

## Extract from the National Native Title Register

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### Determination Information:

**Determination Reference:** Federal Court Number(s): NSD6084/1998  
NNTT Number: NCD2015/001

**Determination Name:** Barkandji Traditional Owners #8 v Attorney-General of New South Wales

**Date(s) of Effect:** 16/06/2015

**Determination Outcome:** Native title exists in the entire determination area

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

**Determination Date:** 16/06/2015

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

Not Applicable

### REGISTERED NATIVE TITLE BODY CORPORATE:

Barkandji Native Title Group Aboriginal Corporation RNTBC  
Trustee Body Corporate  
545 Chapples Street  
BROKEN HILL New South Wales 2880

### COMMON LAW HOLDER(S) OF NATIVE TITLE:

4. Native title in the Determination Area is held by the Barkandji and Malyangapa People who comprise all the descendants of the following apical ancestors:
- |                         |                              |
|-------------------------|------------------------------|
| (a) Manfred Mary/Mary   | (t) Tottie Gibson            |
| Johnson/ Mary Brodie    | (u) Kutyi                    |
| (b) Manfred Tommy       | (v) Cate Newton/Maggie Tyler |
| (c) Louisa Brown        | (w) Albert Bates             |
| (d) Cuthero Jack Brown  | (x) Fanny Bates              |
| (e) Susan/Annie Webster | (y) Yancannia Kitty          |
| (f) Bill Webster        | (z) Judy Quayle              |
| (g) Harry Whyman        | (aa) Nancy Watts             |

- |                            |                             |
|----------------------------|-----------------------------|
| (h) Kate Whyman            | (bb) Topsy Crowe            |
| (i) Louisa McLean          | (cc) Alec Bridge            |
| (j) Alec McLean            | (dd) Olive Barton           |
| (k) Nganya                 | (ee) Margaret Payne         |
| (l) Sarah Cabbage          | (ff) Kitty Knight           |
| (m) Harry Mitchell         | (gg) Jacky Knight           |
| (n) Daniel McGregor        | (hh) Matilda Murray         |
| (o) Lucy Benson            | (ii) Paddy Black            |
| (p) Jack "Doctor" Benson   | (jj) Hero Black             |
| (q) Crancey                | (kk) Tall Boy Keegan        |
| (r) Jack Tyler             | (ll) Kitty Keegan           |
| (s) Taylor Matjulum Gibson | (mm) Fanny Buugali Williams |

and persons adopted into the families of those persons who identify as, and are accepted as, members of the Barkandji and Malyangapa People in accordance with Barkandji and Malyangapa traditional laws and customs (and the biological descendants of any such adopted persons).

#### **MATTERS DETERMINED:**

**BEING SATISFIED** that a determination of native title in the terms agreed by the parties, as recorded in the agreement between the parties made under s 87A(1) of the *Native Title Act 1993* (Cth) (the **NTA**) and filed on 12 June 2015 (the **agreement**), is within the power of the Court, and it appearing appropriate to do so by consent of the parties,

#### **PURSUANT TO SS 87A(4) AND (5) AND 94A OF THE NTA, THE COURT ORDERS THAT:**

1. There be a determination of native title in the terms set out below (the **Determination**).
2. Barkandji Native Title Group Aboriginal Corporation shall hold the determined native title in trust for the native title holders pursuant to s 56(2)(b) of the NTA.

#### **THE DETERMINATION**

##### **Existence of native title**

1. The Determination Area comprises the land or waters described in Schedule One and depicted on the plan in Schedule Two.
2. Native title exists in the Determination Area in the manner set out in paragraphs 5 to 9.
3. Native title does not exist in the Extinguished Areas.

##### **Native title holders**

4. Native title in the Determination Area is held by the Barkandji and Malyangapa People who comprise all the descendants of the following apical ancestors:

(a) Manfred Mary/Mary Johnson/ Mary Brodie	(t) Tottie Gibson
(b) Manfred Tommy	(u) Kutyi
(c) Louisa Brown	(v) Cate Newton/Maggie Tyler
	(w) Albert Bates

