



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): VID6002/1998
NNTT Number: VCD2005/001

Determination Name: [Clarke on behalf of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples v State of Victoria](#)

Date(s) of Effect: 13/12/2005

Determination Outcome: Native title exists in parts of the determination area

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

Determination Date: 13/12/2005

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Barengi Gadjin Land Council Aboriginal Corporation RNTBC
Trustee Body Corporate
PO Box 1255
HORSHAM VIC 3402

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:

The native title rights and interests are held in trust by the BGLCAC on behalf of the Wotjobaluk People as the common law holders.

Wotjobaluk People are the Wotjobaluk Jaadwa Jadwadjali Wergaia and Jupagalk Aboriginal persons, being persons:

(a) who are accepted in accordance with their traditional laws and customs as descended from one of the following Wotjobaluk ancestors:

- Richard Kennedy born circa 1853 at Morton Plains;
- Captain Harrison Senior born circa 1838 at Donald;

- Archibald Pepper born circa 1859 at Nypo Station;
- Thomas Marks born circa 1844 at Lake Hindmarsh;
- Pelham Cameron born circa 1854 at Morton Plains;
- Albert Coombes born circa 1852 of Antwerp;
- Augusta Robinson born circa 1855 at Richardson River; and

(b) who acknowledge and observe Wotjobaluk traditional laws and customs.

MATTERS DETERMINED:

THE COURT ORDERS, DECLARES AND DETERMINES WITH THE CONSENT OF THE PARTIES THAT:

1. In this Determination, unless the contrary intention appears, the expression:

"Application Area" means the area described in Attachment B of the Application provided in Schedule 1 (see Attachment 1).

"Business Day" means a weekday on which banks are open in Melbourne.

"Determination Area A" means the Crown allotments in existence on the date this Determination is made which are described in Part 1 of Schedule 3 (see Attachment 2) and the beds of watercourses and lakes described in Part 2 of Schedule 3 (see Attachment 2) both of which are shown in the maps provided in Schedule 4 (see Attachment 3).

"Determination Area B" means the Crown allotments in existence on the date this Determination is made which are described in Part 1 of Schedule 5 (see Attachment 4) and the watercourses and lakes described in Part 2 of Schedule 5 (see Attachment 4) both of which are shown in the map provided in Schedule 6 (see Attachment 5).

"laws" includes statutes, regulations and other subordinate legislation and the common law.

"native title" has the same meaning as in section 223(1) of the Native Title Act 1993 (Cth).

"the native title rights and interests" means the native title rights and interests described in Order 7 of this Determination.

"the other rights and interests" means the rights and interests referred to in Order 8 and more particularly described in Schedule 7 (see Attachment 5).

"public work" has the same meaning as in section 253 of the Native Title Act 1993 (Cth).

"waters" has its ordinary meaning and not the meaning ascribed to it in section 253 of the Native Title Act 1993 (Cth).

"Wotjobaluk People" means the persons described in Schedule 8.

2. In the event of an inconsistency between the written description of Determination Area A provided in Schedule 3 (see Attachment 2) and the map of Determination Area A provided in Schedule 4 (see Attachment 3), the written description shall prevail. Similarly, in the event of an inconsistency between the written description of Determination Area B provided in Schedule 5 (see Attachment 4) and the map of Determination Area B provided in Schedule 6 (see Attachment 5), the written description shall prevail.

3. Subject to Order 4, native title exists in Determination Area A.

4. Native title does not exist in:

(a) any waters within Determination Area A. For the avoidance of doubt, waters do not include the bed or subsoil under, or airspace over, any waters within Determination Area A; and

(b) any lands within Determination Area A on which public works were validly constructed, established or situated prior to 23 December 1996 or commenced to be constructed or established on or before that date, including any lands falling within the terms of section 251D of the Native Title Act 1993 (Cth); and

(c) any lands within Determination Area A on which public works were validly constructed, established or situated after 23 December 1996, where section 24JA of the Native Title Act 1993 (Cth) applies.

