

FEDERAL COURT OF AUSTRALIA

Taylor on behalf of the Gangalidda and Garawa Peoples #1 v State of Queensland [2015] FCA 731

Citation: Taylor on behalf of the Gangalidda and Garawa Peoples #1 v State of Queensland [2015] FCA 731

Parties: **TERRANCE TAYLOR AND JACKY GREEN ON BEHALF OF THE GANGALIDDA AND GARAWA PEOPLES #1 v STATE OF QUEENSLAND, BURKE SHIRE COUNCIL, CARPENTARIA LAND COUNCIL ABORIGINAL CORPORATION, TELSTRA CORPORATION LIMITED and PANOY PTY LTD AND WESTMORELAND PASTORAL COMPANY PTY LTD**

File number: QUD 84 of 2004

Judge: **DOWSETT J**

Date of consent determination: 1 April 2015

Catchwords: **NATIVE TITLE** – consent determination – requirement under s 87 of the *Native Title Act 1993* (Cth) – resolution by agreement of claim for determination of native title

Legislation: *Native Title Act 1993* (Cth), ss 57, 87, 94A, 223, 225
Native Title (Prescribed Bodies Corporate) Regulations 1999 (Cth)

Cases cited: *Gangalidda and Garawa People v State of Queensland* [2010] FCA 646

Place: Burketown

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 25

Counsel for the Applicant: Mr C Athanasiou

Solicitor for the Applicant: HWL Ebsworths Lawyers

Solicitor for the First Respondent:

Ms A Cope of Crown Law

Counsel for the Second Respondent:

Mr M Wright of Preston Law

Counsel for the Third Respondent:

The Third Respondent did not appear

Counsel for the Fourth Respondent:

The Fourth Respondent did not appear

Counsel for the Fifth Respondent:

The Fifth Respondent did not appear

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

QUD 84 of 2004

BETWEEN: **TERRANCE TAYLOR AND JACKY GREEN ON BEHALF
OF THE GANGALIDDA AND GARAWA PEOPLES #1
Applicant**

AND: **STATE OF QUEENSLAND
First Respondent**

**BURKE SHIRE COUNCIL
Second Respondent**

**CARPENTARIA LAND COUNCIL ABORIGINAL
CORPORATION
Third Respondent**

**TELSTRA CORPORATION LIMITED
Fourth Respondent**

**PANOY PTY LTD AND WESTMORELAND PASTORAL
COMPANY PTY LTD
Fifth Respondent**

JUDGE: **DOWSETT J**

DATE OF ORDER: **1 APRIL 2015**

WHERE MADE: **BURKETOWN**

THE COURT NOTES THAT:

- A. The Applicant in these proceedings has made an application for a determination of native title in relation to land and waters in the Determination Area.
- B. The Native Title Determination Application filed in these proceedings covers all land and waters in the Determination Area.
- C. Each party to the proceedings has reached agreement with the Applicant as to the terms of a determination of native title to be made in the Determination Area.
- D. The parties have agreed that the areas referred to in Schedule 9 are subject to previous exclusive possession acts of the kind referred to in s 23B of the *Native Title Act 1993*

(Cth) and in accordance with s 61A of the *Native Title Act 1993* (Cth) cannot be claimed and are therefore not in the Determination Area.

Being satisfied that a determination in the terms sought by the parties would be within the power of the Court pursuant to s 87 of the *Native Title Act 1993* (Cth), and it appearing to the Court appropriate to do so, and with the consent of those parties,

BY CONSENT THE COURT ORDERS THAT:

1. There be a determination of native title in the terms set out below ("the Determination").
2. The Determination will take effect upon the agreements referred to in paragraph 1 of Schedule 8 being registered on the Register of Indigenous Land Use Agreements.
3. In the event that the agreements referred to in paragraph 2 are not registered on the Register of Indigenous Land Use Agreements within six (6) months of the date of this order or such later time as this Court may order, the matter is to be listed for further directions.
4. Each party to the proceedings is to bear its own costs.

BY CONSENT THE COURT DETERMINES THAT:

5. Native title exists in relation to the area described in Schedule 1, being areas that are also described in:
 - (a) Schedule 2 - which describes that part of the Determination Area in which there are exclusive native title rights and interests; or
 - (b) Schedule 3 - which describes that part of the Determination Area in which there are non-exclusive native title rights and interests,and shown on the Determination Map at Schedule 10.
6. Section 47A of the *Native Title Act 1993* (Cth) applies to the area described in Schedule 2.
7. Native title is held by the Gangalidda People in that part of the Determination Area described in Schedule 4.
8. Native title is held by the Garawa People in that part of the Determination Area described in Schedule 5.
9. The Gangalidda People are those people described in Schedule 6.

10. The Garawa People are those people described in Schedule 7.
11. Subject to orders 14, 15 and 18, the nature and extent of the native title rights and interests in relation to that part of the Determination Area described in Schedule 2 and shown in Schedule 10, other than in relation to the use and enjoyment of Water (which is dealt with in order 13), is the right to possession, occupation, use and enjoyment of the Determination Area to the exclusion of all others.
12. Subject to orders 14, 15, 16 and 18, the nature and extent of the native title rights and interests in relation to that part of the Determination Area described in Schedule 3 and shown in Schedule 10, other than in relation to the use and enjoyment of Water (which is dealt with in order 13) are non-exclusive rights:
 - (a) to access, to be present on and to traverse the area;
 - (b) to hunt, fish and gather Natural Resources on the area for personal, domestic, and non-commercial communal purposes;
 - (c) to take, use, share and exchange Natural Resources from the area for personal, domestic, and non-commercial communal purposes;
 - (d) to camp on the area but not to reside permanently or to erect permanent structures or fixtures;
 - (e) to light fires on the area for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation;
 - (f) to conduct religious and spiritual activities and ceremonies on the area;
 - (g) to be buried on, and bury Native Title Holders on the area; and
 - (h) to maintain places and areas of importance or significance to the Native Title Holders under their traditional laws and customs and protect those places and areas from physical harm.
13. Subject to orders 14, 15 and 18, the nature and extent of the native title rights and interests in relation to the use and enjoyment of Water within the Determination Area are non-exclusive rights:
 - (a) to hunt and fish in and on and gather Natural Resources from the Water;
 - (b) to take, use, share and exchange Natural Resources from the Water; and
 - (c) to take, use and enjoy the Water,
for personal, domestic and non-commercial communal purposes.

14. There are no native title rights or interests 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).
15. 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.
16. The native title rights and interests in relation to the areas described in Schedule 3 do not confer possession, occupation, use and enjoyment of the area on the Native Title Holders to the exclusion of all others.
17. The nature and extent of other interests in the Determination Area are the rights and interests described in Schedule 8 (the "Other Interests") that are current at the date of this Determination.
18. The relationship between the native title rights and interests and the Other Interests is that:
 - (a) the Other Interests continue to have effect;
 - (b) in the area where s 47A of the *Native Title Act 1993* (Cth) applies, and prior extinguishment is disregarded in accordance with s 47A(2) of the *Native Title Act 1993* (Cth), the non-extinguishment principle in s 238 of the *Native Title Act 1993* (Cth) applies to any prior interest in relation to the area in accordance with s 47A(3)(b) of the *Native Title Act 1993* (Cth); and
 - (c) the Other Interests, and any activity that is required or permitted by or under and done in accordance with the Other Interests, prevail over the native title rights and interests and any exercise of the native title rights and interests, but do not extinguish them except in accordance with law.
19. Pursuant to s 56 of the *Native Title Act 1993* (Cth), the Court determines that native title is not held in trust.
20. Gangalidda and Garawa Native Title Aboriginal Corporation RNTBC ICN 7365, incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), is to:
 - (a) be the prescribed body corporate for the purposes of ss 57(2) and 57(3) of the *Native Title Act 1993* (Cth); and

- (b) not hold the native title in trust;
- (c) act as agent for the Gangalidda and Garawa Peoples who are the common law holders of the native title rights and interests; and
- (d) perform the functions set out in the *Native Title Act 1993* (Cth) and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

Definitions and Interpretations

21. The words and expressions used in the Determination, including the words "**land**" and "**waters**", have the same meanings as they have in Part 15 of the *Native Title Act 1993* (Cth) except for the following defined words and expressions:

"Determination Area" means the land and waters within the area described in Schedule 1 and shown in Schedule 10, and to the extent of any inconsistency between the Schedules, Schedule 1 prevails.

