



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NSD6104/1998
NNTT Number: NCD2017/004

Determination Name: [Kelly on behalf of the Gumbaynggirr People v Attorney General of New South Wales](#)

Date(s) of Effect: 16/08/2018

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 08/12/2017

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 8 December 2017 the Federal Court of Australia made a determination that native title exists in the entire determination area - see [Kelly on behalf of the Gumbaynggirr People v Attorney General of New South Wales \[2017\] FCA 1459](#).

Order 2 of the determination provides that 'The Determination shall take effect 21 days after the date on which the later of the two agreements referred to in paragraphs 1 and 3 of Schedule Four is registered on the Register of Indigenous Land Use Agreements pursuant to the Native Title Act'.

The final ILUA was registered on 26 July 2018, therefore the condition attached to the determination has been met and the determination came into effect on 16 August 2018.

REGISTERED NATIVE TITLE BODY CORPORATE:

Gumbaynggirr Wenonah Head Aboriginal Corporation
Trustee Body Corporate
35 Apollo Drive
Coffs Harbour New South Wales 2450

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 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. The Determination shall take effect 21 days after the date on which the later of the two agreements referred to in paragraphs 1 and 3 of Schedule Four is registered on the Register of Indigenous Land Use Agreements pursuant to the Native Title Act.
3. In the event that any or both of the agreements referred to in Order 2 above are not registered on the Register of Indigenous Land Use Agreements on or before 26 July 2018, or at such later time as this Court may order, the matter is to be listed before the Court for further directions.
4. On the Determination taking effect, Gumbaynggirr Wenonah Head Aboriginal Corporation ICN 7376 shall hold the determined native title in trust for the common law holders pursuant to s 56(3) of the Native Title Act and is to:
 - (a) be the prescribed body corporate for the purposes of s 57(1) of the Native Title Act; and
 - (b) perform the functions set out in s 57(1) of the Native Title Act and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

THE COURT DETERMINES THAT:

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

Native title holders

4. Native title in relation to 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.

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

5. Subject to paragraphs 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 to:
 - (a) access, to remain on and traverse the land and waters;
 - (b) access natural resources and to take, use, share and exchange those natural resources for any purpose;
 - (c) hunt and gather traditional natural resources;
 - (d) fish;
 - (e) take and use water for personal, domestic, communal purposes (including cultural purposes) but not extending to a right to control the use and flow of the water in any creeks or intermittently closing and

opening lakes and lagoons;

- (f) live, being to camp on and erect temporary shelters and other temporary structures for that purpose, but not to permanently reside on, possess or occupy the land or waters;
- (g) light fires for domestic purposes;
- (h) conduct and to participate in cultural and religious activities, practices and ceremonies, including the conduct of burials;
- (i) conduct and to participate in meetings;
- (j) teach on the area the physical, cultural and spiritual attributes of places and areas of importance under traditional laws and customs;
- (k) maintain and to protect from physical harm, places and areas of importance or significance under traditional laws and customs;
- (l) to be accompanied by persons who, though not Native Title Holders, are:
 - (i) spouses, partners or parents of native title holders, together with their children and grandchildren; and
 - (ii) people required under traditional laws and customs for the performance of, and to assist in, observe or record, cultural activities, practices or ceremonies.

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 do not confer:

- (a) any right of possession, occupation, use and enjoyment of the land or waters in the Native Title Area to the exclusion of all others; and
- (b) any right to control public access to or use of the land or 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 any applicable requirement to obtain any licences and/or permits for commercial fishing activities, in particular, any applicable requirements related to commercial fishing activities under the *Fisheries Management Act 1994* (NSW); and
- (b) the traditional laws acknowledged and traditional customs observed by the Native Title Holders; and
- (c) the terms and conditions of the agreements referred to in Schedule Four, except the agreement referred to in paragraph 2 of that Schedule.

Nature and extent of any other rights and interests

9. The Other Interests in relation to the Native Title Area are described in Schedule Five.

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

10. Subject to paragraph 11 of these determinations 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 Five 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 Interest; 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.
11. The relationship between the native title rights and interests and the rights and interests of Coffs Harbour and District Local Aboriginal Land Council referred to in paragraph 1 of Schedule Five is as determined by ss 36(9), 36AA(8) and 36AA(10) of the *Aboriginal Land Rights Act 1983* (NSW). Specifically, a transfer of lands to Coffs Harbour and District Local Aboriginal Land Council pursuant to its rights and interests under the Aboriginal Land Agreement referred to in paragraph 2 of Schedule Four shall be for an estate in fee simple but shall be subject to any of the native title rights and interests existing in relation to the land concerned immediately before the transfers.

Section 47B of the Native Title Act

12. Section 47B of the Native Title Act applies to those areas of lands and waters described in Pt 2 of Schedule One.

Definitions

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

Application means the native title claimant application lodged with the National Native Title Tribunal by the Applicant in accordance with ss 13(1) and 61 of the Native Title Act, and is now proceedings number NSD 6104 of 1998 before the Federal Court of Australia as amended.

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

external boundary of the Application means the boundary described in Schedule B of the Application which is also 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.

Gumbaynggirr Wenonah Head Aboriginal Corporation means the Gumbaynggirr Wenonah Head Aboriginal Corporation ICN 7376 incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

Land has the same meaning as in the Native Title Act.

laws of the State of New South Wales and of the Commonwealth include statutes, regulations, 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 rights and interests described in paragraph 5.

Other Interests means the rights and interests described in Schedule Five.

waters has the same meaning as in the Native Title Act.

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

REGISTER ATTACHMENTS:

1. Schedule One - Native Title Area, 5 pages - A4, 08/12/2017
2. Schedule Two - Extinguished Area, 2 pages - A4, 08/12/2017
3. Schedule Three - External boundary of the application, 1 page - A4, 08/12/2017
4. Schedule Four - Agreements, 1 page - A4, 08/12/2017
5. Schedule Five - Other interests in the native title area, 3 pages - A4, 08/12/2017

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.