

## FEDERAL COURT OF AUSTRALIA

### **Watson on behalf of the Nyikina Mangala People (Nyikina Mangala #2) v State of Western Australia [2015] FCA 1132**

Citation: Watson on behalf of the Nyikina Mangala People (Nyikina Mangala #2) v State of Western Australia [2015] FCA 1132

Parties: **JOHN WATSON, ANTHONY WATSON, CYRIL ARCHER, ROSITA SHAW, RONA CHARLES, ANNIE MILGIN, DAVID BANJO, HARRY WATSON & ROBERT WATSON v STATE OF WESTERN AUSTRALIA**

File number: WAD 29 of 2015

Judge: **BARKER J**

Date of judgment: 29 October 2015

Catchwords: **NATIVE TITLE** – consent determination of native title – agreement of parties – s 87 *Native Title Act 1993* (Cth)

Legislation cited: *Native Title Act 1993* (Cth) s 13(1)(a), s 47A, s 56(2)(b), s 68, s 87, s 87(1), s 87(1)(a), s 87(1)(b), s 87(1)(c), s 94A, s 225, s 251B  
*Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth)

Cases cited: *Lander v State of South Australia* [2012] FCA 427  
*Ward v State of Western Australia* [2006] FCA 1848  
*Watson on behalf of the Nyikina Mangala People v State of Western Australia (No 6)* [2014] FCA 545

Date of hearing: 29 October 2015

Place: Perth

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 24

Counsel for the Applicant: Ms J Arman

Solicitor for the Applicant: Kimberley Land Council

Counsel for the State of Western Australia: Ms C Taggart with Ms S Power

Solicitor for the State of Western Australia: State Solicitor's Office

**IN THE FEDERAL COURT OF AUSTRALIA  
WESTERN AUSTRALIA DISTRICT REGISTRY  
GENERAL DIVISION**

**WAD 29 of 2015**

**BETWEEN:**                    **JOHN WATSON, ANTHONY WATSON, CYRIL ARCHER,  
ROSITA SHAW, RONA CHARLES, ANNIE MILGIN, DAVID  
BANJO, HARRY WATSON & ROBERT WATSON**  
**Applicant**

**AND:**                         **STATE OF WESTERN AUSTRALIA**  
**Respondent**

**JUDGE:**                    **BARKER J**

**DATE OF ORDER:**    **29 OCTOBER 2015**

**WHERE MADE:**         **PERTH**

**THE COURT NOTES THAT:**

- A. The Applicant in proceeding WAD 29 of 2015 has made a native title determination application.
- B. Pursuant to ss 87(1)(a)(i) and 87(2) of the *Native Title Act 1993* (Cth) the parties have filed a Minute of Consent Determination which reflects the terms of an agreement reached by the parties in relation to these proceedings.
- C. The terms of the agreement involve the making of consent orders for a determination of native title in relation to the land and waters the subject of this proceeding pursuant to ss 87(1) and 94A of the *Native Title Act 1993* (Cth).
- D. The persons who are the Applicant have indicated that they intend to have the native title rights and interests held in trust and have nominated the Walalakoo Aboriginal Corporation ICN 8041 as the prescribed body corporate to be the trustee of the native title rights and interests.
- E. The Walalakoo Aboriginal Corporation ICN 8041 has consented in writing to hold the rights and interests comprising the native title in trust for the common law holders and to perform the functions given to it as a registered native title body corporate under the *Native Title Act 1993* (Cth).

**BEING SATISFIED** that a determination of native title in the terms sought by the parties is within the power of the Court, and it appearing to the Court appropriate to do so, pursuant to ss 87 and 94A of the *Native Title Act 1993* (Cth) and by the consent of the parties:

**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).
3. There be no order as to costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

**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 30<sup>th</sup> April 2015.**

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

**Prepared By:** Native Title Spatial Services (Landgate) 16<sup>th</sup> 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 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:**

<b>Tenure ID</b>	<b>Location</b>	<b>Interest Holder</b>
CT1388/272	Lots 1 & 19 on DP 180688	Nyikina Mangala Aboriginal Corporation
CT1670/643	Lot 2 on DP 230170	Nyikina Mangala Aboriginal Corporation
CT1659/693	Lot 18 on DP 230170	Nyikina Mangala Aboriginal Corporation

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

<b>Tenure ID</b>	<b>Description</b>
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; Niyana 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:**

<b>Tenure ID</b>	<b>Location</b>	<b>Interest Holder</b>
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:**

<b>Tenure ID</b>	<b>Description</b>
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**

<b>Tenure ID</b>	<b>Location</b>	<b>Interest Holder</b>
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**

<b>Tenure ID</b>	<b>Description</b>
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)***

<b>Tenement ID</b>	<b>Tenement Type</b>	<b>Date of grant</b>
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.

