

## FEDERAL COURT OF AUSTRALIA

### Coulthard v State of South Australia [2015] FCA 1380

Citation: Coulthard v State of South Australia [2015] FCA 1380

Parties: **RUSSELL COULTHARD and ALWYN HAMILTON  
McKENZIE v STATE OF SOUTH AUSTRALIA and  
SOUTH AUSTRALIAN NATIVE TITLE SERVICES  
LTD**

File number: SAD 69 of 2010

Judge: **MANSFIELD J**

Date of judgment: 8 December 2015

Catchwords: **NATIVE TITLE** – consent determination – conditions prescribed by ss 87 and 87A of the *Native Title Act 1993* (Cth) satisfied – resolution by agreement of claim for determination of native title

Legislation: *Native Title Act 1993* (Cth)

Cases cited: *Adnyamathanha No 1 Native Title Claim Group v The State of South Australia (No 2)* [2009] FCA 359  
*Adnyamathanha People No 3 Native Title Claim v State of South Australia* [2014] FCA 101  
*Coulthard v The State of South Australia* [2014] FCA 124

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Date of last submissions: 27 November 2015

Place: Adelaide

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 24

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South Australian Native Title Services Ltd

**IN THE FEDERAL COURT OF AUSTRALIA  
SOUTH AUSTRALIA DISTRICT REGISTRY  
GENERAL DIVISION**

**SAD 69 of 2010**

**BETWEEN:           RUSSELL COULTHARD and ALWYN HAMILTON  
                          McKENZIE  
                          Applicants**

**AND:                 STATE OF SOUTH AUSTRALIA  
                          First Respondent**

**SOUTH AUSTRALIAN NATIVE TITLE SERVICES LTD  
Second Respondent**

**JUDGE:             MANSFIELD J**

**DATE OF ORDER:   8 DECEMBER 2015**

**WHERE MADE:      ADELAIDE**

**THE COURT NOTES THAT:**

- A. This determination covers all of the land and waters subject to the Adnyamathanha No 3 Native Title Determination Application (SAD 69 of 2010) (the Adnyamathanha No 3 claim) including the township of Hookina and any allotments which fall within the external boundaries of the Adnyamathanha No 3 Native Title Claim Area and Sections 160, 161, 228 and 229 of the Hundred of Barndioota, which were excluded from consideration in the Adnyamathanha No 1 Stage 2 Determination.
- B. The area where native title is recognised as existing in this determination is described in *Schedules 1 and 1A* to this determination.
- C. Following the decision made by the Federal Court on 19 February 2014: *Adnyamathanha People No 3 Native Title Claim v State of South Australia* [2014] FCA 101, the Parties have reached agreement as to the application of ss 47A and 47B of the *Native Title Act 1993* (Cth) (the Act) to parcels in the Determination Area for the purposes of the making of consent orders. The Parties agree that native title exists over those parcels set out in Schedule 1 and 1A and is extinguished over those parcels set out in Schedule 2 to this Order. Any extinguishment of native title by a grant or the creation of a prior interest in the parcels set out in Schedule 1 is disregarded in accordance with ss 47A and 47B of the Act.

- D. The Parties agree that a determination of native title can be made in relation to the Determination Area. They have filed an agreement in writing with this Court pursuant to s 87 of the Act to seek the making of consent orders for a determination.
- E. The Parties acknowledge that the effect of the making of this determination will be that those people described in Paragraph 6, in accordance with their traditional laws and customs, will be recognised as the native title holders for the Determination Area (the Native Title Holders).
- F. The Parties have requested that the Court make a determination over the Determination Area without a trial.

