



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD50/2010
NNTT Number: WCD2016/002

Determination Name: BP (Deceased) on behalf of the Birriliburu People v State of Western Australia

Date(s) of Effect: 6/06/2016

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 06/06/2016

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Mungarlu Ngurrarankatja Rirraunkaja (Aboriginal Corporation)
RNTBC
Trustee Body Corporate
C/- Central Desert Native Title Services
76 Wittenoom Street,
EAST PERTH Western Australia 6004

COMMON LAW HOLDER(S) OF NATIVE TITLE:

2. The native title is held by the persons described in Schedule 2 (**native title holders**).

The persons referred to in Order 2 are:

- (a) The descendants of:
 - (i) Milpuntu / Jack Abbott;
 - (ii) Kiliya / Amy Anderson;
 - (iii) Tjirili;
 - (iv) Lunmu, Yingji;
 - (v) Wakukutjara, Piparntjukurr, Tartu, Tjirilltjukul;

- (vi) Matja / Maudie Hill, Lefthand / Willy Hill, Maize Hill / Beaman, Snowy Hill, Johnny Hill, Roly Hill;
- (vii) Wogabu Jimmy Walker (Wakapu), Maraputa / Jenny Jones;
- (viii) Kunamalaya / Jackie Jackman;
- (ix) Yungkutjuru / Kitty Hill, Tulkiwa / Gennie Elliott;
- (x) Puuka;
- (xi) Lenny Morrison, Wally Morrison;
- (xii) Minnie Wongawol, Hitler Richards, Mitika, Yarlta / Joe Finch, Longfella, Katapura / George Finch;
- (xiii) Billy and Tilbie;
- (xiv) Yungka;
- (xv) Ivy Ward, Yatjuwunga / Peter Edjurrong;
- (xvi) Bob Ward, Yinyipapa / Ruby Jackson / Barker, Wungkatju / George Wongajoe;
- (xvii) Wuli / Jimmy Wongawol; and
- (xviii) Mickey Wonyabong, Nyabung / Minnie Ashley, Tommy Ingebong;

(b) AND persons generally acknowledged by them as having rights in part or all of the Determination Area through kinship, marriage, conception, birth, high ritual knowledge or responsibility for sites, including, at the time of this determination:

- (i) Matuwa / Norman Thompson;
- (ii) Nyari-Nyari Morgan; and
- (iii) Norman Stewart.

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

1. In relation to the Determination Area, there be a determination of native title in WAD 50 of 2010 in terms of the attached Minute of Determination of Native Title.
2. The Mungarlu Ngurrarankatja Rirraunkaja (Aboriginal Corporation) RNTBC shall hold the determined native title in trust for the native title holders pursuant to section 56(2) of the Native Title Act.

MINUTES OF DETERMINATION OF NATIVE TITLE

THE COURT 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 is held by the persons described in Schedule 2 (**native title holders**).

The nature and extent of native title rights and interests (s225(b); s 225(e))

3. Subject to Orders 4 to 6, the nature and extent of the native title rights and interests in relation to the Determination Area are the following rights or interests:

- (a) the right to access, to remain in and to use the Determination Area;
- (b) the right to access and take for any purpose the resources of the Determination Area; and

(c) the right to have access to, maintain and protect places, and areas and objects of importance on or in the Determination Area.

Qualifications on native title rights and interests (s225(b); s 225(e))

4. The native title rights and interests referred to in Order 3 do not confer:

(a) possession, occupation, use and enjoyment of the Determination Area on the native title holders to the exclusion of all others; nor

(b) a right to control access to, or use of, the land and waters of the Determination Area.

5. The native title rights and interests are exercisable in accordance with and subject to the:

(a) traditional laws and customs of the native title holders; and

(b) laws of the State and the Commonwealth, including the common law.

