



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD241/2004; WAD6164/1998
NNTT Number: WCD2013/007

Determination Name: [BP \(Deceased\) & Others v The State of Western Australia](#)

Date(s) of Effect: 23/01/2015

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 03/09/2013

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

REGISTERED NATIVE TITLE BODY CORPORATE:

Tarlka Matuwa Piarku Aboriginal Corporation RNTBC
Trustee Body Corporate
Suite 28
Level 3
82 Beaufort Street
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

ORIGINAL REGISTERED NATIVE TITLE BODY CORPORATE(S):

Tarlka Matuwa Piarku (Aboriginal Corporation)

Note: details of the Corporation name change can be found on the Office of the Registrar of Indigenous Corporations website www.oric.gov.au

COMMON LAW HOLDER(S) OF NATIVE TITLE:

[The persons referred to in Order 2]

1. The native title holders are persons who:

(a) have rights in part or all of the Determination Area through descent (whether from a parent or grandparent from the area or who died and is buried in the area), conception and/or birth within the area, long-term residence within the area, high ritual knowledge within the area or responsibility for sites within the area; and

(b) who are recognised under the traditional laws and customs by the other native title holders as having rights in the Determination Area.

2. At the date of this Determination, this includes the following persons who are recognised under the relevant traditional laws and customs by the other native title holders as having rights in the Determination Area:

(a) the descendants of the union of the following people:

- (i) Milpuntu/Jack Abbott and Puku/Amy Abbott;
- (ii) Warilki Anderson and Tjungtawaw/Skinny Fannie/Bunnie Stevens;
- (iii) Maitungkata/Paddy Anderson and Kiliya/Amy Anderson;
- (iv) Yingkali Manara/Mickey Ingle and Kurutjuli/Miriam;
- (v) Kunamalaya/Jacky Jackman and Wilunya/Wilana Brown/Jackman;
- (vi) Peter Gogo and Lady Gogo;
- (vii) Ngalama/Old Paul Morgan and Wangu;
- (viii) Lenny Morrison and Fannie Jones/Stevens;
- (ix) Anthony Jones and May Jones;
- (x) Charlie Riley and Bidy Riley;
- (xi) Muddy Patch and Marlala Nanji;
- (xii) Kurril/Scotty/Ted/Packhorse Rennie Tullock and Daisy Garland;
- (xiii) Piparntjukurr and Kiri/Keri Muru;
- (xiv) Wuli/Jimmy Wongawol and Lily Munda;
- (xv) Nyarraur/Cutline/Ben Brown and Amy Jackman/Brown;
- (xvi) Nanyi-Nanyi/Mr P/Billy Patch and Rosalie Anderson/Patterson; and
- (xvii) Wakukutjara and Yayangarta.

(b) the descendants of the following people:

- (i) Cyril Bingham;
- (ii) Munga/Margaret Long;
- (iii) Tauwi/Miriam Stewart;
- (iv) Mimpu/Willy Williams;
- (v) Ningara Martin;
- (vi) Mirta-Mirta/Andy Campbell;
- (vii) Kutulan/Hitler Richards;
- (viii) Lorna Redman/Stewart;

- (ix) Nyunyi/Maudie Jackman;
- (x) Ngalyakarnpal/Barbara Anderson;
- (xi) Rosy Grant;
- (xii) Alfie Ashwin;
- (xiii) Gladys Bingham;
- (xiv) Adam Bingham;
- (xv) Christine Bingham;
- (xvi) James Harris;
- (xvii) Winya/Minnie;
- (xviii) Yungkutjuru/Kitty Hill;
- (xix) Tulkiwa/Jeanie Elliott;
- (xx) Molly Long;
- (xxi) Mitjipung/Sandy/Santa Clause;
- (xxii) Kanturangu/Frank Narrier;
- (xxiii) Yarlta/Joe Finch;
- (xxiv) Pangka Wongawol/Riley;
- (xxv) Saxon/Jackson Stevens;
- (xxvi) Yupun;
- (xxvii) Tjiriltjukul;
- (xxviii) Yutunga/Udunga Kianga;
- (xxix) Yinyiyapa/Ruby Jackson/Parker;
- (xxx) Wungkajtu/George Wongajoe;
- (xxxi) Molly Anderson;
- (xxxii) Eddieman/Edmund/Eddie Redman; and
- (xxxiii) Minnie Wongawol.

