



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): WAD131/2004  
NNTT Number: WCD2017/006

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

**Date(s) of Effect:** 16/10/2017

**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:** 16/10/2017

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

Not Applicable

### REGISTERED NATIVE TITLE BODY CORPORATE:

Budina Aboriginal Corporation RNTBC  
Trustee Body Corporate  
Level 8  
12-14 The Esplanade  
PERTH Western Australia 6000

*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:

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 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 WAD131 of 2004 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*.

#### **ATTACHMENT A**

#### **DETERMINATION**

#### **THE COURT ORDERS, DECLARES AND DETERMINES THAT:**

##### **Existence of native title (s 225 *Native Title Act*)**

1. Subject to para 2, native title exists in the Determination Area in the manner set out in para 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 maps 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 paras 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 para 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) (***WA Petroleum Act***);
- (iii) geothermal energy resources and geothermal energy as defined in the *WA Petroleum Act*, 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 para 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 ss 47, 47A or 47B of the *Native Title Act* apply**

7. Sections 47, 47A and 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 para 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. 5 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 maps 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 para 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 maps at Schedule Two, the written description prevails.

## SCHEDULE ONE

### DETERMINATION AREA

The Determination Area, generally shown as bordered in blue on the maps in Schedule Two, comprises all land and waters in the following description:

All those lands and waters commencing at Latitude 22.955968 South, Longitude 115.544976 East being a point on the present boundary of Native Title Determination WAD6212/1998 Thudgari People (WCD2009/002) and extending generally southerly, southeasterly and northwesterly along boundaries of that native title determination to Latitude 23.639774 South, Longitude 114.978912 East; Then northerly to Latitude 23.560134 South, Longitude 114.990658 East being a point on the present boundary of Native Title Application WAD6161/1998 Gnulli (WC1997/028); Then generally northerly and westerly along the boundaries of that native title application through the following coordinate positions:

LATITUDE (SOUTH)	LONGITUDE
23.438628	115.003473
23.327419	115.010268
23.185725	115.027088
23.090804	115.042507
23.032778	115.043163
23.032734	115.043232
23.031306	115.043197
23.031672	115.041393

Then continuing westerly along the boundary of that native title application to Latitude 23.031702 South, Longitude 115.041020 East being a point on the present boundary of Native Title Determination WAD6113/1998 Thalanyji (WCD2008/003); Then generally northwesterly, easterly, southerly and generally northeasterly along the boundaries of that native title determination back to the commencement point.

Note: Geographic Coordinates provided in Decimal Degrees.

For the avoidance of doubt the determination excludes any land and waters subject to:

Native Title Determination Application WAD6113/1998 Thalanyji (WCD2008/003) as Determined in the Federal Court on the 18/09/2008.

Native Title Determination Application WAD6212/1998 Thudgari People (WCD2009/002) as Determined in the Federal Court on the 18/11/2009.

Native Title Determination Application WAD6161/1998 Gnulli (WC1997/028) as accepted for registration 13/05/2014.

Datum: Geocentric Datum of Australia 1994 (GDA94) Prepared By: Graphic Services (Landgate) 6th September 2017

#### Use of Coordinates:

Where coordinates 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

### MAPS OF THE DETERMINATION AREA

[See NNTR attachment 1: "Schedule Two - Maps of the Determination Area"]

## SCHEDULE THREE

### AREAS WHERE NATIVE TITLE DOES NOT EXIST (PARA 2)

Native title does not exist in relation to land and waters the subject of the following interests within the Determination Area which, with the exception of public works (as described in cl. 5 of this Schedule), are generally shown as shaded in pink on the maps at Schedule Two:

#### 1. Freehold

Grants of estates in fee simple within the Determination Area including the following:

##### Freehold No.

CT0102600284

CT0200500781

#### 2. Reserves

##### Reserve No. Current/Last Purpose

41171 Natural Gas Pipeline Purposes

41172 Natural Gas Pipeline Purposes

41182 Natural Gas Pipeline Purposes

#### 3. Roads

Dedicated roads, roads set aside, taken or resumed, or roads which are to be considered 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) (WA Titles Act)), including the following:

