

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): SAD133/2014
NNTT Number: SCD2017/001

Determination Name: [Gepp-Kennedy on behalf of the Dieri People v State of South Australia](#)

Date(s) of Effect: 28/09/2017

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 28/09/2017

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

The Dieri Aboriginal Corporation RNTBC
Agent Body Corporate
c\ Camatta Lempens
Level 1, 345 King William street
Adelaide South Australia 5000

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:

5. The Native Title Holders hold the Native Title Rights and Interests in the Native Title Land.
6. Under the traditional laws and customs of the Dieri People, the Native Title Holders are those living Aboriginal people who:
 - (a) are the descendants of the following apical ancestors:
 - (i) Ruby Merrick (also known as Kulpadakuni; Hannah or Anna) and Tim Maltalinha (also known as Tim Merrick) who are the parents of the sibling set - Martin, Gottlieb, Rebecca, Selma (or Thelma), Albert and Alfred;
 - (ii) Kuriputhanha (known as 'Queen Annie'), mother of Karla-warru (also known as Annie);

- (iii) Mary Dixon (born at Killalpaninna), mother of the sibling set - Dear Dear (known as 'Tear'), Jack Garret, George Mungerannie, Joe Shaw, and Henry;
 - (iv) Bertha, mother of the sibling set - Johannes and Susanna;
 - (v) Walter Kennedy, husband of Selma (also known as Thelma) nee Merrick;
 - (vi) Florrie, wife of Martin Merrick;
 - (vii) Clara Stewart (nee Murray), mother of Eddie Stewart; and
 - (viii) The man Pinngipania (born at Lake Hope) and the woman Kulibani (born at Kalamarina) who are the parents of Sam Tintibab (or Dindibana Ginjmilina); and
- (b) identify as Dieri; and
 - (c) are recognised by the other Native Title Holders under the relevant Dieri traditional laws and customs as holding native title rights and interests in the Native Title Land.

MATTERS DETERMINED:

THE COURT ORDERS, DECLARES AND DETERMINES BY CONSENT THAT:

Interpretation & Declaration

- 1. In this Determination, including its schedules:
 - (a) unless the contrary intention appears, the words and expressions used have the same meaning as they are given in Part 15 of the Native Title Act; and
 - (b) in the event of an inconsistency between a description of an area in a schedule and the depiction of that area on the maps in Schedule 2 and 3, the written description shall prevail.

Determination Area

- 2. Schedule 1 describes the external boundaries of the Determination Area (the Determination Area).

Areas within the Determination Area where native title exists (Native Title Land)

- 3. Subject to those items and areas described in Schedule 4, native title exists in the lands and waters described in Schedule 3.

Areas within Determination Area where native title is extinguished

- 4. Native title has been extinguished in those items and areas described in Schedule 4.

Native Title Holders

- 5. The Native Title Holders hold the Native Title Rights and Interests in the Native Title Land.
- 6. Under the traditional laws and customs of the Dieri People, the Native Title Holders are those living Aboriginal people who:
 - (a) are the descendants of the following apical ancestors:
 - (i) Ruby Merrick (also known as Kulpadakuni; Hannah or Anna) and Tim Maltalinha (also known as Tim Merrick) who are the parents of the sibling set - Martin, Gottlieb, Rebecca, Selma (or Thelma), Albert and Alfred;
 - (ii) Kuriputhanha (known as 'Queen Annie'), mother of Karla-warru (also known as Annie);
 - (iii) Mary Dixon (born at Killalpaninna), mother of the sibling set - Dear Dear (known as 'Tear'), Jack Garret, George Mungerannie, Joe Shaw, and Henry;
 - (iv) Bertha, mother of the sibling set - Johannes and Susanna;

- (v) Walter Kennedy, husband of Selma (also known as Thelma) nee Merrick;
- (vi) Florrie, wife of Martin Merrick;
- (vii) Clara Stewart (nee Murray), mother of Eddie Stewart; and
- (viii) The man Pinnigipania (born at Lake Hope) and the woman Kulibani (born at Kalamarina) who are the parents of Sam Tintibab (or Dindibana Ginjmilina); and
- (b) identify as Dieri; and
- (c) are recognised by the other Native Title Holders under the relevant Dieri traditional laws and customs as holding native title rights and interests in the Native Title Land.