(d) Cuthero Jack Brown	(x) Fanny Bates
(e) Susan/Annie Webster	(y) Yancannia Kitty
(f) Bill Webster	(z) Judy Quayle
(g) Harry Whyman	(aa) Nancy Watts
(h) Kate Whyman	(bb) Topsy Crowe
(i) Louisa McLean	(cc) Alec Bridge
(j) Alec McLean	(dd) Olive Barton
(k) Nganya	(ee) Margaret Payne
(l) Sarah Cabbage	(ff) Kitty Knight
(m) Harry Mitchell	(gg) Jacky Knight
(n) Daniel McGregor	(hh) Matilda Murray
(o) Lucy Benson	(ii) Paddy Black
(p) Jack "Doctor" Benson	(jj) Hero Black
(q) Crancey	(kk) Tall Boy Keegan
(r) Jack Tyler	(ll) Kitty Keegan
(s) Taylor Matjulum Gibson	(mm) Fanny Buugali Williams

and persons adopted into the families of those persons who identify as, and are accepted as, members of the Barkandji and Malyangapa People in accordance with Barkandji and Malyangapa traditional laws and customs (and the biological descendants of any such adopted persons).

#### **Nature and extent of native title rights and interests**

5. Subject to paragraphs 7 and 9, the native title rights and interests in relation to the Exclusive Areas, in respect of which s 47A of the *Native Title Act 1993* (Cth) ("the NTA") applies, comprise the right of possession, occupation, use and enjoyment to the exclusion of all others.
6. Subject to paragraphs 7 to 9, the native title rights and interests in relation to the Non-Exclusive Areas are:
  - (a) the right to enter, travel over and remain on the Non-Exclusive Areas;
  - (b) the right to take and use the natural resources (other than water) of the Non-Exclusive Areas;
  - (c) the right to take and use the water of the Non-Exclusive Areas for personal, domestic and communal purposes (including cultural purposes and for watering native animals, cattle and other stock, and watering gardens not exceeding 2 hectares), but not extending to a right to control the use and flow of the water in any rivers or lakes which flow through or past or are situate within the land of two or more occupiers;
  - (d) the right to camp and for that purpose to erect temporary shelters and temporary structures in the Non-Exclusive Areas;
  - (e) the right to light fires in the Non-Exclusive Areas for domestic purposes, but not for the clearance of vegetation;
  - (f) the right to engage in cultural activities on the land, to conduct ceremonies, to hold meetings, and to participate in cultural practices relating to birth and death including burials on the land the subject of the Non-Exclusive Areas;
  - (g) the right to have access to, to maintain and to protect from physical harm sites and places of importance

in the Non-Exclusive Areas which are of significance to the Barkandji and Malyangapa People under their traditional laws and customs;

- (h) the right to teach on the Non-Exclusive Areas the physical, cultural and spiritual attributes of places and areas of importance on or in the Non-Exclusive Areas;
- (i) the right to hunt in the Non-Exclusive Areas;
- (j) the right to fish in the Non-Exclusive Areas; and
- (k) the right to be accompanied on the Non-Exclusive Areas by persons who, though not native title holders, are:
  - (i) spouses, partners or parents of native title holders, together with their children and grandchildren;
  - (ii) people whose presence is required under traditional laws and customs for the performance of cultural activities, practices or ceremonies;
  - (iii) people requested by the native title holders to assist in, observe or record cultural activities, practices or ceremonies.

### **General qualifications on native title rights and interests**

7. Native title does not exist in:

- (a) minerals as defined in the *Mining Act 1992* (NSW) and the *Mining Regulation 2010* (NSW); and
- (b) petroleum as defined in the *Petroleum (Onshore) Act 1991* (NSW) and the *Petroleum (Submerged Lands) Act 1982* (NSW).

8. The native title rights and interests referred to in paragraph 6 do not confer:

- (a) possession, occupation, use or enjoyment of the Non-Exclusive Areas to the exclusion of all others; or
- (b) any right to control access to, or use of, the Non-Exclusive Areas.

9. The native title rights and interests in the Determination Area are subject to and exercisable in accordance with:

- (a) the laws of the State of New South Wales and of the Commonwealth;
- (b) the traditional laws acknowledged and the traditional customs observed by the Barkandji and Malyangapa People; and
- (c) the terms of any Indigenous Land Use Agreement which may be registered by the National Native Title Tribunal in respect of any part of the Determination Area whether made before or after the making of this determination.

