

**SCHEDULE 8: MINUTE OF PROPOSED CONSENT DETERMINATION OF
NATIVE TITLE**

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Minute of Proposed Consent Determination of Native Title

WAD [XXX/202X]

Federal Court of Australia
District Registry: Western Australia
Division: General

[Name] & Ors on behalf of the Gibson Desert People

Applicant

The State of Western Australia [& Ors]

Respondent[s]

THE COURT NOTES THAT:

1. On [insert date] the Applicant, authorised by the native title claim group (**Gibson Desert People**), filed native title determination application WAD [XX/20XX] under section 61(1) of the *Native Title Act 1993* (Cth) (**NTA**) (the **Native Title Claim**).
2. The Applicant and the First Respondent [and the other Respondents, if any, to this proceeding] (together, **the parties**) have reached an agreement as to the terms of a determination which is to be made in relation to all of the land and waters covered by the Native Title Claim (**Determination Area**). The Determination Area is described in order 9(c) of the Determination.
3. On 18 September 2020, application WAD 222 of 2020 was filed under section 61(1) of the NTA seeking a determination of compensation in accordance with Part 2, Division 5 of the NTA for the loss, diminution, impairment or other effect on native title in relation to the Compensable Act (**Compensation Claim**). The Compensation Claim is also brought on behalf of the Gibson Desert People.

Filed on behalf of:	The Applicant and the First Respondent
Prepared by:	Malcolm O'Dell (CDNTS) and Alex Rorrison (SSO)
Law firm:	Central Desert Native Title Services Ltd (CDNTS) and State Solicitor's Office (SSO)
Telephone:	(08) 9425 2000 (CDNTS); (08) 9264 1196 (SSO)
Fax:	(08) 9425 2001 (CDNTS); (08) 9264 1440 (SSO)
Email:	reception@centraldesert.org.au (CDNTS); a.orrison@sso.wa.gov.au (SSO);
Address for service:	76 Wittenoom Street, EAST PERTH WA 6004 (CDNTS) Level 23, David Malcolm Justice Centre, 28 Barrack Street PERTH WA 6000 (SSO)

4. The Applicant and the First Respondent have entered into an agreement which *inter alia* settles the First Respondent's compensation liability (**Settlement Agreement**) in respect of the following acts associated with the creation of the Gibson Desert Nature Reserve (**Reserve 34606**) on 22 April 1977 to the extent that they gave rise to an entitlement to compensation:
 - (a) reservation of the land and waters the subject of the Determination Area under section 29 of the *Land Act 1933* (WA) as Reserve 34606 for the purpose of Conservation of Flora and Fauna;
 - (b) classification of Reserve 34606 as a Class 'A' reserve in accordance with section 31 of the *Land Act 1933* (WA); and
 - (c) vesting of Reserve 34606 in the Western Australian Wildlife Authority in trust for the reserve purpose under section 33 of the *Land Act 1933* (WA),hereafter referred to collectively as the **Compensable Act**.
5. The Compensable Act resulted in the total extinguishment of all native title in relation to the Determination Area.
6. The Settlement Agreement provides for a range of benefits by way of compensation. Those benefits include the First Respondent's commitment to assisting the Gibson Desert People to obtain a determination of native title on the basis that prior extinguishment of their native title is to be disregarded.
7. Pursuant to section 87(1) of the NTA, and consistent with the Settlement Agreement, the parties to this proceeding have reached agreement on the terms of orders and have filed a Minute of Proposed Consent Determination of Native Title, signed by or on behalf of the parties, which sets out the agreed orders which they ask the Court to make in relation to this proceeding.
8. The terms of the agreement involve the making of consent orders for a determination pursuant to sections 87 and 94A of the NTA that native title exists in relation to the land and waters of the Determination Area.
9. The parties acknowledge that the effect of the making of the determination is that the Gibson Desert People, in accordance with traditional laws acknowledged and traditional customs observed by them, are to be recognised as the native title holders for the Determination Area.
10. Pursuant to section 87(2) of the NTA, the parties have requested that the Court determine the Native Title Claim without holding a hearing.

11. The parties to the Compensation Claim have also signed, and filed with the Court in the Compensation Claim, a Minute of Consent Determination of Compensation in accordance with section 87(2) of the NTA.
12. In accordance with section 13(2) of the NTA, and to give effect to the Settlement Agreement, the determination of native title in the Native Title Claim will be made at the same time as the determination of compensation in the Compensation Claim.
13. The Applicant has nominated Warnpurru (Aboriginal Corporation) (ICN: 8979) pursuant to section 56(2)(a) of the NTA to hold the determined native title in trust for the native title holders.

Being satisfied that orders in the terms sought by the parties are within the power of the Court and it appearing to the Court appropriate to do so and by the consent of the parties:

THE COURT ORDERS THAT:

1. There be a determination of native title in relation to the Determination Area in the terms set out in Attachment A.
2. Warnpurru (Aboriginal Corporation) (ICN: 8979) shall hold the determined native title in trust for the native title holders pursuant to section 56(2)(a) of the NTA.
3. There be no order as to costs.

Signed by or on behalf of the parties:

Signed by [name]
Lawyer for the Applicant
Dated:

Signed for the State Solicitor
Lawyer for the State of Western Australia
Dated:

ATTACHMENT A DETERMINATION

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Determination of native title: ss 13(2), 94A NTA

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 relation to the Determination Area is held by the Gibson Desert People (**native title holders**).

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

3. Subject to orders 4 and 5, 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 whole of the Determination Area to the exclusion of all others.