(c) the following people and the descendants of their unions with the listed deceased partner:

- (i) Jimmy Patch (deceased) and Maxine Warren;
- (ii) Yalyalyi/Jack Stevens (deceased) and Tilly Gogo/Stevens;
- (iii) Tjupi-Tjupi/Peter Stewart (deceased) and Tjilpi/Greta Long; and
- (iv) Yatjuwunga/Peter (deceased) and Katjipil/Daisy Kaddabil.

(d) the following people and their descendants:

- (i) Firestick/Barry Abbott;
- (ii) Nyapala Morgan;

- (iii) Wendy Redman/Abbott;
 - (iv) Nyulkul-Nyulkul/Dusty Stevens;
 - (v) Creamy Allison;
 - (vi) Monty Allison;
 - (vii) Elizabeth Wongyabong; and
 - (viii) Shirley Wongyabong.
- (e) the following people:
- (i) Matuwa/Norman Thompson.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. Any part of the application for a determination of native title in WAD 6164/1998 that overlaps native title determination application WAD 241/2004 be dismissed.
2. In relation to the Determination Area, there be a determination of native title in terms of the Determination as provided for in Attachment A to these orders. 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* as the case may be.
3. On or before 29 July 2014, 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 to be trustee of the native title rights and interests; and
 - (b) including within the nomination the written consent of the body corporate.
4. If a prescribed body corporate is nominated in accordance with order 3, it will hold the native title rights and interests described in order 2 in trust for the common law holders of the native title rights and interests.
5. On or before 26 June 2014 a party to this proceeding may file an interlocutory application seeking leave to extend the time for compliance with order 3.
6. Any interlocutory application filed in accordance with order 5, is to be heard on or before 4 July 2014.
7. 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 Court will make a determination in accordance with section 56(2)(c) of the *Native Title Act*.

ATTACHMENT "A"

DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of native title (s 225)

1. Native title exists in relation to the whole of the Determination Area identified in Part 1 of Schedule 1, subject to the exclusions in Part 2 of Schedule 1 (Determination Area).

Native title holders (s 225(a))

2. The native title is held by the persons described in Schedule 2 (native title holders).

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

3. Subject to Orders 4 to 6, the nature and extent of the native title rights and interests in relation to the Determination Area is the right of possession, occupation, use and enjoyment of that part as against the whole world.

Qualifications on native title rights and interests (s 225(b); s 225(e))

4. The native title rights and interests are exercisable in accordance with and subject to the:

- (a) traditional laws and customs of the native title holders; and
- (b) laws of the State and the Commonwealth, including the common law.

5. For the avoidance of doubt:

- (a) the nature and extent of native title rights and interests in relation to water in any watercourse, wetland or underground water source as is 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; and
- (b) the native title right to take resources in relation to the Determination Area recognised by this determination is a right in native title holders to take resources for the purpose of satisfying their personal, domestic or non-commercial communal needs (including social, cultural, religious, spiritual and ceremonial needs and including by way of sharing and exchange).

6. 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); or
- (b) petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and in the *Petroleum and Geothermal Resources Energy Act 1967* (WA); or
- (c) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA).

The nature and extent of any other interests (s 225(c))

7. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 3 (other interests).

Relationship between native title rights and other interests (s 225(d))

8. Except as otherwise provided for by law, the relationship between the native title rights and interests and the other interests is as follows:

- (a) the Determination does not affect the validity of those other interests;
- (b) to the extent of any inconsistency between the other interests and 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
- (c) otherwise the other interests co-exist with the native title rights and interests and, for the avoidance of doubt, the doing of an activity required or permitted under those interests prevails over the native title rights and interests and their exercise, but does not extinguish them.

