



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): WAD439/2019  
NNTT Number: WCD2021/002

**Determination Name:** [Lyndon on behalf of the Budina 2 Claim Group v State of Western Australia](#)

**Date(s) of Effect:** 26/02/2021

**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:** 26/02/2021

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

Not Applicable

### REGISTERED NATIVE TITLE BODY CORPORATE:

Budina Aboriginal Corporation RNTBC  
Trustee Body Corporate  
PO Box 3072  
249 Hay Street  
EAST PERTH Western Australia 6892

*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) *Native Title Act*)

3. The native title in the Determination Area is held by the Budina People. The Budina People are the people referred to in Schedule Five.

### SCHEDULE FIVE

#### NATIVE TITLE HOLDERS (PARA 3)

The Budina People are those persons who:

(a) Are descended from one or more of the following:

- (i) Jirbar - the father of Nora Lyndon;
- (ii) Tamiguru (Fanny) - the mother of Nora Lyndon;
- (iii) Baliaat (Charlie Gray) - father of Ben Gray;
- (iv) Parndabiddy (Milly) - mother of Ben Gray; or
- (v) Topsy - the mother of Sambo Campbell, Hamish Cameron, and Kate Dawe,

where descent can be either by birth or adoption in accordance with traditional laws acknowledged and the traditional customs observed by the Budina People;

(b) Have a connection with the land and waters of the Determination Area in accordance with the traditional laws acknowledged and the traditional customs observed by the Budina People; and

(c) Are accepted as Budina in accordance with the traditional laws acknowledged and the traditional customs observed by other Budina People.

#### **MATTERS DETERMINED:**

#### **THE COURT ORDERS THAT:**

1. In relation to the Determination Area, there be a determination of native title in WAD 439 of 2019 in terms of the Determination as provided for in Attachment A.
2. The Budina Aboriginal Corporation (ICN 8705) 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. Subject to paragraph 2, native title exists in the Determination Area in the manner set out in paragraph 4 of this Determination.
2. Native title does not exist in those parts of the Determination Area the subject of the interests identified in Schedule Three, which are shown as generally shaded pink on the map at Schedule Two.

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

3. The native title in the Determination Area is held by the Budina People. The Budina People are the people referred to in Schedule Five.

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

4. Subject to paragraphs 5 and 6, the nature and extent of the native title rights and interests in relation to the Determination Area are that they confer the following non-exclusive rights on the Budina People, including the right to conduct activities necessary to give effect to them:

- (a) the right to enter and remain on the land, camp, erect temporary shelters and travel over and visit any part of the land and waters of the Determination Area;
- (b) the right to hunt, fish, gather, take and use the traditional resources of the land;
- (c) the right to take and use water;
- (d) the right to engage in cultural activities on the Determination Area, including:
  - (i) visiting places of cultural or spiritual importance and maintaining, caring for, and protecting those places by

carrying out activities to preserve their physical or spiritual integrity; and

(ii) conducting ceremony and ritual and the transmission of cultural knowledge; and

(e) the right to be accompanied on to the Determination Area by those people who, though not Budina People and who (for the avoidance of doubt) cannot themselves exercise any native title right in the Determination Area, are:

(i) the non-Budina spouses, parents or children of the Budina People; or

(ii) people entering in connection with, and subject to, traditional law and custom for the performance of ceremonies or cultural activities on the Determination Area.

#### **Qualifications on the native title rights and interests**

5. The native title rights and interests set out in paragraph 4:

(a) are subject to and exercisable in accordance with:

(i) the laws of the State and the Commonwealth, including the common law; and

(ii) the traditional laws and customs of the Budina People for personal, domestic and communal purposes (including social, cultural, religious, spiritual and ceremonial purposes) but not for commercial purposes; and

(b) do not confer any rights in relation to:

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

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

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

(iv) water captured by the holders of the Other Interests pursuant to those Other Interests.

6. The native title rights and interests set out in paragraph 4 do not confer:

(a) possession, occupation, use and enjoyment on the Budina People to the exclusion of all others; or

(b) a right to control the access to, or use of, the land and waters of the Determination Area or its resources.

#### **Areas to which s 47, s 47A or s 47B of the *Native Title Act* apply**

7. Section 47, s 47A and s 47B of the *Native Title Act* do not apply to disregard any prior extinguishment in relation to the Determination Area.

#### **The nature and extent of any other interests (s 225(c) *Native Title Act*)**

8. The nature and extent of the Other Interests are described in Schedule Four.

#### **Relationship between native title rights and other interests (s 225(d) *Native Title Act*)**

9. Except as otherwise provided for by law, the relationship between the native title rights and interests described in paragraph 4 and the Other Interests 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, and 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 do not extinguish them.

#### **Liberty to apply**

10. 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 cl 4 of Schedule

Three of this Determination.

### **Definitions and interpretation**

11. In this determination, unless the contrary intention appears:

**Commonwealth** means Commonwealth of Australia;

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

**land** has the same meaning as in the *Native Title Act* 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);

**Other Interests** means the legal or equitable estates or interests and other rights in relation to the Determination Area described in Schedule Four and referred to in paragraph 8;

**resources** means flora, fauna, and other natural resources such as charcoal, stone, soil, wood, resin and ochre (except, for the avoidance of doubt, ochres for use in the manufacture of porcelain, fine pottery or pigments which are minerals pursuant the *Mining Act 1904* (WA) (repealed));

**State** means State of Western Australia;

**use** includes by way of share and exchange; and

**waters** has the same meaning as in the *Native Title Act*.

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

### **REGISTER ATTACHMENTS:**

1. Schedule One - Determination Area, 2 pages - A4, 26/02/2021
2. Schedule Two - Map of the Determination Area, 1 page - A4, 26/02/2021
3. Schedule Three - Areas Where Native Title Does Not Exist (Para 2), 2 pages - A4, 26/02/2021
4. Schedule Four - Other Interests (Para 8), 5 pages - A4, 26/02/2021

*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.*