

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NSD6054/1998
NNTT Number: NCD2014/001

Determination Name: Phyball on behalf of the Gumbaynggirr People v Attorney-General of New South Wales

Date(s) of Effect: 15/08/2014

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 15/08/2014

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Wangga (Southern) Gumbaynggirr Nation Aboriginal Corporation RNTBC
Trustee Body Corporate
27 Carbin Street
Bowraville New South Wales 2449

COMMON LAW HOLDER(S) OF NATIVE TITLE:

Native title 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 terms set out below (the Determination)
2. On and from the registration of the Wanggaan (Southern) Gumbaynggirr Nation Aboriginal Corporation as a prescribed body corporate, the native title is to be held on trust.
3. On and from the registration of the Wanggaan (Southern) Gumbaynggirr Nation Aboriginal Corporation as a prescribed body corporate, the Wanggaan (Southern) Gumbaynggirr Nation Aboriginal Corporation is to:

- (a) be the prescribed body corporate for the purposes of section 57(1) of the *Native Title Act 1993* (Cth); and
- (b) perform the functions set out in section 57(1) of the *Native Title Act 1993* (Cth) and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

4. The terms of agreement between the parties, in relation to matters other than the terms of the Determination, contained in the agreement under s 87(1) of the *Native Title Act 1993* signed by the parties and filed on 4 August 2014 shall have effect. [See NNTR attachment 2: "Section 87 Agreement"]

THE COURT NOTES:

6. That it is the intention of the Applicant, the State of New South Wales and the Unkya Local Aboriginal Land Council to use their best endeavours to make and have registered one or more Indigenous Land Use Agreements by the end of December 2014.

THE COURT DETERMINES THAT:

Existence of native title

7. Native title exists in relation to the land and waters described in Schedule A (the "Consent Determination Area") and depicted on the map comprising Schedule B. Schedule C represents the external boundaries of the amended native title determination application.

Native title holders

8. Native title 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) Biddy, the mother of Lavina Duncan (Bina Whaddy);
 - (iv) Fanny Purrupine, the mother of Lily Kelly and Hilda Kelly Robinson;
 - (v) Darby Kelly;
 - (vi) The father of Maggie Kelly's mother Biddy;
 - (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 native title rights and interests

9. Subject to paragraphs 10 and 11 the nature and extent of the native title rights and interests held by the Gumbaynggirr People in the Consent Determination Area are the non-exclusive rights to use and enjoy the land and waters of the Consent Determination Area in accordance with Gumbaynggirr traditional laws and customs being:

- (a) the right to have access to and camp on the Consent Determination Area;
- (b) the right to take and use waters on or in the Consent Determination Area;
- (c) the right to hunt and gather natural resources of the Consent Determination Area for personal, domestic and non-commercial communal use;
- (d) the right to take fish in the temporary waters occurring above the mean high water mark in the Consent Determination Area;
- (e) 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 Consent Determination Area which are of significance to Gumbaynggirr People under their traditional laws and customs.

10. The native title rights and interests referred to in paragraph 9 are exercised for personal, domestic and non-commercial communal purposes and do not confer on the native title holders 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 public use of the land and waters of the Consent Determination Area.

11. The native title rights and interests in the Consent Determination Area are subject to and exercisable in accordance with:

- (a) the laws of the State of New South Wales and the Commonwealth including the common law; and
- (b) the traditional laws acknowledged and traditional customs observed by the Gumbaynggirr People.

Other matters

12. There are no native title rights and interests 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).

13. Native title rights do not exist in any part of the land and waters comprising the Consent Determination Area 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 20(2) of the *Native Title (New South Wales) Act 1993* (NSW) applies, together with any adjacent land or waters in accordance with s 251D of the *Native Title Act 1993* (Cth).