Liberty to apply

9. The parties have liberty to apply to establish the precise location of the public works and adjacent land and waters identified in relation to any part or parts of the Determination Area referred to in Schedule 1, Part 2 of this Determination.

Areas to which s 47B of the Native Title Act apply

10. Section 47B of the *Native Title Act* applies to disregard any extinguishment of native title rights and interests by the creation of any prior interest in relation to any part of the Determination Area, including, but not limited to any extinguishment by the creation of the following pastoral leases:

384/97	3365/97	3682/97	395/902
500/97	3375/97	3768/97	395/906
501/97	3403/97	A97/233	395/947
562/97	3404/97	395/406	395/959
566/97	3445/97	395/415	395/1062
567/97	3453/97	395/435	398/578
638/97	3475/97	395/451	3114/445
3252/97	3485/97	395/634	3114/955
3280/97	3495/97	395/706	
3288/97	3623/97	395/774	

Interpretation

11. In the event of an inconsistency between the written description of areas in the Schedules and the areas depicted on the Maps in Schedule 4, the written descriptions shall prevail.

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

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

resources means flora, fauna, water and other natural resources; and

State means the State of Western Australia.

SCHEDULE 1 - DETERMINATION AREA

[See Order 1]

Part 1 - External Boundaries and areas of land and waters where native title exists

Subject to the exclusions in Part 2, the Determination Area comprises all of the area of land and waters within the external boundaries described in Part 1 marked on the maps in Schedule 4 with a blue line:

PORITION 1

All those lands commencing from the northernmost northwestern corner of Unallocated Crown Land being Lot 4 as shown on Deposited Plan 220354; Then southerly, westerly, again southerly, easterly, again southerly and again easterly along boundaries of that lot to the southwestern corner of Unallocated Crown Land being Lot 3 as shown on Deposited Plan 220354; Then easterly, northerly, again easterly, again northerly and westerly along boundaries of that lot to Longitude 122.100000 East, Then due south to Latitude 25.600000 South; Then due west to Longitude 122.000000 East; Then due north to a northern boundary of Unallocated Crown Land being Lot 3 as shown on Deposited Plan 220354; Then westerly, northerly, again westerly, southerly, again westerly, again southerly and again westerly along boundaries of that lot to the northernmost northeastern corner of Unallocated Crown Land being Lot 4 as shown on Deposited Plan 220354; Then westerly along the boundary of

that lot back to the commencement point.

PORTION 2

All those lands and waters commencing from the westernmost northwestern corner of Unallocated Crown Land being Lot 27 as shown on Deposited Plan 220011 and extending easterly, northerly and generally easterly along boundaries of that lot to the westernmost corner of Unallocated Crown Land being Lot 8 as shown on Deposited Plan 220011; Then easterly and southerly along boundaries of that lot to a northeastern corner of Unallocated Crown Land being Lot 27 as shown on Deposited Plan 220011; then southerly, easterly and again southerly along boundaries of that lot to Latitude 26.198661 South; Then westerly to Longitude 121.584723 East, Latitude 26.198662 South; Then due south to Latitude 26.248662 South; Then due east to a eastern boundary of Unallocated Crown Land being Lot 27 as shown on Deposited Plan 220011; Then southerly generally westerly, northerly, westerly, northwesterly and northerly along boundaries of that lot back to the commencement point.

Note: **Geographic Coordinates provided in Decimal Degrees**

All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.

Cadastral boundaries sourced from Landgate's Spatial Cadastral Database dated 1st August 2013

For the avoidance of doubt the application excludes any land and waters already determined by:

Native Title Determination WAD6284/1998 Birriliburu People (Part A) (WC1998/068) as Determined in the Federal Court on the 20th June 2008.

Native Title Determination WAD6164/1998 Wiluna (WC2013/004) as Determined in the Federal Court on the 29th July 2013.

Datum: **Geocentric Datum of Australia 1994 (GDA94)**

Prepared By: **Native Title Spatial Services (Landgate) 13th August 2013**

Use of Coordinates:

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome to the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

Part 2 - Excluded areas

[The areas in paragraphs 1 and 2 below are not included in the Determination Area because they are not included in the originating native title determination application WAD 241/2004.]