**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 Viliwarinha 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.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

**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
H300100 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

PARCEL IDENTIFIER	HUNDRED NAME	TITLE REFERENCE
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

PARCEL IDENTIFIER	HUNDRED NAME	TITLE REFERENCE
T300101 A45	BARNDIOOTA	CR 5750/8 (except over portion covered by road)
T300101 A46	BARNDIOOTA	CR 5766/203
T300101 A47	BARNDIOOTA	CR 5766/204
T300101 A48	BARNDIOOTA	CR 5766/205

**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.

**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	
T300101 A38	BARNDIOOTA	CT 5836/504	
T300101 A42	BARNDIOOTA	CT 5789/941	
T300101 A43	BARNDIOOTA	CT 5836/504	

PARCEL IDENTIFIER	HUNDRED NAME	TITLE REFERENCE	LEASE REFERENCE
T300101 A44	BARNDIOOTA	CT 41/189	
T300101 AROAD	BARNDIOOTA		

2. 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.

**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

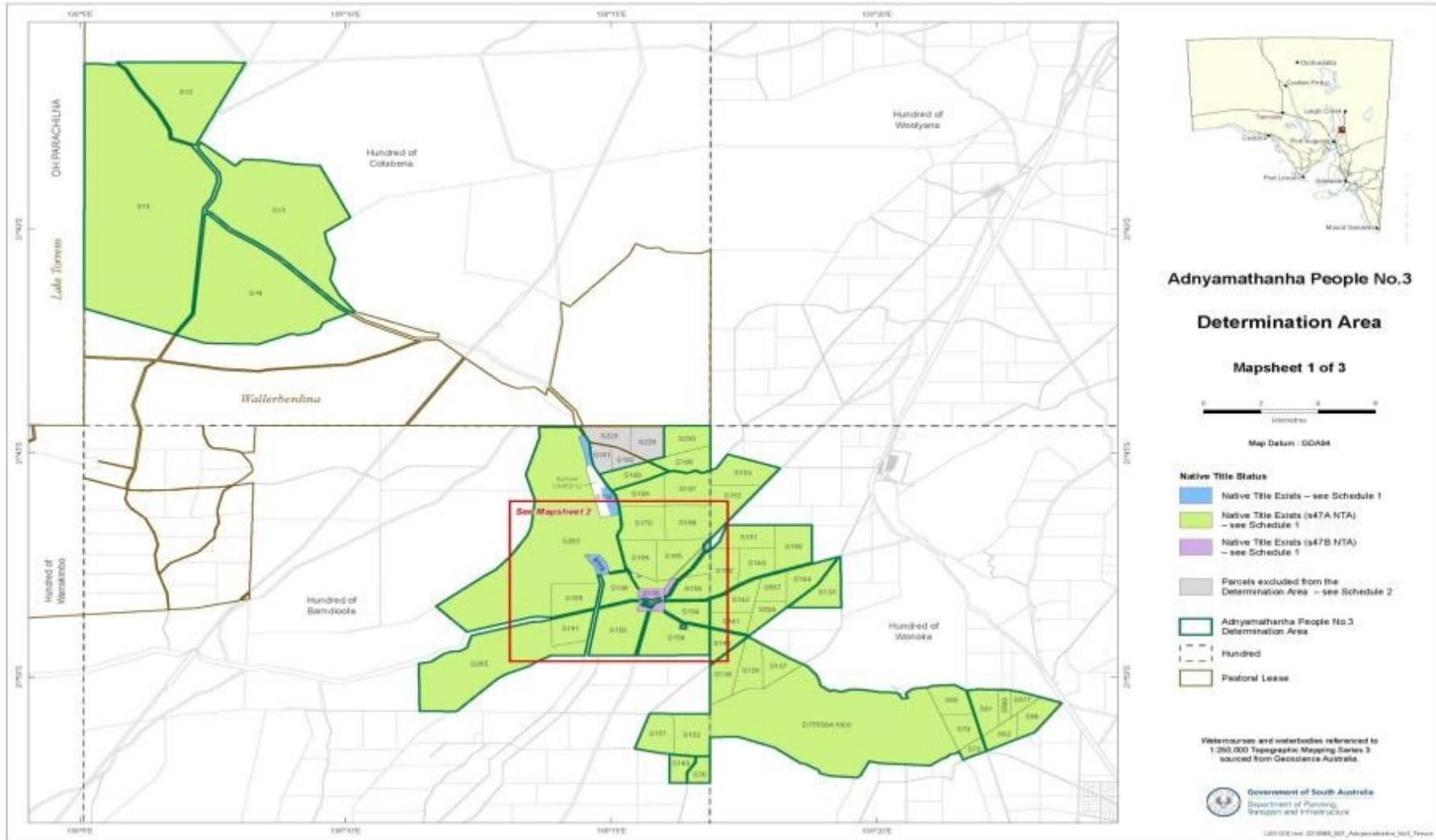
Fanny, wife of Angepena Billy

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



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

PARCEL IDENTIFIER	HUNDRED NAME	TITLE REFERENCE	ASSET TYPE
H300400 S150	WONOKA	CL 508/66	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 570/79	Pole Mounted Transformer





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**IN THE FEDERAL COURT OF AUSTRALIA  
SOUTH AUSTRALIA DISTRICT REGISTRY  
GENERAL DIVISION**

**SAD 69 of 2010**

**BETWEEN:           RUSSELL COULTHARD and ALWYN HAMILTON  
McKENZIE  
Applicants**

**AND:                STATE OF SOUTH AUSTRALIA  
First Respondent**

**SOUTH AUSTRALIAN NATIVE TITLE SERVICES LTD  
Second Respondent**

**JUDGE:             MANSFIELD J**

**DATE:              8 DECEMBER 2015**

**PLACE:             ADELAIDE**

**REASONS FOR JUDGMENT**

1           This application was filed on 18 May 2010 by Russell Coulthard and Alwyn Hamilton McKenzie on behalf of the previously determined Adnyamathanha No 1 native title holders (Claim SAD 6001 of 1998): see *Adnyamathanha No 1 Native Title Claim Group v The State of South Australia (No 2)* [2009] FCA 359. An amended application was filed on 2 December 2010. On 11 March 2011, the Native Title Registrar's delegate accepted the application for registration under s 190A of the *Native Title Act 1993* (Cth) (the Act). Notification of the claim was completed on 5 July 2011.