"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 regulations, statutory instruments, local planning instruments and local laws.

"Native Title Holders" means:

- (a) in relation to the land and waters described in Schedule 4, the Gangalidda People described in Schedule 6; and
- (b) in relation to the land and waters described in Schedule 5, the Garawa People described in Schedule 7.

"Natural Resources" means:

- (a) "animals" as defined in the *Nature Conservation Act 1992* (Qld) and, for certainty, includes honey, but not including animals or honey that are the private personal property of another;
- (b) "plants" as defined in the *Nature Conservation Act 1992* (Qld) and, for certainty, includes charcoal, sap, wax and resin, but not including crops grown on a Crown lease by a lessee; and
- (c) any clay, soil, sand, gravel, or rock on or below the surface of the Determination Area but does not include minerals (except ochre taken in accordance with the traditional laws and customs of the Native Title Holders) as defined in the *Mineral Resources Act 1989* (Qld) as at the date of this determination or petroleum as defined in the *Petroleum Act 1923* (Qld) and the

Petroleum and Gas (Production and Safety) Act 2004 (Qld) as at the date of this determination.

"**Other Interests**" has the meaning given in order 17.

"**Water**" means all or any of the following:

- (a) water that permanently or intermittently is in, or flows in, a watercourse, lake or spring, regardless of the frequency;
- (b) any natural collection of water, whether permanent or intermittent; or
- (c) water from an underground water source.

"**watercourse**" has the meaning that it has in the *Water Act 2000 (Qld)*.

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

SCHEDULE 1

Description of the Determination Area

The Determination Area comprises all of the following land and waters as depicted in the Determination Map at Schedule 10:

1. That part of Lot 4601 on Plan PH1676 (Troutbeck Pastoral Holding) that is not covered by Lot 6 on Native Title Determination Plan AP14236;
2. That part of Lot 1 on Plan SP217472 (Westmoreland Pastoral Holding) subject to Exploration Permit Application 14264; and
3. That part of Lot 2353 on Plan PH1515 (Wentworth Pastoral Holding) subject to Exploration Permit Applications 14264 and 14265,

but excluding all land and waters covered by:

4. Native title determination QG207/97 *The Lardil Peoples v State of Queensland* as determined by the Federal Court of Australia on 23 March 2004;
5. Native title determination QUD84/2004 *Gangalidda and Garawa Peoples v State of Queensland* as determined by the Federal Court of Australia on 23 June 2010;
6. Native title determination application QUD66/2005 *Gangalidda and Garawa People #2* as accepted for registration on 7 April 2005; and
7. The areas described in Schedule 9.

SCHEDULE 2

Description of that part of the Determination Area where exclusive native title rights and interests are recognised

All the land and waters that comprise that part of Lot 4601 on PH1676 to the west of Massacre Inlet (Part Troutbeck Pastoral Holding) that is not covered by Lot 6 on Native Title Determination Plan AP14236 as shown on the Determination Map in Schedule 10 but excluding the areas identified in Schedule 9.

SCHEDULE 3

Description of that part of the Determination Area where non-exclusive native title rights and interests are recognised

All the land and waters that comprise:

1. That part of Lot 1 on Plan SP217472 (Westmoreland Pastoral Holding) which is subject to Exploration Permit Application 14264; and
2. That part of Lot 2353 on Plan PH1515 (Wentworth Pastoral Holding) which is subject to Exploration Permit Applications 14264 and 14265,

as shown on the Determination Map in Schedule 10 but excluding the areas identified in Schedule 9.

SCHEDULE 4**Description of that part of the Determination Area where Gangalidda People hold native title**

All the following land and waters described in (a) that comprise that part of the Determination Area that falls to the east and south of the Gangalidda Garawa Boundary Line defined at (b) and depicted in the Determination Map in Schedule 10.

(a) Area Description
That part of Lot 1 on Plan SP217472 (Westmoreland Pastoral Holding) subject to Exploration Permit application 14264
That part of Lot 4601 on PH1676 (Troutbeck Pastoral Holding)

(b) Description of Gangalidda Garawa Boundary Line

The Gangalidda Garawa Boundary Line is bounded by the following coordinates:

Longitude East	Latitude South
137.994665	-16.538711
138.048922	-16.471921
138.052435	-16.474542
138.057719	-16.479205
138.062583	-16.48427
138.065951	-16.488331
138.067508	-16.490334
138.072584	-16.493883
138.079322	-16.498966
138.084576	-16.502632
138.089692	-16.506479
138.093415	-16.509501
138.095975	-16.511663
138.096916	-16.512502
138.105392	-16.520173
138.111118	-16.525872
138.115151	-16.530631

Longitude East	Latitude South
138.117871	-16.534294
138.12313	-16.5418
138.128465	-16.54548
138.133828	-16.549495
138.137572	-16.552714
138.139832	-16.554849
138.152391	-16.56716
138.170126	-16.581684
138.198299	-16.597289
138.205694	-16.601879
138.211339	-16.606137
138.216597	-16.610826
138.220367	-16.614329
138.228585	-16.619048
138.259126	-16.632456
138.271577	-16.63533
138.274733	-16.636119
138.277033	-16.636772
138.278252	-16.637145
138.294132	-16.642124
138.301023	-16.644598
138.306677	-16.647128
138.310723	-16.649243
138.316915	-16.652686
138.324304	-16.65729
138.325545	-16.658004
138.332726	-16.657825
138.339898	-16.658214
138.347012	-16.65917
138.354019	-16.660686
138.360872	-16.662751

Longitude East	Latitude South
138.363839	-16.663835
138.365704	-16.664554
138.369106	-16.666054
138.366574	-16.66663
138.35881	-16.668893
138.351208	-16.671613
138.347106	-16.673367
138.33492	-16.741832
138.333543	-16.746632
138.331546	-16.751722
138.32942	-16.755974
138.327874	-16.757134
138.325877	-16.757843
138.323622	-16.759067
138.322204	-16.760291
138.321496	-16.762159
138.320529	-16.765831
138.3204	-16.767442
138.320529	-16.770406
138.320658	-16.772338
138.3204	-16.773305
138.319434	-16.774658
138.316535	-16.777042
138.316084	-16.778072
138.31623	-16.77944
138.31446	-16.7801
138.31252	-16.78058
138.3112	-16.78134
138.31001	-16.78317
138.30842	-16.7885
138.3076	-16.7899