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

4. The native title rights and interests are subject to and exercisable in accordance with:
 - (a) the traditional laws and customs of the native title holders; and
 - (b) the laws of the State and the Commonwealth, including the common law.
5. Notwithstanding anything in this Determination:
 - (a) there are no native title rights and interests in relation to 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 Energy Resources Act 1967* (WA); or
 - (iii) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA); and

- (b) 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) 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))

- 6. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 4 (**other interests**).

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

- 7. Except as otherwise provided for by law, the relationship between the native title rights and interests described in order 3 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 described in Schedule 4 and the continued existence, enjoyment or exercise of the native title rights and interests:
 - (i) 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
 - (ii) otherwise the other interests co-exist with the native title rights and interests, and for the avoidance of 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.

Area to which [s 47C / s 47A] of the NTA applies

- 8. Section [47C or 47A as the case may be] of the NTA applies to the whole of the Determination Area.

Interpretation

- 9. In this determination, including its schedules:
 - (a) unless the contrary intention appears, the words and expressions used have the same meaning as in the NTA;
 - (b) if there is an inconsistency between a written description of an area in this determination and the depiction of that area on the map in Schedule 1, the written description prevails;

- (c) **Determination Area** means the whole of the area described in Schedule 1, and as depicted on the map attached at Schedule 2;
- (d) **Gibson Desert People** means the group of persons described in Schedule 3;
- (e) **NTA** means the *Native Title Act 1993* (Cth); and
- (f) **State** means the State of Western Australia.

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

SCHEDULE 1
DETERMINATION AREA DESCRIPTION

1. The Determination Area is all that land and water comprising [Reserve 34606 OR Reserve [XXXX]] for the purpose of [Conservation of Flora and Fauna OR Conservation and Aboriginal Social, Cultural and Economic Benefit], being [Lot 13 as shown on Deposited Plan 91083 (Reserve 34606 – Gibson Desert Nature Reserve) OR Lot [XX] as shown on Deposited Plan [XX] (Reserve [XXXX] – [XXXX])].
2. [Reserve 34606 OR Reserve [XXXX]] excludes the following road corridors:

(a) Gary Highway

All that land, being 100 metres wide and defined by the centreline commencing at the intersection of a northern boundary of [Reserve 34606 (Gibson Desert Nature Reserve) OR Reserve [XXXX] ([XXXX])], being [Lot 13 as shown on Deposited Plan 91083 OR Lot [XX] as shown on Deposited Plan [XX]], with approximate Longitude 125.057882 East and extending generally southerly along that centreline through the following approximate coordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
24.416928	125.057882
24.419339	125.057042
24.420943	125.056567
24.430237	125.053742
24.431927	125.053290
24.434278	125.052570
24.435184	125.052402
24.435469	125.052271
24.435634	125.052239
24.436138	125.052336
24.436354	125.052281
24.436806	125.051914
24.437163	125.051755
24.438036	125.051477
24.440593	125.051110

24.442932	125.050976
24.444971	125.050913
24.446550	125.050951
24.449181	125.050579
24.449837	125.050573
24.450981	125.050286
24.452345	125.050063
24.458395	125.048052
24.460771	125.047179
24.464065	125.046731
24.467674	125.045707
24.472632	125.045096
24.479020	125.044445
24.480251	125.044384
24.486261	125.043146
24.488106	125.042913
24.488969	125.042688
24.490131	125.042688
24.492498	125.042694
24.494623	125.042858
24.496982	125.043221
24.498936	125.043508
24.501113	125.043372
24.503095	125.043212
24.505181	125.042906
24.505462	125.042790
24.508399	125.042704
24.509719	125.042785
24.515912	125.043550
24.516522	125.043517
24.517484	125.043448
24.518253	125.043276
24.518703	125.043243
24.519302	125.042931
24.520433	125.042704
24.522181	125.041593
24.525043	125.040269
24.526351	125.039742

24.530167	125.038076
24.536021	125.035811
24.539586	125.034750
24.544425	125.033309
24.548113	125.032035
24.551983	125.030732
24.554421	125.030511
24.556349	125.030303
24.559375	125.029965
24.561383	125.029479
24.562162	125.029452
24.564100	125.029508
24.566393	125.029258
24.568249	125.029248
24.571444	125.028982
24.574007	125.028358
24.575409	125.028099
24.576076	125.027714
24.576871	125.027647
24.578154	125.026877
24.579218	125.026530
24.580218	125.026573
24.583067	125.026160
24.586500	125.025198
24.588601	125.024313
24.591752	125.023230
24.594219	125.022995
24.596066	125.022981
24.600466	125.023329
24.601987	125.023516
24.602466	125.023389
24.602631	125.023425
24.606023	125.023413
24.608064	125.023065
24.610810	125.022948
24.613660	125.022385
24.617413	125.021816
24.620838	125.021016

24.622014	125.020799
24.623034	125.020431
24.623368	125.020251
24.623619	125.020223
24.626170	125.019520
24.627897	125.019333
24.633483	125.018955
24.635410	125.018554
24.636635	125.018293
24.639027	125.017719
24.642188	125.017024
24.642528	125.017007
24.647611	125.015985
24.650340	125.015515
24.652263	125.015256
24.654531	125.015183
24.656346	125.015093
24.657923	125.014890
24.660241	125.014559
24.661496	125.014322
24.664841	125.013955
24.665424	125.013857
24.670848	125.013368
24.672355	125.013345
24.673681	125.013245
24.677696	125.012173
24.680711	125.010473
24.684440	125.008922
24.687964	125.008118
24.690503	125.007969
24.693715	125.008729
24.695008	125.008904
24.695559	125.008852
24.697722	125.008651
24.698115	125.008515
24.700230	125.008393
24.702043	125.008030
24.702785	125.007912