Native Title Rights and Interests

7. Subject to paragraphs 8, 9 and 10, the nature and extent of the Native Title Rights and Interests in relation to the Native Title Land are non-exclusive rights to use and enjoy, in accordance with the Native Title Holders' traditional laws and customs, the Native Title Land being:

- (a) the right to access and move about;
- (b) the right to hunt and fish;
- (c) the right to gather and use the natural resources of the Native Title Land such as food, medicinal plants, wild tobacco, timber, stone, resin, ochre and feathers but excluding those resources referred to in item 2 of Schedule 4;
- (d) the right to use the natural water resources of the Native Title Land;
- (e) the right to live, to camp and, for the purpose of exercising the Native Title Rights and Interests, to erect shelters and other structures;
- (f) the right to cook and to light fires for domestic purposes but not for the clearance of vegetation;
- (g) the right to engage and participate in cultural activities including those relating to births and deaths;
- (h) the right to conduct ceremonies and hold meetings;
- (i) the right to teach on the Native Title Land the physical and spiritual attributes of locations and sites;
- (j) the right to visit, maintain and protect sites and places of cultural and religious significance to the Native Title Holders under their traditional laws and customs;
- (k) the right to distribute, trade or exchange the subsistence and other traditional resources of the Native Title Land; and
- (l) the right to be accompanied on to the Native Title Land by those people who, though not Native Title Holders, are:
 - (i) spouses of Native Title Holders; or
 - (ii) people required by traditional law and custom for the performance of ceremonies or cultural activities on the Native Title Land; or
 - (iii) people who have rights in relation to the Native Title Land according to the traditional laws and customs acknowledged by the Native Title Holders.

General Limitations

8. The Native Title Rights and Interests are for personal, domestic and communal use but do not include commercial use of the Native Title Land or the resources from it.

9. The Native Title Rights and Interests described in paragraph 7 do not confer possession, occupation, use and enjoyment of the Native Title Land on the Native Title Holders to the exclusion of others.

10. The Native Title Rights and Interests are subject to and exercisable in accordance with:

- (a) the traditional laws and customs of the Native Title Holders; and
- (b) the laws of the State and Commonwealth, including the common law.

For the avoidance of doubt, the native title interest expressed in paragraph 7(d) (the right to use the natural water resources of the Native Title Land) is subject to the *Natural Resources Management Act 2004* (SA).

Other Interests & Relationship with Native Title

11. The nature and extent of other interests in the Native Title Land are:

- (a) the interests created by the following pastoral leases:

Lease name	Pastoral Lease No	Crown Lease
Kalamurina	PE 002412	CL 1323/22
Kallakoopah West	PE 002534	CL 6185/388

- (b) the interests of the Crown in right of the State of South Australia;
- (c) in relation to the Kati Thanda - Lake Eyre National Park:
 - (i) the rights and interests of the Crown of South Australia pursuant to the *National Parks and Wildlife Act 1972* (SA); and
 - (ii) the rights and interests of the public to use and enjoy the Park consistent with the *National Parks and Wildlife Act 1972* (SA);
- (d) the interests of persons to whom valid or validated rights and interests have been granted or recognised by the Crown in right of the State of South Australia or by the Commonwealth of Australia pursuant to statute or otherwise in the exercise of executive power including, but not limited to, rights and interests granted or recognised pursuant to the *Crown Land Management Act 2009* (SA), *Crown Lands Act 1929* (SA), *Mining Act 1971* (SA), *Petroleum Act 1940* (SA), *Petroleum and Geothermal Energy Act 2000* (SA) and *Opal Mining Act 1995* (SA), all as amended from time to time;
- (e) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth;
- (f) the rights to access land by an employee or agent or instrumentality of the State, Commonwealth or other statutory authority as required in the performance of his or her statutory or common law duties;
- (g) the rights and interests of BHP Billiton Olympic Dam Corporation Pty Ltd:
 - (i) in the Indenture (as amended) and ratified by the *Roxby Downs (Indenture Ratification) Act 1982* (SA), and rights, powers, privileges and interests comprised in, conferred under or in accordance with or pursuant to that Indenture and the *Roxby Downs (Indenture Ratification) Act 1982* (SA);
 - (ii) as the holder of a Special Water Licence over Borefield B (SWL Borefield B) granted pursuant to the Indenture ratified by the *Roxby Downs (Indenture Ratification) Act 1982* (SA); and
 - (iii) for its employees, agents or contractors to enter the Determination Area to access BHP Billiton Olympic Dam Corporation Pty Ltd's rights and interests and to do all things necessary to exercise those rights and interests in the vicinity of the Determination Area in performance of their duties.

12. The relationship between the Native Title Rights and Interests in the Native Title Land that are described in paragraph 7 and the other rights and interests described in paragraph 11 (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, subject to any application of the Native Title Act or the *Native Title (South Australia) Act 1994* (SA), do not extinguish them.

AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:

13. The native title is not to be held in trust.
14. The Dieri Aboriginal Corporation RNTBC (ICN 3890) is to:
 - (a) be the prescribed body corporate for the purposes of s57(2) of the *Native Title Act 1993* (Cth); and
 - (b) perform the functions mentioned in s57(3) of the *Native Title Act 1993* (Cth) after becoming a registered native title body corporate.
15. The applicant (through the prescribed body corporate), the State or any other Respondent have liberty to apply on 14 days' notice to a single judge of the Court for the following purposes:
 - (a) to establish the precise location and boundaries of any public works and adjacent land and waters referred to in items 3 and 4 of Schedule 4; or
 - (b) to determine the effect on native title rights and interests of any public works as referred to in item 4 of Schedule 4.

Schedules

SCHEDULE 1 - Location of and areas comprising the Determination Area

External boundary description

The Determination Area is located wholly within and comprises all the land and waters bounded by the following line:

Commencing at a point being the intersection of Longitude 137.266565° East with the centreline of the Warburton River then generally south-easterly and generally southerly in straight lines connecting the following coordinate points:

Longitude East Latitude South

137.266671	27.874909
137.352898	27.891359
137.386075	27.905125
137.416907	27.927044
137.464081	27.966385
137.515186	28.010973
137.561049	28.058181
137.620021	28.147353
137.675058	28.212921
137.772030	28.300780
137.802169	28.328318
137.835278	28.384300
137.854122	28.426935
137.867644	28.469885

137.881166	28.515289
137.898375	28.584008
137.906981	28.653955
137.915587	28.813484
137.916817	28.909201
137.917126	28.955526
137.918278	29.008523
137.918433	29.031378
137.918433	29.038515
137.918433	29.038588

then southerly along a straight line towards a point at Longitude 137.918425° East, Latitude 29.041867° South to its intersection with the southern boundary of Section 1468, Out of Hundreds (Curdimurka) & Out of Hundreds (Lake Eyre) [being along portion of the external boundary of the Dieri native title Consent Determination area - SAD6017/1998 (SCD2012/001)].

Then generally westerly and generally north-westerly along the southern and western boundaries of the said Section 1468, Out of Hundreds (Curdimurka) & Out of Hundreds (Lake Eyre) (being portion of Kati Thanda - Lake Eyre National Park).

Then generally north-westerly along the western boundary of Allotment 2036 of Deposited Plan 38061 (Kalamurina Pastoral Lease, PE2412); generally north-westerly along the southern boundary of Block 425, Out of Hundreds (Noolyeana) (Kallakoopah West Pastoral Lease, PE2534) to its intersection with the centreline of the Warburton River at Longitude 137.180870° East, Latitude 27.910140° South [being portion of the external boundary of Kati Thanda - Lake Eyre National Park].

Then generally northerly and generally north-easterly along the centreline of the Warburton River passing through the following coordinate points:

Longitude East	Latitude South
137.266671	27.874909
137.352898	27.891359
137.386075	27.905125
137.416907	27.927044
137.464081	27.966385
137.515186	28.010973
137.561049	28.058181
137.620021	28.147353
137.675058	28.212921
137.772030	28.300780
137.802169	28.328318
137.835278	28.384300
137.854122	28.426935

137.867644	28.469885
137.881166	28.515289
137.898375	28.584008
137.906981	28.653955
137.915587	28.813484
137.916817	28.909201
137.917126	28.955526
137.918278	29.008523
137.918433	29.031378
137.918433	29.038515
137.918433	29.038588

Then southerly along a straight line towards a point at Longitude 137.918425° East, Latitude 29.041867° South to its intersection with the southern boundary of Section 1468, Out of Hundreds (Curdimurka) & Out of Hundreds (Lake Eyre) [being along portion of the external boundary of the Dieri native title Consent Determination area - SAD6017/1998 (SCD2012/001)].

Then generally westerly and generally north-westerly along the southern and western boundaries of the said Section 1468, Out of Hundreds (Curdimurka) & Out of Hundreds (Lake Eyre) (being portion of Kati Thanda - Lake Eyre National Park).

Then generally north-westerly along the western boundary of Allotment 2036 of Deposited Plan 38061 (Kalamurina Pastoral Lease, PE2412); generally north-westerly along the southern boundary of Block 425, Out of Hundreds (Noolyeana) (Kallakoopah West Pastoral Lease, PE2534) to its intersection with the centreline of the Warburton River at Longitude 137.180870° East, Latitude 27.910140° South [being portion of the external boundary of Kati Thanda - Lake Eyre National Park].