2           The application primarily concerns an area called Yappala that is to the north of Hawker in South Australia and had been excluded from the area of the Adnyamathanha No 1 native title claim pursuant to s 61A(2) of the Act. Yappala is primarily comprised of perpetual lease land and freehold land. There is also some un-allotted Crown land in the proposed determination area.

3           In 2012 with the approval of the Court, the Applicants and the State stated a case pursuant to r 38.01 of the *Federal Court Rules 2011* (Cth) concerning the application of s 47A of the Act to 25 parcels of land consisting of 16 perpetual leases and nine freehold titles held by the Viliwarinha Yura Aboriginal Corporation (VYAC) in the claim area.

4 The parties agreed that, at the time of the application, one or more members of the native title claim group occupied each of the areas comprising the perpetual lease land and the freehold land for the purpose of s 47A(1)(c) of the Act.

5 The Federal Court delivered its judgment on 19 February 2014 and held that s 47A of the Act applies to the perpetual leases and the freehold titles held by the VYAC so that any prior extinguishment is to be disregarded: *Adnyamathanha People No 3 Native Title Claim v State of South Australia* [2014] FCA 101.

6 Following that decision, the parties to the application have reached agreement on the orders to be made in this proceeding pursuant to s 87 of the Act in terms of the proposed Determination (the Consent Determination).

7 The terms of the Consent Determination have been agreed by all other parties to the proceeding who have an interest in the Determination Area and a Minute of Consent has been signed by those parties.

8 The proposed determination covers all of the land and waters subject to the application, including the township of Hookina and any allotments which fall within the external boundaries of the claim area and Sections 160, 161, 228 and 229 of the Hundred of Barndioota, which were excluded from consideration in the Adnyamathanha No 1 Stage 2 Determination: see *Coulthard v The State of South Australia* [2014] FCA 124.

