



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6090/1998
NNTT Number: WCD2016/006

Determination Name: [Finlay on behalf of the Kuruma Marthudunera People v State of Western Australia \(No 2\)](#)

Date(s) of Effect: 1/11/2016

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: 01/11/2016

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Kuruma Marthudunera 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:

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

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. In relation to the Determination Area, there be a determination of native title in WAD 6090 of 1998 in the terms provided for in Attachment A.
2. The Kuruma Marthudunera Aboriginal Corporation RNTBC ICN 7612 shall hold the determined native title in trust for the native title holders pursuant to para 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

1. Subject to para 2 of this determination, native title exists in the Determination Area in the manner set out in paras 4 and 5 of this determination.
2. Native title does not exist in those parts of the Determination Area that are identified in Sch Four and which are generally shown as shaded pink on the map at Sch Two.

Native title holders: s 225(a)

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: s 225(b) and (e)

Exclusive rights and interests

4. Subject to paras 6, 7 and 8 of this determination, 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 waters, 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 waters, the right to use and enjoy the flowing and underground waters, including:

(i) the right to hunt on, fish from, take and use the traditional resources of the flowing and underground waters; and

(ii) the right to take and use the flowing and underground waters.

Non-exclusive rights and interests

5. Subject to paras 6, 7 and 8 of this determination 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 traditional law and custom for the performance of ceremonies or cultural activities 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) but not for commercial 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 paras 4(b) and 5 of this determination 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 s 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 Sch Five (which areas are generally shown as hatched purple on the map at Sch Two).

The nature and extent of any Other Interests

10. The nature and extent of the Other Interests are described in Sch 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 paras 4 and 5 of this determination 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.

Liberty to Apply

12. The parties have liberty to apply to establish the precise location and boundaries of the public works and adjacent land and waters identified in relation to any part or parts of the Determination Area referred to in cl 2 of Sch Four of this determination.

Definitions and Interpretation

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

Commonwealth means Commonwealth of Australia;

Determination Area means the land and waters described in Sch One and depicted on the map at Sch Two;

Exclusive Area means those lands and waters of the Determination Area described in Sch Three (which areas are generally shown as shaded green on the map at Sch 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 para 2 of this determination as an area where native title does not exist (which areas are generally shown as shaded yellow on the map at Sch Two);

Robe River Kuruma People means the people described in Sch Seven and referred to in para 3 of this determination;

Other Interests means the legal or equitable estates or interests and other rights in relation to the Determination Area described in Sch Six and referred to in para 10 of this determination;

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));

State means State of Western Australia;

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.

14. In the event of any inconsistency between the written description of an area in Sch One, Three, Four, Five or Six and the area as depicted on the map at Sch Two the written description prevails.

SCHEDULE ONE

DETERMINATION AREA

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

All those lands and waters commencing at the intersection of a western boundary of Native Title Determination WAD6017/1996 Ngarluma/Yindjibarndi (WC1999/014) with Latitude 21.667808 South and then extending southerly, southeasterly, generally easterly and again southerly along the boundaries of that native title determination to the intersection with a eastern boundary of Native Title Application WAD6005/2003 Yindjibarndi #1 (WC2003/003); Then generally southwesterly along the boundaries of that native title application

to the intersection with a northwestern boundary of Native Title Determination WAD6208/1998 Eastern Guruma (WC1997/089) at Latitude 22.003438 South, Longitude 117.346277 East; Then generally southwesterly along the boundaries of the native title determination to the intersection with a northern boundary of Native Title Determination WAD6007/2001 Puutu Kunti Kurrama and Pinikura People (WC2001/005) at Latitude 22.274940 South, Longitude 117.021666 East; Then generally southwesterly, generally northwesterly and generally westerly along the boundaries of that native title determination to the intersection with a western boundary of the northernmost northwestern severance of Pastoral Lease N050169 (Mt Stuart); Then northerly along the western boundary of that severance to its northwestern corner; Then northwesterly to Latitude 21.925662 South, Longitude 116.526127 East and then northeasterly back to the commencement point.

Note: Geographic Coordinates provided in Decimal Degrees.

Cadastral boundaries sourced from Landgate's Spatial Cadastral Database dated 1 June 2016.

