



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6280/1998; WAD196/2013; WAD90/2020
NNTT Number: WCD2018/008

Determination Name: [Karlka Nyiyaparli Aboriginal Corporation RNTBC v State of Western Australia](#)

Date(s) of Effect: 26/09/2018, 19/01/2021

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: 26/09/2018

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 26 September 2018, the Federal Court of Australia made a determination of native title by consent in [Stock on behalf of the Nyiyaparli People v State of Western Australia \(No 5\) \[2018\] FCA 1453](#) (Federal Court File No: WAD6280/1998 and WAD196/2013, NNTT File No: WCD2018/008).

Among other things, the Federal Court ordered that:

1. In relation to the Determination Area, there be a determination of native title in WAD 6280 of 1998 and WAD 196 of 2013 in terms of the Determination provided for in Attachment A.
2. Karlka Nyiyaparli Aboriginal Corporation ICN 3649 shall hold the determined native title in trust for the native title holders pursuant to s 56(2)(b) of the *Native Title Act*.

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 14 April 2020, Karlka Nyiyaparli Aboriginal Corporation RNTBC filed an application to vary this determination in the Federal Court (Federal Court File No: WAD90/2020; NNTT File No: WR2020/001).

On 19 January 2021, the Federal Court varied this determination by consent in [Karlka Nyiyaparli Aboriginal Corporation RNTBC v State of Western Australia \[2021\] FCA 9](#) to recognise the application of s 47B and a right of exclusive possession over the land and waters identified in Recital F of the determination, being areas which were covered by exploration or prospecting licences at the relevant time.

The determination of native title as varied took effect from 19 January 2021 and this Register entry contains the details of the varied determination.

REGISTERED NATIVE TITLE BODY CORPORATE:

Karlka Nyiyaparli Aboriginal Corporation RNTBC
Trustee Body Corporate
PO Box 2161
South Hedland Western Australia 6722

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 (s 225(a) Native Title Act)

3. The native title in the Determination Area is held by the Nyiyaparli People. The Nyiyaparli People are the people described in Schedule Seven.

SCHEDULE SEVEN

NATIVE TITLE HOLDERS (PARAGRAPH 3)

The Nyiyaparli People are those persons who:

(a) are descended from, in accordance with the traditional laws acknowledged and the traditional customs observed by the Nyiyaparli People, one or more of the following persons:

- (i) Mintaramunya;
- (ii) Pitjirrpangu;
- (iii) Yirkanpangu (Jesse);
- (iv) Kitjiempa (Molly);
- (v) Mapa (Rosie);
- (vi) Iringkulayi (Billy Martin Moses);
- (vii) Parnkahanha (Toby Cadigan);
- (viii) Wirlpangunha (Rabbity-Bung);
- (ix) Wuruwurunha (Tommy Malana);
- (x) Ijyangu (Daisy);
- (xi) Sibling set of Ivy, Solomon and Mildred; and
- (xii) Sibling set of Maynha and Itika,

or, though not descended from those persons, have been incorporated into the Nyiyaparli group in accordance with Nyiyaparli traditional laws and customs,

and

(b) identify themselves as Nyiyaparli under traditional law and custom and are so identified by other Nyiyaparli People as Nyiyaparli;

and

(c) have 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 Nyiyaparli People.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. The determination of native title at Attachment A to the orders made by Justice Barker in *Stock on behalf of the Nyiyaparli People v State of Western Australia (No 5)* [2018] FCA 1453 on 26 September 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 clause 2(a) of Schedule Three, delete all the words from and including 'Excluding' to the end of clause 2(a);
 - (c) in clause 2(b) of Schedule Three, delete all the words from and including 'Excluding' to the end of clause 2(b);
 - (d) in clause 2(c) of Schedule Three, delete all the words from and including 'Excluding' to the end of clause 2(c);
 - (e) in clause 2(d) of Schedule Three, delete all the words in sub-paragraph (i) and renumber sub-paragraph (ii) to sub-paragraph (i); and
 - (f) in clause 2(e) of Schedule Three, delete all the words from and including 'Excluding' to the end of clause 2(e); and
 - (g) in the last sentence of the chapeau to Schedule Six replace the words 'the date of the determination' with the words '26 September 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 (s 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 the subject of the interests identified in Schedule Four, which are shown as generally shaded pink on the maps in Schedule Two.

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

3. The native title in the Determination Area is held by the Nyiyaparli People. The Nyiyaparli People are the people described in Schedule Seven.

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

Exclusive rights and interests

4. Subject to paragraphs 6, 7, 8, and 11, 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 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, 8, and 11, the nature and extent of the native title rights and interests in relation to the Non-Exclusive Area are that they confer the following non-exclusive rights on the Nyiyaparli People, including the right to conduct activities necessary to give effect to them:
 - (a) the right to live, being to enter and remain on the land, to camp and erect shelters and other structures for that purpose, and travel over and visit any part of the land and waters of the Non-Exclusive Area;

- (b) the right to hunt, fish, gather, take and use the traditional resources of the Non-Exclusive Area;
- (c) the right to take and use water in the Non-Exclusive Area;
- (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 maintaining, caring for, and protecting those places by carrying out 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 the Non-Exclusive Area by those people who, though not native title holders and who (for the avoidance of doubt) cannot themselves exercise any native title right in the Determination Area, are:
 - (i) spouses, parents or children of the native title holders; or
 - (ii) people required by or entering in connection with 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 Nyiyaparli 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)*; or
- (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 captured by the holders of the Other Interests pursuant to those 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 Nyiyaparli People to the exclusion of all others; or
- (b) a right to control the access to, or use of, the land and waters of the Determination Area or its resources.

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

9. Section 47A and s 47B of the Native Title Act apply to disregard prior extinguishment in relation to the areas described in clauses 1 and 2, respectively, of Schedule Five.

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

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

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

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.

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 clause 5 of Schedule 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 Schedule One and depicted on the maps in 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 in 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);

native title holders means the Niyaparli People as described in Schedule Seven and referred to in paragraph 3;

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. These lands and waters are generally shown as shaded yellow on the maps at Schedule Two;

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, wood, 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;

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

use includes by way of share and exchange; and

waters has the same meaning as in the Native Title Act.

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

REGISTER ATTACHMENTS:

1. WCD2018/008 Schedule One - Determination Area, 6 pages - A4, 19/01/2021
2. WCD2018/008 Schedule Two - Maps of the Determination Area, 5 pages - A4, 19/01/2021
3. WCD2018/008 Schedule Three - Exclusive Area (Paragraph 4), 47 pages - A4, 19/01/2021

4. WCD2018/008 Schedule Four - Areas Where Native Title Does Not Exist (Paragraph 2), 8 pages - A4, 19/01/2021

5. WCD2018/008 Schedule Five - Areas to Which Sections 47A and 47B of the Native Title Act Apply (Paragraph 9), 3 pages - A4, 19/01/2021

6. WCD2018/008 Schedule Six - Other Interests (Paragraph 10), 22 pages - A4, 19/01/2021

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.