



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): NSD1350/2016  
NNTT Number: NCD2019/002

**Determination Name:** [Williams on behalf of the Gumbaynggirr People and Attorney General of New South Wales](#)

**Date(s) of Effect:** 26/11/2019

**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:** 26/11/2019

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

Not Applicable

### REGISTERED NATIVE TITLE BODY CORPORATE:

Wangaan (Southern) Gumbaynggirr Nation Aboriginal Corporation RNTBC  
Trustee Body Corporate  
PO Box 376  
Macksville New South Wales 2447

*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

4. Native title in the Native Title Area is held by the Gumbaynggirr People who are Aboriginal persons who are:

(a) The biological descendants of:

- (i) King Ben Bennelong;
- (ii) Maggie Buchanan and Davy Cowling;
- (iii) Bidy, the mother of Lavina Duncan (Bina Whaddy);
- (iv) Fanny Purrapine, the mother of Lily Kelly and Hilda Kelly Robinson;
- (v) Darby Kelly;

- (vi) the father of Maggie Kelly's mother Bidy;
- (vii) William "Old Bill" Dotti;
- (viii) John "Jack" Dotti;
- (ix) Lucy Flanders;
- (x) Dave Ballangarry;
- (xi) Robert Walker and Louise Linwood;
- (xii) John "Jack" Long;
- (xiii) Bridget "Biddy" Briggs Needam;
- (xiv) Mary Briggs and Fred Briggs;
- (xv) Susan, mother of Charles Jarrett Snr;
- (xvi) Rose Taylor;
- (xvii) Charles Layton;
- (xviii) Mick McDougall;
- (xix) Clara Skinner;
- (xx) Sylvie Craig;
- (xxi) Elizabeth "Kitty" Campbell/Cameron (known as Elizabeth Blakeney);
- (xxii) Emily Sutton;
- (xxiii) Fred Hookey;
- (xxiv) Nobby Neville;
- (xxv) Mary Jane Ferguson;
- (xxvi) Billy Lardner Jnr;
- (xxvii) King Bobby of Oban;
- (xxviii) the parent of Charlie Whitton and Lucy Larrigo (nee Whitton);
- (xxix) Walter Smith and Stella Jane Davis;
- (xxx) Jane Gard/Maskey; and

(b) persons who have been adopted into the families of those persons (and the biological descendants of any such adopted persons); and

(c) persons who have been otherwise incorporated, or who are direct descendants of a person who has been otherwise incorporated, as a member of the Gumbaynggirr People and who identify as and are accepted as a Gumbaynggirr person, in accordance with Gumbaynggirr laws and customs.

#### **MATTERS DETERMINED:**

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

1. There be a determination of native title in the terms set out below (the Determination");
2. On the Determination taking effect, Wanggaan (Southern) Gumbaynggirr Nation Aboriginal Corporation RNTBC ICN 8095 shall hold the determined native title in trust for the common law holders pursuant to section 56(3) of the *Native Title Act 1993* (Cth) and is to:
  - (i) be the prescribed body corporate for the purposes of section 57(1) of the *Native Title Act 1993* (Cth); and
  - (ii) perform the functions set out in section 57(1) of the *Native Title Act 1993* (Cth) and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

#### **THE COURT DETERMINES THAT:**

1. Native title exists in the Native Title Area described in Schedule One and depicted in green hatching in the map attached to Schedule One.
2. Native title is extinguished in the Extinguished Area described in Schedule Two and depicted in red hatching in the map attached to Schedule Two.
3. To the extent of any inconsistency between the written descriptions in Schedules One and Two and the corresponding map attached to the Schedule, the written description prevails.