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

Native Title Determination WAD6017/1996 Ngarluma/Yindjibarndi (WC1999/014) as Determined in the Federal Court on the 2nd May 2005.

Native Title Determination WAD6208/1998 Eastern Guruma (WC1997/089) as Determined in the Federal Court on the 1st March 2007.

Native Title Determination Application WAD6005/2003 Yindjibarndi #1 (WC2003/003) as Registered in the Federal Court on the 8th August 2003.

Native Title Determination Application WAD6007/2001 Puutu Kunti Kurrama and Pinikura (WC2001/005) as Registered in the Federal Court on the 29th November 2001.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Prepared By: Native Title Spatial Services (Landgate) 17 June 2016

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.

SCHEDULE TWO

MAP OF THE DETERMINATION AREA

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

SCHEDULE THREE

EXCLUSIVE AREA

Areas where native title comprises the rights set out in para 4 of the determination

Native title comprises the rights and interests set out in para 4 of the determination in relation to all those lands and waters within a two kilometre radius of the following sites to the extent that they are within the Determination Area (which areas are generally shown as shaded green on the map at Sch Two).

Location	Longitude (East)	Latitude (South)
Kunarika	116.961611	22.311870
Marrana	117.164826	22.013601
Marti Marti Yinta	116.535511	21.933067
Puthulanya	116.911832	21.972388
Silvergrass Pool	116.942242	22.140679

SCHEDULE FOUR

AREAS WHERE NATIVE TITLE DOES NOT EXIST (PARA 2)

Native title does not exist in relation to land and waters the subject of the following interests within the Determination Area which, with the exception of public works (as described in cl 2 of this Schedule), are generally shown as shaded in pink on the map at Sch Two:

1. Reserves

The following reserve:

Reserve No.	Current / Last Purpose
38991	Water Supply

2. Public Works

Any other public works as that expression is defined in the *Native Title Act* and the *Titles Validation Act* (including the land and waters on which a public work is constructed, established or situated as described in s 251D of the *Native Title Act*) and to which s 12J of the *Titles Validation Act* or subs 23C(2) of the *Native Title Act* applies.

SCHEDULE FIVE

AREAS TO WHICH S 47B OF THE NATIVE TITLE ACT APPLIES (PARA 9)

Section 47B of the *Native Title Act* applies with the effect that any extinguishment over the following areas by the creation of a prior interest (to the extent that the areas were not covered by an interest described in para 47B(1)(b)(i) or (ii) or subject to a resumption process as described in para 47B(1)(c) of the *Native Title Act* when the relevant native title determination application was made) is to be disregarded:

Location	Description / Location
Kunarika	Site as described in Sch Three
Marrana	Site as described in Sch Three
Marti Marti Yinta	Site as described in Sch Three
Puthulanya	Site as described in Sch Three
Silvergrass Pool	Site as described in Sch Three
Portion of UCL 1, UCL 3 & UCL 4	That portion of UCL 1, UCL 3 and adjoining portion of UCL 4 formerly subject to a portion of Resumption 1 (a resumption under s 18 of the <i>Public Works Act 1902</i> (WA) gazetted on 12 March 1982)

SCHEDULE SIX

OTHER INTERESTS (PARA 10)

The nature and extent of the Other Interests in relation to the Determination Area as at the date of this determination are:

1. Pastoral Leases

The following pastoral leases and the rights and interests of the holders from time to time of those pastoral leases:

Lease No.	Description
PL N050169 (formerly 3114/1267)	Mount Stuart
PL N049492 (formerly 3114/1013)	Yalleen

2. Mining Tenements

(a) The following mining tenements granted under the *Mining Act 1904* (WA) (repealed) and/or the *Mining Act 1978* (WA) and the rights and interests of the holders from time to time of those mining tenements:

(i) Mining Leases

Tenement ID

M 4701464

(ii) Exploration Licences

Tenement ID	Tenement ID	Tenement ID
E 4700054	E 4701285	E 4702333
E 4700468	E 4701286	E 4702465
E 4700469	E 4701287	E 4702729
E 4700470	E 4701405	E 4702769
E 4700473	E 4701406	E 4702770
E 4700892	E 4701407	E 4702771
E 4701169	E 4701448	E 4702774
E 4701170	E 4701449	E 4702837
E 4701171	E 4701503	E 4702839
E 4701257	E 4701504	E 4702855
E 4701258	E 4701505	E 4702879
E 4701262	E 4701603	E 4702918
E 4701263	E 4701779	E 4702920
E 4701264	E 4701780	E 4702921
E 4701265	E 4701809	E 4703162
E 4701266	E 4701832	E 4703163
E 4701267	E 4701944	E 4703192

