

## Extract from the National Native Title Register

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### Determination Information:

<b>Determination Reference:</b>	Federal Court Number(s): WAD29/2015 NNTT Number: WCD2015/004
<b>Determination Name:</b>	Watson on behalf of the Nyikina Mangala People (Nyikina Mangala #2) v State of Western Australia
<b>Date(s) of Effect:</b>	29/10/2015
<b>Determination Outcome:</b>	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*)

<b>Determination Date:</b>	29/10/2015
<b>Determining Body:</b>	Federal Court of Australia

### ADDITIONAL INFORMATION:

Not Applicable

### REGISTERED NATIVE TITLE BODY CORPORATE:

Walalakoo Aboriginal Corporation RNTBC  
Trustee Body Corporate  
C/- Kimberley Land Council  
PO Box 2145  
Broome Western Australia 6725

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

The native title in the Determination Area is held by the Nyikina Mangala people. The Nyikina Mangala people are the people referred to in Schedule 5.

Nyikina Mangala people (referred to in paragraph 4) are the descendants of:

Marrkal and Minbukar and Kinara and Karlmurl; Ngurkwan, Yayika and Minyang; Polly Wurrayin and Charlie Djawali, Bundangurra and Jambo; Intiri and Nulanula, and Yawingka and Kalyuka; Kitty Kujaja and Charlie Mangurl; Lucy Muninga and Edward Yedawarra and unnamed mother of Fulgentius Fraser; Maggie Nimbanirl; Dimand the mother of Bobby Ah Choo; Bundangurra and Mabel Ah Chee; Jimgula; Niyna Philomena; Kupa and Ngamariny; Gurupirin; Nani; Jinangkal and Nyuntunga; Yana and Nyani, Ngata and Kalkululu; Andy Marunjari and Marjory Spratt and her unnamed mother; Wilidi and Muna and Tutu and Warda; Muwa and Nijajira; Bobby Yingirr and Molly, and Latpij and Wayurl; Nipper Tapaji and his father Larry; Cissy Punturu and Dan Palangga; Tommy Numarid.

### MATTERS DETERMINED: THE COURT ORDERS THAT:

1. There be a determination of native title in the terms of the Determination as provided for in Attachment A.
2. The Walalakoo Aboriginal Corporation ICN 8041 shall hold the determined native title in trust for the native title holders pursuant to s 56(2)(b) of the *Native Title Act 1993* (Cth).

## **ATTACHMENT "A"**

### **DETERMINATION**

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

##### **Existence of native title (s 225 Native Title Act)**

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 those parts of the Determination Area identified in Schedule 3 (**Native Title Area**).
3. Native title does not exist in those parts of the Determination Area identified in Schedule 4.

##### **Native title holders (s 225(a) Native Title Act)**

4. The native title in the Determination Area is held by the Nyikina Mangala people. The Nyikina Mangala people are the people referred to in Schedule 5.

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

##### **Exclusive native title 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 each part of the Determination Area referred to in Schedule 3 (being areas where there has been no extinguishment of native title or areas where any extinguishment must be disregarded) are:

- (a) except in relation to flowing and underground waters, the right to possession, occupation, use and enjoyment of that part of the Determination Area to the exclusion of all others; and
- (b) in relation to flowing and underground waters, the right to use and enjoy the flowing and underground waters, including:
  - (i) the right to hunt on, fish from, take, use, share and exchange the natural resources of the flowing and underground waters for personal, domestic, cultural or non-commercial communal purposes; and
  - (ii) the right to take, use, share and exchange the flowing and underground waters for personal, domestic, cultural or non-commercial communal purposes.

6. The native title rights and interests referred to in paragraphs 5(b) do not confer:

- (a) possession, occupation, use and enjoyment of those parts of the Determination Area on the Native Title Holders to the exclusion of all others; nor
- (b) a right to control the access of others to the land or waters of those parts of the Determination Area.

7. 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); or
- (d) water lawfully captured by the holders of Other Interests,

except the right to take and use ochre to the extent that ochre is not a mineral pursuant to the *Mining Act 1904* (WA).

8. 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, cultural and non-commercial communal purposes (including social, religious, spiritual and ceremonial purposes).

