



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD6133/1998
NNTT Number: WCD2012/006

Determination Name: [Wurrunmurra v State of Western Australia](#)

Date(s) of Effect: 12/12/2012

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: 12/12/2012

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Bunuba Dawangarri Aboriginal Corporation RNTBC
Trustee Body Corporate
PO Box 264
FITZROY CROSSING Western Australia 6765

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:

4. The native title in the Determination Area is held by the Bunuba People. The Bunuba People are the people referred to in Schedule Six.

SCHEDULE SIX -DESCRIPTION OF THE NATIVE TITLE HOLDERS

The Bunuba People (referred to in para 4) are:

(a)The descendants of the following ancestors:

Mubu5;

Jaranggu6;

Jurrguna7;

FrankEdgar (*Pilot*)8;

Limirruwa;

Nindiligali9;

Dawanjina10;

Ganggula11;

Mangalanyi12;

Yambanana13;

Minyjinyji14;

Balyburru15;

Gijalamili16;

Jingirriban17;

Guburrniya18;

Bundu19; and

Limadji.

5 Banjo Wurrumurra's MM and David Fairfield's MM

6 Johnny Marr's F

7 Rita Laylay's MF

8 Felix Edgar's F

9 Nancy Williams' MF and George Brooking's FF

10 Billy Oscar's FM, Lionel Jambara's FFMM

11 George Leopold's MM

12 Adam Andrews' F

13 Fred Green's F

14 Moses Beharrel's M

15 Joe Ross' MFF and *Wibiy* Roger's FF

16 Betty Smith's MMF

17 Rose Benning's MF

18 Barbara Cole's FM

19 Harry and Lena Skinner's F and Nita Skinner's FF

(b) The individuals, and their descendants, who have been adopted or *Marurra* (people who are raised, grown up, embraced and acknowledged as a Bunuba person) by members of the Bunuba People, or by their predecessors, in accordance with the traditional laws and customs of the Bunuba People; and

(c) Aboriginal persons who:

(i) self-identify as Bunuba; and

(ii) are recognised by other members of the Bunuba People as Bunuba under traditional law and custom.

MATTERS DETERMINED:

BEING SATISFIED that a determination in the terms sought by the parties is within the power of the Court, and it appearing to the Court appropriate to do so, pursuant to ss 87 A and 94A of the *Native Title Act 1993* (Cth) and by the consent of the parties:

THE COURT ORDERS THAT:

1. There be a determination of native title in WAD 6133 of 1998 in terms of the Determination as provided for in Attachment 'A' hereof.

2. The Bunuba Dawangarri Aboriginal Corporation RNTBC shall hold the determined native title in trust for the native title holders pursuant to s 56(2)(b) of the *Native Title Act 1993* (Cth).

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 One and depicted on the maps comprising Schedule Two.

2. Native title exists in those parts of the Determination Area identified in Schedules Three and Four (**Native Title Area**).

3. Native title does not exist in those parts of the Determination Area identified in Schedule Five.

Native title holders (s 225(a) *Native Title Act*)

4. The native title in the Determination Area is held by the Bunuba People. The Bunuba People are the people referred to in Schedule Six.

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*)

Exclusive native title rights and interests

5. Subject to paras 7, 8 and 9 the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule Three, being areas where there has been no extinguishment of native title or areas where any extinguishment must be disregarded, are:

(a) except in relation to flowing and underground waters, the right to possession, occupation, use and enjoyment of that part of the Determination Area to the exclusion of all others; and

(b) in relation to flowing and underground waters, the right to use and enjoy the flowing and underground waters, including:

(i) the right to hunt on, fish from, take, use, share and exchange the natural resources of the flowing and underground waters for personal, domestic, cultural or non-commercial communal purposes;

(ii) the right to take, use, share and exchange the flowing and underground waters for personal, domestic, cultural or non-commercial communal purposes.

Non-exclusive rights and interests

6. Subject to paras 7, 8 and 9, the nature and extent of the native title rights and interests in relation to each part of the Determination Area referred to in Schedule Four, 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 Four;

(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 Four;

(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 Four including soil, sand, clay, gravel, ochre, timber, charcoal, resin and stone for personal, domestic, cultural and non-commercial communal purposes;

(iv) light fires for domestic 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 Four; and

(x) access, take, use, share and exchange water for personal, domestic, cultural or non-commercial communal purposes.

7. The native title rights and interests referred to in paras 5(b) and 6 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.

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); or

(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* (W A); 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* (W A).

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 for personal, domestic, cultural and non-commercial communal purposes, including social, religious, spiritual and ceremonial purposes.