Longitude East	Latitude South
138.30534	-16.7923
138.30177	-16.79503
138.30146	-16.79526
138.30104	-16.79647
138.30123	-16.79745
138.30255	-16.80043
138.30273	-16.80218
138.30236	-16.80349
138.30145	-16.80674
138.2998	-16.80963
138.29611	-16.81357
138.29579	-16.81483
138.29599	-16.81519
138.29633	-16.81581
138.29831	-16.81677
138.29829	-16.81746
138.2982	-16.81817
138.29785	-16.81866
138.29808	-16.819
138.29937	-16.81946
138.2996	-16.81969
138.2996	-16.82025
138.29866	-16.82115
138.29889	-16.82194
138.29865	-16.82273
138.29876	-16.82364
138.29808	-16.82437
138.29805	-16.82578
138.29769	-16.82657
138.29604	-16.82803
138.2952	-16.8313

Longitude East	Latitude South
138.29461	-16.83209
138.29309	-16.83254
138.2925	-16.83321
138.29249	-16.83434
138.29307	-16.83502
138.29647	-16.8356
138.29717	-16.83606
138.29728	-16.8382
138.29617	-16.84024
138.29592	-16.84096
138.29524	-16.84339
138.29423	-16.8447
138.28979	-16.84626
138.2884	-16.84741
138.28716	-16.84872
138.28683	-16.85048
138.28639	-16.85488
138.28575	-16.85663
138.28581	-16.85781
138.28652	-16.85905
138.28753	-16.86025
138.28949	-16.8616
138.29016	-16.86256
138.2903	-16.86381
138.28997	-16.86579
138.28994	-16.86748
138.29069	-16.86844
138.29163	-16.86898
138.311929	-16.997173
138.315113	-17.024345
138.323208	-17.052579

Longitude East	Latitude South
138.327947	-17.075285
138.334463	-17.120498
138.339202	-17.165712
138.343941	-17.237975
138.338216	-17.304118
138.334925	-17.361379
138.338287	-17.4611
138.339853	-17.487471
138.343889	-17.498636
138.343825	-17.510419
138.337848	-17.528351
138.327886	-17.546282
138.31892	-17.56272
138.311448	-17.569693
138.299992	-17.575173
138.270263	-17.578301
138.203069	-17.579152
138.169986	-17.585633
138.142591	-17.594599
138.121771	-17.59639
138.080543	-17.611232
138.032331	-17.634817
138.008674	-17.654384
137.995262	-17.677553

SCHEDULE 5**Description of that part of the Determination Area where Garawa People hold native title**

All the following land and waters described in (a) that comprise that part of the Determination Area that falls to the west and north of the Gangalidda Garawa Boundary Line defined at Schedule 4(b) and depicted in the Determination Map at Schedule 10.

(a)	Area Description
	That part of Lot 1 on Plan SP217472 (Westmoreland Pastoral Holding) subject to Exploration Permit Application 14264
	That part of Lot 2353 on Plan PH1515 (Wentworth Pastoral Holding) subject to Exploration Permit Applications 14264 and 14265
	That part of Lot 4601 on PH1676 (Troutbeck Pastoral Holding) that is not covered by Lot 6 on Native Title Determination Plan AP14236

SCHEDULE 6

Description of the Gangalidda People

The Gangalidda People are all of the descendants of one or more of the following people:-

Greg Thompson, Sophie Thompson, Ernest Thompson, Walter Thompson, Jimmy, Dawudawu Jimmy (King), Grant, George Nark Mirrabaliyajari, Bob Scoles Gunyarbadijarri, Lirragajarri, Bob Weber Milgalajarri, Maggie (or Minnie), Kitty, Kitty Wulnanda, Kitty Lirragajarri, Dolly, Old Nim, Stumpy Paddy, Mickey Charles, Barney Guldangara, Limilimilda, Johnny Balawayinda, Daisy Lirragawanjinda, Sandy, Gunalumbu, Ngarilgudu, Malurgudu, Myrna Malalairunanda, Didmanja, Sandy, Garuwala and Charly (Gundirri/Ngarrguyumbu/Gulawi)

who identify, and are identified by other Gangalidda People, as belonging to the Gangalidda People according to Gangalidda traditional laws and customs.

"Descendants" for the purposes of this description includes those individuals who have been adopted by the Gangalidda People.

SCHEDULE 7

Description of the Garawa People

The Garawa People are all of the descendants of one or more of the following people:-

Dixon Yiliwagu, Murdering Tommy Mayarwagu, Dick Gawardalagayi, Mardu, 'Strike-a-light' Yalagu, Bindi Bindi, Illibarra (or Yilibarra), Charley Marrgarranyi, Violet Man.gali, Dildol Charley Lujunguynyi, Gandiyari, Jangurungurama, Wirrangala, Gurrungumaji, Banjiramaji (Bob) Yellow Jack, Gabugabumanyi Jack, Wanjirrigama Sandy, Dirrdungga, Baramalinya Bandaguyi, Wambilangu, Dunggula, Yalbindirri, Topsy Landurimara, Jack Boy Walbungga, Paul Gayjbalala, Tobacco Jack, Ned Bamalurri, Old Rory Mawulawula (Buraji), Bamy (Barney) Barrgudugudu, Jack Calvert, Masterton Jack, Wudungkamarra, Thalmarrurkimara, Karringamaji (King Peter), Widalamara, Malarrkudu (Kabajuju) (Barramundi Billy), Dukala, Rukulamara, Albert Doomadgee, Ned Doomadgee, Kukurrinya (Yabiwayngka), Jack Nadinku, Nukuthu, Minnie Munjanagurru, Waguwiganda, Jangulamarra, Gilmajarri (or Landilimarra) and Willy Murradoo,

who identify, and are identified by other Garawa People, as belonging to Garawa People in accordance with Garawa traditional law and custom.

"Descendants" for the purposes of this description includes those individuals who have been adopted by the Garawa People.

SCHEDULE 8

Other Interests

The nature and extent of Other Interests in relation to the Determination Area are those rights and interests current at the date of the Determination which comprise the following:

1. The rights and interests of the parties under the following indigenous land use agreements ("ILUAs"):
 - (a) between Terrance Taylor and Jacky Green on behalf of the Gangalidda People and the Garawa People, Gangalidda and Garawa Native Title Aboriginal Corporation RNTBC and Westmoreland Pastoral Company Pty Ltd, entitled the Gangalidda and Garawa People Westmoreland Pastoral ILUA dated 5 March 2015.
 - (b) between Terrance Taylor and Jacky Green on behalf of the Gangalidda People and the Garawa People, Gangalidda and Garawa Native Title Aboriginal Corporation RNTBC and Panoy Pty Ltd, entitled the Garawa People Wentworth Pastoral ILUA dated 26 March 2015.
2. The rights and interests of Westmoreland Pastoral Company Pty Ltd ACN 009 711 602 under PH08/1406, over Lot 1 on Plan SP217472 ("Westmoreland Pastoral Holding").
3. The rights and interests of Panoy Pty Ltd ACN 010 023 346 as lessee under PH08/2353, over Lot 2353 on PH1515 ("Wentworth Pastoral Holding").
4. The rights and interests of Carpentaria Land Council Aboriginal Corporation as lessee of part of Lot 4601 on PH1676 ("Part Troutbeck Pastoral Holding").
5. The rights and interests of Telstra Corporation Limited ACN 051 775 556:
 - (a) as the owner or operator of telecommunications facilities within the Determination Area;
 - (b) created pursuant to the *Post and Telegraph Act 1901* (Cth), the *Telecommunications Act 1975* (Cth), the *Australian Telecommunications Corporation Act 1989* (Cth), the *Telecommunications Act 1991* (Cth) and the *Telecommunications Act 1997* (Cth), including rights:
 - (i) to inspect land;
 - (ii) to install and operate telecommunications facilities; and