#### **Areas to which s 47A of the Native Title Act applies**

9. 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**

10. 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**

11. The relationship between the native title rights and interests described in paragraph 5 and the other interests referred to in paragraph 10 (**the other rights and interests**) is that:

- (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 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. 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, subject to the operation of s 24JB(2) of the Native Title Act, 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 1 and depicted on the maps at Schedule 2;

**"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"** includes the airspace over, or subsoil under, land, but does not include "waters" 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-commercial communal"** includes social, cultural, religious, spiritual and ceremonial purposes;

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

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

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 maps at Schedule 2, the written description prevails.

## **SCHEDULE ONE**

### **DETERMINATION AREA**

The Determination Area, generally shown as bordered in blue on the map at Schedule 2, comprises all that land and waters bounded by the following description:

#### **PORTION 1**

All that land comprising Lots 1 and 19 as shown on Deposited Plan 180688 and being the land described in certificate of title volume 1388 folio 272.

#### **PORTION 2**

All that land comprising Lot 2 as shown on Deposited Plan 230170 and being the land described in certificate of title volume 1670 folio 643.

All that land comprising Lot 18 as shown on Deposited Plan 230170 and being the land described in certificate of title volume 1659 folio 693.

All that land comprising Lot 4 as shown on Deposited Plan 230170 being subject to General Lease H057490.

#### **PORTION 3**

All that land comprising Lots 5 and 6 as shown on Deposited Plan 230170 being subject to General Lease H057490.

#### **PORTION 4**

All that land comprising Lots 7, 8 and 9 as shown on Deposited Plan 230170 being subject to General Lease H057490.

#### **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 30th April 2015.**

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

**Prepared By: Native Title Spatial Services (Landgate) 16th July 2015**

#### **Use of Co-ordinates:**

Where co-ordinates 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.

## **SCHEDULE TWO**

### **MAP OF THE DETERMINATION AREA**

[See NNTR attachment 1: "Schedule Two - Map of the Determination Area"]

## **SCHEDULE THREE**

### **EXCLUSIVE NATIVE TITLE AREAS**

#### **Areas where native title comprises the rights set out in paragraph 5**

The following land and waters generally shown as orange on the maps at Schedule 2:

**Freehold Areas to which s 47A Native Title Act applies:**

Tenure ID	Location	Interest Holder
CT 1388/272	Lots 1 & 19 on DP 180688	Nyikina Mangala Aboriginal Corporation
CT 1670/643	Lot 2 on DP 230170	Nyikina Mangala Aboriginal Corporation
CT 1659/693	Lot 18 on DP 230170	Nyikina Mangala Aboriginal Corporation

**Lease Areas to which s 47A Native Title Act applies:**

Tenure ID	Description
H057490	A lease in respect of Lots 4, 5, 6, 7, 8 and 9 on DP 230170 for the purpose of grazing held by the Nyikina Mangala Aboriginal Corporation

**SCHEDULE FOUR****AREAS WHERE NATIVE TITLE DOES NOT EXIST**

Native title does not exist in the following land and waters, by reason of extinguishment.

**The areas the subject of the following public works:**

Any 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 s 12J of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) or s 23C(2) of the Native Title Act applies, within the external boundary of the Determination Area including the land and waters defined in s 251D of the Native Title Act.

**SCHEDULE FIVE****DESCRIPTION OF THE NATIVE TITLE HOLDERS**

Nyikina Mangala people (referred to in paragraph 4) are the descendants of:

Marrkal and Minbukar and Kinara and Karlmurl; Ngurkwan, Yayika and Minyang; Polly Wurrayin and Charlie Djawali, Bundangurra and Jambo; Intiri and Nulanula, and Yawingka and Kalyuka; Kitty Kujaja and Charlie Mangurl; Lucy Muninga and Edward Yedawarra and unnamed mother of Fulgentius Fraser; Maggie Nimbanirl; Dim and the mother of Bobby Ah Choo; Bundangurra and Mabel Ah Chee; Jimgula; Niyna Philomena; Kupa and Ngamariny; Gurupirin; Nani; Jinangkal and Nyuntunga; Yana and Nyani, Ngata and Kalkululu; Andy Marunjari and Marjory Spratt and her unnamed mother; Wilidi and Muna and Tutu and Warda; Muwa and Nijajira; Bobby Yingirr and Molly, and Latpij and Wayurl; Nipper Tapaji and his father Larry; Cissy Punturu and Dan Palangga; Tommy Numarid.

