

## Extract from the National Native Title Register

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### Determination Information:

**Determination Reference:** Federal Court Number(s): SAD6001/1998  
NNTT Number: SCD2015/001

**Determination Name:** Coulthard v State of South Australia

**Date(s) of Effect:** 8/12/2015

**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:** 08/12/2015

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

Not Applicable

### REGISTERED NATIVE TITLE BODY CORPORATE:

Adnyamathanha Traditional Lands Association (Aboriginal Corporation) RNTBC  
Agent Body Corporate  
c/- Johnston Withers  
17 Sturt Street  
ADELAIDE South Australia 5000

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

6. The Native Title Holders are those living Aboriginal persons who are described in Schedule 3 who:
- (a) identify as Adnyamathanha; and
  - (b) are recognised by other Native Title Holders under the relevant Adnyamathanha traditional laws and customs as having maintained an affiliation with, and continuing to hold native title rights and interests in, the Determination Area.

The descendants (whether biologically or by adoption) of:

Mt Serle Bob

Polly, wife of Mt Serle Bob

Quartpot Tommy

Mt Serle Bob's sister, wife of Quartpot Tommy

Willy Austin Snr

Nicholas Demell

Emily McKenzie, wife of Nicholas Demell

Sydney Ryan

Mary, wife of Sydney Ryan

The siblings of Angepena Billy or Mary

Fanny, wife of Angepena Billy

the siblings of Sara Johnson, Matilda Johnson, Fred Johnson, Natalie Johnson, Jessie Johnson  
or Sydney Jackson

**MATTERS DETERMINED:**

**BY CONSENT THE COURT MAKES THE FOLLOWING DETERMINATION OF NATIVE TITLE PURSUANT TO SECTION 87 OF THE NATIVE TITLE ACT:**

**The Determination Area**

1. In this determination, including its schedules, unless the contrary intention appears, the words and expressions used have the same meaning as they are given in Part 15 of the Act.
2. In this determination, the Determination Area means those parcels as are described in Schedules 1 and 1A but does not include the parcels described in Schedule 2.
3. In this determination including its schedules, 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 Annexure A, the written description shall prevail.

**Existence of Native Title**

4. Subject to paragraph 5, native title exists in the areas described in Schedules 1 and 1A.
5. Native title is extinguished over those areas or resources referred to in paragraphs 13 and 14.

**The native title holders**

6. The Native Title Holders are those living Aboriginal persons who are described in Schedule 3 who:
  - (a) identify as Adnyamathanha; and
  - (b) are recognised by other Native Title Holders under the relevant Adnyamathanha traditional laws and customs as having maintained an affiliation with, and continuing to hold native title rights and interests in, the Determination Area.

**Native title rights and interests**

7. Subject to paragraphs 8, 9 and 12 of this Order, the nature and extent of the native title rights and interests in relation to the Determination Area are:
  - (a) in relation to those areas described in Schedule 1, the rights to possession, occupation, use and enjoyment of the area to the exclusion of all others;
  - (b) in relation to waters and those areas described in Schedule 1A, the non-exclusive rights to:
    - (i) access and move about;
    - (ii) live, camp and to erect shelters;
    - (iii) hunt and fish;

- (iv) gather and use the natural resources of the area such as food, plants, timber, resin, ochre and soil;
- (v) cook and to light fires for cooking and camping purposes;
- (vi) use the natural water resources;
- (vii) distribute, trade or exchange the natural resources;
- (viii) conduct ceremonies and hold meetings on the area;
- (ix) engage and participate in cultural activities on the area including those relating to births and deaths;
- (x) carry out and maintain burials of deceased native title holders and of their ancestors;
- (xi) teach on the area the physical and spiritual attributes of locations and sites within the area;
- (xii) visit, maintain and preserve sites and places of cultural or spiritual significance to Native Title Holders within the area;
- (xiii) speak for and make decisions in relation to the area about the use and enjoyment of the area by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the Native Title Holders;
- (xiv) be accompanied on to the area by those people who, though not Native Title Holders, are:
  - (1) spouses of Native Title Holders; or
  - (2) people required by traditional law and custom for the performance of ceremonies or cultural activities on the area; or
  - (3) people who have rights in relation to the area 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 non-commercial communal use.
- 9. 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;
  - (b) the valid laws of the State and Commonwealth, including the common law.

For the avoidance of doubt, the native title rights and interests expressed in Paragraph 7(b) are subject to the *Natural Resources Management Act 2004 (SA)*.