### **Nature and extent of Other Interests**

10. The other interests in relation to the Determination Area are described in Schedule Seven ('Other Interests').

### **Relationship between native title rights and Other Interests**

11. Except as otherwise provided by law, the relationship between the native title rights and interests in the Non-Exclusive Areas and the Other Interests in those areas is as follows:

- (a) the determination does not affect the validity of those Other Interests;
- (b) to the extent of any inconsistency between the Other Interests and 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
- (c) otherwise, the Other Interests co-exist with the native title rights and interests and, for the avoidance of

doubt, the doing of an activity required or permitted under those Other Interests prevails over the native title rights and interests and their exercise, but does not extinguish them.

12. The relationship between the native title rights and interests in the Exclusive Areas (in relation to which s 47A of the NTA applies) and the Other Interests described in item 1(a) of Schedule Seven ('Aboriginal Land Council Interests') is as follows:
- (a) the Aboriginal Land Council Interests continue to have effect;
  - (b) the non-extinguishment principle in s 238 of the NTA applies to the grant or vesting of the Aboriginal Land Council Interests and any prior interest in relation to the area; and
  - (c) the native title continues to exist in its entirety but the rights and interests have no effect in relation to the Aboriginal Land Council Interests.

## Definitions

13. In this determination and the associated orders, unless the contrary intention appears:

**'Barkandji and Malyangapa People'** means the native title holders as described in paragraph 4.

**'Barkandji Native Title Group Aboriginal Corporation'** means the Barkandji Native Title Group Aboriginal Corporation ICN 4740 incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**'Claim Area'** means the land or waters subject to native title determination application NSD 6084 of 1998 (the Barkandji Application). For the removal of doubt, the Claim Area does not include Lake Victoria, Rufus River, Frenchman's Creek, the Murray River, the Darling River from its junction with the Great Darling Anabranch downstream to its junction with the Murray River, the Great Darling Anabranch, or Tuckers Creek from its junction with the Murray River downstream to its junction with the Darling River.

**'cultural purposes'**, within the meaning of paragraph 6(c), means the purposes of performing the following activities or activities of a similar kind, all of which involve the use of insubstantial quantities of water:

- cleansing ceremonies;
- introductions to country (in which individuals are immersed in water or water is otherwise applied to them);
- the preparation of food or bush medicines;
- the manufacture of artefacts, art and ochre;
- digging out soakages; and
- activities involving the teaching of native title holders about traditional laws, customs and practices.

**'Determination Area'** means the land or waters described in Schedule One and depicted on the plan in Schedule Two.

**'Excluded Areas'** means the land or waters in respect of which the parties have agreed that no determination of native title is to be made at present being the areas described in Schedule Six and shaded purple on the plan in Schedule Two.

**'Exclusive Areas'** means the land or waters described in Schedule Three and shaded orange on the plan in Schedule Two.

**'Extinguished Areas'** means the land or waters described in Schedule Five and hatched in red on the plan in Schedule Two.

**'naturally occurring water body'** means any naturally occurring:

- (a) body of water (however described) whether perennial or intermittent flowing in a natural channel and any affluent, confluent, branch, tributary or other stream into or from which such water flows; or
- (b) lake, lagoon, waterhole or other like collection of water (however described) whether permanent or temporary not being a containment of water in or by an artificial work.

**'Non-Exclusive Areas'** means the land or waters described in Schedule Four and shaded green on the plan in Schedule Two.

**'Other Interests'** means the interests described in Schedule Seven.

14. If a word or expression is not defined in the determination or the associated orders, but is defined in the NTA, it has the meaning given to it in the NTA.

## **Schedule One**

### **Description of the Determination Area**

1. The Determination Area comprises:
  - (a) the Exclusive Areas; and
  - (b) the Non-Exclusive Areas.
2. The Determination Area does not include the Extinguished Areas.
3. The Determination Area does not include the Excluded Areas.
4. For the removal of doubt, the Determination Area only includes areas of land or waters that are within the Claim Area.

In the event of an inconsistency between the written description provided in this Schedule, Schedule Three, Schedule Four, Schedule Five or Schedule Six and the plan in Schedule Two, the written description shall prevail.

## **Schedule Two**

### **Plan of Determination Area**

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

## **Schedule Three**

### **Description of the Exclusive Areas**

The Exclusive Areas, being the areas of land or waters to which s 47A of the NTA applies, are the following:

ID	Lot/DP
11088	109/39794
16034	10/757028
19418	76/40661
20811	1186/820174
22803	3/754343
23136	20/757028
23486	1/1092816

The Exclusive Areas do not include any area of land or waters within the Extinguished Areas.

