



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): WAD535/2018  
NNTT Number: WCD2019/008

**Determination Name:** [Brooking on behalf of the Bunuba People \(Bunuba #2 \(Part B\)\) v State of Western Australia](#)

**Date(s) of Effect:** 25/07/2019

**Determination Outcome:** Native title exists in parts of the determination area

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

**Determination Date:** 25/07/2019

**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](http://www.oric.gov.au)*

### COMMON LAW HOLDER(S) OF NATIVE TITLE:

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

4. The native title in the Determination Area is held by the Bunuba People. The Bunuba People are the people referred to in Schedule 5.

*[Schedule 5 is attached to this extract as Register Attachment Number 5]*

### MATTERS DETERMINED:

#### THE COURT ORDERS THAT:

1. There be a determination of native title in the terms of the Determination as provided for in Attachment "A".
2. The Bunuba Dawanggarri Aboriginal Corporation RNTBC shall hold the determined native title in trust for the native title holders pursuant to section 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)**

1. The Determination Area is the land and waters described in Schedule 1 and depicted on the maps comprising Schedule 2.
2. Native title exists in those parts of the Determination Area identified in Schedule 3 (**Native Title Area**).
3. Native title does not exist in those parts of the Determination Area identified in Schedule 4.

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

4. The native title in the Determination Area is held by the Bunuba People. The Bunuba People are the people referred to in Schedule 5.

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

##### **Non-exclusive rights and interests**

5. Subject to paragraphs 6, 7 and 8, 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 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 3;
  - (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 3;
  - (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 3 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 3; and
    - (x) access, take, use, share and exchange water for personal, domestic, cultural or non-commercial communal purposes.
6. The native title rights and interests referred to in paragraph 5 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.

7. Notwithstanding anything in this Determination there are no native title rights and interests in the Determination Area in or in relation to

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

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

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

(d) water lawfully captured by the holders of other rights and interests;

except the right to take and use ochre to the extent that ochre is not a mineral pursuant to the Mining Act 1904.

8. 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).

### **The nature and extent of any other interests**

9. The nature and extent of other rights and interests in relation to the Determination Area are those set out in Schedule 6.

### **Relationship between native title rights and other interests**

10. The relationship between the native title rights and interests described in paragraph 5 and the other interests referred to in paragraph 9 ("**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 rights and 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**

11. The parties have liberty to apply 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 2 of Schedule 4 of this Determination;

### **Definitions and interpretation**

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

"**Determination Area**" means the land and waters described in Schedule 1 and depicted on the maps at Schedule 2;

"**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 1 or Schedules 3 to 4 and the area as depicted on the maps at Schedule 2, the written description prevails.

**REGISTER ATTACHMENTS:**

1. WCD2019/008 Schedule One - Determination Area, 2 pages - A4, 25/07/2019
2. WCD2019/008 Schedule Two - Maps of the Determination Area, 2 pages - A4, 25/07/2019
3. WCD2019/008 Schedule Three - Non-Exclusive Native Title Areas, 1 page - A4, 25/07/2019
4. WCD2019/008 Schedule Four - Areas Where Native Title Does Not Exist, 1 page - A4, 25/07/2019
5. WCD2019/008 Schedule Five - Description of the Native Title Holders, 2 pages - A4, 25/07/2019
6. WCD2019/008 Schedule Six - Other Rights and Interests, 3 pages - A4, 25/07/2019

*Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.*