



Extract from the National Native Title Register

Determination Information:

Determination Reference:	Federal Court Number(s): WAD598/2016 NNTT Number: WCD2020/008
Determination Name:	Shaw on behalf of the Booroola Moorool Moorool Native Title Claim Group v State of Western Australia
Date(s) of Effect:	2/08/2021
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:	30/11/2020
Determining Body:	Federal Court of Australia

ADDITIONAL INFORMATION:

On 30 November 2020, the Federal Court made a determination that native title exists in parts of the application area – see [Shaw on behalf of the Booroola Moorool Moorool Native Title Claim Group v State of Western Australia \[2020\] FCA 1700](#).

On 23 December 2020, the Federal Court made further orders which stated the following:

1. The orders of the Court made on 30 November 2020 are varied by amending Schedule 1 to:

(a) delete the words 'the southern boundary of Reserve 1834' and substitute the words 'a southwestern boundary of Reserve 51146';

(b) delete the words 'Then easterly to the easternmost northeastern corner of the westernmost severance of Pastoral Lease N049743 (Mowanjum), being the easternmost northwestern corner of again Native Title Determination WAD6099/1998 Nyikina Mangala (WCD2014/003)' and substitute the words 'Then easterly along a line joining coordinate points Latitude 17.415268 South, Longitude 123.667955 East and Latitude 17.415267 South, Longitude 123.751288 East to a northwestern corner of Native Title Determination WAD6099/1998 Nyikina Mangala (WCD2014/003);',

so that the orders be now in the form annexed hereto and marked Attachment A.

Pursuant to Order 2 of the determination, on 2 August 2021, the Booroola Moorool Moorool Native Title Claim Group nominated the Walalakoo Aboriginal Corporation RNTBC to be the prescribed body corporate and to hold the native title on trust. The determination therefore came into effect on 2 August 2021.

REGISTERED NATIVE TITLE BODY CORPORATE:

Walalakoo Aboriginal Corporation RNTBC
Trustee Body Corporate
PO Box 1115
Derby Western Australia 6728

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:

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

3. The native title in the Part A Determination Area is held by the Native Title Holders.

SCHEDULE EIGHT

NATIVE TITLE HOLDERS (PARAGRAPH 3)

The Native Title Holders are those Aboriginal persons who are the biological or adopted descendants of the following apical ancestors:

- (a) Charlie Mangurl
- (b) Ninya Philomena
- (c) Ngurkwan, Yayika and Minyang
- (d) Polly Wurrayin and Charlie Djawali
- (e) Polly Jambo
- (f) Kitty Kujaja
- (g) Lucy Muninga and Edward Yedawarra and Wadadarl (mother of Fulgentius Fraser)
- (h) Maggie Nimbanirl
- (i) Dim
- (j) Bobby Ah Choo (Gadjigar)
- (k) Bundangurra and Mabel Ah Chee
- (l) Gurupirin
- (m) Nani
- (n) Balbarra (husband of Nani)
- (o) Jinangkal and Nyuntunga
- (p) Kanjuka and his siblings, Mona Yabali and Alec Munganji
- (q) Ngamariny
- (r) Kudij
- (s) Charlie Jalabanany
- (t) Rimarrangudu
- (u) Bulu
- (v) Butcher Joe Nangan

(w) Jerry Wandamarra

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. In relation to the Part A Determination Area, there be a determination of native title in WAD 598 of 2016 in terms of the determination as provided for in Attachment A (**Determination**).

2. The Determination is to take effect immediately upon the making of a determination under s 56(1) or s 57(2) of the *Native Title Act 1993* (Cth) as the case may be.

3. Within six 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 to do so by:

(a) nominating in writing to the Federal Court a prescribed body corporate to be trustee of the native title rights and interests; and

(b) including within the nomination the written consent of the body corporate.

4. If a prescribed body corporate is 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.

ATTACHMENT A

DETERMINATION

Note: defined terms are set out in paragraph 14 below.

THE COURT ORDERS, DECLARES AND DETERMINES THAT:

Existence of native title: s 225 *Native Title Act*

1. Subject to paragraph 2, native title exists in the Part A Determination Area in the manner set out in paragraphs 4 and 5 of this Determination.

2. Native title does not exist in those parts of the Part A Determination Area that are identified in Schedule Five to this Determination.

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

3. The native title in the Part A Determination Area is held by the Native Title Holders.

The nature and extent of native title rights and interests: s 225(b) and s 225(e) *Native Title Act*

Exclusive native title rights and interests

4. Subject to paragraphs 7, 8, 9 and 12 the nature and extent of the native title rights and interests in relation to the Exclusive Area is the right to possession, occupation, use and enjoyment of that part as against the whole world.