E 4701281	E 4701988	E 4703207
E 4701282	E 4702061	E 4703211
E 4701284	E 4702285	E 4703401

(iii) Prospecting Licences

Tenement ID	Tenement ID	Tenement ID
P 4701553	P4701644	P4701655
P 4701554	P4701646	P4701656
P 4701642	P4701653	P4701657
P 4701643	P4701654	P4701658

(b) The agreement as amended and ratified by the *Iron Ore (Hamersley Range) Agreement Act 1963 (WA)* and rights and interests comprised in, conferred under or in accordance with, or pursuant to that agreement, including the following mining tenements:

Tenement ID	Tenement Type
AML7000004	Mineral Lease (State Agreement)
AM 7000272	Mining Lease (State Agreement)

(c) The agreement as amended and ratified by the *Iron Ore (Cleveland Cliffs) Agreement Act 1964 (WA)* and rights and interests comprised in, conferred under or in accordance with, or pursuant to that agreement, including the following mining tenements:

Tenement ID	Tenement Type
AML7000248	Mineral Lease (State Agreement)

3. Petroleum interests

The following petroleum interest granted under the *Petroleum Pipelines Act 1969 (WA)* and the rights and interests of the holders from time to time of that interest:

Interest ID	Interest Type
PL 105	Pipeline Licence (Fortescue River Gas Pipeline)

4. Access to Mining and Petroleum Areas

(a) Without limiting the operation of any other clause in Sch Six, but subject to cl (4)(b) below, any rights of the holders from time to time of a mining tenement or petroleum interest, including those listed in cl 2 and cl 3 of this Sch Six, to use (including by servants, agents and contractors) such portions of roads and tracks in the Determination Area (existing as at the date of this determination) as necessary to have access to the area the subject of the mining tenement or petroleum interest for the purposes of exercising the rights granted by that tenement or interest.

(b) Nothing in cl (4)(a) above allows any upgrade, extension, widening or other improvement to the road or track other than work done to maintain it in reasonable repair and in order to leave it in substantially the same condition as it was prior to its use pursuant to cl (4)(a).

(c) Nothing in Sch Six will limit the rights of the holders from time to time of mining tenements or petroleum interests, including those referred to in cl 2 and cl 3 of this Sch Six, including, without limitation, any right to exclude members of the public from entering onto the land and waters the subject of any mining tenement or petroleum interest.

5. Indigenous Land Use Agreements

The *RTIO and Kuruma Marthudunera People Indigenous Land Use Agreement* (Area Agreement) dated 21 August 2012, and registered on the Register of Indigenous Land Use Agreements on 11 February 2013 (Tribunal No. WI2012/006), and the rights and interests comprised in, conferred under, or in accordance with, or pursuant to, that Indigenous Land Use Agreement.

6. Other

The following rights and interests in the Determination Area:

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

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

(c) rights and interests of members of the public arising under 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 and enjoy any roads 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 the common law;

(d) the right to access the Determination Area by:

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

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

(e) so far as confirmed pursuant to subs 212(2) of the *Native Title Act* and s 14 of the *Titles Validation Act* 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) coastal waters;
- (iv) beaches;
- (v) stock-routes; and
- (vi) areas that were public places at the end of 31 December 1993; and

(f) any other:

- (i) legal or equitable estate or interest in the land or waters of the Determination Area; or
- (ii) 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 of the Determination Area; or

(B) an estate or interest in the land or waters of the Determination Area; or

(iii) restriction on the use of the land or waters of the Determination Area, whether or not annexed to other land or waters.

SCHEDULE SEVEN

ROBE RIVER KUR[U]MA PEOPLE (PARA 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.

REGISTER ATTACHMENTS:

1. Schedule Two - Map of the Determination Area, 1 page - A3, 01/11/2016

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.