Then generally northerly and generally north-easterly along the centreline of the Warburton River passing through the following coordinate points:

Longitude East	Latitude South
137.185090	27.904590
137.187900	27.900150
137.188330	27.893610
137.184160	27.882760
137.180090	27.876870
137.175800	27.870650
137.168180	27.863670
137.164350	27.852240
137.168950	27.845580
137.170130	27.844930
137.172520	27.844330
137.179430	27.844160
137.192300	27.848850

137.202960	27.851280
137.214030	27.851390
137.217760	27.851270
137.221110	27.851780
137.224850	27.854160

To its intersection with the centreline of the Macumba River at Longitude 137.225940° East, Latitude 27.854100° South; generally north-easterly along the centreline of the Macumba River passing through the following coordinate points:

Longitude East Latitude South

137.227300	27.854010
137.228390	27.852980
137.232410	27.850990
137.236880	27.849660
137.241250	27.849050

To its intersection with the centreline of an un-named creek at Longitude 137.243340° East, Latitude 27.849160° South [being along portion of the external boundary of the Arabana People native title Consent Determination area - SAD6025/1998 (SCD2012/002)].

Then generally south-easterly along the centreline of the said un-named creek passing through the following coordinate points:

Longitude East Latitude South

137.243520	27.850600
137.244110	27.852350
137.244780	27.853490
137.245440	27.854260
137.246050	27.854860
137.247060	27.855190
137.247580	27.855530
137.248730	27.856550
137.249350	27.857680
137.249620	27.858350
137.249610	27.858920
137.250630	27.861060
137.250500	27.862530
137.249930	27.863290

The latter coordinate being the intersection of the centreline of the said un-named creek and the centreline of the Warburton River; generally south-easterly along the centreline of the Warburton River passing through the following coordinate points:

Longitude East Latitude South

137.251770	27.864100
137.255200	27.864100
137.256720	27.865230
137.258000	27.866810
137.260540	27.868390
137.259640	27.869970
137.260800	27.871770
137.262830	27.872220
137.265880	27.874030

And in a straight line to the point of commencement [being along portion of the external boundary of The Wangkangurru / Yarluyandi Native Title Claim Consent Determination area - SAD6016/1998 (SCD2014/005)].

SCHEDULE 2: Maps of the External Boundaries of the Determination Area

[See NNTR attachment 1: "Schedule 2 - Maps of the External Boundaries of the Determination Area"]

SCHEDULE 3 - Land and waters within the Determination Area where native title exists (Native Title Land)

[See NNTR attachment 2: "Schedule 3 - Map of land and waters within the Determination Area where native title exists (Native Title Land)"]

DCDBID	Hundred	Title Reference	Locality
D38061A2036	OH (Noolyeana) & OH (Lake Eyre)	CL 1323/22	Kalamurina Pastoral Lease 002412
H831400B425	OH (Noolyeana)	CL 6185/388	Kallakoopah West Pastoral Lease 002534
H833000S1468	OH (Lake Eyre) & OH (Curdimurka)	CR 5772/920	Kati Thanda - Lake Eyre National Park

SCHEDULE 4 - Land and waters within Determination Area where native title has been extinguished

1. Native Title Rights and Interests have been extinguished over all roads which have been delineated in a public map pursuant to section 5(d)(ii) of the *Crown Lands Act 1929* (SA) or section 70(3) or (4) of the *Crown Land Management Act 2009* (SA) or which have otherwise been validly established pursuant to South Australian statute or common law.

2. Native Title Rights and Interests do not exist in:

2.1. Minerals, as defined in section 6 of the *Mining Act 1971* (SA);

2.2. Petroleum, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA);

2.3. a naturally occurring underground accumulation of a regulated substance as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth;

2.4. a natural reservoir, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth; or

2.5. geothermal energy, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA) the source of which is below a depth of 100 metres from the surface of the earth.

For the purposes of this item 2 and the avoidance of doubt:

- 2.6. a geological structure (in whole or in part) on or at the earth's surface or a natural cavity which can be accessed or entered by a person through a natural opening in the earth's surface, is not a natural reservoir;
- 2.7. thermal energy contained in a hot or natural spring is not geothermal energy as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA); and
- 2.8. the absence from this order of any reference to a natural reservoir or a naturally occurring accumulation of a regulated substance, as those terms are defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), above a depth 100 metres below the surface of the earth or geothermal energy the source of which is above a depth of 100 metres below the surface of the earth is not, of itself, to be taken as an indication of the existence or otherwise of Native Title Rights or Interests in such natural reservoir, naturally occurring accumulation of a regulated substance or geothermal energy.
3. Native Title Rights and Interests have been extinguished in the areas covered by Public Works (including the land and waters defined in section 251D of the Native Title Act) which were constructed, established or situated prior to 23 December 1996 or commenced to be constructed or established on or before that date.
4. Public Works constructed, established or situated after 23 December 1996 have had such effect as has resulted from Part 2, Division 3, of the Native Title Act.

REGISTER ATTACHMENTS:

1. Schedule 2 - Maps of the External Boundaries of the Determination Area, 4 pages - A4, 28/09/2017
2. Schedule 3 – Map of land and waters within the Determination Area where native title exists (Native Title Land), 1 page - A4, 28/09/2017

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.