



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD43/2019
NNTT Number: WCD2019/005

Determination Name: [John on behalf of the Malarngowem Native Title Claim Group v State of Western Australia](#)

Date(s) of Effect: 8/06/2021

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: 23/05/2019

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

In accordance with orders made by the Federal Court on 11 August 2020, on 8 June 2021 the Malarngowem Native Title Claim Group nominated Malarngowem Aboriginal Corporation ICN 9510 to hold the native title on trust. The determination therefore came into effect on 8 June 2021.

REGISTERED NATIVE TITLE BODY CORPORATE:

Malarngowem Aboriginal Corporation
Trustee Body Corporate
PO Box 2145
Broome Western Australia 6725

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))

4. The native title in the Determination Area is held by the native title holders. The native title holders are the people referred to in Schedule 6.

SCHEDULE 6

DESCRIPTION OF THE NATIVE TITLE HOLDERS

1. The native title holders are those Aboriginal people who:

(a) are related through filiation (including by adoption) to one of the Malarngowem Apical Ancestors who held rights and interest in one of the local estate countries comprising the **Determination Area**; or

(b) are affiliated to a Malarngowem Apical Ancestor and who have spirit conception and/or birth sites in one of the local estate countries in the Determination Area; or

(c) are recognised by the persons described above as:

(i) holding rights and responsibilities for certain songs and ceremonies which make reference to important sites in the Determination Area; or

(ii) holding rights and interests in one of the local estate countries in the Determination Area under traditional law and custom.

2. The **Malarngowem Apical Ancestors** are:

1. Bidy (Dirngorl)

2. Bilal

3. Bulkbarria

4. Chinabi Kargoyn / Mangirribany (Jangala skin)

5. Davy Madarning / Mardangin

6. Dinah Ngowaya

7. Gildjiringin

8. Gumany (Julama skin)

9. Jumulu (aka Jumurul, or Lydia)

10. Jimmy Springvale

11. Jungubany (Jungurra skin)

12. Jungurangan / Old McCarthy

13. Karawala (Nangala skin)

14. Larlkuwanguny

15. Lola Budbaria / Puttpariya (Nagara skin)

16. Lulurji / Lulurji (Bob Daylight)

17. Mamigurl

18. Marmikul

19. Mininjal

20. Minmariya

21. Morlabany / Mulabany

22. Nyawalapan / Ngawalapany

23. Wolabain (Jangala skin) (Father of Rowaljil)

24. Minnie Barnjanjil

25. Tommy Rosewood (Julama skin)

26. Jimmy Turrukpany

27. Nyidanguiny (Father of Dickie Gudangnyi Gali Durrrayny (Jungurra skin) / Tooltany, Paddy Pirtawuny / Bedowying (Jungurra skin) & Ruby Nganngannil)
28. Unnamed Father of Harry Kilpawaran / Gilbawarany and Jack Pullangi (Jangala skin)
29. Unnamed Mother of Judy Bilayil and Judy Bilmaria
30. Unnamed Mother of Nybil / Kneevil, Djulmangurl, Werriyel, Djartintji & Kungkun
31. Wolameri (Jakarra skin)
32. Wulawulyan

MATTERS DETERMINED:

THE COURT DECLARES AND ORDERS THAT:

1. It is satisfied that an order in the terms proposed in the attached Minute of Consent Determination of Native Title is within the power of the Court and is appropriate to be made pursuant to s 87A of the *Native Title Act 1993* (Cth).
2. There be a determination of native title in the terms of the Minute of Consent Determination of Native Title attached. 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.
3. 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.
4. If a prescribed body corporate is nominated in accordance with order 3, 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.
5. In the event that there is no nomination within the time specified in order 3, 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. 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 Schedules 3 and 4 (**Native Title Area**).
3. Native title does not exist in those parts of the Determination Area identified in Schedule 5.

Native title holders (s 225(a))

4. The native title in the Determination Area is held by the native title holders. The native title holders are the people referred to in Schedule 6.

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

Exclusive native title rights and interests

5. Subject to paragraphs 8, 9 and 10 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 any extinguishment must be disregarded) is the right to possession, occupation, use and enjoyment of that part of the Determination Area as against the whole world.

Non-exclusive rights and interests

6. Subject to paragraphs 7, 8, 9 and 10 the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule 4 (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:

(a) The right to have access to, remain in and use that part, which includes but is not limited to the following activities:

(i) to access and move freely through and within that part;

(ii) to live, being to enter and remain on, camp and erect temporary shelters and other structures for those purposes on that part;

(iii) to light controlled contained fires but not for the clearance of vegetation;

(iv) to engage in cultural activities in that part, including the transmission of cultural heritage knowledge; and

(v) to hold meetings in that part.

(b) The right to access and take for any purpose the resources on that part, which includes but is not limited to the following activities:

(i) to access and take water, other than water which is lawfully captured or controlled by the holders of pastoral leases.

(c) The right to protect places, areas and sites of traditional significance on that part, which includes but is not limited to the following activities:

(i) to conduct and participate in ceremonies in that part;

(ii) to conduct burials and burial rites and other ceremonies in relation to death in that part; and

(iii) to visit, maintain and protect from physical harm, areas, places and sites of importance in that part.

(d) The right to be accompanied onto the Determination Area by, any persons who, though not native title holders pursuant to paragraph 4, the native title holders may invite pursuant to traditional law and custom, being:

(i) spouses or partners of the native title holders; and

(ii) persons who may assist with the performance of ceremonies or cultural activities, including sharing of knowledge about country.

7. The native title rights and interests referred to in paragraph 6 do not confer:

(e) possession, occupation, use and enjoyment of those parts of the Determination Area on the Native Title Holders to the exclusion of all others, nor

(f) a right to control the access of others to the land or waters of those parts of the Determination Area.

8. 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)*.

9. 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.

10. 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.

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

11. Section 47, s 47A and s 47B of the Native Title Act apply to disregard any prior extinguishment in relation to the areas described in Schedule 7.

The nature and extent of any other interests

12. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 8.

Relationship between native title rights and other interests

13. The relationship between the native title rights and interests described in paragraphs 5 and 6 and the other interests is as follows:

(a) the determination does not affect the validity of those other interests;

(b) to the extent of any inconsistency between the other interests and 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

(c) otherwise the other interests co-exist with the native title rights and interests. To avoid doubt, existence and exercise of 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 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

14. 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' and **'waters'** respectively have the same meanings as in the *Native Title Act*;

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

15. In the event of any inconsistency between the written description of an area in Schedule 1 or Schedules 3 to 5 and the area as depicted on the maps at Schedule 2, the written description prevails.

REGISTER ATTACHMENTS:

1. WCD2019/005 Schedule 1 - Determination Area, 4 pages - A4, 23/05/2019
2. WCD2019/005 Schedule 2 - Maps Of The Determination Area, 2 pages - A4, 23/05/2019
3. WCD2019/005 Schedule 3 - Exclusive Native Title Areas, 1 page - A4, 23/05/2019
4. WCD2019/005 Schedule 4 - Non-Exclusive Native Title Areas, 1 page - A4, 23/05/2019
5. WCD2019/005 Schedule 5 - Areas Where Native Title Does Not Exist, 1 page - A4, 23/05/2019
6. WCD2019/005 Schedule 7 - Areas To Which Sections 47, 47A and 47B Of The Native Title Act Apply, 1 page - A4, 23/05/2019
7. WCD2019/005 Schedule 8 - Other Interests, 5 pages - A4, 23/05/2019

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.