

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD554/2010
NNTT Number: QCD2015/006

Determination Name: Lampton on behalf of the Juru People v State of Queensland

Date(s) of Effect: 22/06/2015

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 22/06/2015

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Kyburra Munda Yalga Aboriginal Corporation RNTBC
Trustee Body Corporate
PO Box 1717
AITKENVALE BC Queensland 4814

COMMON LAW HOLDER(S) OF NATIVE TITLE:

1. The native title holders are the Juru People. The Juru People are the descendants of one or more of the following people:
 - (a) Emily Pickard;
 - (b) Con Lymburner
 - (c) Nellie Steel / Stell;
 - (d) Lena Taylor;
 - (e) William Morrell and his wife Bessie Rook;
 - (f) Jinnie Ross;
 - (g) Eliza Lampton (mother of Arthur Lampton); or
 - (h) Rosie Wake (mother of William and Emma Nicol).

MATTERS DETERMINED:

BEING SATISFIED that an order in the terms set out below is within the power of the Court, and it appearing appropriate to the Court to do so, pursuant to s 87 of the *Native Title Act 1993* (Cth)

BY CONSENT THE COURT ORDERS THAT:

1. There be a determination of native title in the terms set out below (the “determination”).
2. The exercise of the native title rights and interests referred to in paragraph 8 of the determination in relation to the following areas:
 - (a) Lot 26 on Plan AP7702;
 - (b) Lot 27 on Plan AP7702;
 - (c) the eastern severance of Lot 80 on Plan K1242;
 - (d) Lot 1 on Plan AP5697; and
 - (e) Lot 4 on Plan AP9330,

be suspended for a period of 12 months from the date of the determination.

3. The exercise of the native title rights and interests referred to in paragraph 9 of the determination in relation to the following areas:
 - (a) Lot 404 on Plan SP224848; and
 - (b) that part of Lot 297 on Plan HR1866 described in Schedule 1,

be suspended for a period of 12 months from the date of the determination.

BY CONSENT THE COURT DETERMINES THAT:

5. The Determination Area is the land and waters described in Schedule 1, and depicted in the map attached to Schedule 1. To the extent of any inconsistency between the written description and the map, the written description prevails.
6. Native title exists in relation to that part of the Determination Area described in Parts 1, 2, 3, 4 and 5 of Schedule 1.
7. The native title is held by the Juru People described in Schedule 3 (the “native title holders”).
8. Subject to paragraphs 13, 14 and 15 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 1 of Schedule 1 are:
 - (a) other than in relation to Water, the rights 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.

9. Subject to paragraphs 13, 14 and 15 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 2 of Schedule 1 are the non-exclusive rights to:
 - (a) access, be present on, move about on and travel over the area;

- (b) camp, and live temporarily on the area as part of camping, and for that purpose build temporary shelters;
 - (c) hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;
 - (d) take, use, share and exchange Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;
 - (e) take and use the Water of the area for personal, domestic and non-commercial communal purposes;
 - (f) conduct ceremonies on the area;
 - (g) be buried and bury native title holders within the area;
 - (h) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm;
 - (i) teach on the area the physical and spiritual attributes of the area;
 - (j) hold meetings on the area; and
 - (k) light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation.
10. Subject to paragraphs 13, 14 and 15 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 3 of Schedule 1 are the non-exclusive rights to:
- (a) access, be present on, move about on and travel over the area;
 - (b) camp, and live temporarily on the area as part of camping, and for that purpose build temporary shelters;
 - (c) fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;
 - (d) take, use, share and exchange Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;
 - (e) take and use the Water of the area for personal, domestic and non-commercial communal purposes;
 - (f) conduct ceremonies on the area;
 - (g) be buried and bury native title holders within the area;
 - (h) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm;
 - (i) teach on the area the physical and spiritual attributes of the area;
 - (j) hold meetings on the area; and
 - (k) light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation.
11. Subject to paragraphs 13, 14 and 15 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 4 of Schedule 1 are the non-exclusive rights to:
- (a) access, be present on, move about on and travel over the area;
 - (b) fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;
 - (c) hunt on the land and waters of the area for personal, domestic and non-commercial communal purposes, but not using weapons as defined in the *Weapons Act 1990* (Qld);
 - (d) take, use, share and exchange Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;