- (iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities;
 - (c) for its employees, agents or contractors to access its telecommunications facilities in, and in the vicinity of, the Determination Area in the performance of their duties; and
 - (d) under any lease, licence, access agreement or easement relating to its telecommunications facilities in the Determination Area.
6. The rights and interests of the State of Queensland and Burke Shire Council to access, use, operate, maintain and control the dedicated roads in the Determination Area and the rights and interests of the public to use and access those roads.
 7. The rights and interests of Burke Shire Council as the local government to exercise its powers and responsibilities of a local government under the *Local Government Act 2009* (Qld) and any other legislation within the Burke local government area under the *Local Government Regulations 2012* (Qld).
 8. The rights and interests of the holders of any leases, licences, permits or authorities granted under the *Forestry Act 1959* (Qld) as may be current at the date of this determination.
 9. So far as confirmed pursuant to s 212(2) of the *Native Title Act 1993* (Cth) and s 18 of the *Native Title (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:
 - (a) waterways;
 - (b) beds and banks or foreshores of waterways;
 - (c) coastal waters;
 - (d) beaches;
 - (e) stock routes; and
 - (f) areas that were public places at the end of 31 December 1993.
 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.

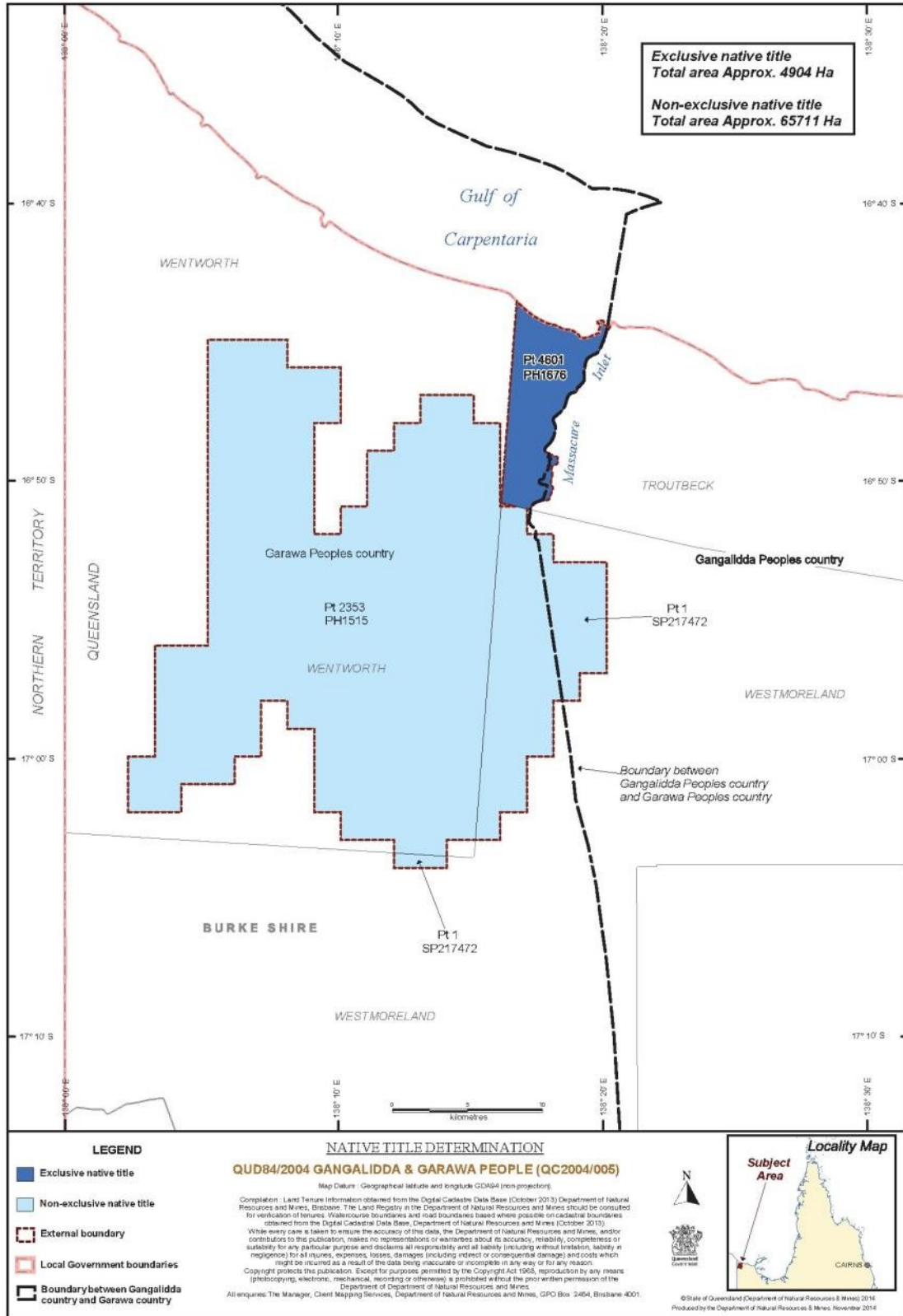
SCHEDULE 9

Description of areas the subject of previous exclusive possession acts and thus wholly excluded from the determination area

The following areas are wholly excluded from the Determination Area on the grounds that they have been the subject of a previous exclusive possession act (defined in s 23B of the *Native Title Act 1993* (Cth)) and in accordance with s 61A of the *Native Title Act 1993* (Cth) cannot be claimed:

1. The land or waters on which any public work (defined in s 253 of the *Native Title Act 1993* (Cth)) that is a previous exclusive possession act (defined in s 23B of the *Native Title Act 1993* (Cth)) was, on or before 23 December 1996, constructed or established, including (in accordance with s 251D of the *Native Title Act 1993* (Cth)) any adjacent land or waters the use of which is or was necessary for, or incidental to, the construction, establishment or operation of the work.

SCHEDULE 10 – Determination Map



**IN THE FEDERAL COURT OF AUSTRALIA
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QUD 84 of 2004

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Fifth Respondent**

JUDGE: DOWSETT J

DATE: 1 APRIL 2015

PLACE: BURKETOWN

REASONS FOR JUDGMENT

1 Before the Court are two applications for native title determinations. In proceeding QUD 84 of 2004, Terrance Taylor and Jacky Green (the “Applicant”) claim on behalf of the Gangalidda People and the Garawa People. The Gangalidda People are all of the descendants of the following people:

Greg Thompson, Sophie Thompson, Ernest Thompson, Walter Thompson, Jimmy, Dawudawu Jimmy (King), Grant, George Nark Mirrabaliyajari, Bob Scoles Gunyarbadijarri, Lirragujarri, Bob Weber Milgalajarri, Maggie (or Minnie), Kitty, Kitty Wulhanda, Kitty Lirragujarri, Dolly, Old Nim, Stumpy Paddy, Mickey Charles, Barny Guldangara, Limilimilda, Johnny Balawayinda, Daisy Lirragawanjinda,

Sandy, Gunalumbu, Ngarilgudu, Malurgudu, Myrna Malalairunanda, Didmanja, Sandy, Garuwala and Charly (Gundirri/Ngarrguyumbu/Gulawi),

who identify, and are identified by other Gangalidda People, as belonging to the Gangalidda People according to Gangalidda traditional laws and customs.

The term “descendants” includes those individuals who have been adopted by the Gangalidda People.

