



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6031/2001
NNTT Number: QCD2016/015

Determination Name: [Kynuna on behalf of the Bar Barrum People #5 v State of Queensland](#)

Date(s) of Effect: 5/12/2016

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 05/12/2016

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Mbabaram Aboriginal Corporation RNTBC
Agent Body Corporate
PO Box 1148
Atherton Queensland 4883

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:

5. The native title is held by the Bar Barrum People described in Schedule 3 ("the native title holders").
1. The native title holders are the Bar Barrum People.
2. The Bar Barrum People are the biological descendants of one or more of the following people:
 - (a) Rosie aka Lucy (mother of William Congoo);

- (b) Nellie (mother of Albert Bennett);
- (c) Millie (mother of Alick/Aleck Collins aka Chalk aka Stevens) or of her siblings Fred and Jack Solomon;
- (d) Maggie Watsonville (mother of May Thynne);
- (e) Nora Miller nee Clark or of her brother Billy;
- (f) Arkaragan and Kurimbu (parents of Jack Robinson);
- (g) Jack Brumby (father of Peter Fagan and Monday);
- (h) Archie Perrott aka Campbell (father of Margaret Perrott);
- (i) Lizzie Simmonds (mother of Mamie Simmonds);
- (j) John Burt Grainer (father of John Grainer and Paddy Hastie);
- (k) Nellie Williams or of her sister Ethel Perrott;
- (l) Bessie Tiger (mother of Peter Freeman); or

people who are or were adopted into one of the above descent groups in accordance with the traditional laws and customs of the Bar Barrum People.

MATTERS DETERMINED:

BY CONSENT THE COURT ORDERS THAT:

1. There be a determination of native title in the terms set out below ("the determination").

BY CONSENT THE COURT DETERMINES THAT:

3. The Determination Area is the land and waters described in Schedule 1A, and depicted in the map attached to Schedule 1B.
4. Native title exists in relation to that part of the Determination Area described in Part 1 and Part 2 of Schedule 1A.
5. The native title is held by the Bar Barrum People described in Schedule 3 ("the native title holders").
6. Subject to paragraphs 8, 9 and 10 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 1 of Schedule 1A are:
 - (a) other than in relation to Water, the right to possession, occupation, use and enjoyment of the area to the exclusion of all others; and
 - (b) in relation to Water, the non-exclusive rights to:

- (i) hunt, fish and gather from the Water of the area;
- (ii) take and use the Natural Resources of the Water in the area; and
- (iii) take and use the Water of the area,

for personal, domestic and non-commercial communal purposes.

7. Subject to paragraphs 8, 9 and 10 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 2 of Schedule 1A are the non-exclusive rights to:

- (a) access, be present on, move about on and travel over the area;
- (b) camp, and live temporarily on the area as part of camping, and for that purpose build temporary shelters;
- (c) hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;
- (d) take and use Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;
- (e) take and use the Water of the area for personal, domestic and non-commercial communal purposes;
- (f) conduct ceremonies on the area;
- (g) be buried and bury native title holders within the area;
- (h) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm;
- (i) teach on the area the physical and spiritual attributes of the area;
- (j) hold meetings on the area;
- (k) light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation.

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

- (a) the Laws of the State and the Commonwealth; and
- (b) the traditional laws acknowledged and traditional customs observed by the native title holders.

9. The native title rights and interests referred to in paragraphs 6(b) and 7 do not confer possession, occupation, use or enjoyment to the exclusion of all others.

10. There are no native title rights in or in relation to minerals as defined by the *Mineral Resources Act 1989* (Qld) and petroleum as defined by the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

11. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) are set out in Schedule 4.

12. The relationship between the native title rights and interests described in paragraphs 6 and 7 and the other interests described in Schedule 4 (the “other interests”) is that:

- (a) the other interests continue to have effect, and the rights conferred by or held under the other interests may be exercised notwithstanding the existence of the native title rights and interests;
- (b) to the extent the other interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests in relation to the land and waters of the Determination Area, the native title continues to exist in its entirety but the native title rights and interests have no effect in relation to the other interests to the extent of the inconsistency for so long as the other interests exist; and
- (c) the other interests and any activity that is required or permitted by or under, and done in accordance with, the other interests, or any activity that is associated with or incidental to such an activity, prevail over the native title rights and interests and any exercise of the native title rights and interests.