24.703411	125.007678
24.704360	125.007486
24.704981	125.007444
24.708042	125.006700
24.709549	125.006465
24.710445	125.006386
24.711581	125.006480
24.712081	125.006584
24.712478	125.006770
24.713701	125.006510
24.714856	125.006504
24.720101	125.006270
24.726790	125.006606
24.737589	125.005928
24.739877	125.005916
24.752541	125.005616
24.756572	125.005092
24.760341	125.004932
24.761972	125.004755
24.764568	125.004419
24.770361	125.002807
24.772692	125.002403
24.775806	125.001757
24.777161	125.001382
24.778739	125.000848
24.783478	124.999367
24.787414	124.998209
24.789708	124.997746
24.796435	124.996604
24.802375	124.995840
24.805841	124.996277
24.807749	124.996674
24.809622	124.996856
24.811612	124.996816
24.813978	124.996528
24.818466	124.996568
24.822008	124.996426
24.823880	124.996185

24.827246	124.995857
24.833914	124.995449
24.838408	124.994690
24.839665	124.994552
24.843077	124.993848
24.847186	124.992881
24.847710	124.992640
24.849192	124.991958
24.850397	124.991487
24.852385	124.990896
24.854709	124.990742
24.857884	124.990616
24.859704	124.990453
24.862593	124.989931
24.866663	124.988794
24.868062	124.988721
24.869595	124.988668
24.870805	124.988361
24.872451	124.988247
24.874665	124.987613
24.874876	124.987520
24.875039	124.987535
24.876900	124.987384
24.877676	124.987186
24.879608	124.986911
24.881025	124.986911
24.882426	124.986998
24.884430	124.987703
24.888889	124.989315
24.893658	124.991305
24.896285	124.991941
24.897894	124.991977
24.902342	124.991690
24.906598	124.991294
24.913700	124.990861
24.920384	124.990783
24.925919	124.990456
24.932557	124.989765

24.935247	124.989450
24.938099	124.989084
24.940513	124.988623
24.944628	124.988105
24.946977	124.988115
24.947891	124.988247
24.951143	124.989054
24.952935	124.988766
24.960714	124.987467
24.962742	124.987045
24.963674	124.986928
24.964565	124.986586
24.965488	124.985924
24.966651	124.984757
24.967984	124.984125
24.969147	124.983766
24.970220	124.983335
24.971065	124.983151
24.972257	124.983021
24.972807	124.982878
24.973554	124.982735
24.974659	124.982680
24.975653	124.982514
24.978000	124.980987
24.980272	124.979810
24.982107	124.978914
24.983945	124.978309
24.984956	124.978137
24.985969	124.978100
24.990846	124.977319
24.992466	124.977360
24.994922	124.977123
25.000716	124.976524
25.003902	124.976277
25.006039	124.976165
25.006643	124.975963
25.007671	124.976194
25.008699	124.976172

25.010115	124.976339
25.011733	124.976293
25.011554	124.976258
25.013090	124.975906
25.019241	124.975687
25.023049	124.974403
25.031596	124.971630
25.032434	124.970983
25.034283	124.969862
25.034819	124.969670
25.036458	124.969453
25.039390	124.970740
25.042989	124.972941
25.045737	124.974640
25.050646	124.975431
25.051318	124.975473
25.051645	124.975615
25.051879	124.975617
25.052139	124.975671
25.053122	124.976745
25.053336	124.976918
25.053765	124.977035
25.054786	124.977205
25.055441	124.977379
25.057479	124.978043
25.058309	124.978265
25.058576	124.978285
25.059158	124.978424
25.059668	124.978434
25.059973	124.978564
25.061001	124.978700
25.061381	124.978654
25.061991	124.978725
25.062223	124.978680
25.062471	124.978793
25.062937	124.978904
25.063263	124.979098
25.063441	124.979130

25.064102	124.978902
25.065248	124.978953
25.065999	124.978900
25.066565	124.978743
25.067235	124.979066
25.067677	124.979133
25.067971	124.979102
25.068290	124.979205
25.069082	124.979239
25.069191	124.979312
25.069383	124.979261
25.069713	124.979325
25.070191	124.979268
25.070399	124.979429
25.071144	124.979494
25.071512	124.979617
25.071650	124.979637
25.071870	124.979553
25.072300	124.979618
25.072468	124.979692
25.072975	124.979715
25.073444	124.979778
25.073918	124.979930
25.074352	124.979927
25.074523	124.980121
25.076739	124.981588
25.078016	124.981895
25.079014	124.982258
25.079497	124.982317
25.079692	124.982376
25.080015	124.982388
25.080686	124.982673
25.081334	124.982677
25.081672	124.982762
25.082215	124.982983
25.083588	124.984710
25.083855	124.984961
25.086055	124.985063

25.086294	124.985023
25.086895	124.984849
25.087199	124.984586
25.087856	124.984598
25.088972	124.984166
25.090154	124.983211
25.091842	124.981616
25.092661	124.980963
25.093131	124.980645
25.093415	124.980535
25.093646	124.980488
25.095078	124.980460
25.096348	124.980287
25.098014	124.979952
25.098766	124.979902
25.099611	124.979675
25.101037	124.979380
25.101482	124.979376
25.101941	124.979595
25.102429	124.979690
25.102844	124.979914
25.103140	124.980013
25.103455	124.980275
25.103593	124.980379
25.103734	124.980425
25.104805	124.980152
25.105765	124.980283
25.106264	124.980432
25.107165	124.980816
25.107887	124.980833
25.109171	124.980798
25.110315	124.980880
25.110841	124.980867
25.111775	124.980831
25.112518	124.980930
25.113452	124.980880
25.113910	124.980892
25.116341	124.980585

