



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

No: WAD541/2018

**MERVYN MULARDY & ORS ON BEHALF OF THE BIRRIMAN-GAN NATIVE  
TITLE CLAIM GROUP**

Applicant

**STATE OF WESTERN AUSTRALIA & ORS**

Respondent

**ORDER**

**JUDGE:** JUSTICE BANKS-SMITH

**DATE OF ORDER:** 19 December 2019

**WHERE MADE:** Perth

**THE COURT NOTES THAT:**

- A. Pursuant to section 87(1) of the *Native Title Act 1993* (Cth) the parties have filed with the Court the attached Minute of Consent Determination of Native Title which reflects the terms of an agreement reached by the parties in relation to these proceedings.
- B. The terms of the agreement involve the making of consent orders for a determination of native title in relation to the land and waters the subject of this proceeding pursuant to section 87(2) and 94A of the *Native Title Act 1993* (Cth).

**IN THESE CIRCUMSTANCES AND WITH THE CONSENT OF THE PARTIES,  
THE COURT DETERMINES, 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 section 87 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 section 56(1) or 57(2) of the *Native Title Act 1993* (Cth) as the case may be.
3. Within nine 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 or prescribed bodies corporate to be trustee of the native title rights and interests; and
  - (b) including within the nomination the written consent of the body corporate or bodies corporate.
4. If a prescribed body corporate or bodies corporate are 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.
  6. There be no order as to costs.

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



## **ATTACHMENT 'A'**

### **DETERMINATION**

#### **THE COURT ORDERS, DECLARES AND DETERMINES THAT:**

##### **Existence of native title (s 225)**

1. The Determination Area is the land and waters described in Schedule 1 and depicted on the map comprising Schedule 2.
2. Native title exists in the whole of the Determination Area identified in Schedule 3.

##### **Native title holders (s 225(a))**

3. 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 4.

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

4. Subject to paragraphs 5, 6 and 7 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.
5. 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); orexcept the right to take and use ochre to the extent that ochre is not a mineral pursuant to the *Mining Act 1904* (WA).
6. 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.



7. 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 where extinguishment is disregarded (s 47B)**

8. Section 47B of the *Native Title Act* applies to disregard any prior extinguishment in respect of the whole of the Determination Area.

**Other interests (s 225(c) and s 225(d))**

9. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 5.
10. The relationship between the native title rights and interests described in paragraph 4 and the other interests is as follows:
- (a) the Other Interests co-exist with the native title rights and interests;
  - (b) this Determination does not affect the validity of those Other Interests; and
  - (c) to the extent of any inconsistency, the native title rights and interests yield to the Other Interests and the existence and exercise of native title rights and interests cannot prevent activities permitted under the Other Interests.

**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 map 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);

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



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## **SCHEDULE 1**

### **DETERMINATION AREA**

The **Determination Area**, generally shown as bordered in blue on the map at Schedule 2, comprises all that land and waters bounded by the following description:

All those land and waters commencing at the westernmost southwestern corner of Pastoral Lease N050193 (Dampier Downs), being a point on a northern boundary of Native Title Determination WAD6100/1998 Karajarri People (Area A) (WCD2002/001) and extending generally westerly along the boundary of that native title determination to the intersection of an eastern boundary of Native Title Determination WAD6006/1998 Rubibi Community (WCD2006/001); then generally northeasterly and easterly along boundaries of that native title determination to the intersection of a western boundary of Native Title Determination WAD6099/1998 Nyikina Mangala (WCD2014/003); then southerly and generally southwesterly along boundaries of that native title determination back to the commencement point.

**Note:**           **Geographic Coordinates provided in Decimal Degrees.**

**All referenced Deposited Plans and Diagrams are held by the Western Australian Land Information Authority, trading as Landgate.**

**Cadastral boundaries sourced from Landgate's Spatial Cadastral Database dated 2nd September 2019.**

**For the avoidance of doubt the determination excludes any land and waters subject to:**

**Native Title Determination Application WAD6100/1998 Karajarri People (Area A) (WCD2002/001) as Determined in the Federal Court on the 12/02/2002.**

**Native Title Determination Application WAD6006/1998 Rubibi Community (WCD2006/001) as Determined in the Federal Court on the 28/04/2006.**