MapInfo ID	Description	Shown in
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ROAD 01	Road 16542/Lyndon-Towera Road	Government Gazette 5 December 1980 (WA) 1: 250,000 plan for Winning Pool dated June 1968 Miscellaneous Plan 20208 (Location 178) prepared 26 March 1999
ROAD 02	Road No. 566/Lyndon Road	Government Gazette 24 April 1896; Cancelled public plan 503124 (93/300) dated 7 January 1921 Miscellaneous Plan 20208 (Location 178) prepared 26 March 1999
ROAD 03	Road 3609	Cancelled public plan 503094 (78/300) dated 12 April 1923
ROAD 04	Road 5993	Government Gazette 25 October 1918 Miscellaneous Plan 20208 (Location 178) prepared 26 March 1999
ROAD 05	Road 8397	Government Gazette 10 May 1935; Miscellaneous Plan 20208 for Location 178 dated 26 March 1999
ROAD 06	Road 9476/Lyndon-Minnie Creek Road	Government Gazette 17 May 1935 Miscellaneous Plan 20208 (Location 178) prepared 26 March 1999
Historic Road 01	Road 7914	Government Gazette 4 April 1930 Cancelled public plan 503131 (94/300)

#### 4. Easements containing public works

Easements containing public works granted to the State Energy Commission of Western Australia (and currently held by the Dampier to Bunbury Natural Gas Pipeline Land Access Minister) for the purposes of access to, and the construction, use and maintenance of, a natural gas pipeline and associated apparatus, appurtenances and infrastructure (Dampier to Bunbury Natural Gas Pipeline) for the transmission and conveyance of natural gas, including but not limited to the following:

<b>Easement No.</b>	<b>Date of Grant</b>
Easement 31344B/216 (E244621)	13 September 1988
Easement 3134B/219 (E244617)	13 September 1988
Easement 3134B/226 (E244623)	13 September 1988
Easement 3134B/227 (E244622)	13 September 1988
Easement 3134B/229 (E244618)	13 September 1988

#### 5. PUBLIC WORKS

Any other public works, as that expression is defined in the *Native Title Act* and the *WA Titles Act* (including the

land and waters on which a public work is constructed, established or situated as described in s 251D of the *Native Title Act*), and to which s 12J of the *WA Titles Act* or s 23C(2) of the *Native Title Act* applies.

## SCHEDULE FOUR

### OTHER INTERESTS (PARA 8)

The nature and extent of the Other Interests in relation to the Determination Area as at the date of this Determination are:

#### 1. Reserves

(a) The following reserves:

Reserve No.	Current Purpose
1886	Watering place for travellers and stock
1887	Watering place for travellers and stock
1888	Watering place for travellers and stock

(b) The rights and interests of persons who have the care, control and management of the reserves identified in cl. 1(a) above;

(c) The rights and interests of persons entitled to access and use the reserves identified in cl. 1(a) above for the respective purposes for which they are reserved, subject to any statutory limitations upon those rights; and

(d) The rights and interests of persons holding leases over areas of the reserves identified in cl. 1(a) above, if any.

#### 2. Pastoral leases

(a) The following pastoral leases and the rights and interests of the holders from time to time of those leases:

Lease No.	Station Name
PL N049957	Towera Station
PL N049982	Uaroo Station
PL N050138	Lyndon Station
PL N050183	Emu Creek Station
PL N050359	Mangaroon Station
PL N050477	Maroonah Station
PL N050522	Middalya Station

(b) Any rights and obligations of the pastoralists pursuant to the pastoral leases referred to in cl. 2(a) above to adopt and exercise best practice management of the pasture and vegetation resources, livestock and soils within the boundaries of the pastoral leases in order to manage stock and for the management, conservation and regeneration of pasture for permitted uses.