1. The areas the subject of the following interests are areas of land and waters where native title has been completely extinguished (either by reason of a previous exclusive possession act (sections 61A and 23B of the

Native Title Act and sections 12I and 12J of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)* or at common law) and are excluded from the Determination Area on that basis:

- (a) Reserve 43017 for the designated purpose of "Repeater Station Site"; and
- (b) Road Number 10473 as declared by publication in the Government Gazette on 24 January 1947 and opened by resolution of the Wiluna Road Board published in the Government Gazette on 14 February 1947.

2. Any other areas of land or waters where a public work as defined in the *Native Title Act* and the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)* (including the land and waters on which a public work is constructed, established or situated as described in section 251D of the *Native Title Act*) 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.

SCHEDULE 2 - NATIVE TITLE HOLDERS

[The persons referred to in Order 2]

1. The native title holders are persons who:

- (a) have rights in part or all of the Determination Area through descent (whether from a parent or grandparent from the area or who died and is buried in the area), conception and/or birth within the area, long-term residence within the area, high ritual knowledge within the area or responsibility for sites within the area; and
- (b) who are recognised under the traditional laws and customs by the other native title holders as having rights in the Determination Area.

2. At the date of this Determination, this includes the following persons who are recognised under the relevant traditional laws and customs by the other native title holders as having rights in the Determination Area:

- (a) the descendants of the union of the following people:
 - (i) Milpuntu/Jack Abbott and Puku/Amy Abbott;
 - (ii) Warilki Anderson and Tjungtawa/Skinny Fannie/Bunnie Stevens;
 - (iii) Maitungkata/Paddy Anderson and Kiliya/Amy Anderson;
 - (iv) Yingkali Manara/Mickey Ingle and Kurutjuli/Miriam;
 - (v) Kunamalaya/Jacky Jackman and Wilunya/Wilana Brown/Jackman;
 - (vi) Peter Gogo and Lady Gogo;
 - (vii) Ngalama/Old Paul Morgan and Wangu;
 - (viii) Lenny Morrison and Fannie Jones/Stevens;
 - (ix) Anthony Jones and May Jones;
 - (x) Charlie Riley and Biddy Riley;
 - (xi) Muddy Patch and Marlala Nanji;
 - (xii) Kurril/Scotty/Ted/Packhorse Rennie Tullock and Daisy Garland;
 - (xiii) Piparntjukurr and Kiri/Keri Muru;
 - (xiv) Wuli/Jimmy Wongawol and Lily Munda;
 - (xv) Nyarraur/Cutline/Ben Brown and Amy Jackman/Brown;

- (xvi) Nanyi-Nanyi/Mr P/Billy Patch and Rosalie Anderson/Patterson; and
- (xvii) Wakukutjara and Yayangarta.
- (b) the descendants of the following people:
 - (i) Cyril Bingham;
 - (ii) Munga/Margaret Long;
 - (iii) Tauwi/Miriam Stewart;
 - (iv) Mimpu/Willy Williams;
 - (v) Ningara Martin;
 - (vi) Mirta-Mirta/Andy Campbell;
 - (vii) Kutulan/Hitler Richards;
 - (viii) Lorna Redman/Stewart;
 - (ix) Nyunyi/Maudie Jackman;
 - (x) Ngalyakarnpal/Barbara Anderson;
 - (xi) Rosy Grant;
 - (xii) Alfie Ashwin;
 - (xiii) Gladys Bingham;
 - (xiv) Adam Bingham;
 - (xv) Christine Bingham;
 - (xvi) James Harris;
 - (xvii) Winya/Minnie;
 - (xviii) Yungkutjuru/Kitty Hill;
 - (xix) Tulkiwa/Jeanie Elliott;
 - (xx) Molly Long;
 - (xxi) Mitjipung/Sandy/Santa Clause;
 - (xxii) Kanturangu/Frank Narrier;
 - (xxiii) Yarlrat/Joe Finch;
 - (xxiv) Pangka Wongawol/Riley;
 - (xxv) Saxon/Jackson Stevens;
 - (xxvi) Yupun;
 - (xxvii) Tjiriltjukul;
 - (xxviii) Yutunga/Udunga Kianga;
 - (xxix) Yinyiyapa/Ruby Jackson/Parker;
 - (xxx) Wungkajtu/George Wongajoe;