#### **Nature and extent of the other rights and interests and relationship with native title**

- 10. The nature and extent of the other rights and interests in relation to the Determination Area are:
  - (a) the interests of the Crown in right of the State of South Australia;
  - (b) 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;
  - (c) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth;
  - (d) 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 (in accordance with any valid legislation);
  - (e) the interests of Viliwarintha Yura Aboriginal Corporation and the Indigenous Land Corporation in the tenures listed at Schedule 1;

- (f) the rights and interests of the Producers as defined in the *Cooper Basin (Ratification) Act 1975* (SA):
  - (i) as holders of Pipeline Licence No.2 (PL2) granted to the Producers on 26 November 1981 under the *Petroleum Act 1940* (SA) and renewed on 3 May 2003 under the *Petroleum Act 2000* (SA) and continuing in force by the operation of clause 2 of the Schedule to the *Petroleum Act 2000* (SA);
  - (ii) (created pursuant to the *Stoney Point (Liquids Project) Ratification Act 1981* (SA));
  - (iii) granted to the Producers pursuant to the former PASA (now NGASA) and the Producers' Right of Way Agreement dated 26 November 1981;
  - (iv) for the Producers' employees, agents or contractors to enter the Determination Area to access the Producers' 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.
- (g) the rights, interests and entitlements of SA Power Networks (a partnership of Spark Infrastructure SA (No.1) Pty Ltd, Spark Infrastructure SA (No.2) Pty Ltd, Spark Infrastructure SA (No.3) Pty Ltd, CKI Utilities Development Limited and PAI Utilities Development Limited) and its related and successor entities, including its rights, interests and entitlements:
  - (i) to exercise its entitlements and discharge its obligations as the owner and/or operator of electricity infrastructure (as defined in the *Electricity Act 1996* (SA)) (Electricity Act) and telecommunications facilities and infrastructure on the Determination Area including but not limited to the electricity infrastructure identified in Schedule 4 (Existing Infrastructure);
  - (ii) to exercise its entitlements and discharge its obligations as the holder of a licence under the Electricity Act and/or as an electricity entity under the Electricity Act;
  - (iii) to exercise its entitlements and discharge its obligations as the holder of a carrier licence under the *Telecommunications Act 1997* (Cth);
  - (iv) to install new electricity and telecommunications infrastructure on the Determination Area (New Infrastructure) and modify, maintain and repair Existing Infrastructure;
  - (v) under easements, leases or licences (whether registered, unregistered, statutory or otherwise) relating to Existing Infrastructure or New Infrastructure on the Determination Area (Easements);
  - (vi) to provide its employees, agents or contractors with access to Existing Infrastructure, New Infrastructure and the Easements on the Determination Area; and
  - (vii) to the extent permitted by law, to restrain any person from performing any act, or compel any person to perform any act, for the purposes of ensuring that SA Power Networks complies with its obligations under any law, including, but not limited to, excluding any person from entering an area containing Existing Infrastructure or New Infrastructure for the purposes of maintaining the safety of any person and the security and protection of such infrastructure.

11. Subject to Paragraph 12, the relationship between the native title rights and interests in the Determination Area that are described in Paragraph 7 and the other rights and interests that are referred to in Paragraph 10 (the Other rights and interests) is that:

- (a) the Other rights and interests co-exist with the native title rights and interests;
- (b) in the event of inconsistency, the Other rights and interests prevail over the native title rights and interests and any exercise of the native title rights and interests, but do not extinguish them;
- (c) the existence of the native title rights and interests does not prevent the doing of any activity required or permitted to be done by, in accordance with or under the Other rights and interests.

12. For the avoidance of doubt, the relationship between the Aboriginal-held interests listed in Schedule 1 and the native title rights and interests in the Determination Area that are described in Paragraph 7(a) is governed by the non-extinguishment principle as defined in s 238 of the Act as provided for in s 47 A (3).

13. Native title rights and interests do not exist in:

- (a) Minerals, as defined in s 6 of the *Mining Act 1971* (SA); or

- (b) Petroleum, as defined in s 4 of the *Petroleum and Geothermal Energy Act 2000* (SA); or
- (c) a naturally occurring underground accumulation of a regulated substance as defined in s 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth; or
- (d) a natural reservoir, as defined in s 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth;
- (e) geothermal energy, as defined in s 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 Paragraph 13 and the avoidance of doubt:

- (i) 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;
- (ii) thermal energy contained in a hot or natural spring is not geothermal energy as defined in s 4 of the *Petroleum and Geothermal Energy Act 2000* (SA);
- (iii) 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 s 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.

14. Native title rights do not exist in the areas covered by public works attributable to the State or Commonwealth (including the land defined in s 251 D of the Act) which were constructed, established or situated prior to 23 December 1996 or commenced to be constructed or established on or before that date.

15. Public works constructed, established or situated after 23 December 1996 have had such effect on native title rights and interests as has resulted from Part 2 Division 3 of the Act.

**AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:**

- 16. The native title is not to be held in trust.
- 17. Adnyamathanha Traditional Lands Association (Aboriginal Corporation) RNTBC is to:
  - (a) be the prescribed body corporate for the purposes of s 57(2) of the Act; and
  - (b) perform the functions mentioned in s 57(3) of the Act after becoming the registered native title body corporate in relation to the Determination Area.
- 18. The Parties 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 Paragraphs 14 and 15 of this Order;
  - (b) to establish the effect on native title rights and interests of any public works referred to in Paragraph 15 of this Order.

**SCHEDULE 1 - Areas where exclusive native title is recognised in this Consent Determination -**

**See Annexure A for Mapsheets**

**Parcels subject to the application of section 47A NTA**

PARCEL IDENTIFIER	HUNDRED NAME	TITLE REFERENCE
D75556 A1000	WONOKA	CT 6033/228
H300100 S101	BARNDIOOTA	CL 489/43
H300100 S102	BARNDIOOTA	CL 489/43

H300100 S106	BARNDIOOTA	CL 864/10
H300100 S141	BARNDIOOTA	CL 1011/20
H300100 S149	BARNDIOOTA	CL 489/43
H300100 S154	BARNDIOOTA	CL 401/25
H300100 S155	BARNDIOOTA	CL 864/10
H300100 S156	BARNDIOOTA	CL 131/16
H300100 S158	BARNDIOOTA	CL 184/57
H300100 S159	BARNDIOOTA	CL 175/2
H304100 S163	BARNDIOOTA	CL 616/8
H300100 S164	BARNDIOOTA	CL 506/83
H300100 S165	BARNDIOOTA	CL 506/83
H300100 S166	BARNDIOOTA	CL 506/83
H300100 S167	BARNDIOOTA	CL 508/66
H300100 S169	BARNDIOOTA	CL 506/83
H300100 S170	BARNDIOOTA	CL 489/123
H300100 S196	BARNDIOOTA	CL 489/123
H300100 S197	BARNDIOOTA	CL 174/59
H300100 S198	BARNDIOOTA	CL 174/59
H300100 S199	BARNDIOOTA	CL 879/18
H300100 S230	BARNDIOOTA	CL 616/8
H300100 S263	BARNDIOOTA	CL 570/38
H300100 S265	BARNDIOOTA	CL 570/79
H300100 S76	BARNDIOOTA	CL 489/43
H300200 S12	COTABENA	CL 1198/18
H300200 S13	COTABENA	CL 1198/18
H300200 S14	COTABENA	CL 1198/18
H300200 S15	COTABENA	CL 1198/18
H300400 S133	WONOKA	CT 6033/111
H300400 S137	WONOKA	CT 6033/228
H300400 S138	WONOKA	CT 6033/228
H300400 S139	WONOKA	CT 6033/228
H300400 S140	WONOKA	CT 6034/494
H300400 S141	WONOKA	CT 6034/494
H300400 S142	WONOKA	CT 6034/494

H300400 S144	WONOKA	CT 6033/111
H300400 S148	WONOKA	CT 6033/111
H300400 S149	WONOKA	CL 508/66
H300400 S150	WONOKA	CL 508/66
H300400 S151	WONOKA	CL 508/66
H300400 S152	WONOKA	CT 6033/110
H300400 S153	WONOKA	CT 6033/110
H300400 S549	WONOKA	CT 6033/228
H300400 S557	WONOKA	CT 6034/494
H300400 S558	WONOKA	CT 6034/494
H300400 S577	WONOKA	CT 6033/228
H300400 S78	WONOKA	CT 6033/228
H300400 S79	WONOKA	CT 6033/228
H300400 S80	WONOKA	CT 6033/228
H300400 S81	WONOKA	CT 6033/228
H300400 S82	WONOKA	CT 6033/228
H300400 S84	WONOKA	CT 6033/228

**Parcels subject to the application of section 47B NTA**

**PARCEL IDENTIFIER HUNDRED NAME TITLE REFERENCE**

H300100 S116	BARNDIOOTA	CR 5761/428
H300100 S117	BARNDIOOTA	CR 5761/429
H300100 S118	BARNDIOOTA	CR 5761/430
H300100 S119	BARNDIOOTA	CR 5761/431
H300100 S135	BARNDIOOTA	CR 5766/199 (except over portion covered by road)
T300101 A21	BARNDIOOTA	CR 5766/200 (except over portion covered by road)
T300101 A39	BARNDIOOTA	CR 5766/201 (except over portion covered by road)
T300101 A40	BARNDIOOTA	CR 5766/202 (except over portion covered by road)
T300101 A41	BARNDIOOTA	CR 5975/729
T300101 A45	BARNDIOOTA	CR 5750/8 (except over portion covered by road)
T300101 A46	BARNDIOOTA	CR 57661203
T300101 A47	BARNDIOOTA	CR 57661204
T300101 A48	BARNDIOOTA	CR 57661205

[See NNTR attachment 1: "Annexure A - Maps of Determination Area"]

**SCHEDULE 1A – Areas where non-exclusive native title is recognised in this Consent Determination - See**

**Annexure A for Mapsheets**

- a) Portion of Section 114 Hundred of Barndioota (CR 5761/426):
- b) Section 115 Hundred of Barndioota (CR 5761/427); and
- c) Waters.

