

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6110/1998
WAD77/2006
WAD141/2010
NNTT Number: WCD2013/002

Determination Name: Martu (Part B), Karnapyrri, and Martu #2

Date(s) of Effect: 16/05/2013

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 16/05/2013

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Western Desert Lands Aboriginal Corporation (Jamukurnu-
Yapalikunu) RNTBC
Trustee Body Corporate
PO Box 331
WEST PERTH Western Australia 6872

COMMON LAW HOLDER(S) OF NATIVE TITLE:

SCHEDULE FOUR - NATIVE TITLE HOLDERS

Part One

1. In respect of the whole of the Determination Area, except for the parts described in Part Two below, the persons referred to in paragraph 2(a) are those people known as the Martu People. The Martu People are those Aboriginal people who hold in common the body of traditional law and culture governing the Determination Area and who identify as Martu and who, in accordance with their traditional laws and customs, identify themselves as being members of one, some or all of the following language groups:

- (a) Manyjilyjarra;
- (b) Kartujarra;
- (c) Kiyajarra;

- (d) Putjarra;
- (e) Nyiyaparli;
- (f) Warnman;
- (g) Ngulipartu;
- (h) Pitjikala;
- (i) Karajarra;
- (j) Jiwality;
- (k) Mangala; and
- (l) Nangajarra.

Part Two

2. In respect of that part of the Determination Area within the following boundary

(Shared Area):

all those land and waters commencing at the northwestern corner of Reserve 5279 being a point on the present boundary of Native Title Application WAD6110/1998 Martu (WC96/78); then extending easterly and southeasterly along the boundary of that native title application to the intersection with the southern boundary of Reserve 5279; then northwesterly to the intersection of the western boundary of Native Title Application WAD6110/1998 Martu (WC96/78) with Latitude 21.758100 South; then northerly along the western boundary of that native title application back to the commencement point, the native title holders are:

- (a) the Martu People as defined above in paragraph 1 of this schedule; and
- (b) the Ngurrara People as defined below, in paragraph 3 of this schedule.

3. The Ngurrara People are those Aboriginal people who, in accordance with their traditional laws and customs:

- (a) identify themselves and their forebears as:
 - (i) Jiwality;
 - (ii) Mangala;
 - (iii) Manyilyjarra;
 - (iv) Walmajarri;
 - (v) Wangkajungja; or
 - (vi) any combination of (i), (ii), (iii), (iv) and (v) above; and
- (b) acknowledge the beliefs, practices and protocols associated with the jilakalputru rainmaking ritual complex.

MATTERS DETERMINED:

THE COURT DECLARES, ORDERS AND DETERMINES THAT:

Existence of Native Title (s 225 Native Title Act)

1. Native title exists in relation to the whole of the Determination Area identified in Schedule One (Determination Area).

Native Title Holders (s 225(a) Native Title Act)

2. The native title is held by:

(a) the persons described in Schedule Four, Part One in relation to the parts of the Determination Area described in Schedule Four, Part One; and

(b) the persons described in Schedule Four, Part Two in relation to the parts of the Determination Area described in Schedule Four, Part Two

(native title holders).

Nature and extent of native title rights and interests (s 225(b) and (e) Native Title Act)

3. Subject to paragraphs 4 to 8 below, the nature and extent of the native title rights and interests are the right of possession, occupation, use and enjoyment to the exclusion of all others, including:

(a) the right to live on the Determination Area;

(b) the right to make decisions about the use and enjoyment of the Determination Area;

(c) the right to hunt and gather and to take water for the purpose of satisfying their personal, domestic, social, cultural, religious, spiritual, ceremonial and communal needs;

(d) the right to control access to, and activities conducted by others on, the land and waters of the Determination Area;

(e) the right to maintain and protect sites and areas which are of significance to the common law holders under their traditional laws and customs; and

(f) the right as against any other Aboriginal group or individual to be acknowledged as the traditional Aboriginal owners of the Determination Area.

Qualifications on native title rights and interests (ss 225(b) and 225(e) Native Title Act)

4. Notwithstanding anything in this Determination:

(a) there are no native title rights and interests in the Determination Area in or in relation to:

(i) minerals as defined in the Mining Act 1904 (WA) (repealed) and the Mining Act 1978 (WA) (Mining Act);

(ii) petroleum as defined in the Petroleum Act 1936 (WA) (repealed) and in the Petroleum and Geothermal Energy Resources Act 1967 (WA); or

(iii) geothermal energy resources and geothermal energy as defined in the Petroleum and Geothermal Energy Resources Act 1967 (WA); and

(b) 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 for the purpose of satisfying the native title holders' personal, domestic, social, cultural, religious, spiritual, ceremonial and communal needs.

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

(a) traditional laws and customs of the native title holders; and

(b) laws of the State and the Commonwealth, including the common law.

6. For the avoidance of doubt, the native title rights and interests recognised in paragraph 3 include the right to use the following traditionally accessed resources:

- (a) ochre;
- (b) soils;
- (c) rocks and stones; and
- (d) flora and fauna,

for the purpose of satisfying the native title holders' personal, domestic, social, cultural, religious, spiritual, ceremonial and communal needs.