- (e) take and use the Water of the area for personal, domestic and non-commercial communal purposes;
 - (f) conduct ceremonies on the area;
 - (g) be buried and bury native title holders within the area;
 - (h) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm;
 - (i) teach on the area the physical and spiritual attributes of the area;
 - (j) hold meetings on the area; and
 - (k) light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation.
12. Subject to paragraphs 13, 14 and 15 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part 5 of Schedule 1 are the non-exclusive rights to access, be present on, move about on and travel over the area.
13. The native title rights and interests are subject to and exercisable in accordance with:
- (a) the Laws of the State and the Commonwealth;
 - (b) the traditional laws acknowledged and traditional customs observed by the native title holders; and
 - (c) the terms and conditions of the agreements referred to in paragraph 1 of Schedule 4.
14. The native title rights and interests referred to in paragraphs 8(b), 9, 10, 11 and 12 do not confer possession, occupation, use or enjoyment to the exclusion of all others.
15. 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).
16. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) are set out in Schedule 4.
17. The relationship between the native title rights and interests described in paragraphs 8, 9, 10, 11 and 12 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;
 - (b) to the extent the other interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests in relation to the land and waters of the Determination Area, the native title continues to exist in its entirety but the native title rights and interests have no effect in relation to the other interests to the extent of the inconsistency for so long as the other interests exist; and
 - (c) 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

18. In this determination, unless the contrary intention appears:

“High Water Mark” means the ordinary high-water mark at spring tides;

“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:

- (a) any animal, plant, fish and bird life found on or in the lands and waters of the Determination Area; and
- (b) any clays, soil, sand, gravel or rock found on or below the surface of the Determination Area,

that have traditionally been taken and used by the native title holders, but does not include:

- (a) animals that are the private personal property of another;
- (b) crops that are the private personal property of another; and
- (c) minerals as defined in the *Mineral Resources Act 1989* (Qld) or petroleum as defined in the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld);

“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;
- (c) water from an underground water source; and
- (d) tidal water.

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:

- 19. The native title is held in trust.
- 20. The Kyburra Munda Yalga Aboriginal Corporation RNTBC ICN 7581, incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), is to:
 - (a) be the prescribed body corporate for the purpose of ss 56(2)(b) and 56(3) of the *Native Title Act 1993* (Cth); and
 - (b) perform the functions mentioned in s 57(1) of the *Native Title Act 1993* (Cth) after becoming a registered native title body corporate in relation to the determination.

Schedule 1 - DETERMINATION AREA

A. Description of Determination Area

[See NNTR attachment 1: “Schedule 1 - DETERMINATION AREA - A. Description of Determination Area”]

B. Map of Determination

[See NNTR attachment 2: “Schedule 1 - DETERMINATION AREA - B. Map of Determination”]

Schedule 2 - AREAS NOT FORMING PART OF THE DETERMINATION AREA

The areas described below do not form part of the Determination Area.

Part A

- 1. Those land and waters within the external boundary described in Part 6 of Schedule 1, which at the time the native title determination application was made:
 - (a) 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 that extinguished native title); and
 - (b) to which none of ss 47, 47A or 47B of the *Native Title Act 1993* (Cth) applied,

do not form part of the Determination Area on the basis that they could not be claimed, in accordance with s 61A of the *Native Title Act 1993* (Cth).