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

14. The relationship between native title rights and interests and other rights and interests in the Consent Determination Area is:

- (a) To the extent that the native title rights and interests and the other rights and interests are not inconsistent, both the native title rights and interests and the other rights and interests continue to have effect and to be exercisable by the respective holders of those rights and interests and the native title rights and interests are not extinguished or impaired;
- (b) The other rights and interests referred to in paragraphs 15(e) to (h) are, in accordance with the *Aboriginal Land Rights Act 1983* (NSW) and the *National Parks and Wildlife Act 1974* (NSW), subject to the native title rights and interests herein recognised and do not extinguish or impair the native title rights and interests. To avoid doubt, the other rights and interests referred to in paragraphs 15(e) to (h) do not prevent the exercise of the native title rights and interests recognised herein, consistent with paragraphs 10 and 11 above; and
- (c) Where any other rights or interests not being of the kind referred to in (b) above and any activity done in accordance with or incidental to the exercise of any such right or interest is inconsistent with the existence, exercise or enjoyment of the native title rights and interests, then the other right or interest and any exercise of the other right or interest prevails over the native title rights and interests but does not extinguish the native title rights and interests.

Nature and extent of other rights and interests

15. The nature and extent of the other rights and interests in relation to the Consent Determination Area are the current interests created or recognised at the date of this determination by the Crown, statute or common law as follows:

- (a) The rights and interests of an energy services corporation within the meaning of the *Energy Services Corporations Act 1995* (NSW) to exercise functions, powers or rights in accordance with the laws of the State of New South Wales or Commonwealth and as owner and operator of electricity transmission facilities and associated infrastructure situated on the Consent Determination Area including but not limited to the right to enter the Consent Determination Area in order to access, use, install, maintain, repair, replace, upgrade or otherwise deal with facilities and infrastructure;
- (b) The rights and interests of Essential Energy as the holder of a registered easement 20 metres wide shown on transfer AF413714D;
- (c) The rights and interests of the Nambucca Shire Council under its local government jurisdiction and as an entity exercising statutory powers in respect of the land and waters in its local government area;
- (d) The rights and interests granted by the Commonwealth pursuant to statute or otherwise in the exercise of its executive power and under any regulations made pursuant to such legislation;
- (e) The rights and interests of the Nambucca Heads Local Aboriginal Land Council and the Unkya Local Aboriginal Land Council in the land and waters within the Consent Determination Area, as the holders of an estate in fee simple pursuant to the *Aboriginal Land Rights Act 1983* (NSW) and the *National Parks and Wildlife Act 1974* (NSW);
- (f) The rights and interests of the Nambucca Heads Local Aboriginal Land Council and the Unkya Local

Aboriginal Land Council (as lessors) and the Minister administering the *National Parks and Wildlife Act 1974* (NSW) (as lessee), under the Gaagal Wanggaan (South Beach) National Park Lease established pursuant to Part 4A of the *National Parks and Wildlife Act 1974* (NSW) on 22 April 2010;

(g) The rights, interests, powers, authorities, duties and functions of the Director General and the National Parks and Wildlife Service under the *National Parks and Wildlife Act 1974* (NSW), in relation to the management of the Gaagal Wanggaan (South Beach) National Park;

(h) The rights and interests of the Board of Management established pursuant to the *National Parks and Wildlife Act 1974* (NSW) relating to the management of the Gaagal Wanggaan (South Beach) National Park, under the *National Parks and Wildlife Act 1974* (NSW) and the Gaagal Wanggaan (South Beach) National Park Lease between the Nambucca Heads Local Aboriginal Land Council and the Unkya Local Aboriginal Land Council (as lessor) and the Minister administering the *National Parks and Wildlife Act 1974* (NSW) (as lessee) dated 22 April 2010;

(i) The rights and interests of members of the public arising under the common law including but not limited to the public right to fish;

(j) So far as confirmed pursuant to section 16 and 18 of the *Native Title (New South Wales) Act 1994*, any other existing public access to and enjoyment of

(i) waterways;

(ii) the beds and banks or foreshores of waterways;

(iii) coastal waters;

(iv) beaches;

(v) stock routes;

(vi) areas that were public places at the end of 31 December 1993;

(k) Any other rights and interests of the Crown in right of the State of New South Wales;

(l) Any other rights and interests granted or recognised by the State of New South Wales pursuant to statute or otherwise in the exercise of its executive power and under any regulations made pursuant to such legislation;

(m) Any other right to access land by an employee or agent or instrumentality of the State, Commonwealth or other statutory authority as required in the performance of his or her statutory or common law duties; and

(n) Any other:

(a) legal or equitable estate or interest in the land or waters of the Consent Determination Area; or

(b) right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with:

(i) the land or waters of the Consent Determination Area; or

(ii) an estate or interest in the land or waters of the Consent Determination Area.