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

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

Relationship between native title rights and Other Interests (s 225(d) Native Title Act)

8. The relationship between the native title rights and interests described in paragraph 3 and the Other Interests is that:

- (a) the other rights and interests and the doing of any activity in exercise of the rights conferred by or held under the other rights and interests co-exist with the native title rights and interests except to the extent that the other rights and interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests in which case the native title continues to exist in its 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; and
- (b) for the avoidance of doubt, the existence and exercise of the native title rights and interests does 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.

Areas to which ss 47A and 47B of the Native Title Act apply

9. For the avoidance of doubt, sections 47A and 47B of the Native Title Act respectively apply to the areas described in Schedule Five.

Definitions and interpretation

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

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

'land' and 'waters' respectively have the same meaning as in the Native Title Act 1993;

'mining operations' has the meaning given to that expression in the Mining Act; and

'State' means the State of Western Australia.

SCHEDULE ONE - DETERMINATION AREA

Part One - the Determination Area

The Determination Area comprises all of the land and waters within the following external boundaries, as shown generally on the map as shaded and hatched in blue in respect of WAD 6110/1998 (Area B), yellow in respect of WAD 77/2006 (Area C), and pink in respect of WAD 141/2010 (Area D):

1. In relation to Area B, all those areas comprising:

- (a) all those lands and waters commencing at Latitude 23.790302 South, Longitude 123.001347 East being a point on the present boundary of Native Title Determination WAD6110/1998 Martu (Area A) (WC1996/078); Then easterly and southerly along the boundaries of that native title determination to the intersection with a northern boundary of Native Title Determination WAD6284/1998 Birriliburu People (Part A) (WC1998/068); Then westerly

along the northern boundary of that native title determination to the intersection with Native Title Determination WAD6110/1998 Martu (Area A) (WC1996/078); Then northerly along a eastern boundary of that native title determination back to the commencement point;

(b) all that land at Latitude 21.694740 South, Longitude 122.224657 East being the Telstra site;

(c) all those lands and waters within the external extent of the following mining leases and general purpose leases granted prior to 1 January 1994:

Tenement	Holder
M45/0527	Mount Burgess Mining NL
M45/0528	Mount Burgess Mining NL
M45/0550	Mount Burgess Mining NL
M45/0542	Mount Burgess Mining NL, and Newmont Gold Exploration Pty Ltd
M45/0543	Mount Burgess Mining NL, and Newmont Gold Exploration Pty Ltd
M45/0544	Mount Burgess Mining NL, and Newmont Gold Exploration Pty Ltd
M45/0548	Mount Burgess Mining NL, and Newmont Gold Exploration Pty Ltd
M45/0549	Mount Burgess Mining NL, and Newmont Gold Exploration Pty Ltd
M45/0551	Mount Burgess Mining NL, and Newmont Gold Exploration Pty Ltd
M45/0492	Mount Isa Mines Ltd, and Omega Mines Ltd
M45/0253	Newcrest Mining Ltd
M45/0394	Newcrest Mining Ltd
M45/0399	Newcrest Mining Ltd
M45/0400	Newcrest Mining Ltd
M45/0401	Newcrest Mining Ltd
M45/0532	Newcrest Mining Ltd
M45/0533	Newcrest Mining Ltd
M45/0576	Newcrest Mining Ltd
M45/0580	Newcrest Mining Ltd
M45/0581	Newcrest Mining Ltd
M45/0598	Newcrest Mining Ltd
M45/0364	Newcrest Mining Ltd, and Newcrest Operations Ltd
M45/0247	Newcrest Mining Ltd, and Newcrest Operations Ltd
M45/0248	Newcrest Mining Ltd, and Newcrest Operations Ltd
M45/0006	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0007	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0008	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0009	Newcrest Operations Ltd, and Newmont Pty Ltd

M45/0010	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0011	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0033	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0203	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0204	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0205	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0206	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0207	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0208	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0209	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0210	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0211	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0249	Newcrest Operations Ltd, and Newmont Pty Ltd
M45/0314	Omega Mines Ltd, and Straits Exploration (Aust) Pty Ltd
M45/0315	Omega Mines Ltd, and Straits Exploration (Aust) Pty Ltd
M45/0317	Omega Mines Ltd, and Straits Exploration (Aust) Pty Ltd
M45/0318	Omega Mines Ltd, and Straits Exploration (Aust) Pty Ltd
M45/0264	Rio Tinto Exploration Pty Ltd
M45/0266	Rio Tinto Exploration Pty Ltd
M45/0267	Rio Tinto Exploration Pty Ltd
M45/0420	Rio Tinto Exploration Pty Ltd
M271 S.A.	Birla Nifty Pty Ltd
G45/0001	Newcrest Operations Ltd, and Newmont Pty Ltd
G45/0002	Newcrest Operations Ltd, and Newmont Pty Ltd
G45/0003	Newcrest Operations Ltd, and Newmont Pty Ltd
G45/0004	Newcrest Operations Ltd, and Newmont Pty Ltd

2. For the avoidance of doubt, Area B does not include all that land comprising Reserve 12297.

3. In relation to Area C, all those areas comprising all that land commencing at the intersection of Longitude 122.139976 East with the northern boundary of Reserve 34607 (Karlamilyi National Park) and extending southerly, westerly, again southerly, again westerly and generally northwesterly along boundaries of that reserve to Longitude 121.966223 East; thence easterly back to the commencement point.

