

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6217/1998
NNTT Number: WCD2015/006

Determination Name: Wise on behalf of the Kurungal Native Title Claim v State of Western Australia

Date(s) of Effect: 25/11/2016

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: 01/12/2015

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Orders 1 and 2 of the determination provide that:

- “1. ... 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 1993* (Cth) as the case may be.
2. Within twelve 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 Federal 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.”

The Tiyatiya Aboriginal Corporation was nominated on 25/11/2016 and registered on the National Native Title Register on 01/12/2016.

REGISTERED NATIVE TITLE BODY CORPORATE:

Tiyatiya Aboriginal Corporation RNTBC
Trustee Body Corporate
C/- Kimberley Land Council
PO Box 2145
Broome Western Australia 6725

COMMON LAW HOLDER(S) OF NATIVE TITLE:

(4) The native title in the Determination Area is held by the Kurungal people. The Kurungal people are the people referred to in Schedule 5.

The native title holders are those Aboriginal people who hold in common the body of traditional laws and customs concerning the land and waters known as Kurungal. Those people are:

(a) the descendants of Charcoal; Hobble Hobbs (Kinaji); Lucky Luck (Nundagurda); Nynga Nynga; Kulari (mother of Maggie Barnes); Eclipse (Lurlaji); Juluk Tighe; Jack (Jugajawal); Jack Green; Ned Cox; Wilfred Steele; Butcher Wise; Eric and Julie Lawford; Jean Tighe; Walter Rose; Willy Kew; Limestone Billy; Go Go Billy; Possum; Hairpin Marna; Chum Lee/Jamali; Jimmy James/Wirrali; Barney Barnes; David Downs; Tiger Yul; John Aitkin; Boxer Yangar; Benny Wakartu; Rum and Lombarji; Rosie Kuji and siblings; Frank Thomas; Marjorie Baldwin-Jones; Josephine Lawford; Olive Knight; Jewess; Peter Kurtiji; Trixie Long; Taipan Forest; George Tuckerbox; Billy Muputarti; Billy (Gundagunda); Billy Thomas; Bluey Thomas; Ivy Nixon; Sundown Ellery; Tom Collins; Minnie Pie; Spider Snell; Jerry Thompson; John Charles; Nada Rawlins and siblings; George Spinks; Molly Dededar; Hitler; Ivan and Rolla Holliman; Edgar Pike; Barney Lawford; and

(b) those individuals listed in paragraph (a) who are still living.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. There be a determination of native title in the 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 1993* (Cth) as the case may be.
2. Within twelve 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 Federal 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 Native Title Act)

- (1) The Determination Area is the land and waters described in Schedule 1 and depicted on the maps 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 Kurungal people. The Kurungal 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)

Non-exclusive 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 a partial extinguishment of native title and where any extinguishment is not required to be disregarded) are that they confer the following non-exclusive rights on the Native Title Holders, including the right to conduct activities necessary to give effect to them:

- (a) the right to access and move freely through and within each part of the Determination Area referred to in Schedule 3;
- (b) the right to live, being to enter and remain on, camp and erect shelters and other structures for those purposes on the Determination Area referred to in Schedule 3;
- (c) the right to:
 - (i) hunt, gather and fish for personal, domestic, cultural and non-commercial communal purposes;
 - (ii) take and use flora and fauna for personal, domestic, cultural and non-commercial communal purposes;
 - (iii) take, use, share and exchange the natural resources of each part of the Determination Area referred to in Schedule 3 including soil, sand, clay, gravel, ochre, timber, charcoal, resin and stone for personal, domestic, cultural and non-commercial communal purposes;
 - (iv) light fires for cultural and spiritual purposes but not for the clearance of vegetation;
 - (v) engage in cultural activities in the area, including the transmission of cultural heritage knowledge;
 - (vi) conduct and participate in ceremonies;
 - (vii) conduct burials and burial rites and other ceremonies in relation to death;
 - (viii) hold meetings;
 - (ix) visit, maintain and protect from physical harm, areas, places and sites of importance in each part of the Determination Area referred to in Schedule 3; and
 - (x) access and take water for personal, domestic, cultural or non-commercial communal purposes, and for the sake of clarity and the avoidance of doubt, this right does not include the right to take or use water lawfully captured or controlled by the holder of the Christmas Creek pastoral lease, Pastoral Lease N049681; and
- (d) the right to be accompanied on to the area by those persons who, though not native title holders, are:
 - (i) spouses or partners of native title holders;
 - (ii) people who are members of the immediate family of a spouse or partner of a native title holder;
 - (iii) people reasonably required by the native title holders under traditional law and custom for the performance of ceremonies or cultural activities on the Determination Area; or
 - (iv) people who have specialised knowledge based on their training, study or experience who are reasonably requested by native title holders to observe or record traditional activities or otherwise to investigate matters of cultural significance on the Determination Area, in connection with the exercise of native title rights and interests.