[See NNTR attachment 1: "Annexure A - Maps of Determination Area"]

**SCHEDULE 2 - Areas over which native title has been extinguished that have been excluded from the Determination Area - See Annexure A for Mapsheets**

1 The parties agree that native title is extinguished in the following listed land parcels and sections 47A and 47B cannot apply:

PARCEL IDENTIFIER	HUNDRED NAME	TITLE REFERENCE	LEASE REFERENCE
H300100 S114 (portion)	BARNDIOOTA	CR 5761/426	
H300100 S121	BARNDIOOTA	CR 5756/553	
H300100 S136	BARNDIOOTA	CR 5761/435	
H300100 S157	BARNDIOOTA	CT 6092/875	
H300100 S160	BARNDIOOTA	CL 1280/1	PE 2220
H300100 S161	BARNDIOOTA	CL1280/1	PE 2220
H300100 S228	BARNDIOOTA	CL 1280/1	PE 2220
H300100 S229	BARNDIOOTA	CL 1280/1	PE 2220
T300101 A26	BARNDIOOTA	CT 5721/758	
T300101 A27	BARNDIOOTA	CT 5721/758	
T300101 A28	BARNDIOOTA	CT 5838/129	
T300101 A29	BARNDIOOTA	CT 41/189	
T300101 A30	BARNDIOOTA	CT 5838/393	
T300101 A31	BARNDIOOTA	CT 5838/772	
T300101 A32	BARNDIOOTA	CT 5838/769	
T300101 A33	BARNDIOOTA	CT 5839/611	
T300101 A34	BARNDIOOTA	CT 5880/966	
T300101 A35	BARNDIOOTA	CT 5880/966	
T300101 A36	BARNDIOOTA	CT 5880/966	
T300101 A37	BARNDIOOTA	CT 5836/504	
1300101 A38	BARNDIOOTA	CT 5836/504	
T300101 A42	BARNDIOOTA	CT 5789/941	
T300101 A43	BARNDIOOTA	CT 5836/504	
T300101 A44	BARNDIOOTA	CT 41/189	

T300101 AROAD BARNDIOOTA

Native title rights 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 s70(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.

[See NNTR attachment 1: "Annexure A - Maps of Determination Area"]

### **SCHEDULE 3 - The descendants of Adnyamathanha Apical Ancestors**

**The descendants (whether biologically or by adoption) of:**

Mt Serle Bob

Polly, wife of Mt Serle Bob

Quartpot Tommy

Mt Serle Bob's sister, wife of Quartpot Tommy

Willy Austin Snr

Nicholas Demell

Emily McKenzie, wife of Nicholas Demell

Sydney Ryan

Mary, wife of Sydney Ryan

The siblings of Angepena Billy or Mary

Fanny, wife of Angepena Billy

the siblings of Sara Johnson, Matilda Johnson, Fred Johnson, Natalie Johnson, Jessie Johnson  
or Sydney Jackson

### **SCHEDULE 4 - Existing interest of SA Power Networks**

<b>PARCEL IDENTIFIER</b>	<b>HUNDRED NAME</b>	<b>TITLE REFERENCE</b>	<b>ASSET TYPE</b>
H300400 S150	WONOKA	CL 508166	Overhead Low Voltage Conductor
H300400 S150	WONOKA	CL 508/66	Overhead Low Voltage Service Conductor
H300100 S265	BARNDIOOTA	CL 570/79	Overhead Low Voltage Service Conductor
H300400 S150	WONOKA	CL 508/66	Pole Mounted Transformer
H300100 S265	BARNDIOOTA	CL 570179	Pole Mounted Transformer

### **SCHEDULE 5 – Annexure B - The Memorandum of Understanding between the Adnyamathanha People and the Malyangapa People**

[See NNTR attachment 2: "SCHEDULE 5 – Annexure B - The MOU"]

### **REGISTER ATTACHMENTS:**

1. Annexure A - Maps of Determination Area, 2 pages - A4, 08/12/2015
2. Schedule 5 - Annexure B - The MOU, 7 pages - A4, 08/12/2015

*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.*