**Native Title Determination Application WAD6099/1998 Nyikina Mangala (WCD2014/003) as Determined in the Federal Court on the 29/05/2014.**

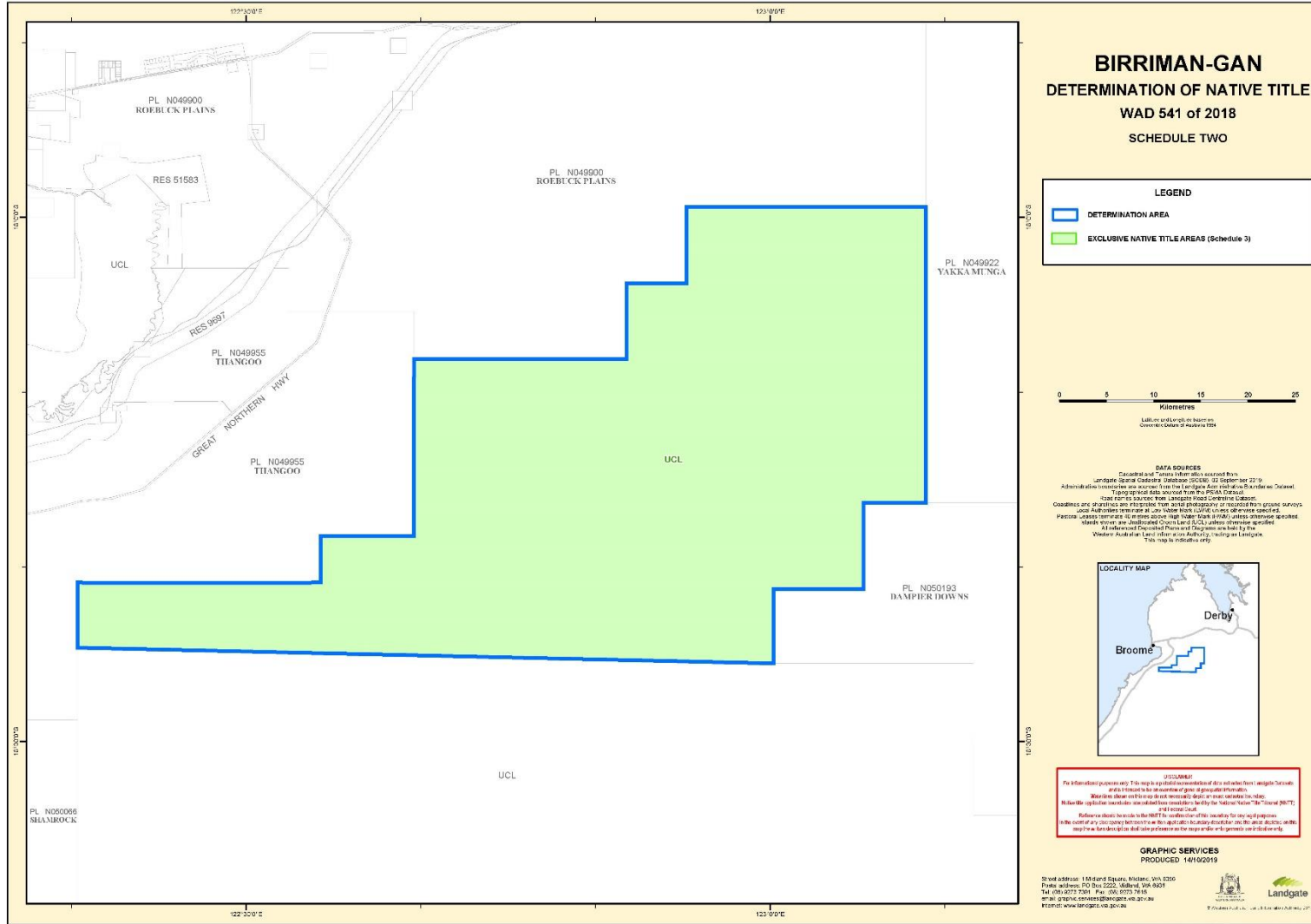
**Datum:**           **Geocentric Datum of Australia 1994 (GDA94)**

**Prepared By:**   **Graphic Services (Landgate) 21st October 2019**

**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 2 MAP OF THE DETERMINATION AREA





### **SCHEDULE 3 EXCLUSIVE NATIVE TITLE AREAS**

**Areas where native title comprises the rights set out in paragraph 4**

**The following land and waters:**

The entire claim area as described in Schedule 1 and depicted on the map at Schedule 2.