9 Following the February 2014 judgment referred to at [5] above, the parties have reached agreement as to the application of ss 47A and 47B of the Act and the extinguishing effect of the various tenures in the Determination area for the purposes of the making of consent orders.

10 Under the Consent Determination, exclusive native title will be recognised over land to which ss 47A and 47B apply. The native title will, however, be subject to the arrangements under which the Indigenous Land Corporation has vested the land in VYAC. There are also two parcels over which non-exclusive native title is to be recognised and the Consent Determination records those areas where native title has been extinguished.

11 It is necessary for the Court to be satisfied that the requirements of ss 223 and 225 of the Act are satisfied, and it is appropriate and within the power of the Court to make the orders sought pursuant to s 87 of the Act. Those requirements are addressed in the following paragraphs of these reasons.

12 As noted above, consent determinations have already been made in respect of some of the Adnyamathanha People No 1 claim area. Those determinations accept that the Adnyamathanha People are a recognisable group or society which recognises and observes traditional laws and customs in the areas covered by those determinations.

13 The areas which are the subject of the proposed determination are surrounded by areas covered by the existing Adnyamathanha determinations. In those circumstances, for the purpose of this Determination, it is safe to conclude that the requirements of s 223 are met.

14 Section 225 of the Act governs what the Consent Determination must include. The Applicants and the State submit that the Consent Determination complies with each requirement of that section. I am satisfied that that is correct.

15 The Consent Determination describes the parcels in the Determination Area (paragraph 2), and sets out with particularity those areas where native title exists (Schedules 1 and 1A), and those areas within the Determination Area where native title is extinguished (Schedule 2).

16 For the purpose of s 225(a) of the Act, paragraph 6 of the Consent Determination defines the group of native title holders and the criteria by which they have group membership. This is the same as for the existing determinations.

17 For the purpose of s 225(b) of the Act, paragraph 7 of the Consent Determination sets out the nature and extent of the native title rights and interests in the Determination Area. Paragraphs 8 and 9 set out the general limitations on their exercise.

18 For the purpose of s 225(c) of the Act, paragraph 10 of the Consent Determination sets out the nature and extent of other interests in the Determination Area. The content of this paragraph has been informed through tenure searches undertaken by the State. There are no other respondent parties to the claim with interests in this area, but negotiations have occurred with two non-parties (SA Power Networks and Santos Pty Ltd) who own infrastructure in the area with accompanying rights of access. Clauses have been included recognising their rights. The State's comprehensive tenure searches have not identified any other relevant interest holders in the Determination Area. There has been ample opportunity for any other interest holders in the area to identify themselves and join as parties to the claim.

19 For the purpose of s 225(d) of the Act, paragraph 11 of the Consent Determination describes the relationship between the native title rights in paragraph 7 and those other rights in paragraph 10.

20 For the purpose of s 225(e) of the Act, the native title rights and interests recognised in almost all of the Determination Area (save for two parcels) are exclusive.

21 Agreement has been reached between the parties to these proceedings on the terms of the Consent Determination and signed copies of that Determination have been filed with the Court. That is a process provided for by s 87 of the Act.

22 On the basis of the material submitted to the Court, I am satisfied that it is appropriate, and within its power, for the Court to make orders pursuant to s 87.

23 All of the parties to the Determination (and those non-parties with rights recognised in paragraph 10 of the draft Determination) have had independent and competent legal advice in the proceeding.

24 The Act encourages the resolution by agreement of claims for determinations of native title. The State and the Applicants consider that the Consent Determination is appropriate and should be made in this proceeding. By signing the Minute of Consent Determination of native title, the other parties to the proceeding have indicated their agreement. For the reasons given, I regard that course as proper to be given effect to. I accordingly make the Determination of native title with the Orders set out in detail accompanying these reasons.

I certify that the preceding twenty-four (24) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Mansfield.

Associate:

Dated: 8 December 2015