The Exclusive Areas are also depicted on the plan in Schedule Two shaded orange.

## **Schedule Four**

### **Description of the Non-Exclusive Areas**

[See NNTR attachment 2: "Schedule Four - Description of the Non-Exclusive Areas"]

## Schedule Five

### Description of Extinguished Areas

[See NNTR attachment 3: "Schedule Five - Description of Extinguished Areas"]

## Schedule Six

### Description of Excluded Areas

[See NNTR attachment 4: "Schedule Six - Description of Excluded Areas"]

## Schedule Seven

### Other Rights and Interests in the Determination Area

The Other Interests, as they exist at the date of this Determination, are as follows:

1. Aboriginal Land Council Interests

- (a) The rights and interests of Dareton Local Aboriginal Land Council, Menindee Local Aboriginal Land Council or Wilcannia Local Aboriginal Land Council (as the case may be) as the holder of a freehold or leasehold title over the areas of land or waters within the Exclusive Areas as follows:

Local Aboriginal Land Council	Areas over which freehold or leasehold title held
Dareton Local Aboriginal Land Council	Lot 1186 DP 820174
Menindee Local Aboriginal Land Council	Lot 76 DP 40661, Lot 3 DP 754343
Wilcannia Local Aboriginal Land Council	Lot 109 DP 39794, Lot 10 DP 757028, Lot 20 DP 757028

- (b) The rights and interests of New South Wales Aboriginal Land Council, Broken Hill Local Aboriginal Land Council, Dareton Local Aboriginal Land Council, Menindee Local Aboriginal Land Council, Mutawintji Local Aboriginal Land Council and/or Wilcannia Local Aboriginal Land Council (as the case may be) pursuant to undetermined Aboriginal land claims made under s 36 of the *Aboriginal Land Rights Act 1983* (NSW) in respect of certain lands within the Non-Exclusive Areas, including, subject only to a determination that the land is claimable Crown land as defined in s 36(1) of that Act, the right to the transfer of an estate in fee simple pursuant to that Act.

2. Reserves

- (a) The rights of organisations or persons who have the care, control and management of any reserves within the Non-Exclusive Areas;
- (b) The rights of the holders of leases, licences or permits in respect of, or easements or rights of way over, any reserves within the Non-Exclusive Areas; and
- (c) The rights of persons entitled to access and use any reserves within the Non-Exclusive Area for the respective purposes for which they are reserved, subject to any statutory limitations upon those rights.

3. Mining and petroleum interests

- (a) The rights of the holders of any mining interests.
- (b) The rights of the holders of any petroleum interests.

4. Water interests

- (a) The rights of the holders of the following licences and of any other licences or permits granted under the *Water Act 1912* (NSW) and the *Water Management Act 2000* (NSW) ('*Water Management Act*):
- (i) Water Supply Works Approval 60WA580721;
- (ii) Water Access Licence WAL4908;
- (iii) Water Access Licence WAL13132;

- (iv) Water Access Licence WAL13133;
- (v) Water Access Licence WAL10398;
- (vi) Water Access Licence WAL10399; and
- (vii) Water Access Licence WAL29910 60AL582713.
- (b) The rights of the holders of the following Permissive Occupancies and of any other Permissive Occupancies:
  - (i) Permissive Occupancy granted to The Stanley Wine Company Pty Ltd as and from 4 January 1984 for Pump Site and Rising Main.

5. Murray-Darling Basin Authority

The rights and interests of the Murray Darling Basin Authority:

- (a) as the entity responsible for performing the functions and duties, and exercising the powers, relating to the management of Basin water resources conferred on it by the *Water Act 2007* (Cth) ('*Water Act*');
- (b) as the entity responsible for performing the functions and duties and exercising the powers conferred on it by the Murray Darling Basin Agreement set out in Schedule 1 of the *Water Act*, as authorised by Parts 9, 10 and 10A of that Act and Part 3A of the *Water Management Act*,
- (c) created, conferred or imposed pursuant to its functions or duties or the performance thereof, or the exercise of its powers under:
  - (i) the *Water Act* or the *Water Management Act* and any regulation or legislative instrument made under either of those Acts;
  - (ii) the Murray-Darling Basin Agreement set out in Schedule 1 of the *Water Act* or any corporate plan, asset management plan, asset agreement or service level agreement made, and any river management operations and objectives an outcomes document approved, under that Agreement;
  - (iii) the Basin Plan adopted by the Minister under the *Water Act*, and
  - (iv) any resolution or determination of the Murray-Darling Basin Ministerial Council or the Basin Officials Committee made under the Murray-Darling Basin Agreement.