#### **Native title holders**

4. Native title in the Native Title Area is held by the Gumbaynggirr People who are Aboriginal persons who are:
  - (a) The biological descendants of:
    - (i) King Ben Bennelong;
    - (ii) Maggie Buchanan and Davy Cowling;

- (iii) Biddy, the mother of Lavina Duncan (Bina Whaddy);
- (iv) Fanny Purrupine, the mother of Lily Kelly and Hilda Kelly Robinson;
- (v) Darby Kelly;
- (vi) the father of Maggie Kelly's mother Biddy;
- (vii) William "Old Bill" Dotti;
- (viii) John "Jack" Dotti;
- (ix) Lucy Flanders;
- (x) Dave Ballangarry;
- (xi) Robert Walker and Louise Linwood;
- (xii) John "Jack" Long;
- (xiii) Bridget "Biddy" Briggs Needam;
- (xiv) Mary Briggs and Fred Briggs;
- (xv) Susan, mother of Charles Jarrett Snr;
- (xvi) Rose Taylor;
- (xvii) Charles Layton;
- (xviii) Mick McDougall;
- (xix) Clara Skinner;
- (xx) Sylvie Craig;
- (xxi) Elizabeth "Kitty" Campbell/Cameron (known as Elizabeth Blakeney);
- (xxii) Emily Sutton;
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- (xxiv) Nobby Neville;
- (xxv) Mary Jane Ferguson;
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- (xxviii) the parent of Charlie Whitton and Lucy Larrigo (nee Whitton);
- (xxix) Walter Smith and Stella Jane Davis;
- (xxx) Jane Gard/Maskey; and

(b) persons who have been adopted into the families of those persons (and the biological descendants of any such adopted persons); and

(c) persons who have been otherwise incorporated, or who are direct descendants of a person who has been otherwise incorporated, as a member of the Gumbaynggirr People and who identify as and are accepted as a Gumbaynggirr person, in accordance with Gumbaynggirr laws and customs.

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

5. Subject to paragraphs 8 and 19, the nature and extent of the native title rights and interests held by the Gumbaynggirr People in the Native Title Area are the non-exclusive rights to use and enjoy the land and waters of the Native Title Area in accordance with Gumbaynggirr traditional laws and customs being:

- (a) the right to have access to and Camp on the Native Title Area;
- (b) the right to take and use waters on or in the Native Title Area;
- (c) the right to hunt and gather natural resources of the Native Title Area for personal, domestic and non-commercial communal use;
- (d) the right to take fish in the temporary waters occurring above the mean high water mark in the Native Title Area;
- (e) the right to do the following activities on the land:
  - (i) conduct ceremonies;
  - (ii) teach the physical, cultural and spiritual attributes of places and areas of importance on or in the land and waters; and
  - (iii) to have access to, maintain and protect from physical harm, sites in the Native Title Area which are of significance to Gumbaynggirr People under their traditional laws and customs.

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

6. The native title rights and interests referred to in paragraph 5 are exercised for personal, domestic and non-commercial communal purposes.

7. Native title does not exist in:

- (a) minerals as defined in the *Mining Act 1992 (NSW)* and the *Mining Regulation 2016 (NSW)*; and

(b) petroleum as defined in the *Petroleum (Onshore) Act 1991* (NSW) and the *Petroleum (Offshore) Act 1982* (NSW).

8. The native title rights and interests described in paragraph 5 do not confer:

(a) Possession, occupation, use or enjoyment of the land or waters in the Native Title Area to the exclusion of all others; or

(b) any right to control public access to or public use of the land or waters in the Native Title Area.

9. The native title rights and interests in relation to the land or waters in the Native Title Area are subject to and exercisable in accordance with:

(a) the laws of the State of New South Wales and of the Commonwealth; and

(b) the traditional laws acknowledged and traditional customs observed by the Native Title Holders.

#### **The nature and extent of any Other Interests**

10. The Other Interests in relation to the Native Title Area are described in Schedule Four.

#### **Relationship between native title rights and interests and other rights and interests**

11. Subject to paragraph 12 and except as provided by law, the relationship between the native title rights and interests in relation to land or waters in the Native Title Area and the Other Interests described in Schedule Four is that:

(a) the Other Interests continue to have effect;

(b) the Other Interests co-exist with the native title rights and interests;

(c) the Native Title Holders do not have the right to control access to or the use of the land or waters within the Native Title Area by the holders of the Other Interests; and

(d) to the extent of any inconsistency, the Other Interests and any activity that is required or permitted by or under the exercise of a right conferred or held under the Other Interests, while they are in existence, prevail over but do not extinguish the native title rights and interests and any exercise of those native title rights and interests.