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

10. Sections 47 and 47B of the *Native Title Act* apply to disregard any prior extinguishment in relation to the areas described in Schedule Seven.

The nature and extent of any other interests

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

Relationship between native title rights and other interests

12. The relationship between the native title rights and interests described in paras 5 and 6 and the other interests referred to in para 11 ("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.

Liberty to Apply

13. The parties have liberty to apply for the following purposes:

(a) to establish the precise location and boundaries of the public works and adjacent land and waters identified in relation to any part or parts of the Determination Area referred to in Part One of Schedule Five of this Determination;

(b) to establish the precise location of the boundaries of land on which the pastoral improvements referred to in Part Two of Schedule Five of this Determination have been constructed and any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvements;

and

(c) to establish whether any of the pastoral improvements referred to in Part Two of Schedule Five of this Determination have been constructed unlawfully.

Definitions and interpretation

14. In this Determination, unless the contrary intention appears:

"Determination Area" means the land and waters described in Schedule One and depicted on the maps at Schedule Two;

"flowing water" means the following water within the Determination Area:

(a) water which flows, whether permanently, intermittently or occasionally, within any river, creek, stream or brook; and

(b) any natural collection of water into, through, or out of which a river, creek, stream or brook flows;

"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;

"underground water" means water from and including an underground water source, including water that percolates from the ground;

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

In the event of any inconsistency between the written description of an area in Schedule One or Schedules Three to Five and the area as depicted on the maps at Schedule Two, the written description prevails.

SCHEDULE ONE - DETERMINATION AREA

[See NNTR attachment 1: "Schedule One - Determination Area"]

SCHEDULE TWO - MAPS OF THE DETERMINATION AREA

[See NNTR attachment 2: "Schedule Two - Maps of the Determination Area"]

SCHEDULE THREE - 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 Two:

Pastoral Leases to which s 47 *Native Title Act* applies:

Fairfield - Pastoral Lease 3114/748 held by the Bunuba Aboriginal Corporation.

Leopold Downs - Pastoral Lease K571500 held by the Bunuba Aboriginal Corporation.

UCL Areas to which s 47B *Native Title Act* applies:

UCL 1 being an area comprised of areas formerly subject to Pastoral Lease 3114/930, Reserve 2068 and Reserve 23226.

SCHEDULE FOUR - NON - EXCLUSIVE NATIVE TITLE AREAS

Areas where native title comprises the rights set out in paragraph 6

The following land and waters generally shown as pink on the maps at Schedule Two:

1. Pastoral Leases:

Portion of Pastoral Lease 3114/692, Crown Lease 655/1993, Kimberley Downs falling within the Determination Area.

Portion of Pastoral Lease 3114/930, Crown Lease 218/1968, Jubilee Downs falling within the Determination Area.

Portion of Pastoral Lease 3114/1269, Crown Lease 381/1992 Quanbun Downs falling within the Determination Area.

Portion of Pastoral Lease 3114/1271, Crown Lease 402/1992 Blina falling within the Determination Area.

2. Non-vested Reserves:

Reserve 1576 - Watering Place.

Reserve 12474 - Portion of Lennard River Stock Route falling within the Determination Area.

Reserve 12475 - Stock Route.

3. Reserves vested under the Conservation and Land Management Act 1984 (WA)

Reserve 43099 - Conservation Park.

Reserve 43100 - Conservation Park.

Reserve 43101 - Conservation Park.

4. Areas of Unallocated Crown Land

UCL 2 being Lot 338 on Deposited Plan 195328

UCL 3 being Lot 337 on Deposited Plan 195326

UCL 4 being Lot 336 on Deposited Plan 221293

UCL 5 being Lot 335 on Deposited Plan 221293

UCL 6, 7 and 8 being the bed of the Fitzroy River.

SCHEDULE FIVE - AREAS WHERE NATIVE TITLE DOES NOT EXIST

Part 1-

Native title does not exist in the following land and waters, shown as green on the maps at Schedule Two, by

reason of extinguishment, except those public works which are captured by the definition at para 3.2 of Part One of this Schedule

1. Freehold:

Certificate of Title 2734 folio 355 being Lot 325 on Deposited Plan 28864.

Certificate of Title 2741 folio 261 being Lot 326 on Deposited Plan 28864.

Certificate of Title 2746 folio 558 being Lot 327 on Deposited Plan 28864.

Vested Reserves and Public Works

2. Vested Reserves:

Reserve 13120 for the purpose of water vested in the Shire of West Kimberley.

Reserve 36958 for the purpose of Health (Hospital and Allied Purposes) vested in Minister for Public Health.

