

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): WAD95/2013
NNTT Number: WCD2015/010

Determination Name: Aiken on behalf of the Bunuba People (Bunuba #3) v State of Western Australia

Date(s) of Effect: 22/12/2015

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 22/12/2015

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

COMMON LAW HOLDER(S) OF NATIVE TITLE:

SCHEDULE FOUR

DESCRIPTION OF THE NATIVE TITLE HOLDERS

Bunuba People (referred to in paragraph 3) are:

- (a) The descendants of the following ancestors:
- Mubu (Banjo Wurrumurra's MM and David Fairfield's MM);
 - Jaranggu (Johnny Marr's F);
 - Jurrguna (Rita Laylay's MF);
 - Frank Edgar (*Pilot*) (Felix Edgar's F);
 - Limirruwa;

Nindiligali (Nancy Williams' MF and George Brooking's FF);
Dawanjina (Billy Oscar's FM, Lionel Jambara's FFMM);
Ganggula (George Leopold's MM);
Mangalanyi (Adam Andrews' F);
Yambanana (Fred Green's F);
Minyjinyji (Moses Beharrel's M);
Balyburru (Joe Ross' MFF and Wibiy Roger's FF);
Gijalamili (Betty Smith's MMF);
Jingirriban (Rose Benning's MF);
Guburrmiya (Barbara Cole's FM);
Bundu (Harry and Lena Skinner's F and Nita Skinner's FF); and
Limadji.

(b) The individuals, and their descendants, who have been adopted or are being adopted or *Marurra* (people who are raised, grown up, embraced and acknowledged as a Bunuba person) by members of the Bunuba native title claim group, 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 s 87 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 95 of 2013 in terms of the Determination as provided for in Attachment "A" hereof.

2. The Bunuba Dawangarri Aboriginal Corporation RNTBC ICN 7813 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 1 and depicted on the map comprising Schedule 2.

(2) Native title exists in those parts of the Determination Area identified in Schedule 3 (**Native Title Area**).

Native Title Holders (s 225(a) *Native Title Act*)

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

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

(4) Subject to paragraphs 5, 6 and 7 the nature and extent of the native title rights and interests in relation to the Determination Area referred to in Schedule 3 (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; and

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

(5) The native title rights and interests referred to in paragraph 4(b) 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.

(6) 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); or

(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 Interests,

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

(7) 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 ss 47 and 47B of the *Native Title Act* apply

(8) Section 47B of the *Native Title Act 1993* (Cth) applies to disregard any prior extinguishment in relation to the areas described in Schedule 5.

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 4 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 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 1993*, do not extinguish them.

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 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 Schedule 3 and the area as depicted on the map at Schedule 2, the written description prevails.

SCHEDULE ONE

DETERMINATION AREA

The Determination Area, generally shown as bordered in blue on the map at Schedule 2, comprises all that land comprising those portions of Lot 341 as shown on Deposited Plan 52596 that are wholly within the area defined by the following coordinate positions:

LATITUDE (SOUTH)	LONGITUDE (EAST)
17.415261	124.934616
17.431927	124.934616
17.448594	124.934616
17.465261	124.934616
17.465262	124.951283
17.465263	124.967949
17.465263	124.984615
17.465264	125.001281

17.448597	125.001281
17.431930	125.001281
17.431929	124.984615
17.431928	124.967949
17.415262	124.967949
17.415261	124.951283

EXCLUSIONS

Fairfield-Leopold Downs Road being Road No. 229 as shown on Deposited Plan 52596.

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 3rd August 2015.

For the avoidance of doubt the determination excludes any land and waters already claimed by:

Native Title Determination Application WAD6133/1998 Bunuba (Area A) (WC1999/019) as Determined in the Federal Court on the 12th December 2012.

Native Title Determination Application WAD94/2012 Bunuba #2 (WC2012/004) as Registered in the Federal Court on the 10th May 2012.