4. In relation to Area D, all those areas comprising:

(a) Portion One: all that land and water comprising Lot 320 as shown on Deposited Plan 40438 (formerly Reserve 11474);

(b) Portion Two:

(i) all that land and water comprising Lot 321 as shown on Deposited Plan 40438 (formerly Reserve 13638);

and

(ii) all that land and water comprising Lot 322 as shown on Deposited Plan 40438 (formerly Reserve 11541);
and

(c) Portion Three: all that land and water commencing from the northwestern corner of Reserve 5279 and extending easterly along the northern boundary of that reserve to Longitude 125.671541 East; Then southeasterly to Latitude 21.783416 South, Longitude 125.786128 East; Then northeasterly to the intersection of the northern boundary of Reserve 5279 with Longitude 125.900131 East; Then easterly, southerly, westerly and northerly along boundaries of that reserve 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 February 2013.

Datum: Geocentric Datum of Australia

Prepared by: Native Title Spatial Services (Landgate)

11 April 2013

Part Two - areas excluded from the Determination Area

The following areas are land and waters excluded from the Determination Area on the basis that they are areas where native title has been completely extinguished and were therefore not included in the applications for determinations of native title: any public works as 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 TWO - MAP OF DETERMINATION AREA

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

SCHEDULE THREE - OTHER INTERESTS

[See NNTR attachment 2: "Schedule Three - Other Interests"]

SCHEDULE FOUR - NATIVE TITLE HOLDERS

Part One

1. In respect of the whole of the Determination Area, except for the parts described in Part Two below, the persons referred to in paragraph 2(a) are those people known as the Martu People. The Martu People are those Aboriginal people who hold in common the body of traditional law and culture governing the Determination Area and who identify as Martu and who, in accordance with their traditional laws and customs, identify themselves as being members of one, some or all of the following language groups:

- (a) Manyjilyjarra;
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- (c) Kiyajarra;
- (d) Putijarra;
- (e) Niyaparli;
- (f) Warnman;
- (g) Ngulipartu;
- (h) Pitjikala;

- (i) Kurajarra;
- (j) Jiwality;
- (k) Mangala; and
- (l) Nangajarra.

Part Two

2. In respect of that part of the Determination Area within the following boundary (**Shared Area**):

all those land and waters commencing at the northwestern corner of Reserve 5279 being a point on the present boundary of Native Title Application WAD6110/1998 Martu (WC96/78); then extending easterly and southeasterly along the boundary of that native title application to the intersection with the southern boundary of Reserve 5279; then northwesterly to the intersection of the western boundary of Native Title Application WAD6110/1998 Martu (WC96/78) with Latitude 21.758100 South; then northerly along the western boundary of that native title application back to the commencement point,

the native title holders are:

- (a) the Martu People as defined above in paragraph 1 of this schedule; and
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3. The Ngurrara People are those Aboriginal people who, in accordance with their traditional laws and customs:

- (a) identify themselves and their forebears as:
 - (i) Jiwality;
 - (ii) Mangala;
 - (iii) Manyilyjarra;
 - (iv) Walmajarri;
 - (v) Wangkajungja; or
 - (vi) any combination of (i), (ii), (iii), (iv) and (v) above; and
- (b) acknowledge the beliefs, practices and protocols associated with the jila-kalpurpu rainmaking ritual complex.

SCHEDULE FIVE - AREAS TO WHICH SECTION 47A OR SECTION 47B OF THE NATIVE TITLE ACT APPLY

1. Section 47A of the Native Title Act applies to disregard any extinguishment by the creation of prior interests in relation to the following area within the Determination Area the subject of the following interest:

- (a) Reserve 5279 for the purpose of "Use and Benefit of Aboriginal Inhabitants" which comprises Lot 300 on Deposited Plan 55304.

2. Section 47B of the Native Title Act applies to disregard any extinguishment by the creation of prior interests in relation to those areas within the Determination Area which were not covered by an interest described in section 47B(1)(b)(i) or (ii), or subject to a resumption process as described in section 47B(1)(b)(iii), when WAD 6110/1998, WAD 77/2006 or WAD141/2010 was made, including any extinguishment by the creation of the following interests:

- (a) Reserve 11474 for the purpose of "Water (Rabbit Department)" cancelled on 19 May 2008;
- (b) Reserve 11541 for the purpose of "Water (Water Act 57 Vic No 20)" cancelled on 9 July 2008; and
- (c) Reserve 13638 for the purpose of "Timber" cancelled on 9 July 2008

REGISTER ATTACHMENTS:

1. Schedule Two - Map of Determination Area, 1 page - A3, 16/05/2013
2. Schedule Three - Other Interests, 11 pages - A4, 16/05/2013

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.