25.119534	124.980565
25.121311	124.980362
25.122816	124.980300
25.124279	124.980301
25.126182	124.980310
25.130073	124.980415
25.130419	124.980521
25.131243	124.980879
25.132457	124.981201
25.141494	124.983347
25.141797	124.983388
25.142903	124.983267
25.150715	124.981770
25.153205	124.981244
25.157096	124.980490
25.159745	124.980390
25.174271	124.980499

(b) Gunbarrel Highway

All that land, being 100 metres wide and defined by the centreline commencing at the intersection of a western boundary of [Reserve 34606 (Gibson Desert Nature Reserve) OR Reserve [XXXX] ([XXXX])], being [Lot 13 as shown on Deposited Plan 91083 OR Lot [XX] as shown on Deposited Plan [XX]], with approximate Latitude 25.173822 South and extending easterly and generally southeasterly along that centreline through the following approximate coordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
25.174345	124.819729
25.174271	124.980499
25.174265	124.993457
25.174259	124.994496
25.174215	124.995301
25.174193	124.998132
25.174107	125.059452
25.174250	125.063290
25.174350	125.066050

25.174773	125.066719
25.175413	125.067109
25.176520	125.067301
25.177642	125.067971
25.181577	125.070950
25.201959	125.086511
25.207221	125.090544
25.226898	125.105563
25.227040	125.105734
25.227350	125.105922
25.308160	125.167514
25.311059	125.169585
25.312766	125.170715
25.316453	125.172120
25.319054	125.173121
25.322032	125.173530
25.327200	125.173853
25.329229	125.174178
25.330375	125.174344
25.331574	125.174587
25.333070	125.174848
25.334930	125.175242
25.335591	125.175277
25.336356	125.175150
25.336713	125.174903
25.336974	125.174651
25.337456	125.174040
25.337944	125.173078
25.338210	125.172353
25.339134	125.168796
25.339683	125.167041
25.340005	125.166489
25.340855	125.165652
25.342280	125.165142
25.343051	125.165150
25.344143	125.165623

then southeasterly to the intersection of a southern boundary of [Reserve 34606 (Gibson Desert Nature Reserve) OR Reserve [XXXX] ([XXXX])], being [Lot 13 as shown on Deposited Plan 91083 OR Lot [XX] as shown on Deposited Plan [XX]], with Longitude 125.206795 East.

SCHEDULE 2
MAP SHOWING DETERMINATION AREA

See over page.

SCHEDULE 3
THE GIBSON DESERT PEOPLE

1. The Gibson Desert People are those persons who:
 - (a) have rights under traditional laws and customs in part or all of the Determination Area through:
 - (i) being conceived in the claim area;
 - (ii) being born in the claim area;
 - (iii) the birth of an ancestor on the claim area;
 - (iv) the acquisition of knowledge through long association with the claim area;
 - (v) an ancestor's acquisition of knowledge through long association with the claim area;
 - (vi) the burial site of an ancestor in the claim area; and/or
 - (vii) having religious, sacred, ritual, practical and historical knowledge of the claim area; and
 - (b) are recognised under traditional laws and customs by other members of the Gibson Desert People as having rights in the Determination Area.
2. As at the date of this determination, this includes the descendants of the following persons:
 - (a) Malungka;
 - (b) the siblings Wirun / Wallace Davies, Tjuturumul / Billy Campbell and Marnupa Banks;
 - (c) Katurapulparr;
 - (d) the siblings Wunkurpa, Ngawili / Nolene Campbell, Tjintutjitji, Mulyamaru / Barney Ward and Nangkawan / Robert Ward;
 - (e) Lenny Morrison;
 - (f) Kaliya / Amy Anderson;
 - (g) the cousin-siblings Mirta-Mirta / Andy Campbell, Dinny Campbell and Nyipi Ward;
 - (h) the siblings Kautjuku / Polly Bond, Red Robertson, Walampari Mitchell and Tatitjarra / Arthur Robertson;

- (i) Minmarna / Chinaman / John Carnegie;
- (j) the siblings Yaluwila / Violet Ward and Neva Butler;
- (k) the siblings Tjiltjirrkurnyu and Tjapiyatjara;
- (l) the siblings Matjuwa Campbell and Nyingura Martin;
- (m) Kuku / Kirintji;
- (n) Dr George Ward / George Ward;
- (o) the siblings Dolly Smith and Eileen Robinson;
- (p) Pulpurru Davies; and
- (q) Nyaraurr / Nama Cutline / Ben Brown.

SCHEDULE 4

OTHER INTERESTS

The nature and extent of other interests in relation to the Determination Area as at the date of this Determination are:

[For Section 47C Determination: Interests that exist as at the date of the determination to be confirmed but will include:

Gibson Desert Nature Reserve 34606

1. Gibson Desert Nature Reserve, reserved under section 29 of the *Land Act 1933* (WA) as Reserve 34606 for the purpose of Conservation of Flora and Fauna on 22 April 1977 and vested in the Western Australian Wildlife Authority in trust for the reserve purpose under section 33 of the *Land Act 1933* (WA) on the same date (as reduced on or about 25 October 1996 by the excision of Milyuga Location 14).
2. Any public works on Reserve 34606 constructed or established by or on behalf of the State.
3. Rights and interests of persons who:
 - (a) have the care, control and management of Reserve 34606;
 - (b) are entitled to access and use Reserve 34606 for the purpose for which it is reserved; and
 - (c) are otherwise entitled to access and use the public works on Reserve 34606, subject to any statutory limitations on those rights and interests.]