Datum: Geocentric Datum of Australia 1994 (GDA94)

Prepared By: Native Title Spatial Services (Landgate) 11th December 2015

Use of Co-ordinates:

Where co-ordinates 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 TWO

MAP OF THE DETERMINATION AREA

[see NNTR attachment 1: Schedule Two - Map of the Determination Area]

SCHEDULE THREE

EXCLUSIVE NATIVE TITLE AREAS

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

The following land and waters (generally shown as hachured blue on the map at Schedule 2):

UCL Area to which s 47B of the *Native Title Act* applies:

Lot 341 on Deposited Plan 52596.

SCHEDULE FOUR

DESCRIPTION OF THE NATIVE TITLE HOLDERS

Bunuba People (referred to in paragraph 3) are:

(a) The descendants of the following ancestors:
 Mubu (Banjo Wurrumurra's MM and David Fairfield's MM);
 Jarangu (Johnny Marr's F);
 Jurrguna (Rita Laylay's MF);
 Frank Edgar (*Pilot*) (Felix Edgar's F);
 Limirruwa;
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 Limadji.

(b) The individuals, and their descendants, who have been adopted or are being adopted or *Marurra* (people who are raised, grown up, embraced and acknowledged as a Bunuba person) by members of the Bunuba native title claim group, 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 FIVE

AREAS TO WHICH SECTION 47B OF THE *NATIVE TITLE ACT 1993* (CTH) APPLIES

Lot 341 on Deposited Plan 52596.

SCHEDULE SIX

OTHER INTERESTS

(1) Existing Interests under the Mining Act 1978 (WA)

Tenement ID	Tenement type	Date of grant
E04/2367	Exploration Licence	10/03/2015

(2) 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) Rights and interests of members of the public arising under the common law including but not limited to:
 - (i) the public right to fish;
 - (ii) the public right to navigate;
 - (iii) the right of any person to use any road 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 common law;
- (d) The right to access land by:
 - (i) an employee or agent or instrumentality of the State;
 - (ii) an employee or agent or instrumentality of the Commonwealth;
 - (iii) an employee or agent or instrumentality of 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.

- (e) Rights of any person to access and enjoy (subject to the laws of the State) Stock Routes.
- (f)
 - (i) Without limiting the operation of any other paragraph in the Eighth Schedule, but subject to paragraph (f)(ii), the rights of holders from time to time of existing petroleum interests under the *Petroleum and Geothermal Energy Resources Act 1967* (WA), petroleum pipelines under the *Petroleum Pipelines Act 1969* (WA) and existing mining tenements under the *Mining Act 1978* (WA) including those mentioned at paragraphs 4 and 5 above to use (including by servants, agents and contractors) roads and tracks as are existing at the time of this Determination in the Determination Area to the extent reasonably necessary to have access to the area subject of the petroleum, pipeline and mineral interests for the purposes of exercising the rights granted by those interests;
 - (ii) Nothing in paragraph (f)(i) above allows any upgrade, extension, widening or other improvement to the road or track other than work done to maintain such road or track in reasonable repair.
- (g) So far as confirmed pursuant to s 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) the beds and banks or foreshores of waterways;
 - (iii) stock routes; or
 - (iv) areas that were public places at the end of 31 December 1993.
- (h) Any other:
 - (i) legal or equitable estate or interest in the land or waters; or
 - (ii) any other right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with:
 - (A) the land or waters; or
 - (B) an estate or interest in the land or waters; or
 - (iii) restriction on the use of the land or waters, whether or not annexed to other land or waters.
- (i) The rights and interests of Telstra Corporation Limited:
 - (a) as the owner or operator of telecommunications facilities within the Determination Area;

(b) created pursuant to the *Post and Telegraph Act 1901* (Cth), the *Telecommunications Act 1975* (Cth), the *Australian Telecommunications Corporation Act 1989* (Cth), the *Telecommunications Act 1991* (Cth) and the *Telecommunications Act 1997* (Cth) including rights:

- (i) to inspect land;
- (ii) to install and operate telecommunications facilities; and
- (iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities;
- (c) for its employees, agents or contractors to, access its telecommunications facilities in and in the vicinity of the Determination Area in performance of their duties; and
- (d) under any lease, licence or easement relating to its telecommunications facilities in the Determination Area.

REGISTER ATTACHMENTS:

1. Schedule Two - Map of the Determination Area, 1 page - A4, 22/12/2015

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.