(6) The native title rights and interests referred to in paragraph 5 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).

The nature and extent of any other interests

(9) The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 6.

Relationship between native title rights and other interests

(10) The relationship between the native title rights and interests described in paragraph 5 and the other interests referred to in paragraph 9 ("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, 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, subject to the operation of s 24JB(2) of the *Native Title Act*, do not extinguish them.

Definitions and interpretation

(11) 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;

"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; and

"waters" has the same meaning as in the Native Title Act; and includes flowing and underground water.

(12) In the event of any inconsistency between the written description of an area in Schedule 1 or Schedules 3 to 4 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 maps at Schedule 2, comprises all that land and waters bounded by the following description:

Commencing at the easternmost southeastern corner of Pastoral Lease N049681 (Christmas Creek) and extending generally westerly along boundaries of that pastoral lease to the centreline of Christmas Creek; Then generally northwesterly downwards along that centreline to the intersection with a eastern boundary of Pastoral Lease N049678 (Gogo) being a point on the present boundary of Native Title Determination WAD6008/2000 Gooniyandi Combined #2 (WC2000/010); Then northerly, generally northwesterly, generally northeasterly and

generally southeasterly along boundaries of that Native Title Determination to the intersection with a western boundary of Reserve 39302; Then southerly, southeasterly and generally northeasterly along boundaries of that reserve to the intersection with a southwestern boundary of Native Title Determination WAD6008/2000 Gooniyandi Combined #2 (WC2000/010); Then generally southeasterly along boundaries of that Native Title Determination to the intersection with a western boundary of Pastoral Lease N049681 (Christmas Creek); Then easterly, generally northeasterly, southeasterly and southerly along boundaries of that pastoral lease back to the commencement point.

EXCLUSIONS

All that land comprising Reserve 26889, Reserve 35196 and Reserve 40568.

Note: Geographic Coordinates provided in Decimal Degrees.

Cadastral boundaries sourced from Landgate's Spatial Cadastral Database dated 27 February 2015.

Christmas Creek data sourced from Commonwealth of Australia (Geoscience Australia).

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

Native Title Determination WAD6008/2000 Gooniyandi Combined #2 (WC2000/010) as Determined in the Federal Court on the 19th June 2013.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Prepared By: Native Title Spatial Services (Landgate) 17th March 2015

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

MAPS OF THE DETERMINATION AREA

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

SCHEDULE THREE

NON - 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):

1. Pastoral Lease:

Portion of Pastoral Lease N049681 (formerly PL 3114/1257), Christmas Creek falling within the Determination Area (comprising portions of Lot 851 on DP 70751 and Lot 1560 on DP 74360).