**IN THE FEDERAL COURT OF AUSTRALIA  
WESTERN AUSTRALIA DISTRICT REGISTRY  
GENERAL DIVISION**

**WAD 29 of 2015**

**BETWEEN:**                 **JOHN WATSON, ANTHONY WATSON, CYRIL ARCHER,  
ROSITA SHAW, RONA CHARLES, ANNIE MILGIN, DAVID  
BANJO, HARRY WATSON & ROBERT WATSON**  
**Applicant**

**AND:**                       **STATE OF WESTERN AUSTRALIA**  
**Respondent**

**JUDGE:**                   **BARKER J**

**DATE:**                    **29 OCTOBER 2015**

**PLACE:**                  **PERTH**

**REASONS FOR JUDGMENT**

**INTRODUCTION**

1                 This native title determination application, known as the Nyikina Mangala #2 *application*, is before the Court for determination pursuant to s 225 of the *Native Title Act 1993* (Cth) (**Native Title Act**). The application covers an area of approximately 12.4 square kilometres of land and waters in the vicinity of Udialla, south of Derby.

2                 The application was filed in the Federal Court of Australia on 2 February 2015 over areas of land and waters not included in the consent determination of proceeding WAD 6099 of 1998 on 29 May 2014: *Watson on behalf of the Nyikina Mangala People v State of Western Australia (No 6)* [2014] FCA 545. The application area covers ten lots of land which comprise three freeholds and one lease all held by the Nyikina Mangala Aboriginal Corporation. These areas were excluded in the determination of WAD 6099 of 1998 on the basis that s 47A of the Native Title Act may apply to the area to the effect that any prior extinguishment of any native title rights and interests could be disregarded allowing for a determination of exclusive native title rights and interests.

3                 The application area wholly overlaps the remaining non-determined portion of WAD 6099 of 1998. Orders discontinuing WAD 6099 of 1998 are anticipated to be sought by the parties at the time the determination of Nyikina Mangala #2 application is made.

### Agreement to determination of native title

4 There are only two parties to the application, the Applicant and the *State* of Western Australia. The parties have reached agreement as to the terms of the determination of native title pursuant to ss 87 and 94A of the Native Title Act in relation to the land and waters claimed in the application.

5 In support of the agreement reached, the parties have filed the following documents:

- (a) a Minute of Consent Orders filed by the State on 30 September 2015 (*Orders*);
- (b) a Minute of Consent Determination filed by the State on 29 September 2015 (*Minute*);
- (c) Joint submissions of the First Respondent and Applicant in support of the minute of proposed consent determination of native title filed by the State on 30 September 2015 (*Joint Submissions*); and
- (d) an affidavit of Jemma Maree Arman affirmed 7 September 2015 confirming the authorisation of the Nyikina Mangala people to the making of the application and consent to the proposed determination filed by the Applicant on 7 September 2015.

6 Additionally, the Applicant has filed the following documents in support of the nomination of *Walalakoo Aboriginal Corporation* ICN 8041 as the prescribed body corporate to hold the determined native title in trust for the native title holders pursuant to s 56(2)(b) of the Native Title Act:

- (a) a Nomination of Prescribed Body Corporate filed on 29 September 2015;
- (b) a Consent to nomination as Prescribed Body Corporate filed on 29 September 2015;
- (c) an affidavit of Jemma Maree Arman affirmed 4 September 2015 in support of the nomination of Prescribed Body Corporate filed on 7 September 2015; and
- (d) Submissions of the Applicant in support of Walalakoo Aboriginal Corporation as the Prescribed Body Corporate filed 7 September 2015.

7 The parties agree that the native title rights and interests to be determined are held by the Nyikina Mangala people who are the descendants of the following named apical ancestors:

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.

8 The external boundary of the area to be determined is the land and waters of the ten lots claimed in the application as described in Schedule 1 to the Minute and illustrated on the map in Schedule 2 to the Minute.

9 The parties agree that s 47A of the Native Title Act applies to the area to be determined to disregard any prior extinguishment of any native title rights and interests.

10 Subject to paragraphs 6, 7 and 8 of the Minute, the rights and interests to be determined, except in relation to flowing and underground waters, are exclusive native title rights and interests to possession, occupation, use and enjoyment to the exclusion of all others. In relation to flowing and underground waters, the rights and interests to be determined are non-exclusive native title rights and interests. Paragraph 11 of the Minute outlines the relationship between the native title rights and interests to be determined and the other rights and interests as set out in Schedule 7 of the Minute.

11 The parties agree that the Walalakoo Aboriginal Corporation shall hold the determined native title rights and interests in trust for the native title holders pursuant to s 56(2)(b) of the Native Title Act.