Reserve 39456 for the purpose of Repeater Station Site vested in Australian Telecommunication Commission.

3. The areas the subject of the following works:

3.1 Roads:

Road Number	Location
1	"A Road starting from Wingrate Pool and Extending South by East about 14 miles to Mowrowia Pool, at Elimbirrie Cliff Station". 2
2.	" .. strip of land ... , one chain wide, starting from the Telegraph Station at Fitzroy

Crossing, and extending Northward via Brooking Creek and Westward to Leopold Downs Station; also starting from Leopold Downs Station and extending Eastward via Pigeon Creek to Duck Hole; thence North-Eastward to the Old Leopold Station".³

3. "A strip of land, five chains wide ... , its centre line commencing on the East boundary of Kimberley location 3 and extending... Eastward through Pastoral Leases 396/506, 396/686, 396/726, 396/413, 396/493, 396/494, 396/452, 396/753, 396/466, 396/566 and 396/429 and reserves Nos. 18291, 23226 and 12475 to the right bank of the Fitzroy River".⁴

3.2 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*.

2 WA Government Gazette 11 February 1886.

3 WA Government Gazette 10 July 1908.

4 WA Government Gazette 7 April 1955.

Part 2 - Pastoral Improvements

1. In relation to the areas described in para 1 of Schedule Four native title does not exist in the parts of those areas covered by:

- a. homestead, house, shed, building or electrical generation facility
- b. constructed airstrips;
- c. a constructed dam or other constructed stock watering point, bore, turkey nest or squatter's tank;
- d. permanent stockyards; and
- e. permanent trapyards.

The areas described by (a) to (e) above comprise land on which the improvements have been constructed prior to the date of this determination, and any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvements.

2. For the avoidance of doubt, Schedule Five Part 2.1 above does not preclude the possibility of further extinguishment, according to law, of native title over other limited parts of the Determination Area by reason of the construction of new pastoral improvements of the kind referred to in Schedule Five Part 2.1 after the date of this determination.

SCHEDULE SIX - DESCRIPTION OF THE NATIVE TITLE HOLDERS

The Bunuba People (referred to in para 4) are:

(a) The descendants of the following ancestors:

Mubu5;

Jaranggu6;

Jurrguna7;

Frank Edgar (*Pilot*)8;

Limirruwa;

Nindiligali9;

Dawanjina10;

Ganggula11;

Mangalanyi12;

Yambanana13;

Minyjinyji14;

Balyburru15;

Gijalamili16;

Jingirriban17;

Guburrniya18;

Bundu19 ; and

Limadji.

5 Banjo Wurrumurra's MM and David Fairfield's MM

6 Johnny Marr's F

7 Rita Laylay's MF

8 Felix Edgar's F

9 Nancy Williams' MF and George Brooking's FF

10 Billy Oscar's FM, Lionel Jambara's FFMM

11 George Leopold's MM

12 Adam Andrews' F

13 Fred Green's F

14 Moses Beharrel's M

15 Joe Ross' MFF and *Wibiy* Roger's FF

16 Betty Smith's MMF

17 Rose Benning's MF

18 Barbara Cole's FM

19 Harry and Lena Skinner's F and Nita Skinner's FF

(b) The individuals, and their descendants, who have been adopted or *Marurra* (people who are raised, grown up, embraced and acknowledged as a Bunuba person) by members of the Bunuba People, or by their predecessors, in accordance with the traditional laws and customs of the Bunuba People; and

(c) Aboriginal persons who:

(i) self-identify as Bunuba; and

(ii) are recognised by other members of the Bunuba People as Bunuba under traditional law and custom.

SCHEDULE SEVEN - AREAS TO WHICH SECTIONS 47 AND 47B OF THE *NATIVE TITLE ACT* APPLY

Fairfield - Pastoral Lease 3114/748 held by the Bunuba Aboriginal Corporation.

Leopold Downs - Pastoral Lease K571500 held by the Bunuba Aboriginal Corporation.

UCL 1 being an area comprised of areas formerly subject to Pastoral Lease 3114/930, Reserve 2068 and Reserve 23226.

SCHEDULE EIGHT - OTHER INTERESTS

[See NNTR attachment 3: "Schedule Eight - Other Interests"]

REGISTER ATTACHMENTS:

1. Schedule 1 - Determination Area, 6 pages - A4, 12/12/2012
2. Schedule 2 - Maps of the Determination Area, 6 pages - A4, 12/12/2012
3. Schedule 8 - Other Interests, 5 pages - A4, 12/12/2012

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.