12. The relationship between the native title rights and interests in relation to the land and waters described in Schedule One (being land and waters to which section 47A of the *Native Title Act 1993* (Cth) applies) and the Other Interests described in paragraph 1 in Schedule Four ("Nambucca Heads Local Aboriginal Land Council's Interests") is that:

(a) Nambucca Heads Local Aboriginal Land Council's Interests continue to have effect;

(b) the non-extinguishment principle in section 238 of the *Native Title Act 1993* (Cth) applies to the grant or vesting of Nambucca Heads Local Aboriginal Land Council's Interests and any prior interest in relation to the area in accordance with section 47A(3)(b) of the *Native Title Act 1993* (Cth);

(c) the native title rights and interests continue to exist in their entirety, but have no effect in relation to Nambucca Heads Local Aboriginal Land Council's Interests;

(d) Nambucca Heads Local Aboriginal Land Council's Interests, and any activity that is required or permitted by or under and done in accordance with the Nambucca Heads Local Aboriginal Land Council's Interests, may be exercised and enjoyed in their entirety notwithstanding the existence of the native title rights and interests;

(e) the native title rights and interests may not be exercised on land or waters the subject of Nambucca Heads Local Aboriginal Land Council's Interests while Nambucca Heads Local Aboriginal Land Council's Interests exist;

(f) if Nambucca Heads Local Aboriginal Land Council's Interests or their effects are wholly removed or otherwise wholly cease to operate the native title rights and interests again have full effect; and

(g) if Nambucca Heads Local Aboriginal Land Council's Interests or their effects are removed to an extent or otherwise cease to operate only to an extent, the native title rights and interests again have effect to that extent.

#### **Definitions**

13. In these orders, unless the contrary intention appears:

**"Application"** means the native title determination application filed with the Federal Court of Australia by the

Applicant in accordance with sections 13(1) and 61 of the *Native Title Act 1993* (Cth) and given proceedings number NSD 1350 of 2016.

**"Application Area"** means the land and waters subject to the native title determination application filed by the Gumbaynggirr People in Federal Court of Australia proceeding NSD 1350 of 2016.

**"Camp"** means to stay on the Native Title Area for temporary periods. Tents or other like structures are permitted. It does not include the right to permanently reside or build permanent structures or fixtures.

**"external boundaries of the Application"** means the boundary of the native title determination application filed by the Gumbaynggirr People in Federal Court of Australia proceeding NSD 1350 of 2016 the perimeter of the land and waters described in Schedule Three.

**"Extinguished Area"** means the land and waters described in Schedule Two.

**"Gumbaynggirr People"** has the same meaning as Native Title Holders.

**"land"** has the same meaning as in the *Native Title Act 1993* (Cth).

**"laws of the State of New South Wales and of the Commonwealth"** include statutes, regulations and other subordinate legislation and the common law.

**"Native Title Area"** means the land and waters described in Schedule One.

**"Native Title Holders"** means the persons described in paragraph 4.

**"Native title rights and interests"** means the native title rights and interests described in paragraph 5.

**"non-extinguishment principle"** has the same meaning as section 238 of the *Native Title Act 1993* (Cth).

**"Other Interests"** means the rights and interests described in Schedule Four.

**"Wanggaan (Southern) Gumbaynggirr Nation Aboriginal Corporation"** means the Wanggaan (Southern) Gumbaynggirr Nation Aboriginal Corporation RNTBC ICN 8095 incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**"waters"** has the same meaning as in the *Native Title Act 1993* (Cth).

14. If a word or expression is not defined in these orders or this Determination, but is defined in the *Native Title Act 1993* (Cth) or *Native Title (New South Wales) Act 1994* (NSW), then it has the meaning given to it in the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* (NSW), whichever is relevant.

#### **REGISTER ATTACHMENTS:**

1. Schedule One - Native title area, 2 pages - A4, 26/11/2019
2. Schedule Two - Extinguished area, 2 pages - A4, 26/11/2019
3. Schedule Three - External boundaries of the application, 1 page - A4, 26/11/2019
4. Schedule Four - Other interests in the native title area, 3 pages - A4, 26/11/2019

*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.*