The Garawa People are all of the descendants of the following people:

Dixon Yiliwagu, Murdering Tommy Mayarwagu, Dick Gawardalagayi, Mardu, “Strike-a-light” Yalagu, Bindi Bindi, Illibarra (or Yilibarra), Charley Marrgarranyi, Violet Man.gali, Dildol Charley Lujunguynyi, Gandiyari, Jangurungurama, Wirrangala, Gurrunggumaji, Banjiramaji (Bob) Yellow Jack, Gabugabumanyi Jack, Wanjirrigama Sandy, Dirrdungga, Baramalinya Bandaguyi, Wambilangu, Dunggula, Yalbindirri, Topsy Landurimara, Jack Boy Walbungga, Paul Gayjbalala, Tobacco Jack, Ned Bamalurri, Old Rory Mawulawula (Buraji), Bamy (Barney) Barrgudugudu, Jack Calvert, Masterton Jack, Wudungkamarra, Thalmarrurkimara, Karringamaji (King Peter), Widalamara, Malarrkudu (Kabajuju) (Barramundi Billy), Dukala, Rukulamara, Albert Doomadgee, Ned Doomadgee, Kukurrinya (Yabiwayngka), Jack Nadinku, Nukuthu, Minnie Munjanagurru, Waguwiganda, Jangulamarra, Gilmajarri (or Landilimarra) and Willy Murradoo,

who identify, and are identified by other Garawa People, as belonging to the Garawa People in accordance with Garawa traditional laws and customs.

The term “descendants” includes those individuals who have been adopted by the Garawa People.

2 In proceeding QUD 66 of 2005, Terrance Taylor and Jacky Green (the “Applicant”), claim on behalf of the Gangalidda People and the Garawa People, who are described in the same way as in QUD 84 of 2004.

3 The claim areas are contiguous and are in the southern Gulf of Carpentaria region of north-west Queensland, close to the Queensland/Northern Territory border. QUD 84 of 2004 claims approximately 706 square kms of land and water, including parts of Wentworth Pastoral Holding, a small western portion of Troutbeck Pastoral Holding and part of

Westmoreland Pastoral Holding. The north-eastern corner of the claim area extends to the High Water Mark, commencing west of Massacre Inlet.

4 QUD 66 of 2005 covers an area of approximately 8,643 square kms of land and water. The north-western corner of the claim area extends five nautical miles seaward of the High Water Mark. The eastern boundary of the claim area commences on the coast at the Leichhardt River. Part of the southern boundary includes the Nicholson River. Other major rivers that flow through the claim area are the Albert and Gregory Rivers. The claim area predominantly covers, either wholly or in part, 15 pastoral holdings namely:

- Yarrum;
- Turn Off Lagoons;
- Lawn Hill;
- Westmoreland;
- Wentworth;
- Almora;
- Armraynald;
- Beamesbrook;
- Birkalla;
- Nierrana;
- Little Doab;
- Doab;
- Brinawa;
- Kotupna; and
- Punjab.

QUD 66 of 2005 also claims:

- (a) reserves and unallocated State land;
- (b) part of the Doomadgee Deed of Grant in Trust;
- (c) areas of unallocated State land;

- (d) land and waters on the seaward side of the High Water Mark, predominantly between the Queensland/Northern Territory border and Massacre Inlet;
- (e) estuarine areas, including the lower reaches of Johns Creek in the locality of Tarrant Point; and
- (f) part of Finucane Island National Park.

The Gangalidda People have been recognized as traditional owners of other areas in the region. I need not complicate these reasons by detailed references to those determinations.

5 The present respondents to QUD 84 of 2004 are:

- State of Queensland;
- Burke Shire Council;
- Carpentaria Land Council Aboriginal Corporation;
- Telstra Corporation Limited;
- Panoy Pty Ltd; and
- Westmoreland Pastoral Company Pty Ltd.

6 The present respondents to QUD 66 of 2005 are:

- State of Queensland;
- Commonwealth of Australia;
- Burke Shire Council;
- Doomadgee Aboriginal Shire Council;
- Ergon Energy Corporation Limited;
- Telstra Corporation Limited;
- John Leonard Clarke;
- Norman Leonard Clarke;
- Susan Maree Clarke;
- Judith Anne Goodall;
- Janice Nelson;
- John Geoffrey Nelson;

- Panoy Pty Ltd;
- Paraway Pastoral Company Limited;
- John Ross Smith;
- Venlock Pty Ltd; and
- Westmoreland Pastoral Company Pty Ltd.

7 The Gangalidda and Garawa Peoples are, according to the anthropological evidence, constituent parts of a single cultural bloc. Professor Trigger of the University of Queensland has spent much of his professional life in contact with that cultural bloc. He considers that it includes, apart from the Gangalidda and Garawa Peoples, the Waanyi and a number of other named language groups to the north and west. Professor Trigger says in his report dated 20 March 2012 at para 4, that:

...

The shared laws and customs across this regional society, that extends as far east as the vicinity of the Leichhardt River, include the following:

- The same subsection or 'skin' system of 8 categories (with the same set of 16 terms for male and female persons);
- The same system of spiritual (or totemic) entities inhering in the landscape;
- Adaptations and transformations of the structurally similar system of estate groups;
- The same form of kinship system (with both shared and some different actual terms of address and reference);
- A history of intermarriage and resulting multiple personal potential memberships in both Waanyi and Ganggalida groups, such that a significant number of individuals have a primary link to country of one group together with a secondary link to the country of the other group;
- Both Waanyi and Ganggalida groups have social, kinship and historical connections and relationships with the adjacent Garawa group to the west;

...

8 The Gangalidda and Garawa Peoples do not claim equal interests in the whole of each claim area. Professor Trigger has identified the eastern boundary of Garawa traditional land and waters as running more or less north-south, about 30 kms east of the Queensland/Northern Territory border. I should add that Garawa traditional land extends into the Northern Territory. Generally, Gangalidda land lies to the east of that line. Professor

Trigger considers that there is a transitional zone extending up to 10 kms to the west of the line. Both Gangalidda and Garawa Peoples assert traditional rights over that area. Professor Trigger also describes Garawa country at para 7 of his report dated June 2010 as follows:

The Garawa system of estates, Dreamings and associated 'skins' extends eastwards into Queensland to Massacre Inlet on the coast. Inland from the coast, Garawa country extends southwards along Settlement Creek, then southwards to the vicinity of the junction of Lagoon Creek and Hann Creek (known as Percy Creek further upstream). The line indicating the eastward extent of Garawa country then extends southwards to cross Eight Mile Creek and continue to the vicinity of a site known as Balaganyi (... an area surrounding a hill located around 35 km east of the N.T./Qld border). This location marks a topographic boundary of sorts with the beginning of hilly areas extending to the west. ...

9 Concerning the Gangalidda People, Professor Trigger says in his report dated December 1998 at pp 5, 6 and 9:

Those who identify as members of the category of persons known as "Ganggalida people" are the descendants of the people who at the time of European arrival were in occupation of coastal areas of land and sea from the vicinity of Massacre Inlet in the west to at least the vicinity of Moonlight Creek in the east. It is difficult to reconstruct precisely the location of the eastern boundary of Ganggalida country with the territory of another language group known as Minggin or Mingginda However, Ganggalida people are the successors of the Mingginda People who were in occupation of the area from the Leichhardt River west to what was, during times beyond the living memory of all but a few contemporary older persons, the boundary with Ganggalida country.

The population of Ganggalida people is made up of interconnected extended families. These are cognatic groups in that membership of them is traced through either parent, and then through either male or female lineal links, to earlier generations of one's ancestry. The groups tend to have a patrilineal core in that successive earlier generations are often traced through a male line. However, it would seem there has been a shift to a broadly accepted cognatic principle in these groups, over the past few generations, such that it is now just as common for people to be members by matrilineal as by patrilineal

The primary rule for membership among Ganggalida people is that a person is socially acknowledged as belonging to one or more of what are referred to as Ganggalida "families".