6. Telecommunications interests

The rights and interests of Telstra Corporation Limited (ACN 051 775 556) and any other holder of a carrier licence under the *Telecommunications Act 1997* (Cth):

- (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 Corporations Act 1989* (Cth), the *Telecommunications Act 1991* (Cth) and the *Telecommunications Act 1997* (Cth), including rights:
  - (i) to inspect land; and
  - (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, access agreement, or easement relating to its telecommunications facilities in the Determination Area.

7. Electricity supply interests



- (a) The rights and interests of an energy services corporation within the meaning of the *Energy Services Corporations Act 1995* (NSW) to exercise functions, powers or rights in accordance with the laws of the State of New South Wales or of the Commonwealth and as owner and operator of facilities for the transmission of electricity and other forms of energy and associated infrastructure situated on the Determination Area including but not limited to the right to enter the Determination Area in order to access, use, maintain, repair, replace, upgrade or otherwise deal with existing facilities and infrastructure.
- (b) The rights and interests of:
  - (i) a network operator within the meaning of the *Electricity Supply Act 1995* (NSW); and
  - (ii) for the purposes of any privatisation transaction, any lessor or lessee of a transmission system or person who owns or is authorised to control or operate a transmission system,

to exercise functions, powers or rights in accordance with the law of the State of New South Wales or of the Commonwealth as operator of facilities for the transmission of electricity and other forms of energy and associated infrastructure situated on the Determination Area in order to access, use, maintain, repair, replace, upgrade or otherwise deal with existing facilities and infrastructure.

- (c) The rights and interests of Powercor Australia Ltd:
  - (i) as the holder of occupation permit 14745 under the *Forestry Act 1916* (NSW), as continued in force under the *National Parks and Wildlife Act 1974* (NSW);
  - (ii) as the owner or operator of electricity facilities within the Determination Area, including overhead and underground cabling; and
  - (iii) for its employees, agents or contractors to enter the Determination Area in the performance of their duties, to access its electricity facilities in, and in the vicinity of, the Determination Area.

#### 8. Local Government interests

The rights and interests of the Broken Hill City Council and Wentworth Shire Council as councils constituted under the *Local Government Act 1993* (NSW).

#### 9. Commonwealth interests

The rights and interests of the Bureau of Meteorology as the owner, operator and manager of the automatic weather station located on part of Lot 4420 on DP766863 at the White Cliffs Airport.

#### 10. Other interests generally

- (a) Rights and interests, including licences and permits granted by the Crown in right of the State of New South Wales or of the Commonwealth pursuant to statute or under regulations made pursuant to such legislation.
- (b) Rights and interests held by reason of the force and operation of the laws of the State of New South Wales or of the Commonwealth.
- (c) Rights and interests of members of the public arising under common law.
- (d) So far as is confirmed pursuant to s 18 of the *Native Title (NSW) Act* as at the date of the determination, any existing public access to and enjoyment of:
  - (i) waterways;
  - (ii) the bed and banks or foreshores of waterways;
  - (iii) stock routes; and
  - (iv) areas that were public places at the end of 31 December 1993.
- (e) The right to access the Determination Area by:
  - (i) an employee, agent or instrumentality of the State of New South Wales;

- (ii) an employee, agent or instrumentality of the Commonwealth; and
  - (iii) an employee, agent or instrumentality of any local government authority;
- as required in the performance of his, her or its statutory or common law duty.

**REGISTER ATTACHMENTS:**

1. Schedule Two - Plan of Determination Area, 1 page - A3, 16/06/2015
2. Schedule Four - Description of the Non-Exclusive Areas, 42 pages - A4, 16/06/2015
3. Schedule Five - Description of Extinguished Areas, 251 pages - A4, 16/06/2015
4. Schedule Six - Description of Excluded Areas, 2 pages - A4, 16/06/2015

*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.*