OR

[For Section 47A Determination: Interests that exist as at the date of the determination to be confirmed but will include:

[XXXX Reserve XXXX]

1. [New reserve details].

2. Any public works on Reserve [XXXX] constructed or established by or on behalf of the State.
3. Rights and interests of persons who:
 - (a) have the care, control and management of Reserve [XXXX];
 - (b) are entitled to access and use Reserve [XXXX] for the purpose for which it is reserved; and
 - (c) are otherwise entitled to access and use the public works on Reserve [XXXX], subject to any statutory limitations on those rights and interests.]

Other

4. The following rights and interests:
 - (a) rights and interests, including licences and permits, held under valid or validated grants by the Crown in right of the State or of the Commonwealth pursuant to statute or otherwise in the exercise of its executive power and any regulations made pursuant to such legislation;
 - (b) valid or validated rights and interests held by reason of the force and operation of the laws of the State or of the Commonwealth, including but not limited to, 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, 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;

- (d) so far as confirmed pursuant to section 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; and
- (e) any rights and interests of members of the public arising under the common law, including but not limited to the right of any person to use and enjoy any roads 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 the common law.

Minute of Proposed Consent Determination of Native Title

WAD [XXX/202X]

Federal Court of Australia
District Registry: Western Australia
Division: General

[Name] & Ors on behalf of the Gibson Desert People

Applicant

The State of Western Australia [& Ors]

Respondent[s]

THE COURT NOTES THAT:

1. On [insert date] the Court made an approved determination of native title to the effect that native title does not exist in relation to land and waters the subject of Reserve 34606 (Gibson Desert Nature Reserve) (**Original Determination**). The Original Determination recognised that native title had been wholly extinguished by the vesting of Reserve 34606 under section 33 of the *Land Act 1933* (WA).
2. On [insert date] the First Respondent filed revised native title determination application **WAD XX/20XX** under section 61(1) of the *Native Title Act 1993* (Cth) (**NTA**) to vary the Original Determination (the **Revised Determination Application**). The Revised Determination Application is made in accordance with sections 13(5)(c) and 47C of the NTA which requires prior extinguishment in relation to Reserve 34606 to be disregarded.
3. Pursuant to section 87(2) of the NTA, the parties have requested that the Revised Determination Application be determined without holding a hearing.

Filed on behalf of:	The Applicant and the First Respondent
Prepared by:	Malcolm O'Dell (CDNTS) and Alex Rorrison (SSO)
Law firm:	Central Desert Native Title Services Ltd (CDNTS) and State Solicitor's Office (SSO)
Telephone:	(08) 9425 2000 (CDNTS); (08) 9264 1196 (SSO)
Fax:	(08) 9425 2001 (CDNTS); (08) 9264 1440 (SSO)
Email:	reception@centraldesert.org.au (CDNTS); a.orrison@sso.wa.gov.au (SSO);
Address for service:	76 Wittenoom Street, EAST PERTH WA 6004 (CDNTS) Level 23, David Malcolm Justice Centre, 28 Barrack Street PERTH WA 6000 (SSO)

4. The Applicant and the First Respondent [and the other Respondents, if any, to this proceeding] (together, **the parties**) have reached agreement as to the terms of a determination which is to be made in relation to all of the land and waters covered by the **Original Determination (Determination Area)**. The Determination Area is described in order 9(c) of the Determination.
5. Pursuant to section 87(1) of the NTA the parties to this proceeding have filed a Minute of Proposed Consent Determination of Native Title, signed by or on behalf of the parties, which sets out the agreed orders which they ask the Court to make in relation to this proceeding.
6. The terms of the agreement involve the making of consent orders for a determination pursuant to sections 87 and 94A of the NTA that native title exists in relation to the land and waters of the Determination Area.
7. The parties acknowledge that the effect of the making of the determination is that the Gibson Desert People, in accordance with traditional laws acknowledged and traditional customs observed by them, are to be recognised as the native title holders for the Determination Area.
8. The Applicant has nominated Warnpurru (Aboriginal Corporation) (ICN: 8979) pursuant to section 56(2)(a) of the NTA to hold the determined native title in trust for the native title holders.

Being satisfied that orders in the terms sought by the parties are within the power of the Court and it appearing to the Court appropriate to do so and by the consent of the parties:

THE COURT ORDERS THAT:

1. The approved determination of native title made on [insert date] in relation to the Determination Area be varied in accordance with these orders.
2. The revised determination of native title in relation to the Determination Area be in the terms set out in Attachment A.
3. Warnpurru (Aboriginal Corporation) (ICN: 8979) shall hold the determined native title in trust for the native title holders pursuant to section 56(2)(a) of the NTA.
4. There be no order as to costs.

Signed by or on behalf of the parties:

Signed for the State Solicitor

Lawyer for the Applicant

Dated:

Signed by [name]

Lawyer for the First Respondent

Dated:

**ATTACHMENT A
DETERMINATION**

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Determination of native title: ss 13(2), 94A NTA

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 relation to the Determination Area is held by the Gibson Desert People (**native title holders**).

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

3. Subject to orders 4 and 5, 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 whole of the Determination Area to the exclusion of all others.