DEFINITIONS AND INTERPRETATION

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

“land” and “waters”, respectively, have the same meanings as in the *Native Title Act 1993* (Cth);

“Laws of the State and the Commonwealth” means the common law and the laws of the State of Queensland and the Commonwealth of Australia, and includes legislation, regulations, statutory instruments, local planning instruments and local laws;

“Local Government Act” has the meaning given in the *Local Government Act 2009* (Qld);

“Local Government Area” has the meaning given in the *Local Government Act 2009* (Qld);

“Natural Resources” means:

- (a) any animal, plant, fish and bird life found on or in the lands and waters of the Determination Area; and
 - (b) any clays, soil, sand, gravel or rock found on or below the surface of the Determination Area,
- that have traditionally been taken and used by the native title holders, but does not include:

- (a) animals that are the private personal property of another;
- (b) crops that are the private personal property of another;

- (c) minerals as defined in the *Mineral Resources Act 1989* (Qld); or
- (d) petroleum as defined in the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld);

“Reserve” means a reserve dedicated or taken to be a reserve under the *Land Act 1994* (Qld);

“Water” means:

- (a) water which flows, whether permanently or intermittently, within a river, creek or stream;
- (b) any natural collection of water, whether permanent or intermittent;
- (c) water from an underground water source.

Other words and expressions used in this Determination have the same meanings as they have in Part 15 of the *Native Title Act 1993* (Cth).

THE COURT DETERMINES THAT:

14. The native title is not held in trust.

15. The Mbabaram Aboriginal Corporation ICN 8449, incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), is to:

- (a) be the prescribed body corporate for the purpose of s 57(2) of the *Native Title Act 1993* (Cth); and
- (b) perform the functions mentioned in s 57(3) of the *Native Title Act 1993* (Cth) after becoming a registered native title body corporate in relation to the determination.

Schedule 1 - DETERMINATION AREA

Schedule 1A - Description of Determination Area

The Determination Area comprises all of the land and waters described in Parts 1 and 2 below, and depicted in the map contained in Schedule 1B, excluding the areas described in Schedule 2.

To the extent of any inconsistency, the written description set out in Part 1 and Part 2 of Schedule 1A and Schedule 2 prevails over the map contained in Schedule 1B.

Part 1 - Exclusive Areas:

All of the land and waters described below and shown on the map at Schedule 1B:

Area Description

Lot 10 on HG651

Lot 157 on USL21437

Part 2 - Non-Exclusive Areas:

All of the land and waters described below and shown on the map at Schedule 1B:

Area Description

That part of Lot 1 on AP19246 south and west of a line which commences at the north easternmost corner of Lot 619 on OL72 and extends generally south easterly along the southern boundary of former Lot 5 on USL21414 to its south eastern corner; then south easterly to the junction of the headwaters of Scrubby Creek and the watershed of the Great Dividing Range; then generally southerly and generally south westerly along that watershed to Lot 567 on OL57

Lot 2 on CP891168

Lot 9 on HG690

Lot 1 on PER4790

Lot 1 on PER4789

Lot 1 on PER5540

Lot 7 on HG647

That part of Lot 567 on OL57 excluding an area covered by the QUD6222 of 1998 Bar Barrum People (QCD2001/007) determination and further identified as being former Lots 91 and 100 on USL21437

Lot 569 on OL58

Data Reference and source

Boundary data for that part of Lot 1 on AP19246 compiled by National Native Title Tribunal based on data sourced from Department of Natural Resources and Mines (2013)

Native title determination QUD6222/98 Bar Barrum People (QCD2001/007) as determined by the Federal Court on 28 June 2001.

Cadastre data sourced from Department of Natural Resources and Mines, Qld (1 August 2012).

Great Dividing Range watershed boundary sourced from Department of Natural Resources and Mines, Qld (February 2012).