5. Native title does not exist in Determination Area B.

6. The native title rights and interests are held in trust by the BGLCAC on behalf of the Wotjobaluk People as the common law holders.

7. Subject to Orders 8 and 9, the nature and extent of the native title rights and interests held by the Wotjobaluk People in Determination Area A are the non-exclusive rights to hunt, fish, gather and camp for personal, domestic and non-commercial communal needs.

8. The nature and extent of other rights and interests in relation to Determination Area A are those set out in Part 1 of Schedule 7 (see Attachment 5) and those described by Crown allotment reference in Part 2 of Schedule 7 (see Attachment 5).

9. The relationship between the native title rights and interests and the other rights and interests is that the other rights and interests, and any activity done in exercise of a right conferred or held under the other rights or interests, prevail over the native title rights and interests and any exercise of those native title rights and interests, but do not extinguish them.

10. The native title rights and interests are subject to and exercisable in accordance with:

- (a) the traditional laws acknowledged and the traditional customs observed by the Wotjobaluk People; and
- (b) the laws of the State or Commonwealth including (where s.211 of the Native Title Act 1993 (Cth) does not apply) any requirement to obtain any licence, permit or other instrument; and
- (c) the terms and conditions of the Access Agreement which the Court has noted at Recital H above.

11. The native title rights and interests do not confer possession, occupation, use and enjoyment of Determination Area A on the native title holders to the exclusion of all others.

AND THE COURT WITH THE CONSENT OF THE PARTIES FURTHER ORDERS THAT:

12. In accordance with the Applicant's nomination of the BGLCAC, it shall:

- (a) be the prescribed body corporate for the purposes of sections 56(2) and 57(1) of the Native Title Act 1993 (Cth); and
- (b) hold the native title rights and interests in trust for the Wotjobaluk People; and
- (c) perform the functions set out in section 57(1)(a) and (b) of the Native Title Act 1993 (Cth) and in regulation 6 of the Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth).

13. Any notices required under any legislation or otherwise to be served on the native title holders, registered native title claimants or the native title claim group may be served on the BGLCAC, and such service shall be deemed to be sufficient.

14. Each party has, upon giving 14 Business Days written notice to any other affected party, liberty to apply to the Court in relation to Order 4 for the purpose of establishing whether an installation is a public work, and the precise location and boundaries of:

- (a) existing or past public works in relation to Determination Area A; and
- (b) adjacent land, the use of which is or was necessary for, or incidental to, the construction, establishment or operation of the public works in relation to Determination Area A.

SCHEDULE 8 - WOTJOBALUK PEOPLE

Wotjobaluk People

Wotjobaluk People are the Wotjobaluk Jaadwa Jadwadjali Wergaia and Jupagalk Aboriginal persons, being persons:

(a) who are accepted in accordance with their traditional laws and customs as descended from one of the following Wotjobaluk ancestors:

- Richard Kennedy born circa 1853 at Morton Plains;
- Captain Harrison Senior born circa 1838 at Donald;
- Archibald Pepper born circa 1859 at Nypo Station;
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- Pelham Cameron born circa 1854 at Morton Plains;
 - Albert Coombes born circa 1852 of Antwerp;
 - Augusta Robinson born circa 1855 at Richardson River; and
- (b) who acknowledge and observe Wotjobaluk traditional laws and customs.

REGISTER ATTACHMENTS:

1. Attachment 1 - Schedule 1 Written description of the amended claim area, 39 pages - A4, 13/12/2005
2. Attachment 2 - Schedule 3 Determination Area A (Written Description), 2 pages - A4, 13/12/2005
3. Attachment 3 - SCHEDULE 4 Maps of the the Determination Area A, 11 pages - A3, 13/12/2005
4. Attachment 4 - Schedule 5 Determination Area B (written description), 46 pages - A4, 13/12/2005
5. Attachment 5 - SCHEDULE 6 Map of Deetrmiation Area B, 1 page - A4, 13/12/2005
6. Attachment 6 - SCHEDULE 7 Other Rights and Interests, 4 pages - A4, 13/12/2005

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.