Definitions

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

"Camp" means to stay on the Consent Determination Area for temporary periods. Tents or other like structures are permitted. It does not include the right to permanently reside or build permanent structures or fixtures.

"Consent Determination Area" means the land and waters described in Schedule A and mapped in Schedule B.

"Gumbaynggirr People" means the native title holders as described in paragraph 8.

"Gumbaynggirr Corporation" means the Wanggaan (Southern) Gumbaynggirr Nation Aboriginal Corporation incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth).

"laws" include statutes, regulations and other subordinate legislation and the common law.

"Proceedings" means the application for determination of native title made by Barry Phyllis, Peter Gary Williams, Larry Kelly, Colin Jarrett, Michele Donovan, Bridget Jarrett, Richard Pacey, Trevor Ballangarry, Aden Ridgeway and Conway Edwards (NC96/41; NSD6054/98) .

17. If a word or expression is not defined in these orders, but is defined in the Native Title Act 1993 (Cth), then it has the meaning given to it in the *Native Title Act 1993* (Cth).

SCHEDULE A - CONSENT DETERMINATION AREA

The land and waters in which the Gumbaynggirr People hold native title are the parcels described in this schedule and shown on the map as purple hachure at Schedule B.

- (a) That part of Lot 7310 of DP1149441 not subject to, an easement 15 metres wide for access, pipeline and rising main to Lot 1 of DP710419
- (b) Lot 7311 of DP1149441
- (c) Lot 7312 of DP1149441
- (d) Lot 7313 of DP1149441
- (e) Lot 7314 of DP1149441
- (f) Lot 7315 of DP1149441
- (g) Lot 235 of DP755539
- (h) Lot 236 of DP755539
- (i) Lot 237 of DP755539
- (j) Lot 238 of DP755539
- (k) Lot 239 of DP755539
- (l) Lot 240 of DP755539
- (m) Lot 241 of DP755539
- (n) Lot 242 of DP755539
- (o) Lot 243 of DP755539
- (p) Lot 244 of DP755539
- (q) Lot 245 of DP755539
- (r) Lot 246 of DP755539

In the event of an inconsistency between the written description provided in this schedule and the map, the written description shall prevail.

SCHEDULE B - MAP OF THE CONSENT DETERMINATION AREA AND AMENDED APPLICATION AREA

[See NNTR attachment 1: "Schedule B - Map of the Consent Determination Area and Amended Application Area"]

SCHEDULE C - AMENDED APPLICATION AREA

The land and waters within the external boundaries of the amended native title determination application for the Gumbaynggirr People are the parcels described in this schedule and shown on the map as purple hachure at Schedule B.

- (a) That part of Lot 7310 of DP1149441 not subject to an easement 15 metres wide for access, pipeline and rising main to Lot 1 of DP710419

- (b) Lot 7371 of DP1149441
- (c) Lot 7312 of DP1149441
- (d) Lot 7313 of DP1149441
- (e) Lot 7314 of DP1149441
- (f) Lot 7315 of DP1149441
- (g) Lot 235 of DP755539
- (h) Lot 236 of DP755539
- (i) Lot 237 of DP755539
- (j) Lot 238 of DP755539
- (k) Lot 239 of DP755539
- (l) Lot 240 of DP755539
- (m) Lot 241 of DP755539
- (n) Lot 242 of DP755539
- (o) Lot 243 of DP755539
- (p) Lot 244 of DP755539
- (q) Lot 245 of DP755539
- (r) Lot 246 of DP755539

In the event of an inconsistency between the written description provided in this schedule and the map, the written description shall prevail.

Note

Data Reference and source

Application boundary data compiled by National Native Title Tribunal based on information provided by NSW Department of Lands and the Applicant.

Prepared by Geospatial Services, National Native Title Tribunal (NNTT), by request of the State and the Applicant.

REGISTER ATTACHMENTS:

1. Schedule B - Map of the Determination Area and Amended Application Area, 2 pages - A2, 15/08/2014
2. Section 87 Agreement, 6 pages - A4, 15/08/2014

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.