Reference datum

Geocentric Datum of Australia 1994 (GDA94).

Schedule 1B - Map of Determination Area

[See NNTR attachment 1: "Schedule 1B - Map of Determination Area"]

Schedule 2 - AREAS NOT FORMING PART OF THE DETERMINATION AREA

The following areas of land and waters are excluded from the Determination Area.

1. Those land and waters which at the time the native title determination application was made were the subject of one or more Previous Exclusive Possession Acts, within the meaning of s 23B of the *Native Title Act 1993* (Cth) are excluded from the Determination Area as they could not be claimed in accordance with s 61A of the *Native Title Act 1993* (Cth).

2. Specifically, and to avoid any doubt, the land and waters described in (1) above includes:

(a) the Previous Exclusive Possession Acts described in ss 23B(2) and 23B(3) of the *Native Title Act 1993* (Cth) to which s 20 of the *Native Title (Queensland) Act 1993* (Qld) applies; and

(b) the land or waters on which any public work, as defined in s 253 of the *Native Title Act 1993* (Cth), is or was constructed, established or situated, and to which ss 23B(7) and 23C(2) of the *Native Title Act 1993* (Cth) and to which s 21 of the *Native Title (Queensland) Act 1993* (Qld), applies, together with any adjacent land or waters in accordance with s 251D of the *Native Title Act 1993* (Cth).

Schedule 3 - NATIVE TITLE HOLDERS

1. The native title holders are the Bar Barrum People.

2. The Bar Barrum People are the biological descendants of one or more of the following people:

(a) Rosie aka Lucy (mother of William Congoo);

(b) Nellie (mother of Albert Bennett);

(c) Millie (mother of Alick/Aleck Collins aka Chalk aka Stevens) or of her siblings Fred and Jack Solomon;

(d) Maggie Watsonville (mother of May Thynne);

(e) Nora Miller nee Clark or of her brother Billy;

(f) Arkaragan and Kurimbu (parents of Jack Robinson);

- (g) Jack Brumby (father of Peter Fagan and Monday);
- (h) Archie Perrott aka Campbell (father of Margaret Perrott);
- (i) Lizzie Simmonds (mother of Mamie Simmonds);
- (j) John Burt Grainer (father of John Grainer and Paddy Hastie);
- (k) Nellie Williams or of her sister Ethel Perrott;
- (l) Bessie Tiger (mother of Peter Freeman); or

people who are or were adopted into one of the above descent groups in accordance with the traditional laws and customs of the Bar Barrum People.

Schedule 4 - OTHER INTERESTS IN THE DETERMINATION AREA

The nature and extent of the other interests in relation to the Determination Area are the following as they exist as at the date of the determination:

1. The rights and interests of the parties under the following agreements:

- (a) the agreement between Thomas Congoo and John Edward Wason on behalf of themselves and the Bar Barrum People and the Mareeba Shire Council as parties to the Indigenous Land Use Agreement QI2001/053 entered on the Register of Indigenous Land Use Agreements on 8 March 2002; and
- (b) the agreement between Tom Congoo and John Wason on their own behalf and on behalf of the Bar Barrum People #2, Tom Congoo and John Wason on their own behalf and on behalf of the Bar Barrum People #3, Layne Malthouse, Tom Congoo and John Wason on their own behalf and on behalf of the Bar Barrum People #4, John Wason, Tennyson Kynuna and Lynette Burke on their own behalf and on behalf of the Bar Barrum People #5, Layne Malthouse, Tennyson Kynuna and Lynette Burke on their own behalf and on behalf of the Bar Barrum People #6 and Jean Rosas, Tom Congoo and John Wason on their own behalf and on behalf of the Bar Barrum People #7 and the Tablelands Regional Council (now the Mareeba Shire Council) as parties to the Indigenous Land Use Agreement QI2012/056 entered on the Register of Indigenous Land Use Agreements on 24 January 2013; and
- (c) the agreement between the Bar Barrum People and Ergon Energy Corporation Limited (ACN 087 646 062), which was authorised by the Bar Barrum People native title claim group on 18 April 2013 and will be known as the Bar Barrum People and Ergon Energy ILUA and, depending on the version that is registered first in time on the Register of Indigenous Land Use Agreements, will either be:
 - (i) the Bar Barrum People and Ergon Energy body corporate agreement between the Applicant, Ergon Energy Corporation Limited and the registered native title body corporate to be nominated as the Prescribed Body Corporate in accordance with paragraph 15 of the Determination; or
 - (ii) the Bar Barrum People and Ergon Energy area agreement between the Applicant and Ergon Energy Corporation Limited.