6. Notwithstanding anything in this determination:

(a) there are no native title rights and interests in the Determination Area in or in relation to:

(i) minerals as defined in the *Mining Act 1904* (WA) (repealed) and the *Mining Act 1978* (WA); or

(ii) petroleum as defined in the *Petroleum Act 1936* (WA) (repealed) and in the *Petroleum and Geothermal Resources Energy Act 1967* (WA); or

(iii) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA);

(b) the nature and extent of native title rights and interests in relation to water in any watercourse, wetland or underground water source as is defined in the *Rights in Water and Irrigation Act 1914* (WA) at the date of this determination is the non-exclusive right to take, use and enjoy that water.

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

7. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 3 (**other interests**).

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

8. Except as otherwise provided for by law, the relationship between the native title rights and interests 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 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

(c) 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 interests prevails over the native title rights and interests and their exercise, but does not extinguish them.

Definitions

9. In this determination, unless the contrary intention appears:

'Determination Area' means all of the land and waters within the external boundary described in Schedule 1, Part 1, with the exclusion of the areas of land and waters described in Schedule 1, Part 2. In the event of an inconsistency between the written descriptions of areas in the Schedules and the areas depicted on the map in Schedule 4, the written descriptions shall prevail;

'land' and 'waters' respectively have the same meanings as in the *Native Title Act*,

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

'State' means the State of Western Australia.

Schedule 1 - Determination Area

[See Order 1]

The external boundary of the Determination Area (which is subject to the exclusions in Part 2 below) is described in Part 1 below and shown generally on the map in Schedule 4.

Part 1 - External Boundaries

1. All those lands and waters commencing from the southernmost corner of the eastern severance of Pastoral Lease N050237 (Glenayle) and extending northerly, easterly, again northerly, again easterly, again northerly and generally westerly along boundaries of that eastern severance to its westernmost northwestern corner; Then west to an eastern boundary of the western severance of Pastoral Lease N050237 (Glenayle); Then northwesterly along boundaries of that severance, to an eastern boundary of Reserve 36469; Then northerly and westerly along boundaries of that reserve to Longitude 121.583250 East; Then north to an eastern boundary of the northwestern severance of Pastoral Lease N050237 (Glenayle); Then generally northerly, westerly, southerly, again westerly and again southerly to the southernmost southwestern corner of that severance; Then south to the westernmost northwestern corner of the western severance of Pastoral Lease N050237 (Glenayle); Then southerly and generally easterly along the boundaries of that severance to its easternmost southeastern corner, being a point on the south western boundary of a parcel of UCL (Stock Route); Then southeasterly along that boundary to the northern corner of the southeastern severance of Pastoral Lease N050237 (Glenayle); Then southerly and easterly along boundaries of that severance to its southeastern corner; Then easterly to Latitude 25.445169 South, Longitude 122.197951 East and then northerly back to the commencement point.

Note: Geographic Coordinates provided in Decimal Degrees.

Cadastral boundaries sourced from Landgate's Spatial Cadastral Database dated 1st March 2016.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Prepared By: Native Title Spatial Services (Landgate) 11th April 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.

Part 2 - Excluded Areas

[The areas in paragraph 2 below are not included in the Determination Area because they are not included in the originating native title determination application WAD 50 of 2010.]

2. The following are areas of land and waters where previous exclusive possession acts have been done and native title has been completely extinguished. These areas are not covered by the Birriliburu #3 Application (sections 61A and 23C of the *Native Title Act* and sections 12I and 12J of the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA)) and are excluded from the Determination Area on that basis:

(a) The following reserves:

Area	Title	Location	Vesting
Weld Spring	Reserve 36469 (Protection of Historic Site)	Lot 2 on Plan 91341	WA Museum (15 February 1980)
Reserve 39380	(Satellite Ground Station Site)	Lot 1 on Plan 186731	Commonwealth of Australia (7 February 1986)

(b) Any areas of land or waters where a public work as defined in the *Native Title Act* and the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA) (including the land and waters on which a public

work is constructed, established or situated as described in section 251D of the *Native Title Act*) and to which section 12J of the Titles (*Validation*) and *Native Title (Effect of Past Acts) Act 1995* (WA) or section 23C(2) of the *Native Title Act* applies.