**SCHEDULE SIX****AREAS TO WHICH S 47A NATIVE TITLE ACT APPLIES****Freehold Areas to which s 47A Native Title Act applies:**

Tenure ID	Location	Interest Holder
CT 1388/272	Lots 1 & 19 on DP 180688	Nyikina Mangala Aboriginal Corporation
CT 1670/643	Lot 2 on DP 230170	Nyikina Mangala Aboriginal Corporation
CT 1659/693	Lot 18 on DP 230170	Nyikina Mangala Aboriginal Corporation

**Lease Areas to which s 47A Native Title Act applies:**

Tenure ID	Description
H057490	A lease in respect of Lots 4, 5, 6, 7, 8 and 9 on DP 230170 for the purpose of grazing held by the Nyikina Mangala Aboriginal Corporation

**SCHEDULE SEVEN**

## OTHER INTERESTS

### 1. Freehold Interests

Tenure ID	Location	Interest Holder
CT 1388/272	Lots 1 & 19 on DP 180688	Nyikina Mangala Aboriginal Corporation
CT 1670/643	Lot 2 on DP 230170	Nyikina Mangala Aboriginal Corporation
CT 1659/693	Lot 18 on DP 230170	Nyikina Mangala Aboriginal Corporation

### 2. Lease

Tenure ID	Description
H057490	A lease in respect of Lots 4, 5, 6, 7, 8 and 9 on DP 230170 for the purpose of grazing held by the Nyikina Mangala Aboriginal Corporation

### 3. Existing petroleum interests under the *Petroleum and Geothermal Energy Resources Act 1967* (WA)

Tenement ID	Tenement Type	Date of grant
EP 428 R1	Exploration Permit	31/07/2014

### 4. Other Rights and Interests

(a) Rights and interests, including licences and permits, granted by the Crown in right of the Commonwealth or the State pursuant to statute or otherwise in the exercise of its executive power and under any regulations made pursuant to such legislation;

(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) Rights and interests of members of the public arising under the common law including but not limited to:

(i) the public right to fish;

(ii) the public right to navigate; and

(iii) the right of any person to use any road in the Determination Area (subject to the laws of the State) over which, as at the date of this Determination, members of the public have a right of access under common law;

(d) The right to access land by:

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

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

(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 duties where such access would be permitted to private land;

(e)

(i) Without limiting the operation of any other paragraph in the Eighth Schedule, but subject to paragraph (f) (ii), the rights of holders from time to time of existing petroleum interests under the *Petroleum and Geothermal Energy Resources Act 1967* (WA), petroleum pipelines under the *Petroleum Pipelines Act 1969* (WA) and existing mining tenements under the *Mining Act 1978* (WA) including those mentioned at paragraphs 8 and 9 above to use (including by servants, agents and contractors) roads and tracks as are existing at the time of this Determination in the Determination Area to the extent reasonably necessary to have access to the area subject of the petroleum, pipeline and mineral interests for the purposes of exercising the rights granted by those interests;

(ii) Nothing in paragraph (f)(i) above allows any upgrade, extension, widening or other improvement to the road or track other than work done to maintain such road or track in reasonable repair;

(f) So far as confirmed pursuant to s 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) the beds and banks or foreshores of waterways;
- (iii) stock routes; or
- (iv) areas that were public places at the end of 31 December 1993;
- (g) Any other:
  - (i) legal or equitable estate or interest in the land or waters; or
  - (ii) any other right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with:
    - (A) the land or waters; or
    - (B) an estate or interest in the land or waters; or
    - (iii) restriction on the use of the land or waters, whether or not annexed to other land or waters.

**REGISTER ATTACHMENTS:**

1. Schedule 2 - Map of the Determination Area, 1 page - A3, 29/10/2015

*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.*