#### 3. Mining tenements

(a) The following mining tenements under the *Mining Act 1904 (WA)* (repealed) and the *Mining Act 1978 (WA)* and the rights and interests of the holders from time to time of those mining tenements:

(i) Exploration Licences

##### Tenement ID

E 0801645

E 0801646  
 E 0802480  
 E 0802537  
 E 0802544  
 E 0802571  
 E 0802665  
 E 0802775  
 E 0802783  
 E 0802821  
 E 0802883  
 E 0901584  
 E 0902041  
 E 0902154

**4. Petroleum interests**

(a) The following petroleum title under the *Petroleum Pipelines Act 1969* (WA) and the rights and interests of the holders from time to time of that petroleum title:

**Title ID Title Type**

PL 40 Pipeline Licence

(b) The interests of the Dampier to Bunbury Natural Gas Pipeline Land Access Minister in the land in the Dampier to Bunbury Natural Gas Pipeline Corridor, including State corridor rights, under the *Dampier to Bunbury Pipeline Act 1997* (WA), and the interests of any other person in land in the Dampier to Bunbury Natural Gas Pipeline Corridor under sections 34 and 36 of the *Dampier to Bunbury Pipeline Act 1997* (WA), including but not limited to the land the subject of the following taking orders:

Description	Tenure	Taking Order
Portion of Lyndon Location 178 on Land Administration Miscellaneous Plan 20208 as shown on Land Administration Plans 15514, 15515, 15516, 15609, 19394, 19740, 19741, 20830, 20831, 20832, 20833 and 20907 being part of the land comprised in Certificate of Crown Land Title Volume 3069 Folio 384 (CL47/1972)	Pastoral lease (part Lyndon Station)	YA H950959
Portion of Lyndon Location 175 on Deposited Plan 220795 as shown 215513, on Deposited Plans 215514, 215607, 215608, 219740, 95899, 95900, 26811, 220827, 220828,	Pastoral lease (part Towera Station)	YA 1209642



220829 and 220830 being part of the land  
comprised in Certificate of Crown Land Title  
Volume 3084 Folio 787 (CL87/1974)

## 5. Access to mining and petroleum areas

(a) Without limiting the operation of any other clause in Schedule Four, but subject to cl. 5(b) below, any rights of the holders from time to time of a mining tenement or petroleum title, including those referred to in cl. 3 and cl. 4 of Schedule Four, to use (including by servants, agents and contractors) such portions of existing roads and tracks in the Determination Area as necessary to have access to the area the subject of the mining tenement or petroleum title for the purposes of exercising the rights granted by that tenement or title.

(b) Nothing in cl. 5(a) above allows any upgrade, extension, widening or other improvement to the road or track other than work done to maintain it in reasonable repair and in order to leave it in substantially the same condition as it was prior to its use pursuant to cl. 5(a).

(c) Nothing in this Schedule Four will limit the rights of the holders from time to time of mining tenements or petroleum titles, including those referred to in cl. 3 and cl. 4 of Schedule Four, including, without limitation, any right to exclude members of the public from entering onto the land and waters the subject of any mining tenement or petroleum title.

## 6. Other

The following rights and interests:

(a) rights and interests, including licences and permits, granted by the Crown in right of the State or of the Commonwealth pursuant to statute or otherwise in the exercise of its executive power and any regulations made pursuant to such legislation;

(b) rights and interests held by reason of the force and operation of the laws of the State or of the Commonwealth, including but not limited to, 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; and

(iii) the right of any person to use and enjoy any roads 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 the common law;

(d) the right to access the Determination Area by;

(i) an employee, agent or instrumentality of the State;

(ii) an employee, agent or instrumentality of the Commonwealth;

(iii) an employee, agent or instrumentality of any local government authority,

as required in the performance of his or her statutory or common law duty;

(e) so far as confirmed pursuant to s 212(2) of the *Native Title Act* and s 14 of the *WA Titles Act* as at the date of this Determination, any existing public access to, and enjoyment of, the following places in the Determination Area:

(i) waterways;

(ii) beds and banks or foreshores of waterways;

(iii) coastal waters;

- (iv) beaches;
- (v) stock routes; and
- (vi) areas that were public places at the end of 31 December 1993;
- (f) 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.

### **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.

### **REGISTER ATTACHMENTS:**

1. Schedule Two - Maps of the Determination Area, 4 pages - A4, 16/10/2017

*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.*