- (xxxi) Molly Anderson;
- (xxxii) Eddieman/Edmund/Eddie Redman; and
- (xxxiii) Minnie Wongawol.
- (c) the following people and the descendants of their unions with the listed deceased partner:
 - (i) Jimmy Patch (deceased) and Maxine Warren;
 - (ii) Yalyalyi/Jack Stevens (deceased) and Tilly Gogo/Stevens;
 - (iii) Tjupi-Tjupi/Peter Stewart (deceased) and Tjilpi/Greta Long; and
 - (iv) Yatjuwunga/Peter (deceased) and Katjipil/Daisy Kaddabil.
- (d) the following people and their descendants:
 - (i) Firestick/Barry Abbott;
 - (ii) Nyapala Morgan;
 - (iii) Wendy Redman/Abbott;
 - (iv) Nyulkul-Nyulkul/Dusty Stevens;
 - (v) Creamy Allison;
 - (vi) Monty Allison;
 - (vii) Elizabeth Wongyabong; and
 - (viii) Shirley Wongyabong.
- (e) the following people:
 - (i) Matuwa/Norman Thompson.

SCHEDULE 3 - OTHER INTERESTS

[Other interests referred to in Order 7]

The nature and extent of other interests in relation to the Determination Area are the following as they exist as at the date of this Determination:

Mining tenements

1. The rights and interests of the holders of the following exploration licences:

Exploration licence

E 5301433	E 6902064	E 6902483	E 6903022
E 5301460	E 6902065	E 6902503	E 6903054
E 5301619	E 6902126	E 6902587	
E 5301620	E 6902265	E 6902607	
E 5301630	E 6902375	E 6902657	

2. Subject to paragraph 3 below, any rights and interests that may exist as at the date of this Determination that are held by the holders from time to time of the mining tenements listed above, that permits the holder of those mining tenements to use or use and maintain in reasonable repair (including by servants, agents and contractors) such portions of roads and tracks in the Determination Area:

- (a) as may be permitted in accordance with those rights and interests; and
- (b) as are necessary to have access to the area the subject of the mining tenement for the purpose of exercising the rights granted by that mining tenement.

3. Nothing in paragraph 2 above allows any upgrade, extension, widening, re-alignment or other improvement to the road or track.

Other

4. The following rights and interests:

- (a) rights and interests held under grants from the Crown in right of the State or of the Commonwealth pursuant to statute or in the exercise of its executive power or otherwise conferred by statute;
- (b) rights and 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)* and the *Aboriginal Communities Act 1979 (WA)*;
- (c) the right of a member of the public to use (subject to the laws of the State, in particular the *Aboriginal Affairs Planning Authority Act 1972 (WA)* and Regulations where applicable):
 - (i) the following roads (being roads which are maintained by the Shire of Wiluna as at the date of this Determination, which are generally marked on the maps in Schedule 4 with a broken red line):
 - (A) Sydney Heads Road; and
 - (B) Granite Peak-Lake Violet Road; and
 - (ii) any road in the Determination Area over which, as at the date of this Determination, the public has a right of way according to the common law;
 - (d) 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; and

(e) so far as confirmed pursuant to section 14 of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995 (WA)* as at the date of this determination, any existing public access to and enjoyment of:

- (i) waterways;
- (ii) beds and banks or foreshores of waterways;
- (iii) stock routes; or
- (iv) areas that were public places at the end of 31 December 1993.

SCHEDULE 4 - MAPS OF THE DETERMINATION AREA

[See NNTR attachment 1: "Schedule 4 - Maps of the Determination Area"]

REGISTER ATTACHMENTS:

1. Schedule 4 - Maps of the Determination Area, 2 pages - A3, 03/09/2013

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.