SCHEDULE FOUR

AREAS WHERE NATIVE TITLE DOES NOT EXIST

Public Works

The areas the subject of the following works:

1. Roads:

Road Number

Location

1 Road 19070 - Yurabi Location 97 - Christmas Creek Road (runs north to Great Northern

Highway)

- 2 Road 19070 - Yurabi Location 95 (runs south from Christmas Creek Road)
- 2 Cherrabun Road
- 3 Bulka Road
- Historical Road 1 Great Northern Highway (old route prior to deviation shown on Pastoral Plan 16 dated 3 June 1988)

2. Any other 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

The native title holders are those Aboriginal people who hold in common the body of traditional laws and customs concerning the land and waters known as Kurungal. Those people are:

- (a) the descendants of Charcoal; Hobble Hobbs (Kinaji); Lucky Luck (Nundagurda); Nynga Nynga; Kulari (mother of Maggie Barnes); Eclipse (Lurlaji); Juluk Tighe; Jack (Jugajuwal); Jack Green; Ned Cox; Wilfred Steele; Butcher Wise; Eric and Julie Lawford; Jean Tighe; Walter Rose; Willy Kew; Limestone Billy; Go Go Billy; Possum; Hairpin Marna; Chum Lee/Jamali; Jimmy James/Wirrali; Barney Barnes; David Downs; Tiger Yul; John Aitkin; Boxer Yangar; Benny Wakartu; Rum and Lombarji; Rosie Kuji and siblings; Frank Thomas; Marjorie Baldwin-Jones; Josephine Lawford; Olive Knight; Jewess; Peter Kurtiji; Trixie Long; Taipan Forest; George Tuckerbox; Billy Muputarti; Billy (Gundagunda); Billy Thomas; Bluey Thomas; Ivy Nixon; Sundown Ellery; Tom Collins; Minnie Pie; Spider Snell; Jerry Thompson; John Charles; Nada Rawlins and siblings; George Spinks; Molly Dededar; Hitler; Ivan and Rolla Holliman; Edgar Pike; Barney Lawford; and
- (b) those individuals listed in paragraph (a) who are still living.

SCHEDULE SIX

OTHER INTERESTS

1. Pastoral Leases

Portion of Pastoral Lease N049681 (formerly PL3114/1257), Christmas Creek falling within the Determination Area.

2. Existing Interests under the *Mining Act 1978 (WA)*

Tenement ID	Tenement Type	Date of grant
E 04/1893	Exploration Licence	13/06/2011
E 80/4240	Exploration Licence	04/07/2011
E 80/4390	Exploration Licence	22/11/2010
E 80/4712	Exploration Licence	18/02/2013
E 80/4907	Exploration Licence	23/07/2015
G 04/17	General Purpose Lease	20/02/1989
G 04/18	General Purpose Lease	20/02/1989
G 04/19	General Purpose Lease	20/02/1989
M 04/135	Mining Lease	10/03/1987
M 04/167	Mining Lease	04/08/1988

3. **Water Bore and Gravel Pit**

The water bore and gravel pit marked on the maps at Schedule 2, which are accessed and used for the maintenance of the Great Northern Highway.

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; or

(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 Sixth Schedule, but subject to paragraph (e)(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 2 and 3 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 (e)(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 Tannexed [sic] to other land or waters; and
- (h) The rights and interests of Telstra Corporation Limited (ACN 051 775 556):
 - (a) as the owner or operator of telecommunications facilities within the Determination Area;
 - (b) created pursuant to the *Post and Telegraph Act 1901* (Cth), the *Telecommunications Act 1975* (Cth), the *Australian Telecommunications Corporation Act 1989* (Cth), the *Telecommunications Act 1991* (Cth) and the *Telecommunications Act 1997* (Cth) including rights:
 - (i) to inspect land;
 - (ii) to install and operate telecommunications facilities; and
 - (iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities;
 - (c) for its employees, agents or contractors to access its telecommunications facilities in and in the vicinity of the Determination Area in performance of their duties; and
 - (d) under any licence, lease, access agreement or easement relating to its telecommunications facilities in the Determination Area.

REGISTER ATTACHMENTS:

1. Schedule Two - Maps of the Determination Area, 3 pages - A3, 01/12/2015

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.