2. The rights and interests of Ergon Energy Corporation ACN 087 646 062:

- (a) as the owner and operator of any "Works" as that term is defined in the *Electricity Act 1994* (Qld) within the Determination Area;
- (b) as a distribution entity and the holder of a distribution authority under the *Electricity Act 1994* (Qld)
- (c) created under the *Electricity Act 1994* (Qld) and the *Government Owned Corporations Act 1993* (Qld) including:

- (i) rights in relation to any agreement relating to the Determination Area existing or entered into before the date on which these orders are made;
- (ii) rights to enter the Determination Area by its employees, agents or contractors to exercise any of the rights and interests referred to in this paragraph; and
- (iii) to inspect, maintain and manage any Works in the Determination Area.

3. The rights and interests of the Mareeba Shire Council as the local government for that part of the Determination Area within its Local Government Area, including:

- (a) its powers, functions, responsibilities and jurisdiction under a Local Government Act;
- (b) its rights and interests under any interest in land or waters within the Determination Area including under any lease, licence, access agreement, easement or reserve in the Determination Area;
- (c) its rights to use, operate, maintain, replace, restore, remediate, repair and otherwise exercise all other rights as the owner and operator of infrastructure, structures, earthworks, access works, facilities and other improvements within the Determination Area;
- (d) its rights under any agreements between the Council and third parties which relate to land or water in the Determination Area; and
- (e) the right of its employees, agents and contractors to enter upon the Determination Area for the purpose of performing its powers and responsibilities under paragraphs (a) - (d).

4. The rights and interests of the holder of Water Licence No. 53578K granted under the *Water Act 2000* (Qld).

5. The rights and interests of Simon Knight (formerly Birrel) under Permit to Occupy 9/6248 over Lot 9 on HG690, Title Reference 17689078.

6. The rights and interests of Robert Liddle, Isabelle Liddle and Sheila Manning Stanley under Permit to Occupy 9/5540 over Lot 1 on PER5540, Title Reference 17685133.

7. The rights and interests of Martha Wright (formerly Blewitt) under Permit to Occupy 9/6434 over Lot 7 on HG647, Title Reference 17728165.

8. The rights and interests of Carmel Maureen Martin under Permit to Occupy 9/4790 over Lot 1 on PER4790, Title Reference 17682226.

9. The rights and interests of Jeffrey James Perkes under OL9/567 over Lot 567 on CP OL57, Title Reference 17662146 and OL9/569 over Lot 569 on CP OL 58, Title Reference 17662147.

10. Any other rights and interests:

- (a) held by the State of Queensland or Commonwealth of Australia; or
- (b) existing by reason of the force and operation of the Laws of the State and the Commonwealth.

11. To avoid any doubt paragraphs 10(a) and 10(b) include:

(a) the rights and interests of the State of Queensland in Reserves, the rights and interests of the trustees of those Reserves and of the persons entitled to access and use those Reserves for the respective purpose for which they are reserved; and

(b) so far as confirmed pursuant to s 212(2) of the *Native Title Act 1993* (Cth) and s 18 of the *Native Title Act (Queensland) Act 1993* (Qld) as at the date of this Determination, any existing public access to, and enjoyment of, the following places in the Determination Area:

- (i) waterways;
- (ii) beds and banks or foreshores of waterways;
- (iii) stock routes; and
- (iv) areas that were public places at the end of 31 December 1993.

REGISTER ATTACHMENTS:

1. Schedule 1B – Map of Determination Area, 1 page - A4, 05/12/2016

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.