There are cases where adoption by a Ganggalida family is accepted as conferring on the adopted person the right to identify with Ganggalida people and assert interests in the group's cultural property.

As these extracts demonstrate, the Gangalidda People claim some areas as successors to earlier owners in accordance with traditional laws and customs. This question has been dealt with in part, but at some length, in earlier proceedings.

10 Of the Garawa People, Mr Jeff Stead says in his report dated June 2010 at para 1.37:

A number of literature sources attempt to localise Garawa language territory. Tindale has Karawa (Garawa) extending east to Wollgorang Station and on to Westmoreland but excludes the coastal plain. Roth's data (collected at the turn of the 20th Century) also locates traditional Karawa (Garawa) territory on or close to the claim area, locating it on the upper Settlement Creek, with a main residential focus being in the Northern Territory at Wollgorang Station. Matthews locates Karrawar (Garawa) in the general area between the Calvert and Nicholson Rivers which would include much of the claim area. Oates' analysis locates Garawa territory as running north from the Nicholson River, west to the MacArthur River and east to eighty kilometres inside Queensland. Furby and Furby also locate the claim area within Garawa territory having it extending east into Queensland by approximately fifty miles Kumarage's research confirms Garawa interests within the claim area, identifying Garawa estates in the north-western corner. In the author's opinion, this body of research clearly indicates that historically, and currently, the claim area was, and is, identified with the Garawa People and their law and custom. The author's investigations over the last thirty years also confirm that the claim area is associated with the Garawa People and Garawa law and custom.

(References omitted.)

Professor Trigger in his report dated June 2010 concerning the Garawa People says at para 8:

The system of estates and related 'skin' groups (subsections and semi-moieties) upon which Garawa law and custom in regard to land is based continues into Queensland. There are processes of internal succession enabling people to circulate through relationships of various kinds to the different estates On this basis there is a continuing Garawa system for resolving those particular families who hold locality-specific rights and interests to the country in Queensland, as well as the broader Garawa group who hold generic rights and interests largely throughout Garawa country. I have discussed this distinction between locality-specific and generic rights in my reports in the Gangalida sea claim and the Waanyi native title claim. ...

11 Concerning the Gangalidda People's first European contact following sovereignty, Spender J said in earlier proceedings in *Gangalidda and Garawa People v State of Queensland* [2010] FCA 646 at [22] – [25]:

22 I cite the following historical observations taken from paragraph 6 of the Applicant's submissions filed in these proceedings, that give an understanding of the society that existed at first contact and the changes to that society as a consequence of European contact:

As early as November 1802, just [fourteen] years after the establishment of the colony of New South Wales, Matthew Flinders observed that the islands which he named the Wellesley Islands were inhabited by Indigenous people. In November 1802 Flinders stayed over a month in the vicinity of the Wellesley Islands, to undertake repairs to his vessel, the HMS Investigator, and to replenish supplies of water and wood. He observed "natives" on Bentinck Island, Sweers Island, Allen Island, Horseshoe Island and Mornington

Island. He observed spiral shells used as water containers, and midden material comprising shells and turtle bones on Horseshoe Island. He observed sleeping hollows on Bentinck and Sweers Island, and wells, midden material and human remains on Sweers Island.

Later explorers confirmed the presence of Indigenous people on the islands and adjoining coastal mainland. In July 1841 John Lort Stokes in the HMS Beagle anchored in Investigator Road. Stokes reported "natives" on Sweers Island and on Allen Island. He travelled 40 miles upstream of the Albert River and continued on foot. He was so impressed with the soil and vegetation of the area that he called it '*the plains of promise*'. He observed 'native skulls' and long bones on Sweers Island, and a well at Bayley Point.

In 1844-1845 Ludwig Leichhardt's expedition travelled along the southern part of the Gulf. They crossed the Albert River, travelled along the Nicholson River, and travelled to Port Essington. They found camps, tracks, and fish traps of Aboriginal people.

In 1865 pastoralist JG Macdonald established a settlement on the Albert River twelve miles inland from the Gulf. It was named Burketown. Severe fever inflicted the residents, and the fever victims were evacuated to Sweers Island. The majority of the population of Burketown was relocated in 1866 to Sweers Island in 1866 where a township called Carnarvon was established.

In 1880 Captain Pennefather in the HMS Pearl landed on Sweers Island and Allen Island and examined the fish traps, and in 1881 surveyed the waters between Point Parker and Allen Island. In 1880 he recorded that he '*saw a large mob of natives, who did not allow us to approach them.*'

On 6 January 1866 the pastoral district of Burke was proclaimed. A number of pastoral operations commenced: Lawn Hill in 1875, Gregory Downs in 1876, Lorraine in 1878, Punjab in 1880, Augustus Downs in 1880, Westmoreland circa 1880s. In 1888 a school was opened in Burketown, and boiling down works were established in 1892. Aboriginal people from the region were attracted to the town. Camps were established on the fringes of the town. By the late 1890s the population of the camps had grown to more than 200.

In 1899 Inspector Lamond closed down the camps. He provided '*rations for each tribe and sent them off to their old hunting grounds*'. In November 1899 J. Ordish, officer in charge at Turn Off Lagoon, reported that 130 of the '*Point Parker tribe*' were camping at Moonlight Creek – '*they are improving now they are away from Burketown ... now they are settling down to their native food.*' The coastal country between the Northern Territory border and Point Parker was considered unsuitable for cattle. In 1896 Police Inspector Urquhart reported that this country was '*wholly unoccupied except by the blacks*'. Within several years fringe camps were re-established at Burketown and Normanton. By 1906 Burketown camp had 220 residents. Occasionally, rations and blankets were issued by the

local Protector.

- 23 At paragraph 13 in my reasons in the *Lardil, Yangkaal, Gangalidda and Kaiadilt People Land Claim*, I referred to submissions specifically in respect to Gangalidda people where it was said that:

It should also be noted that during the first half of the 19th century Gangalidda people, though coming to live in camps on pastoral stations and at Burketown (as well as at the Dumaji Mission established in 1933), continued to move around the coastal country, at least into the 1920s and 1930s. Such occupation of the Gangalidda coastal lands entailed considerable movement among people and this included some travel via traditional watercraft between the mainland and the North Wellesley Islands. Waters relatively near to the beach were routinely used for obtaining foods and other resources.

- 24 This historical overview records that from the time of first European contact, the Determination Area was inhabited by Aboriginal people, and by inference from the date of sovereignty, and thereafter.

- 25 The Gangalidda people have maintained their connection to the claimed land and waters through their continuing enjoyment and use of them. That connection supports the rights and interests claimed in this application.

(Emphasis in original.)

Equally, I would add, that connection supports the rights and interests claimed in the applications today.

- 12 Concerning the Garawa People's first European contact after sovereignty, I cite the following passage from Mr Stead's report dated June 2010 at paras 1.18 – 1.31:

- 1.18 The following paragraphs analyses significant events of the claim region (including the claim area), with the aim of illustrating the degree of Aboriginal occupation of the claim region (and area) at contact and onwards. The analysis also attempts to obtain an understanding of traditional Aboriginal life in the claim region at first contact.

...

