

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD293/2005; WAD720/2015
NNTT Number: WCD2016/004

Determination Name: Taylor v State of Western Australia

Date(s) of Effect: 22/09/2017

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 12/10/2016

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Order 1 of the determination provides that '... The Determination is to take effect immediately upon the making of a determination under s 56(1) or s 57(2) of the Native Title Act as the case may be.'

On 22 September 2017 the Federal Court determined that the Kulyakartu (Aboriginal Corporation) be the prescribed body corporate.

REGISTERED NATIVE TITLE BODY CORPORATE:

Kulyakartu (Aboriginal Corporation) RNTBC
Trustee Body Corporate
76 Wittenoom Street
East Perth Western Australia 6004

COMMON LAW HOLDER(S) OF NATIVE TITLE:

2. The native title in the determination area is held by the persons described in Sch 3 (native title holders).

The persons referred to in para 2 of the Determination are:

(1) Those persons who, in accordance with traditional laws and customs, have native title rights and interests in part or all of the determination area.

(2) At the date of this Determination, the persons referred to in (1) include the descendants of the following people:

- (a) Japurtujukurr;
- (b) Walparti;
- (c) Kulurnanyuta / Tommy Gardiner;
- (d) KupaKupa;
- (e) Junamuya / Jimmy Gardiner;
- (f) Jutuparni;
- (g) Ngarti warta; and
- (h) Mukuly Mukuly.

**MATTERS DETERMINED:
THE COURT ORDERS THAT:**

1. Part A of WAD293/2005 and Part A of WAD720/2015 be determined together pursuant to s 67(1) of the *Native Title Act* and there be a determination of native title in terms of the Determination as provided for in Attachment "A". The Determination is to take effect immediately upon the making of a determination under s 56 (1) or s 57(2) of the *Native Title Act* as the case may be.

2. Within 12 months of the date upon which these orders are made, 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 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.

3. If a prescribed body corporate is nominated in accordance with order 2, it will hold the native title rights and interests described in order 1 in trust for the common law holders of the native title rights and interests.

4. In the event that there is no nomination within the time specified in order 2, or such later time as the Court may order, the matter is to be listed for further directions.

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.

Native title holders (s 225(a))

2. The native title in the determination area is held by the persons described in Sch 3 (*native title holders*).

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

3. Subject to paras 4, 5 and 6, the nature and extent of the native title rights and interests in relation to the determination area is the right to possession, occupation, use and enjoyment of the determination area to the exclusion of all others.

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

4. 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.

5. For the avoidance of doubt, the nature and extent of native title rights and interests in relation to water in any watercourse, wetland or underground water source as 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.

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

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

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

7. For the avoidance of doubt, s 47B of the *Native Title Act* applies to the whole of the determination area.

The nature and extent of any other interests

8. The nature and extent of other rights and interests in relation to the determination area are those set out in Sch 4 (*other interests*).

Relationship between native title rights and other interests

9. The relationship between the native title rights and interests described in para 3 and the other interests is as follows:

(a) 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

(b) otherwise the other interests co-exist with the native title rights and interests. To avoid doubt, the doing of an activity required or permitted under those other interests prevails over the native title rights and interests and their exercise, but does not extinguish them.

Definitions and interpretation

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

determination area means the land and waters described in Sch 1 and depicted on the map at Sch 2. In the event of any inconsistency between the written description of an area in Sch 1 and the area as depicted on the map in Sch 2, the written description prevails.

land and **waters** respectively have the same meanings as in the *Native Title Act* to the extent that they refer to an area of land or waters;

Native Title Act means the *Native Title Act 1993* (Cth); and

State means the State of Western Australia.

SCHEDULE 1

DETERMINATION AREA PART A

The determination area Part A, generally shown as bordered in pink and dark blue on the map at Sch 2, comprises all those land and waters commencing at Latitude 20.998619 South, Longitude 123.343914 East being a point on the present boundary of Native Title Determination WAD6281/1998 Nyangumarta People (Part A) (WC1998/065); Then southerly and northwesterly along the boundaries of that native title determination to the intersection with a northeastern boundary of Native Title Determination WAD6110/1998 Martu (Area A) (WC1996/078) at Longitude 122.841718 East; Then southeasterly, southerly and easterly along the boundaries of that native title determination to the intersection with a southwestern corner of Native Title Determination WAD6077/1998 Ngurrara (Area A) (WC1996/032) at Latitude 21.498617 South, Longitude 123.926319 East; Then northwesterly along the boundary of that native title determination to its westernmost southwestern corner at Latitude 20.998619 South, Longitude 123.501315 East; Then west back to the commencement point.

EXCLUSIONS

Those parts of Petroleum Exploration Permit EP 448 (as defined by Department of Mines and Petroleum as at 4th December 2015) overlapping the lands and waters described above.

Note: Geographic Coordinates provided in Decimal Degrees.

Petroleum Tenements sourced from Department of Mines and Petroleum as at 4th December 2015.

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

Native Title Determination Application WAD6077/1998 Ngurrara (Area A) (WC1996/032) as Determined in the Federal Court on the 9th November 2007.

Native Title Determination Application WAD6110/1998 Martu (Area A) (WC1996/078) as Determined in the Federal Court on the 27th September 2002.

Native Title Determination Application WAD6281/1998 Nyangumarta People (Part A) (WC1998/065) as Determined in the Federal Court on the 11th June 2009.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Prepared By: Native Title Spatial Services (Landgate) 15th September 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 2

MAP OF DETERMINATION AREA - PART A

[See NNTR attachment 1: "Schedule 2 - Map of Determination Area - Part A"]

SCHEDULE 3

DESCRIPTION OF THE NATIVE TITLE HOLDERS

The persons referred to in para 2 of the Determination are:

- (1) Those persons who, in accordance with traditional laws and customs, have native title rights and interests in part or all of the determination area.
- (2) At the date of this Determination, the persons referred to in (1) include the descendants of the following people:
 - (a) Japurtujukurr;
 - (b) Walparti;
 - (c) Kulurnanyuta / Tommy Gardiner;
 - (d) Kupa Kupa;
 - (e) Junamuya / Jimmy Gardiner;
 - (f) Jutuparni;
 - (g) Ngarti warta; and
 - (h) Mukuly Mukuly.

SCHEDULE 4

OTHER INTERESTS

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:

1. Other Rights and Interests

- (a) Rights and interests held under grants from the Crown in right of the Commonwealth or the State pursuant to statute or otherwise in the exercise of its executive power or otherwise conferred by statute.
- (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) The right to access the determination area by an employee or agent or instrumentality of:
 - (i) the State;
 - (ii) the Commonwealth; or
 - (iii) 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.

- (d) 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; or
 - (iii) areas that were public places at the end of 31 December 1993.

REGISTER ATTACHMENTS:

1. Schedule 2 - Map of Determination Area - Part A, 1 page - A4, 12/10/2016

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.