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

4. The native title rights and interests are subject to and exercisable in accordance with:
 - (a) the traditional laws and customs of the native title holders; and
 - (b) the laws of the State and the Commonwealth, including the common law.
5. Notwithstanding anything in this Determination:
 - (a) there are no native title rights and interests in relation to 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 Energy Resources Act 1967* (WA); or
 - (iii) geothermal energy resources and geothermal energy as defined in the *Petroleum and Geothermal Energy Resources Act 1967* (WA); and

- (b) 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) 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))

- 6. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 4 (**other interests**).

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

- 7. Except as otherwise provided for by law, the relationship between the native title rights and interests described in order 3 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 described in Schedule 4 and the continued existence, enjoyment or exercise of the native title rights and interests:
 - (i) 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
 - (ii) otherwise the other interests co-exist with the native title rights and interests, and for the avoidance of 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.

Area to which s 47C of the NTA applies

- 8. Section 47C of the NTA applies to the whole of the Determination Area.

Interpretation

- 9. In this determination, including its schedules:
 - (a) unless the contrary intention appears, the words and expressions used have the same meaning as in the NTA;
 - (b) if there is an inconsistency between a description of an area in this determination and the depiction of that area on the map in Schedule 1, the written description prevails;

- (c) **Determination Area** means the whole of the area described in Schedule 1, and as depicted on the map attached at Schedule 2;
- (d) **Gibson Desert People** means the group of persons described in Schedule 3;
- (e) **NTA** means the *Native Title Act 1993* (Cth); and
- (f) **State** means the State of Western Australia.

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

SCHEDULE 1
DETERMINATION AREA DESCRIPTION

1. The Determination Area is all that land and water comprising reserve 34606 for the purpose of Conservation of Flora and Fauna, being Lot 13 as shown on Deposited Plan 91083 (Reserve 34606 – Gibson Desert Nature Reserve).
2. Reserve 34606 excludes the following road corridors:

(a) Gary Highway

All that land, being 100 metres wide and defined by the centreline commencing at the intersection of a northern boundary of Reserve 34606 (Gibson Desert Nature Reserve), being Lot 13 as shown on Deposited Plan 91083, with approximate Longitude 125.057882 East and extending generally southerly along that centreline through the following approximate coordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
24.416928	125.057882
24.419339	125.057042
24.420943	125.056567
24.430237	125.053742
24.431927	125.053290
24.434278	125.052570
24.435184	125.052402
24.435469	125.052271
24.435634	125.052239
24.436138	125.052336
24.436354	125.052281
24.436806	125.051914
24.437163	125.051755
24.438036	125.051477
24.440593	125.051110
24.442932	125.050976
24.444971	125.050913
24.446550	125.050951
24.449181	125.050579
24.449837	125.050573

24.450981	125.050286
24.452345	125.050063
24.458395	125.048052
24.460771	125.047179
24.464065	125.046731
24.467674	125.045707
24.472632	125.045096
24.479020	125.044445
24.480251	125.044384
24.486261	125.043146
24.488106	125.042913
24.488969	125.042688
24.490131	125.042688
24.492498	125.042694
24.494623	125.042858
24.496982	125.043221
24.498936	125.043508
24.501113	125.043372
24.503095	125.043212
24.505181	125.042906
24.505462	125.042790
24.508399	125.042704
24.509719	125.042785
24.515912	125.043550
24.516522	125.043517
24.517484	125.043448
24.518253	125.043276
24.518703	125.043243
24.519302	125.042931
24.520433	125.042704
24.522181	125.041593
24.525043	125.040269
24.526351	125.039742
24.530167	125.038076
24.536021	125.035811
24.539586	125.034750
24.544425	125.033309
24.548113	125.032035

24.551983	125.030732
24.554421	125.030511
24.556349	125.030303
24.559375	125.029965
24.561383	125.029479
24.562162	125.029452
24.564100	125.029508
24.566393	125.029258
24.568249	125.029248
24.571444	125.028982
24.574007	125.028358
24.575409	125.028099
24.576076	125.027714
24.576871	125.027647
24.578154	125.026877
24.579218	125.026530
24.580218	125.026573
24.583067	125.026160
24.586500	125.025198
24.588601	125.024313
24.591752	125.023230
24.594219	125.022995
24.596066	125.022981
24.600466	125.023329
24.601987	125.023516
24.602466	125.023389
24.602631	125.023425
24.606023	125.023413
24.608064	125.023065
24.610810	125.022948
24.613660	125.022385
24.617413	125.021816
24.620838	125.021016
24.622014	125.020799
24.623034	125.020431
24.623368	125.020251
24.623619	125.020223
24.626170	125.019520

24.627897	125.019333
24.633483	125.018955
24.635410	125.018554
24.636635	125.018293
24.639027	125.017719
24.642188	125.017024
24.642528	125.017007
24.647611	125.015985
24.650340	125.015515
24.652263	125.015256
24.654531	125.015183
24.656346	125.015093
24.657923	125.014890
24.660241	125.014559
24.661496	125.014322
24.664841	125.013955
24.665424	125.013857
24.670848	125.013368
24.672355	125.013345
24.673681	125.013245
24.677696	125.012173
24.680711	125.010473
24.684440	125.008922
24.687964	125.008118
24.690503	125.007969
24.693715	125.008729
24.695008	125.008904
24.695559	125.008852
24.697722	125.008651
24.698115	125.008515
24.700230	125.008393
24.702043	125.008030
24.702785	125.007912
24.703411	125.007678
24.704360	125.007486
24.704981	125.007444
24.708042	125.006700
24.709549	125.006465