- 1.19 Marine explorers sailed within close proximity of the coastal portion of the claim region (and area). Flinders charted the southern coast of the Gulf of Carpentaria in 1802. He records Aboriginal occupation of the coastline from the Pellew Islands to the Wesley Islands [sic]. His party had very brief encounters with Aboriginal people. Flinders describes hunting and gathering techniques, Aboriginal dwellings and the use of rafts. In later years Stokes (early 1840's), Chimmo (in 1850's) and Pennefather (in 1880) all record the presence of Aboriginal people in the southern Gulf of Carpentaria.

- 1.20 Leichhardt in his expedition from Moreton Bay to Port Essington, encountered many Aboriginal people from the Albert River (in Queensland), west to the Robertson River in the (now) Northern Territory. He describes

their artefacts, dwellings, food sources, methods of preparing and storing food, use of red ochre and the presence of fish and emu traps.

...

- 1.21 Wells who along with Carruthers (1880's) surveyed the Queensland/Northern Territory border recorded the names of the three Aboriginal individuals 'Jakkamarri, 'Kumerange' and 'Bellarimi' which generally equate to sub-sections term currently in use in the general region. In the author's opinion, they are important elements of Aboriginal laws and customs as they related to the regulation of marriage and the establishment of socio-centric relationships between groups
- 1.22 Dymock provides information about Aboriginal occupation of Westmoreland and Wologorang Stations in the 1880's through his data on Aboriginal/European conflict e.g. at Damorli Lagoon (Westmoreland Homestead), Hell's Gate, Massacre Inlet at the mouth of Lagoon Creek, Battle Creek approximately ten kilometres up Lagoon Creek from Westmoreland Homestead, and a number of upper tributaries of Branch Creek.
- 1.23 Dymock relying on Garawa oral history, relates the gatherings of Aboriginal people at Baladuna Waterhole on Settlement Creek, about eighteen kilometres up from Wologorang Station (in 1897). His data indicates that one of the attendees was Illibarra (Healy Burra), also known as "King Hillyborough of Wologorang", who had traditional interests in the Settlement Creek area. ... Dymock also records ceremonial activities involving Garawa people in north-west Queensland including at Westmoreland and Turn-off Lagoons.
- 1.24 Blake's analysis also demonstrates Aboriginal occupation of the claim region (and claim area) in 1899. Relying on police correspondence, he indicates that: one hundred and thirty Carawa (Garawa) were camped at the head of the Nicholson River; one hundred people camped on Moonlight Creek; and fifty Aboriginal people (Euchlo) camping between Point Parker and the SA (Northern Territory) border. I agree with Blake's opinion this demonstrates that despite contact with Europeans for many years, distinct groups and their territory were readily identifiable. Blake's analysis of the historical data indicates that the coastal country between Borroloola and Point Parker (this includes the coastal portions of the claim area) was occupied by Aboriginal people.
- 1.25 Given this historical data the author is of the opinion that the claim region (and area) was occupied by Aboriginal people at first contact.
- 1.26 There is early ethnographic data which links the Garawa People to the claim region (and area) and demonstrates aspects of their laws and customs, which are still currently relevant.
- 1.27 Stretton who was a magistrate and collector of customs at Borroloola during the 1890's, identifies a Leearwa (Garawa) tribe of one hundred people centred on the Robinson River. He also provides generalised data on the laws and customs of a number of Aboriginal groups of the western Gulf of Carpentaria including the Garawa. Such laws and customs include, use of native flora as medicine, marriage laws, avoidance of certain relations, body

scarification, performance of initiation rites, the practice of adoption, and burial rites. Stretton's data also partially addresses the connection of individuals and groups to their land. His data suggests that each individual has a relationship with his birth place. It also demonstrates territoriality between groups and traditionally, sanctions for trespass that were enforced against Aboriginal and non-Aboriginal.

- 1.28 The pioneering anthropologists Gillen and Spencer contacted Aboriginal people of the Gulf of Carpentaria in their expedition through northern Australia. These contacts were recorded in Gillen's daily diary and subsequent publications. Most of this data was collected at Borroloola in 1901. They locate Garawa territory close to the coast on the east of the Robinson River. Whilst they recorded little direct Garawa data, they did collect information from neighbouring groups with similar laws and customs ... including, knowledge of myth, use of sub-sections and semi-moieties, marriage arrangements and ritual.
- 1.29 Roth collected data in the early 1900's. He locates the Karawa (Garawa) tribe at the head of Settlement Creek (which runs through the western claim area) with their chief camp at Wologorang Station. Constable Alford, based at the Turn-off Lagoon Police Post (during the 1890's) identifies the Carawagh (Garawa) as frequenting the Queensland/Northern Territory border up to the Calvert River.
- 1.30 The evidence examined above, in the author's view, clearly indicates that Aboriginal people were living within the claim region from at least the early Nineteenth Century. The historical and early ethnographic data also indicates there were Garawa people living within the claim region (and claim area) since the latter years of the Nineteenth and early years of the next Century. In the author's opinion, it is similarly clear, that these people maintained a social system with regulating laws and customs such as, marriage rules, kinship avoidance, initiation rites, the practice of adoption, sanctions for trespass, and a system of social classification including the use of sub-section terms. The evidence, in the author's opinion, also indicates that the Garawa (and neighbouring groups) were semi-nomadic people who had specialist techniques and artefacts to exploit the environment in which they lived (e.g. traps, canoes and flora processing techniques).
- 1.31 It is the author's opinion that it is appropriate to infer that this way of life, and its accompanying system of rules and customs, were in existence prior to the 1890's. Similarly it is the author's opinion, that had there been an earlier, different system, dating prior to first contact then it would have been reported in early historical and ethnographic data. Thus, a conclusion that the way of life and system of law and customs recorded in last half of the Nineteenth Century was present at sovereignty is reasonable.

(References omitted.)

- 13 Although we know the names of so many of the European explorers, settlers, anthropologists and officials from those early times, we know little about the indigenous people whom they encountered. That is regrettable, but perhaps inevitable. In any event, today we recall all indigenous people who have, for thousands of years, owned and occupied

this part of our country. These histories leave little room for doubt that the Gangalidda and Garawa Peoples occupied the claim areas as at the time of first European contact and, by inference, as at the date of the first claim to sovereignty, and that they are the traditional owners of the claim area.

14 Concerning ongoing connection, a large number of Gangalidda People and Garawa People have provided affidavits in which they describe personal associations with the claim area and associations between the claim group and the claim area. Time constraints prevent me from giving even a general summary of that evidence, or even listing the names of the people who have sworn the affidavits. It is sufficient to say that that evidence identifies numerous well-known locations within the claim area to which the Gangalidda and Garawa Peoples relate and describes the nature of the ongoing connection between them and such areas. The evidence also provides detailed descriptions of traditional laws and customs as they relate to the Gangalidda and Garawa Peoples and the claim area.

15 I am grateful for the submissions prepared by counsel for the Applicants, Mr Athanasiou. They have helped greatly in the preparation of these reasons.

16 Section 87 of the *Native Title Act 1993* (Cth) (the “Native Title Act”) authorizes the Court, in certain circumstances, to decide that native title exists without conducting a full hearing. Broadly speaking, the Court may proceed in that way where all of the parties agree, and the Court considers that it is appropriate so to do. On 19 December 2014 and 30 January 2015, agreements were filed in QUD 84 of 2004 and QUD 66 of 2005 respectively. Those agreements were the result of years of work and persistence on the part of the claim group and the other parties. QUD 66 of 2005 posed particular problems. Those problems have been resolved by way of mediation, in good faith, and with good will. The Court’s Native Title Registrar, Mr Ian Irving and the Queensland Native Title Registrar, Mrs Christine Fewings, have made particular contributions to that process. I should also mention the involvement in the mediation process of the Honourable SG Jones AO, formerly the Far Northern Judge of the Supreme Court of Queensland. Mr Jones has assisted in the resolution of many problems. Those involved in native title in Queensland are fortunate that he makes his skills available to us. I am pleased that he is with us today.