## **SCHEDULE 4 DESCRIPTION OF THE NATIVE TITLE HOLDERS**

The native title holders comprise the Karajarri people, the Yawuru people and the Nyikina people, defined as follows:

### **Karajarri People**

Those people who refer to themselves as Karajarri, being persons who:

- (a) are of Karajarri descent;
- (b) identify as Karajarri and are accepted as such by the Karajarri;
- (c) adhere to Karajarri customs and traditions; and
- (d) are by Karajarri laws and customs entitled to the use or occupation of the Karajarri lands irrespective of whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission and includes those persons having native title thereto under common law.

### **Yawuru People**

- (a) the descendants of Nyobing Babere, Chimbere Sitocay, Aloysius Louis Dolby, Jirawina, Jack and Pollyanna Mangain, Lija (wife of Phillip O'Brien Taylor), Nyilandin, Joseph Mary, Paddy Djiagween, Lucy Marcella Roe, Mary Minyal, Cecilia Ngangon, Nyingula, Annie Mawunga, Milangka, Lena Charlie, Lucia 'Lija' (daughter of Bornal and Gurdan), Minbal Ester, Philomena Carter, Aubrey Kelly Edar, John Two fingers, Mary Budjinka, Yungula (first wife of George Harriot Roe), Yungula (second wife of George Harriot Roe), Tommy Roe 'Guminy', Dorothy Kelly, Lydia Kanagai, Solong Archill, Jiriny, Dockan Harry Minbal, Maggie Kanado (Kangode), Lucy Warrdarr and Philomena 'Polly' Vincent (nee Pedro) save that where a person has only one Yawuru parent, that person self-identifies as Yawuru; and
- (b) Aboriginal persons who have been adopted as children or been grown up by a Yawuru person as members of the Yawuru community under the traditional laws and customs of the community and who self-identify and are generally accepted by other members of the community as Yawuru persons; and





- (c) Aboriginal persons who possess high cultural knowledge and responsibilities in relation to the area described in Schedule 2 and:
  - (i) were born in; or
  - (ii) have a long term physical association with, that area under the traditional laws and customs of the Yawuru community and who self-identify and are generally accepted by other members of the community, as Yawuru persons; and
- (d) the descendants of persons referred to in (b) or (c) save that where a person has only one Yawuru parent, that person self-identifies as Yawuru.

### **Nyikina people**

The descendants of Karlmurl, Ngurkwan, Yayika and Minyang, Polly Wurrayin and Charlie Djawali, Bundangurra and Jambo, Kitty Kujaja and Charlie Mangurl, Lucy Muninga and Edward Yedawarra and Wadadarl 'Brumby', Maggie Nimbanirl, Dim and the mother of Bobby Ah Choo, Bundangurra and Mabel Ah Chee, Jimgula, Niyna Philomena, Ngamariny, Gurupirin, Nani, Jinangkal and Nyuntunga, Andy Marunjari and Marjory Spratt and her unnamed mother, Bulu, and Joe Nangan.



## SCHEDULE 5 OTHER INTERESTS

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:

### 1. Existing interests under the *Mining Act 1978*

Tenement ID	Tenement Type	Date of grant
E04/2540	Exploration Licence	3 October 2019
E04/2554	Exploration Licence	3 October 2019

### 2. Existing interests under the *Petroleum and Geothermal Energy Resources Act 1967*

Tenement ID	Tenement Type	Date of grant
EP 391 R3	Exploration Permit	7 January 2015
L 20	Petroleum Production Licence	2 July 2015
L 21	Petroleum Production Licence	2 July 2015
SPA 29 AO	Petroleum Special Prospecting Authority	8 November 2018

### 3. Existing interests under the *Petroleum Pipelines Act 1969*

PL 109	Pipeline	4 June 2015
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### 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) The right to access land by an employee or agent or instrumentality of:
- a. the State;
  - b. the Commonwealth; or
  - c. 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.

Date that entry is stamped: 19 December 2019

*Sia Lagos*  
Registrar