24.710445	125.006386
24.711581	125.006480
24.712081	125.006584
24.712478	125.006770
24.713701	125.006510
24.714856	125.006504
24.720101	125.006270
24.726790	125.006606
24.737589	125.005928
24.739877	125.005916
24.752541	125.005616
24.756572	125.005092
24.760341	125.004932
24.761972	125.004755
24.764568	125.004419
24.770361	125.002807
24.772692	125.002403
24.775806	125.001757
24.777161	125.001382
24.778739	125.000848
24.783478	124.999367
24.787414	124.998209
24.789708	124.997746
24.796435	124.996604
24.802375	124.995840
24.805841	124.996277
24.807749	124.996674
24.809622	124.996856
24.811612	124.996816
24.813978	124.996528
24.818466	124.996568
24.822008	124.996426
24.823880	124.996185
24.827246	124.995857
24.833914	124.995449
24.838408	124.994690
24.839665	124.994552
24.843077	124.993848

24.847186	124.992881
24.847710	124.992640
24.849192	124.991958
24.850397	124.991487
24.852385	124.990896
24.854709	124.990742
24.857884	124.990616
24.859704	124.990453
24.862593	124.989931
24.866663	124.988794
24.868062	124.988721
24.869595	124.988668
24.870805	124.988361
24.872451	124.988247
24.874665	124.987613
24.874876	124.987520
24.875039	124.987535
24.876900	124.987384
24.877676	124.987186
24.879608	124.986911
24.881025	124.986911
24.882426	124.986998
24.884430	124.987703
24.888889	124.989315
24.893658	124.991305
24.896285	124.991941
24.897894	124.991977
24.902342	124.991690
24.906598	124.991294
24.913700	124.990861
24.920384	124.990783
24.925919	124.990456
24.932557	124.989765
24.935247	124.989450
24.938099	124.989084
24.940513	124.988623
24.944628	124.988105
24.946977	124.988115

24.947891	124.988247
24.951143	124.989054
24.952935	124.988766
24.960714	124.987467
24.962742	124.987045
24.963674	124.986928
24.964565	124.986586
24.965488	124.985924
24.966651	124.984757
24.967984	124.984125
24.969147	124.983766
24.970220	124.983335
24.971065	124.983151
24.972257	124.983021
24.972807	124.982878
24.973554	124.982735
24.974659	124.982680
24.975653	124.982514
24.978000	124.980987
24.980272	124.979810
24.982107	124.978914
24.983945	124.978309
24.984956	124.978137
24.985969	124.978100
24.990846	124.977319
24.992466	124.977360
24.994922	124.977123
25.000716	124.976524
25.003902	124.976277
25.006039	124.976165
25.006643	124.975963
25.007671	124.976194
25.008699	124.976172
25.010115	124.976339
25.011733	124.976293
25.011554	124.976258
25.013090	124.975906
25.019241	124.975687

25.023049	124.974403
25.031596	124.971630
25.032434	124.970983
25.034283	124.969862
25.034819	124.969670
25.036458	124.969453
25.039390	124.970740
25.042989	124.972941
25.045737	124.974640
25.050646	124.975431
25.051318	124.975473
25.051645	124.975615
25.051879	124.975617
25.052139	124.975671
25.053122	124.976745
25.053336	124.976918
25.053765	124.977035
25.054786	124.977205
25.055441	124.977379
25.057479	124.978043
25.058309	124.978265
25.058576	124.978285
25.059158	124.978424
25.059668	124.978434
25.059973	124.978564
25.061001	124.978700
25.061381	124.978654
25.061991	124.978725
25.062223	124.978680
25.062471	124.978793
25.062937	124.978904
25.063263	124.979098
25.063441	124.979130
25.064102	124.978902
25.065248	124.978953
25.065999	124.978900
25.066565	124.978743
25.067235	124.979066

25.067677	124.979133
25.067971	124.979102
25.068290	124.979205
25.069082	124.979239
25.069191	124.979312
25.069383	124.979261
25.069713	124.979325
25.070191	124.979268
25.070399	124.979429
25.071144	124.979494
25.071512	124.979617
25.071650	124.979637
25.071870	124.979553
25.072300	124.979618
25.072468	124.979692
25.072975	124.979715
25.073444	124.979778
25.073918	124.979930
25.074352	124.979927
25.074523	124.980121
25.076739	124.981588
25.078016	124.981895
25.079014	124.982258
25.079497	124.982317
25.079692	124.982376
25.080015	124.982388
25.080686	124.982673
25.081334	124.982677
25.081672	124.982762
25.082215	124.982983
25.083588	124.984710
25.083855	124.984961
25.086055	124.985063
25.086294	124.985023
25.086895	124.984849
25.087199	124.984586
25.087856	124.984598
25.088972	124.984166

25.090154	124.983211
25.091842	124.981616
25.092661	124.980963
25.093131	124.980645
25.093415	124.980535
25.093646	124.980488
25.095078	124.980460
25.096348	124.980287
25.098014	124.979952
25.098766	124.979902
25.099611	124.979675
25.101037	124.979380
25.101482	124.979376
25.101941	124.979595
25.102429	124.979690
25.102844	124.979914
25.103140	124.980013
25.103455	124.980275
25.103593	124.980379
25.103734	124.980425
25.104805	124.980152
25.105765	124.980283
25.106264	124.980432
25.107165	124.980816
25.107887	124.980833
25.109171	124.980798
25.110315	124.980880
25.110841	124.980867
25.111775	124.980831
25.112518	124.980930
25.113452	124.980880
25.113910	124.980892
25.116341	124.980585
25.119534	124.980565
25.121311	124.980362
25.122816	124.980300
25.124279	124.980301
25.126182	124.980310

