



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6244/1998
NNTT Number: QCD2016/011

Determination Name: [Miller on behalf of the Birriah People v State of Queensland \(No 2\)](#)

Date(s) of Effect: 10/03/2017

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: 29/11/2016

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

The judgement made in [Miller on behalf of the Birriah People v State of Queensland \(No 2\) \[2016\] FCA 1434](#) is to take effect immediately upon the registration of an agreement on the Register of Indigenous Land Use Agreements. The judgment will not be registered on the National Native Title Register until this condition is met.

QI2016/046 was registered on the Register of Indigenous Land Use Agreements on 10 March 2017. The conditions attached to the determination have therefore now been met.

REGISTERED NATIVE TITLE BODY CORPORATE:

Birriah Aboriginal Corporation RNTBC
Trustee Body Corporate
PO BOX 1989
Aitkenvale Queensland 4814

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:

The native title is held by the Birriah People described in Schedule 3 (the “native title holders”).

The native title holders are the Birriah People. The Birriah People are the biological or adopted descendants of one or more of the following people:

- (a) Jinnie Tiers;
- (b) Kuburu, the father of Billy Lightning Banbari;
- (c) John Smallwood;
- (d) Rosie Schilling;
- (e) Peggy Barker;
- (f) Sambo Callaghan;
- (g) Tommy Morgan;
- (h) the mother of Lizzie Limburner;
- (i) Nellie Skeen or William (Billy) Skeen Snr;
- (j) Caroline Roger; or
- (k) Maggie or her husband Harry Shepherd (Snr).

MATTERS DETERMINED:

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 agreement referred to in paragraph 1 of Schedule 4 being registered on the Register of Indigenous Land Use Agreements.
3. In the event that the agreement referred to in paragraph 2 above is 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.

BY CONSENT THE COURT DETERMINES THAT:

5. The Determination Area is the land and waters described in Schedule 1, and depicted in the plan attached to Schedule 1.
6. Native title exists in relation to that part of the Determination Area described in Part 1, Part A of Schedule 1.
7. Native title does not exist in relation to that part of the Determination Area described in Part 2, Part A of

Schedule 1.

8. The native title is held by the Birriah People described in Schedule 3 (the “native title holders”).

9. Subject to paragraphs 10, 11, and 12 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 1, Part A of Schedule 1 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.

10. 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.

11. 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).

12. The nature and extent of any other interests in relation to that part of the Determination Area described in Part 1, Part A of Schedule 1 are set out in Schedule 4.

13. The relationship between the native title rights and interests described in paragraph 9 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; and

(b) 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

14. 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;

“Natural Resources” means any animal, plant, fish and bird life found on or in the Water of the Determination Area, that have traditionally been taken and used by the native title holders, but does not include animals that are the private personal property of another;

“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; and
- (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:

15. Upon the determination taking effect:

- (a) the native title is held in trust;
- (b) the Birriah Aboriginal Corporation RNTBC ICN 8261, incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), is to:
 - (i) be the prescribed body corporate for the purpose of ss 56(2)(b) and 56(3) of the *Native Title Act 1993* (Cth); and
 - (ii) perform the functions mentioned in s 57(1) of the *Native Title Act 1993* (Cth) after becoming a registered native title body corporate.

Schedule 1 – DETERMINATION AREA

Part A - Description of Determination Area

The Determination Area comprises all the land and waters described in Parts 1 and 2 below, and depicted in the plan in Part B of Schedule 1, excluding the areas described in Schedule 2. To the extent of any inconsistency between the written descriptions in Part A and the areas shown on the plan in Part B, the written description

prevails.

Part 1 – Exclusive Areas

All of the land and waters contained within Lot 3 on SP289533.

Part 2 – Areas within the Determination Area where native title does not exist

All of the land and waters contained within Lot 1 on SP289533 and Lot 2 on SP289533.

Part B - Plan of Determination Area

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

Schedule 2 – AREAS NOT FORMING PART OF THE DETERMINATION AREA

The land and waters described in Part 1, Part A of Schedule 1 do not include:

- (a) land or waters upon 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/or s 21 of the *Native Title (Queensland) Act 1993* (Qld) applies;
- (b) together with any adjacent land or waters in accordance with s 251D of the *Native Title Act 1993* (Cth),

on the basis that such areas are or were the subject of one or more previous exclusive possession acts, as defined in s 23B of the *Native Title Act 1993* (Cth) (despite the fact that the areas, or parts of them, may have been subject to earlier acts which extinguished native title), and could not be claimed in accordance with s 61A of the *Native Title Act 1993* (Cth).

Schedule 3 – NATIVE TITLE HOLDERS

The native title holders are the Birriah People. The Birriah People are the biological or adopted descendants of one or more of the following people:

- (a) Jinnie Tiers;
- (b) Kuburu, the father of Billy Lightning Banbari;
- (c) John Smallwood;
- (d) Rosie Schilling;

- (e) Peggy Barker;
- (f) Sambo Callaghan;
- (g) Tommy Morgan;
- (h) the mother of Lizzie Limburner;
- (i) Nellie Skeen or William (Billy) Skeen Snr;
- (j) Caroline Roger; or
- (k) Maggie or her husband Harry Shepherd (Snr).

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 Birriah People and Castle Hill Exotics Pty Ltd Indigenous Land Use Agreement (area agreement) between Frank Fisher, Colin McLennan, Algon Walsh Jnr, David Miller, and Gracelyn Smallwood on their own behalf and on behalf of the Birriah People, the Birriah Aboriginal Corporation RNTBC ICN 8261, Castle Hill Exotics Pty Ltd ACN 009 855 190, and the State of Queensland, dated 9 November 2016.

2. The rights and interests of Ergon Energy Corporation Limited 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 area described in Part 1, Part A of Schedule 1;
 - (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 area described in Part 1, Part A of Schedule 1 existing or entered into before the date on which these orders are made;
 - (ii) rights to enter the area described in Part 1, Part A of Schedule 1 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 area described in Part 1, Part A of Schedule 1.

3. 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.

REGISTER ATTACHMENTS:

1. Schedule 1 Part B - Plan of Determination Area, 5 pages - A4, 29/11/2016

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.