



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NSD426/2016
NNTT Number: NCD2021/001

Determination Name: [Bandjalang People No 3 v Attorney-General of New South Wales](#)

Date(s) of Effect: 30/04/2021

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: 30/04/2021

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Bandjalang Aboriginal Corporation Prescribed Body Corporate
RNTBC
Trustee Body Corporate
PO Box 302
Coraki New South Wales 2471

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:

Native title holders

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

- (a) the biological descendants of:
 - (i) King Harry;
 - (ii) Jack Wilson;
 - (iii) Susannah mother of Frank Jock Jnr;

- (iv) Michael 'Mundoon' Wilson;
- (v) George James;
- (vi) Eliza Breckenridge;
- (vii) Jack Breckenridge;
- (viii) Frank Jock Jnr;
- (ix) Ada Jock;
- (x) Gibson Robinson;
- (xi) Grace Bond; and

(b) persons adopted or incorporated into the families of those persons (and the biological descendants of any such adopted or incorporated persons) and who identify as and are accepted as Bandjalang People in accordance with Bandjalang traditional 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. The native title be held on trust.
3. Bandjalang Aboriginal Corporation Prescribed Body Corporate RNTBC ICN 7930:
 - (a) be the prescribed body corporate for the purposes of s 57(1) of the *Native Title Act 1993* (Cth); and
 - (b) perform the functions set out in s 57(1) of the *Native Title Act 1993* (Cth) and the *Native Title (Prescribed Body Corporate) Regulations 1999* (Cth).

THE COURT DETERMINES THAT:

Existence of Native Title

1. Native title exists in relation to the Native Title Area described in Parts 1 and 2 of Part A of Schedule One and depicted on the maps at Part B of Schedule One.
2. Native title is extinguished in relation to the Extinguished Area described in Part A of Schedule Two and depicted on the maps at Part B of Schedule Two.
3. To the extent of any inconsistency between the written description in Part A of Schedules One and Two and the maps at Part B of those Schedules, the written description prevails.

Native title holders

4. Native title in relation to the Native Title Area is held by the Bandjalang People who are Aboriginal persons who are:
 - (a) the biological descendants of:
 - (i) King Harry;
 - (ii) Jack Wilson;
 - (iii) Susannah mother of Frank Jock Jnr;
 - (iv) Michael 'Mundoon' Wilson;
 - (v) George James;
 - (vi) Eliza Breckenridge;

- (vii) Jack Breckenridge;
- (viii) Frank Jock Jnr;
- (ix) Ada Jock;
- (x) Gibson Robinson;
- (xi) Grace Bond; and

(b) persons adopted or incorporated into the families of those persons (and the biological descendants of any such adopted or incorporated persons) and who identify as and are accepted as Bandjalang People in accordance with Bandjalang traditional laws and customs.

Nature and extent of non-exclusive native title rights and interests

5. Subject to paragraphs 6, 7 and 8, the nature and extent of the native title rights and interests in the Native Title Area are the non-exclusive native title rights set out below:

- (a) the right to hunt, fish and gather the traditional natural resources of the Native Title Area for non-commercial personal, domestic and communal use;
- (b) the right to take and use waters on or in the Native Title Area;
- (c) the right to access and camp on the Native Title Area;
- (d) 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 the Bandjalang people under traditional laws and customs.

General qualifications on native title rights and interests

6. Native title does not exist in:

- (a) minerals as defined in the *Mining Act 1992* (NSW) and the *Mining Regulation 2010* (NSW); and
- (b) petroleum as defined in the *Petroleum (Onshore) Act 1991* (NSW) and the *Petroleum (Submerged Lands) Act 1982* (NSW).

7. The native title rights and interests described in paragraph 5 are exercised for personal, domestic and non-commercial communal purposes and do not confer possession, occupation, use or enjoyment to the exclusion of all others. The native title rights and interests do not confer any right to control public access or use the land and waters in the Native Title Area.

8. 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, including the common law; and
- (b) the traditional laws acknowledged and traditional customs observed by the Bandjalang people.

Nature and extent of any other rights and interests

9. The nature and extent of Other Interests in relation to the Native Title Area are described in Schedule Three.

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

10. Subject to paragraphs 11 and 12, the relationship between the native title rights and interests in relation to land and waters in the Native Title Area described in paragraph 5 and the Other Interests described in Schedule Three is that:

- (a) the Other Interests continue to have effect; and

(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 and waters within the Native Title Area by the holders of the Other Interests; and

(d) to the extent of any inconsistency between the Other Interests and the native title rights and interests, the Other Interests and any activity that is required or permitted by or in 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.

11. The relationship between the native title rights and interests in relation to the land and waters described in Part 2 of Part A of Schedule One (land or waters in relation to which s 47A of the *Native Title Act 1993* (Cth) applies) and the Other Interests described at item 1(a) of Schedule Three is that:

(a) the Other Interests continue to have effect;

(b) the non-extinguishment principle described in s 238 of the *Native Title Act 1993* (Cth) applies to the grant or vesting of the Other Interests or any prior interest in relation to the area in accordance with s 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 the Other Interests;

(d) the Other Interests, and any activity that is required or permitted by or in exercise of a right conferred or held under and done in accordance with the Other 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 the Other Interests while those Other Interests exist;

(f) if the Other 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 the Other Interests or their effects are removed only to an extent, or otherwise cease to operate only to an extent, the native title rights and interests again have effect to that extent.

12. The relationship between the native title rights and interests in relation to the land and waters described in Part 1 of Part A of Schedule One and the Other Interests described at item (1)(b) of Schedule Three is that:

(a) pursuant to section 36(9) of the *Aboriginal Land Rights Act 1983* (NSW), the Other Interests shall be subject to the native title rights and interests; and

(b) the land and waters may only be dealt with by the Aboriginal Land Council that holds the Other Interests in accordance with the *Aboriginal Land Rights Act 1983* (NSW) and the *Native Title Act 1993* (Cth).

Definitions

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

‘Aboriginal Land Council’ means New South Wales Aboriginal Land Council and any Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983* (NSW) for a Local Aboriginal Land Council area, within the meaning of that Act, that is within the Native Title Area, and includes Bogal Local Aboriginal Land Council, Casino Boolangle Local Aboriginal Land Council, Jali Local Aboriginal Land Council, Ngulingah Local Aboriginal Land Council and Yaegl Local Aboriginal Land Council.

‘Bandjalang People’ has the same meaning as Native Title Holders.

‘Determination Area’ means the Native Title Area together with the Extinguished Area.

‘Extinguished Area’ means the land and waters described in Schedule Two.

‘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’ means statutes, regulations, other subordinate legislation and the common law operating in the State of New South Wales and the Commonwealth of Australia.

‘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 rights and interests described in paragraph 5.

'Other Interests' means the rights and interests described in Schedule Three.

'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 the *Native Title (New South Wales) Act 1994* (NSW), it has the meaning given to it in the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* (NSW).

REGISTER ATTACHMENTS:

1. NCD2021/001 Schedule One - Native Title Area, 7 pages - A4, 30/04/2021
2. NCD2021/001 Schedule Two - Extinguished Area, 10 pages - A4, 30/04/2021
3. NCD2021/001 Schedule Three - Other Interests In The Native Title Area, 3 pages - A4, 30/04/2021

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.