Non-exclusive native title rights and interests

5. Subject to paragraphs 6, 7, 8, 9 and 12 the nature and extent of the native title rights and interests in relation to the Non-Exclusive Area are the following:

(a) the right to have access to, remain on and use that part. For the avoidance of doubt, some of the ways in which that right may be exercised in the Non-Exclusive Area include but are not limited to the following activities:

(i) to access and move freely through and within that part;

(ii) to live, being to enter and remain on, camp and erect temporary shelters and other structures for those purposes on that part;

(iii) to engage in cultural activities, including the transmission of cultural heritage knowledge; and

(iv) to hold meetings.

(b) the right to access and take the resources on that part. For the avoidance of doubt, some of the ways in which that right may be exercised in the Non-Exclusive Area include but are not limited to the following activities:

(i) to hunt, gather and fish;

(ii) to take and use flora and fauna;

(iii) to take other natural resources, including soil, sand, clay, gravel, ochre, timber, charcoal, resin and stone; and

(iv) to take and use water.

(c) the right to protect places, areas and objects of traditional significance on that part. For the avoidance of doubt, some of the ways in which that right may be exercised in the Non-Exclusive Area include but are not limited to the following activities:

(i) to conduct and participate in ceremonies; and

(ii) to visit, maintain and protect from physical harm, areas, places and sites of importance.

(d) the right to be accompanied onto the Part A Determination Area by any persons who, though not Native Title Holders pursuant to paragraph 3, the Native Title Holders may invite pursuant to traditional law and custom, being:

(i) spouses or partners of the Native Title Holders; and

(ii) persons who may assist with the performance of ceremonies or cultural activities, including sharing of knowledge about country.

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 Part A 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 Part A Determination Area.

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

(a) minerals as defined in the *Mining Act 1904 (WA)* (repealed) and in the *Mining Act 1978 (WA)*, except to the extent that ochre is not a mineral pursuant to the *Mining Act 1904 (WA)*;

(b) petroleum as defined in the *Petroleum Act 1936 (WA)* (repealed) and in 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 or controlled by the holders of the Other Interests.

8. The 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.

9. For the avoidance of doubt, the native title rights and interests set out in paragraphs 4 and 5 do not confer exclusive rights 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.

Areas where extinguishment is disregarded: s 47A or s 47B Native Title Act

10. Section 47A and s 47B of the *Native Title Act* apply to disregard any prior extinguishment in relation to the areas described in Schedule Six to this Determination.

The nature and extent of any Other Interests: s 225(c) Native Title Act

11. The nature and extent of the Other Interests in relation to the Part A Determination Area are those set out in Schedule Seven to this Determination.

Relationship between native title rights and Other Interests: s 225(d) *Native Title Act*

12. The relationship between the native title rights and interests described in paragraphs 4 and 5 and the Other Interests referred to in paragraph 11 is that:

(a) to the extent that any of the Other 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 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 Interests. The Other Interests, and the doing of any activity required or permitted to be done by or under the Other 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 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 Part A Determination Area referred to in clause 2 of Schedule Five of this Determination.

Definitions and Interpretation

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

'**Exclusive Area**' means those lands and waters of the Part A Determination Area described in Schedule Three to this Determination (being areas where any extinguishment must be disregarded) which are not Non-Exclusive Areas or described in paragraph 2 as an area where native title does not exist. Exclusive Areas are generally shown as shaded green on the maps at Schedule Two;

'**high water mark**' means the mean high water mark at common law;

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

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

'**Native Title Holders**' means the people described in Schedule Eight to this Determination;

'**Non-Exclusive Area**' means those lands and waters of the Part A Determination Area described in Schedule Four to this Determination (being areas where there can only be partial recognition of native title). Non-Exclusive Areas are generally shown as shaded yellow on the maps at Schedule Two;

'**Other Interests**' means the legal or equitable estates or interests and other rights in relation to the Part A Determination Area described in Schedule Seven to this Determination and referred to in paragraph 11;

'**Part A Determination Area**' means the land and waters described in Schedule One and depicted on the maps at Schedule Two to this Determination;

'**State**' means the State of Western Australia; and

'**Titles Validation Act**' means the *Titles (Validation) and Native Title (Effect of Past Acts) Act 1995* (WA).

15. In the event of any inconsistency between the written description of an area in Schedules One, Three, Four, Five, Six or Seven and the area as depicted on the map at Schedule Two the written description prevails.

REGISTER ATTACHMENTS:

1. Schedule One - Part A Determination Area, 2 pages - A4, 23/12/2020
2. Schedule Two - Maps of the Part A Determination Area, 4 pages - A4, 23/12/2020
3. Schedule Three - Exclusive Native Title Areas (Paragraph 4), 1 page - A4, 23/12/2020
4. Schedule Four - Non-Exclusive Native Title Areas (Paragraph 5), 1 page - A4, 23/12/2020

5. Schedule Five - Areas Where Native Title Does Not Exist (Paragraph 2), 1 page - A4, 23/12/2020

6. Schedule Six - Areas to which Sections 47A & 47B Native Title Act apply (Paragraph 10), 2 pages - A4, 23/12/2020

7. Schedule Seven - Other Interests (Paragraph 11), 3 pages - A4, 23/12/2020

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.