### **Resolution of connection and occupation issues**

12 The application area was excluded in the determination of WAD 6099 of 1998 on the basis that s 47A of the Native Title Act may apply to the area. The Joint Submissions make reference to an expert anthropological report authored by Dr Kingsley Palmer filed on 16 November 2012 in WAD 6099 of 1998 (*Palmer Report*). The parties agree that the Palmer Report is relevant to the connection of members of the Nyikina Mangala people to the

areas covered by the application. It is also agreed that negotiation of the connection for the determined portion of WAD 6099 of 1998 included consideration of the connection of the Nyikina Mangala people to the application area.

13 The parties agree that that the Nyikina Mangala people are bound together by a normative system of laws and customs which, on the basis of known fact and reasonable inference, has continued to be observed by its members in a substantially uninterrupted manner since prior to the declaration of sovereignty over Western Australia.

14 It is also agreed that the ethnographic and historical materials, combined with Aboriginal evidence provided, is sufficient evidence that the Nyikina Mangala people have maintained some physical presence in the application area since the acquisition of British sovereignty. In addition, evidence of ongoing physical or spiritual involvement in the application area was sufficient to enable the State to conclude that this connection has continued. Taken together, the State was satisfied that the material presented was sufficient to evidence the maintenance of connection according to traditional laws and customs in the application area.

15 In support of the application of s 47A of the Native Title Act various materials were provided by the Applicant to the State for consideration. The material, including affidavits and tenure documents, demonstrated that the three freeholds and one lease comprising the application area are all held expressly for the benefit of Aboriginal peoples and that when the application was made, members of the Nyikina Mangala people occupied the application area. The parties submit that this material is sufficient to support the application of s 47A to the application area.

#### **Requirements pursuant to s 87 of the Native Title Act**

16 The Joint Submissions seek that a determination of native title should be made pursuant to s 87 of the Native Title Act. The determination will be over the claimed ten lots of land that were not part of the consent determination in WAD 6099 of 1998 on 29 May 2014 and are all held by the Nyikina Mangala Aboriginal Corporation.

17 Section 87 of the Native Title Act provides that the Court may make a determination of native title by consent over an area covered by a native title application without holding a hearing where various requirements are met. With regard to this application, pursuant to

s 87(1) of the Native Title Act, the notification period ended on 14 October 2015. The Orders and the Minute reflecting the agreement reached for the proposed determination have been filed in the Court, are in writing and are signed by the parties to the application (s 87(1)(b) of the Native Title Act). The agreement for a proposed determination is in relation to the land and waters claimed in the application (s 87(1)(a) of the Native Title Act).

18 The orders sought are consistent with the terms of the agreement pursuant to s 87(1)(c) of the Native Title Act as the form of the proposed determination complies with ss 94A and 225 of the Native Title Act, the application is validly made having been authorised by the claim group members (as required by s 251B of the Native Title Act) and there is no approved determination over the area proposed to be determined (ss 13(1)(a) and 68 of the Native Title Act).

19 Regarding the issue of the appropriateness of the orders sought, s 87(2) of the Native Title Act does not require the Court to receive evidence, make findings, embark on its own inquiry on the merits of the claim made in the application or even to form a final view as to whether the legal requirements for proving native title have been met. It may be appropriate to make orders under s 87 of the Native Title Act where the Court is satisfied that the parties have freely and on an informed basis come to an agreement. See generally *Ward v State of Western Australia* [2006] FCA 1848 (at [8]). The primary focus of the Court is on the making of the agreement by the parties: *Lander v State of South Australia* [2012] FCA 427 (at [11]).

20 In the circumstances including the background of this matter which includes a related consent determination, the agreement reached by the parties which the material filed indicates is freely entered into on an informed basis, and the active role in negotiations by the State, I am satisfied that it is appropriate and within the power of the Court under ss 87 and 94A of the Native Title Act to make the orders sought.

#### **Nomination of prescribed body corporate**

21 As noted above, the Applicant has filed various documents in support of the nomination of Walalakoo Aboriginal Corporation as the prescribed body corporate to hold the determined native title in trust for the native title holders pursuant to s 56(2)(b) of the Native Title Act. The documents include a nomination of prescribed body corporate in writing by the Nyikina Mangala people and consent to nomination by the Walalakoo Aboriginal Corporation. The documents also include an affidavit of Jemma Maree Arman

affirmed 4 September 2015 in support of the nomination of Walalakoo Aboriginal Corporation as the prescribed body corporate and submissions in support of Walalakoo Aboriginal Corporation as the prescribed body corporate. I am satisfied that the requirements of the Native Title Act and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth) have been met for the nomination of prescribed body corporate.

## CONCLUSION

22 In the circumstances the Court considers it appropriate to make the determination of native title in the terms proposed.

23 For these reasons I make the orders in the terms submitted to the Court being satisfied that the proposed determination is both within power and appropriate.

24 Finally, the Court congratulates the Applicant and the State for negotiating and agreeing to consent orders being made in these terms.

I certify that the preceding twenty-four (24) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Barker.

Associate:

Dated: 29 October 2015