Schedule 2 - Native Title Holders

The persons referred to in Order 2 are:

- (a) The descendants of:
 - (i) Milpuntu / Jack Abbott;
 - (ii) Kiliya / Amy Anderson;
 - (iii) Tjirili;
 - (iv) Lunmu, Yingji;
 - (v) Wakukutjara, Piparntjukurr, Tartu, Tjiriltjukul;
 - (vi) Matja / Maudie Hill, Lefthand / Willy Hill, Maize Hill / Beaman, Snowy Hill, Johnny Hill, Roly Hill;
 - (vii) Wogabu Jimmy Walker (Wakapu), Maraputa / Jenny Jones;
 - (viii) Kunamalaya / Jackie Jackman;
 - (ix) Yungkutjuru / Kitty Hill, Tulkiwa / Gennie Elliott;
 - (x) Puuka;
 - (xi) Lenny Morrison, Wally Morrison;
 - (xii) Minnie Wongawol, Hitler Richards, Mitika, Yartat / Joe Finch, Longfella, Katapurna / George Finch;
 - (xiii) Billy and Tilbie;
 - (xiv) Yungka;
 - (xv) Ivy Ward, Yatjuwunga / Peter Edjurrong;
 - (xvi) Bob Ward, Yinyipapa / Ruby Jackson / Barker, Wungkatju / George Wongajoe;
 - (xvii) Wuli / Jimmy Wongawol; and
 - (xviii) Mickey Wonyabong, Nyabung / Minnie Ashley, Tommy Ingebong;
- (b) AND persons generally acknowledged by them as having rights in part or all of the Determination Area through kinship, marriage, conception, birth, high ritual knowledge or responsibility for sites, including, at the time of this determination:
 - (i) Matuwa / Norman Thompson;
 - (ii) Nyari-Nyari Morgan; and
 - (iii) Norman Stewart.

Schedule 3 - Other Interests

[Other interests referred to in Order 7]

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:

Pastoral Lease

1. The rights and interests of the holders of Pastoral Lease N050237 (Glenayle).

Exploration Licences

2. The rights and interests of the holders of the following exploration licences:

Tenement ID	Holder	Date Granted
E69/3133	Vale Australia EA Pty Ltd	16 June 2014
E69/3183	Vale Australia EA Pty Ltd	16 June 2014
E69/3184	Vale Australia EA Pty Ltd	16 June 2014
E69/3208	Vale Australia EA Pty Ltd	16 June 2014
E69/3395	Ausquest Limited	8 February 2016

3. Subject to paragraph 4 below, any rights that may exist as at the date of this determination that are held by the holders from time to time of the exploration licences listed above, that permit the holder of those explorations licences to use or use and maintain in reasonable repair (including by servants, agents and contractors) such portions of roads and tracks in the Determination Area:

- (a) as may be permitted in accordance with those rights and interests; and
- (b) as are necessary to have access to the area the subject of the exploration licence for the purpose of exercising the rights granted by that interest.

4. Nothing in paragraph 3 above allows any upgrade, extension, widening, re-alignment or other improvement to the road or track.

Other

5. The following rights and interests:

- (a) rights and interests held under grants from the Crown in right of the State or of the Commonwealth pursuant to statute or in the exercise of its executive power or otherwise conferred by statute;
- (b) rights and 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) and the *Aboriginal Communities Act 1979* (WA);
- (c) the right of any person to use (subject to the laws of the State, in particular the *Aboriginal Affairs Planning Authority Act 1972* (WA) and Regulations where applicable):
 - (i) the following roads (being roads which are maintained by the Shire of Wiluna as at the date of this Determination):
 - (a) Carnegie-Glenayle Road; and
 - (b) Sydney Heads Road;
 - (ii) the Canning Stock Route; and
 - (iii) any road in the determination area over which, as at the date of this Determination, the public has a right of way according to the common law;
- (d) 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 duty where such access would be permitted to private land; and

- (e) 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) beds and banks or foreshores of waterways;
- (iii) stock routes; or
- (iv) areas that were public places at the end of 31 December 1993.

Schedule 4 - The Maps

[See NNTR attachment 1: "Schedule 4 - The Maps"]

REGISTER ATTACHMENTS:

1. Schedule 4 - The Maps, 1 page - A4, 06/06/2016

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.