17 The proposed determination in QUD 84 of 2004 recognizes the existence of exclusive native title over the land and waters described in Schedule 2 to each of the orders and non-exclusive native title rights and interests over that part of the claim area which is

identified in Schedule 3. The Gangalidda People hold native title over that part of the claim area described in Schedule 4. The Garawa People hold native title over that part of the claim area described in Schedule 5. The Gangalidda People are described in Schedule 6, and the Garawa People, in Schedule 7.

18 Orders 11, 12 and 13 provide:

11. Subject to orders 14, 15 and 18, the nature and extent of the native title rights and interests in relation to that part of the Determination Area described in Schedule 2 and shown in Schedule 10, other than in relation to the use and enjoyment of Water (which is dealt with in order 13), is the right to possession, occupation, use and enjoyment of the Determination Area to the exclusion of all others.
12. Subject to orders 14, 15, 16 and 18, the nature and extent of the native title rights and interests in relation to that part of the Determination Area described in Schedule 3 and shown in Schedule 10, other than in relation to the use and enjoyment of Water (which is dealt with in order 13) are non-exclusive rights:
 - (a) to access, to be present on and to traverse the area;
 - (b) to hunt, fish and gather Natural Resources on the area for personal, domestic, and non-commercial communal purposes;
 - (c) to take, use, share and exchange Natural Resources from the area for personal, domestic, and non-commercial communal purposes;
 - (d) to camp on the area but not to reside permanently or to erect permanent structures or fixtures;
 - (e) to light fires on the area for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation;
 - (f) to conduct religious and spiritual activities and ceremonies on the area;
 - (g) to be buried on, and bury Native Title Holders on the area; and
 - (h) to maintain places and areas of importance or significance to the Native Title Holders under their traditional laws and customs and protect those places and areas from physical harm.
13. Subject to orders 14, 15 and 18, the nature and extent of the native title rights and interests in relation to the use and enjoyment of Water within the Determination Area are non-exclusive rights:
 - (a) to hunt and fish in and on and gather Natural Resources from the Water;
 - (b) to take, use, share and exchange Natural Resources from the Water; and
 - (c) to take, use and enjoy the Water,for personal, domestic and non-commercial communal purposes.

19 The proposed determination in QUD 66 of 2005 recognizes the existence of exclusive native title rights and interests over that part of the claim area as is described in Schedule 2,

and non-exclusive native title rights and interests over that part of the claim area as is described in Schedule 3. The Gangalidda People hold native title rights and interest over the area identified in Schedule 4. The Garawa People hold native title rights and interests over the area described in Schedule 5. The Gangalidda People are again described in Schedule 6, and the Garawa People, in Schedule 7.

20 Orders 12, 13, 14 and 15 provide:

12. Subject to orders 16, 17 and 20, the nature and extent of the native title rights and interests in relation to that part of the Determination Area described in Schedule 2 and shown in Schedule 11, other than in relation to the use and enjoyment of Water (which is dealt with in order 14), is the right to possession, occupation, use and enjoyment of the Determination Area to the exclusion of all others.
13. Subject to orders 16, 17, 18 and 20, the nature and extent of the native title rights and interests in relation to that part of the Determination Area described in Schedule 3 and shown in Schedule 11, other than in relation to the use and enjoyment of Water (which is dealt with in order 14) and land and waters on the seaward side of the High Water Mark (which is dealt with in order 15), are non-exclusive rights:
 - (a) to access, to be present on and to traverse the area;
 - (b) to hunt, fish and gather Natural Resources on the area for personal, domestic, and non-commercial communal purposes;
 - (c) to take, use, share and exchange Natural Resources from the area for personal, domestic, and non-commercial communal purposes;
 - (d) to camp on the area but not to reside permanently or to erect permanent structures or fixtures;
 - (e) to light fires on the area for domestic purposes including cooking but not for the purposes of hunting or clearing vegetation;
 - (f) to conduct religious and spiritual activities and ceremonies on the area;
 - (g) to be buried on, and bury Native Title Holders on the area; and
 - (h) to maintain places and areas of importance or significance to the Native Title Holders under their traditional laws and customs and protect those places and areas from physical harm.
14. Subject to orders 16, 17, 18 and 20, the nature and extent of the native title rights and interests in relation to the use and enjoyment of Water within the Determination Area, other than in relation to waters on the seaward side of the High Water Mark (which is dealt with in order 15), are non-exclusive rights:
 - (a) to hunt and fish in and on and gather Natural Resources from the Water;
 - (b) to take, use, share and exchange Natural Resources from the Water; and
 - (c) to take, use and enjoy the Water,for personal, domestic, and non-commercial communal purposes.

15. Subject to orders 16, 17, 18 and 20, the nature and extent of the native title rights and interests in relation to the use and enjoyment of land and waters on the seaward side of the High Water Mark within that part of the Determination Area described in Schedule 3 and shown in Schedule 11 are non-exclusive rights:

- (a) to access, to be present on and to traverse the area;
- (b) to fish, hunt and gather Natural Resources on the area for personal, domestic or non-commercial communal purposes;
- (c) to take, use, share and exchange Natural Resources from the area for personal, domestic, and non-commercial communal purposes;
- (d) to take and consume fresh drinking water from fresh water springs in the inter tidal zone for domestic or non-commercial purposes;
- (e) to conduct religious and spiritual activities or ceremonies on the area; and
- (f) to visit places or areas of importance or significance to the Native Title Holders under their traditional laws and customs and protect those places and areas from physical harm.

21 The native title is not to be held in trust. Gangalidda and Garawa Native Title Aboriginal Corporation (RNTBC ICN 7365) is to be the prescribed body corporate for the purposes of ss 57(2) and 57(3) of the Native Title Act. It is to act as agent for the common law holders of the native title rights and interests and to perform the functions set out in the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

22 Section 94A of the Native Title Act requires that an order for a determination of native title must set out details of the matters mentioned in s 225 of the Native Title Act. That section must be read together with s 223 of the Native Title Act. I am satisfied that the proposed orders address each of the relevant matters. Finally, I am satisfied that the orders are appropriate and in accordance with s 87 of the Native Title Act. I therefore make orders in terms of the draft provided in each case, which drafts I initial and place with the papers.

23 The Gangalidda and Garawa Peoples have waited a very long time to achieve recognition of their traditional rights and interests. They have, since first European contact, suffered much. That they have survived as recognizable societies with ongoing connection to their traditional lands says much about their individual and collective strength and resilience.

24 Native title rights and interests are the product of traditional laws and customs which have been observed and practised over the generations. Those rights and interests are now recognized and protected under the Native Title Act.

25 I have not come here today to give anything to the Gangalidda and Garawa Peoples. Rather, I have come to recognize, on behalf of all Australians, that they are the traditional owners of this land pursuant to traditional laws and customs which have their roots in ancient times. I now recognize that traditional ownership. In so doing, I bind all people for all time, including the Commonwealth of Australia, the State of Queensland, the Doomadgee Aboriginal Shire Council and the Burke Shire Council. On behalf of all other Australians, and in particular on behalf of the Judges of this Court and our staff, I congratulate you, the Gangalidda and Garawa Peoples upon the recognition which you have achieved today. We wish you well for the future in which we will all share.

I certify that the preceding twenty-five (25) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Dowsett.

Associate:

Dated: 17 July 2015