Aboriginal Corporation RNTBC shall hold the determined native title in trust for the native title holders pursuant to section 56(2)(b) of the *Native Title Act 1993* (Cth).

On 17 April 2019, the High Court of Australia in [Tjungarrayi v Western Australia \[2019\] HCA 12](#), held that the presence of exploration or prospecting licences or permits did not prevent the disregarding of extinguishment under s 47B(2) of the *Native Title Act* in respect of land or waters covered by such licences or permits.

Following the High Court's decision, on 9 April 2020, Robe River Aboriginal Corporation RNTBC (previously named Kuruma Marthudunera Aboriginal Corporation RNTBC) filed an application to vary the *Finlay* determination in the Federal Court (Federal Court File No: WAD91/2020; NNTT File No: WR2020/002).

On 27 January 2021, the Federal Court varied this determination by consent in [Robe River Kuruma Aboriginal Corporation RNTBC v State of Western Australia \[2021\] FCA 20](#) to recognise the application of s 47B and a right of exclusive possession over the land and waters identified in Recital I(a) and (b) of the determination, being areas which were covered by exploration or prospecting licences at the relevant time. The varied determination also recognises a right of exclusive possession over an area known as Marti Marti Yinta, which was omitted from the *Finlay* determination as a result of an accidental slip or omission on the part of the parties.

The determination of native title as varied took effect from 27 January 2021 and this Register entry contains the details of the varied determination.

REGISTERED NATIVE TITLE BODY CORPORATE:

Robe River Kuruma Aboriginal Corporation RNTBC
Trustee Body Corporate
PO Box 1944
Karratha Western Australia 6714

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: section 225(a) *Native Title Act*

3. The native title in the Determination Area is held by the Robe River Kuruma People.

SCHEDULE SEVEN

Robe River Kuruma People (Paragraph 3)

The Robe River Kuruma People are those Aboriginal persons who:

(a) are the cognatic descendants of one or more of the following apical ancestors:

- (i) Tumbler;
- (ii) Minnie;
- (iii) Rosie;
- (iv) Bobby Marawarru;
- (v) Ruby Woolhouse;
- (vi) Johnson Alec; or
- (vii) Algy Patterson; and

(b) recognise themselves as, and are recognised by a substantial number of the descendants of the above apical ancestors as, a Robe River Kuruma 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 Robe River Kuruma People.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. The determination of native title at Attachment "A" to the orders made by Justice Rangiah in *Finlay on behalf of the Kuruma Marthudunera Peoples v State of Western Australia [2018] FCA 548* on 26 April 2018 be varied as follows:

- (a) Delete the maps in Schedule Two and replace them with the maps contained in Schedule Two of the Varied Determination of Native Title provided for in Attachment A;
- (b) In paragraph 2 of Schedule Three, delete the words "portions of exploration licences E0801060, E0801293, E0801686 and E0802408, prospecting licences P0800666 and P0800669";
- (c) In paragraph 3 of Schedule Three, delete the words "not subject to portion of exploration licence E0800592";
- (d) In Schedule Three add paragraph 4 as follows:

4. Portion of UCL 12 (Marti Marti Yinta), being all those land and waters within a 2 kilometre radius of the following coordinates (to the extent that they fall within the Determination Area and are not subject to portion of mineral lease AML 7000248):

Longitude (East) Latitude (South)
116.535511 21.933067

(e) In Schedule Five, delete the description relating to UCL 12 and replace it as follows:

That part of UCL 12 subject to the sites of Kangaroo Trap Pool, Payering's Cave (Old Sarah's cave) and Marti Marti Yinta to the extent described in Schedule Three;

(f) In Schedule Five, delete from the description relating to UCL 51, the words "portions of exploration licences E0801060, E0801293, E0801686 and E0802408, prospecting licences P0800666 and P0800669"; and

(g) In the chapeau to Schedule Six replace the words "the date of this determination" with the words "26 April 2018".

2. The determination of native title as varied by Order 1 above is in the form of the Varied Determination of Native Title provided for in Attachment A.

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 4 and 5 of this determination.
2. Native title does not exist in those parts of the Determination Area that are identified in Schedule Four and which are generally shown as shaded pink on the maps at Schedule Two.

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

3. The native title in the Determination Area is held by the Robe River Kuruma People.

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

Exclusive rights and interests

4. Subject to paragraphs 6, 7 and 8 the nature and extent of the native title rights and interests in relation to the Exclusive Area is:

- (a) except in relation to flowing and underground water, the right to possession, occupation, use and enjoyment of the Exclusive Area 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

5. Subject to paragraphs 6, 7 and 8 the nature and extent of the native title rights and interests in relation to the Non-Exclusive Area is that they confer the following non-exclusive rights on the Robe River Kuruma People, including the right to conduct activities necessary to give effect to them:

- (a) the right to live, being to enter and remain, camp and erect temporary shelters and other structures for that purpose and to travel over and visit any part of the Non-Exclusive Area;
- (b) the right to hunt, fish, gather and use the traditional resources of the Non-Exclusive Area;
- (c) the right to take and use water;

(d) the right to engage in cultural activities and the transmission of cultural knowledge on the Non-Exclusive Area, including:

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

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

(e) the right to be accompanied on to the Non-Exclusive Area by those people who, though not Robe River Kuruma People and who (for the avoidance of doubt) cannot themselves exercise any native title rights, are;

(i) the non-Robe River Kuruma spouses, parents or children of the Robe River Kuruma People; or

(ii) persons required by or entering in accordance with traditional law and custom for the performance of ceremonies or cultural activities or the exercise by the Robe River Kuruma People of other native title rights on the Non-Exclusive Area.

Qualifications on the native title rights and interests

6. 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 Robe River Kuruma People for personal, domestic, and communal purposes (including social, cultural, religious, spiritual and ceremonial purposes).

7. 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.

8. The native title rights and interests set out in paragraphs 4(b) and 5 do not confer:

(a) possession, occupation, use and enjoyment on the Robe River Kuruma People to the exclusion of all others; or

(b) a right to control the access to, or use of, those parts of the Determination Area or its resources.

Areas to which section 47B of the *Native Title Act* applies

9. Section 47B of the *Native Title Act* applies to disregard any prior extinguishment in relation to the land and waters described in Schedule Five (which areas are generally shown as hatched purple on the maps at Schedule Two).

The nature and extent of any Other Interests

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

Relationship between native title rights and other interests

11. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraphs 4 and 5 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.

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;

“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 at Schedule Two);

“flowing water” 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” 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);

“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);

“Robe River Kuruma People” means the people described in Schedule Seven 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 Six and referred to in paragraph 10;

“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 to the *Mining Act 1904* (WA) (repealed));

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

“use” does not include use by way of trade;

“underground water” means water from and including an underground water source, including water that percolates from the ground; and

“waters” has the same meaning as in the *Native Title Act* and includes flowing and underground water.

13. 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. WCD2018/003 Schedule One - Determination Area, 4 pages - A4, 27/01/2021
2. WCD2018/003 Schedule Two - Maps of the Determination Area, 9 pages - A4, 27/01/2021
3. WCD2018/003 Schedule Three - Exclusive Area, 1 page - A4, 27/01/2021
4. WCD2018/003 Schedule Four - Areas Where Native Title Does Not Exist (Paragraph 2), 4 pages - A4, 27/01/2021
5. WCD2018/003 Schedule Five - Areas to which Section 47B of the Native Title Act Applies (Paragraph 9), 2 pages - A4, 27/01/2021
6. WCD2018/003 Schedule Six - Other Interests (Paragraph 10), 7 pages - A4, 27/01/2021

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.