25.130073	124.980415
25.130419	124.980521
25.131243	124.980879
25.132457	124.981201
25.141494	124.983347
25.141797	124.983388
25.142903	124.983267
25.150715	124.981770
25.153205	124.981244
25.157096	124.980490
25.159745	124.980390
25.174271	124.980499

(b) Gunbarrel Highway

All that land, being 100 metres wide and defined by the centreline commencing at the intersection of a western boundary of Reserve 34606 (Gibson Desert Nature Reserve), being Lot 13 as shown on Deposited Plan 91083, with approximate Latitude 25.173822 South and extending easterly and generally southeasterly along that centreline through the following approximate coordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
25.174345	124.819729
25.174271	124.980499
25.174265	124.993457
25.174259	124.994496
25.174215	124.995301
25.174193	124.998132
25.174107	125.059452
25.174250	125.063290
25.174350	125.066050
25.174773	125.066719
25.175413	125.067109
25.176520	125.067301
25.177642	125.067971
25.181577	125.070950
25.201959	125.086511

25.207221	125.090544
25.226898	125.105563
25.227040	125.105734
25.227350	125.105922
25.308160	125.167514
25.311059	125.169585
25.312766	125.170715
25.316453	125.172120
25.319054	125.173121
25.322032	125.173530
25.327200	125.173853
25.329229	125.174178
25.330375	125.174344
25.331574	125.174587
25.333070	125.174848
25.334930	125.175242
25.335591	125.175277
25.336356	125.175150
25.336713	125.174903
25.336974	125.174651
25.337456	125.174040
25.337944	125.173078
25.338210	125.172353
25.339134	125.168796
25.339683	125.167041
25.340005	125.166489
25.340855	125.165652
25.342280	125.165142
25.343051	125.165150
25.344143	125.165623

then southeasterly to the intersection of a southern boundary of Reserve 34606 (Gibson Desert Nature Reserve), being Lot 13 as shown on Deposited Plan 91083, with Longitude 125.206795 East.

SCHEDULE 2
MAP SHOWING AGREEMENT AREA

See over page.

SCHEDULE 3
THE GIBSON DESERT PEOPLE

1. The Gibson Desert People are those persons who:
 - (a) have rights under traditional laws and customs in part or all of the Determination Area through:
 - (i) being conceived in the claim area;
 - (ii) being born in the claim area;
 - (iii) the birth of an ancestor on the claim area;
 - (iv) the acquisition of knowledge through long association with the claim area;
 - (v) an ancestor's acquisition of knowledge through long association with the claim area;
 - (vi) the burial site of an ancestor in the claim area; and/or
 - (vii) having religious, sacred, ritual, practical and historical knowledge of the claim area; and
 - (b) are recognised under traditional laws and customs by other members of the Gibson Desert People as having rights in the Determination Area.
2. As at the date of this determination, this includes the descendants of the following persons:
 - (a) Malungka;
 - (b) the siblings Wirun / Wallace Davies, Tjuturumul / Billy Campbell and Marnupa Banks;
 - (c) Katurapulparr;
 - (d) the siblings Wunkurpa, Ngawili / Nolene Campbell, Tjintutjitji, Mulyamaru / Barney Ward and Nangkawan / Robert Ward;
 - (e) Lenny Morrison;
 - (f) Kaliya / Amy Anderson;
 - (g) the cousin-siblings Mirta-Mirta / Andy Campbell, Dinny Campbell and Nyipi Ward;
 - (h) the siblings Kautjuku / Polly Bond, Red Robertson, Walampari Mitchell and Tatitjarra / Arthur Robertson;

- (i) Minmarna / Chinaman / John Carnegie;
- (j) the siblings Yaluwila / Violet Ward and Neva Butler;
- (k) the siblings Tjiltjirkurnyu and Tjapiyatjara;
- (l) the siblings Matjuwa Campbell and Nyingura Martin;
- (m) Kuku / Kirintji;
- (n) Dr George Ward / George Ward;
- (o) the siblings Dolly Smith and Eileen Robinson;
- (p) Pulpurru Davies; and
- (q) Nyaraurr / Nama Cutline / Ben Brown.

SCHEDULE 4

OTHER INTERESTS

The nature and extent of other interests in relation to the Determination Area as at the date of this Determination are:

Gibson Desert Nature Reserve 34606

1. Gibson Desert Nature Reserve, reserved under section 29 of the *Land Act 1933* (WA) as Reserve 34606 for the purpose of Conservation of Flora and Fauna on 22 April 1977 and vested in the Western Australian Wildlife Authority in trust for the reserve purpose under section 33 of the *Land Act 1933* (WA) on the same date (as reduced on or about 25 October 1996 by the excision of Milyuga Location 14).
2. Any public works on Reserve 34606 constructed or established by or on behalf of the State.
3. Rights and interests of persons who:
 - (a) have the care, control and management of Reserve 34606;
 - (b) are entitled to access and use Reserve 34606 for the purpose for which it is reserved; and
 - (c) are otherwise entitled to access and use the public works on Reserve 34606, subject to any statutory limitations on those rights and interests.

Other

4. The following rights and interests:
 - (a) rights and interests, including licences and permits, held under valid or validated grants from the Crown in right of the State or of the Commonwealth pursuant to statute or otherwise in the exercise of its executive power and any regulations made pursuant to such legislation;
 - (b) valid or validated rights and interests held by reason of the force and operation of the laws of the State or of the Commonwealth, including but not limited

to, 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, 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;

- (d) so far as confirmed pursuant to section 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; and

- (e) any rights and interests of members of the public arising under the common law, including but not limited to the right of any person to use and enjoy any roads 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 the common law.