2. Specifically, and to avoid any doubt, the land and waters referred to in paragraph 1 above include the acts described in ss 23B(2) and 23B(3) of the *Native Title Act 1993* (Cth) to which s 20 of the *Native Title (Queensland) Act 1993* (Qld) applies and include, but are not limited to, the whole of the land and waters described as:
- (a) Lot 76 on Plan HR315;
 - (b) Lot 7 on Plan RP706771;
 - (c) Lot 8 on Plan RP706771;
 - (d) Lot 9 on Plan RP706771;
 - (e) Lot 10 on Plan RP706771;
 - (f) Lot 11 on Plan RP706771;
 - (g) Lot 247 on Plan HR1633;
 - (h) Lot 222 on Plan SP189779;
 - (i) Lot 255 on HR1287;
 - (j) Lot 296 on Plan HR1866;
 - (k) Lot 321 on Plan HR1953; and
 - (l) Lot 329 on SP151025.
3. Specifically, and to avoid any doubt, the land and waters described in paragraph 1 above include the 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, together with any adjacent land or waters in accordance with s 251D of the *Native Title Act 1993* (Cth), and include but are not limited to the whole of the land and waters described as:
- (a) that part of Lot 297 on Plan HR1866 which does not include the area described in Part 2 of Schedule 1;
 - (b) that part of Lot 207 on Plan SP159339 which does not include the area described in Part 2 of Schedule 1;
 - (c) Lot 13 on SB181;
 - (d) Lot 385 on SB599;
 - (e) Lot 310 on SP198022;
 - (f) Lot 308 on SP118066;
 - (g) Lot 240 on HR1130; and
 - (h) Lots 72, 73, 74, 75, 76, 77, 78, 79, 87, 88, and 89 on Plan M4881.

Part B

Land and waters specifically excluded from QUD554/2010 Juru People native title determination application (QC2013/010) filed on 7 March 2014, being land and waters subject to:

- native title determination application QUD6244/1998 Birriah People (QC1998/012), as accepted for registration by the National Native Title Tribunal on 14 August 2007; and
- the determination made by the Federal Court of Australia on 26 July 2011 in QUD6249/1998 Juru (Cape Upstart) People.

Part C

Land and waters the subject of the determination made by the Federal Court of Australia on 11 July 2014 in QUD544/2010 Juru People (the "Part A" determination).

Schedule 3 - NATIVE TITLE HOLDERS

1. The native title holders are the Juru People. The Juru People are the descendants of one or more of the following people:
 - (a) Emily Pickard;
 - (b) Con Lymburner
 - (c) Nellie Steel / Stell;
 - (d) Lena Taylor;
 - (e) William Morrell and his wife Bessie Rook;
 - (f) Jinnie Ross;
 - (g) Eliza Lampton (mother of Arthur Lampton); or
 - (h) Rosie Wake (mother of William and Emma Nicol).

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 following agreements:
 - (a) the Juru People and Ergon Energy indigenous land use agreement QI2014/010 registered on 28 July 2014;
 - (b) the Juru People and Local Government indigenous land use agreement QI2014/011 registered on 28 July 2014;
 - (c) the Hancock Alpha Coal Project (Port Area Native Title Group) indigenous land use agreement QI2011/019 registered on the Register of Indigenous Land Use Agreements on 23 March 2012; and
 - (d) the Port of Abbot Point and Abbot Point State Development Area indigenous land use agreement QI2011/063 registered on the Register of Indigenous Land Use Agreements on 10 May 2012.
2. 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 its telecommunication facilities;
 - (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 telecommunication facilities in and in the vicinity of the Determination Area in performance of their duties; and
 - (d) under any lease, licence, access agreement or easement relating to its telecommunications facilities in the Determination Area.
3. The rights and interests of Ergon Energy Corporation ACN 087 646 062 in the Determination Area including Lot 350 on Plan SB337, Lot 84 on Plan USL4498 and Lot 4 on Plan AP9330:
 - (a) as the owner and operator of any "Works" as that term is defined in the *Electricity Act 1994* (Qld) within the Determination Area;

- (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 Determination Area existing or entered into before the date on which these orders are made;
 - (ii) rights to enter the Determination Area 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 Determination Area.
4. The rights and interests of Aurizon Network Pty Ltd ACN 132 181 116 in relation to rail transport infrastructure under the *Transport Infrastructure Act 1994* (Qld).
 5. The rights and interests of Hancock Coal Infrastructure Pty Ltd ACN 132 394 122 as preferred developer of Terminal 3 at the Port of Abbot Point, under the T3 Project Framework Agreement dated 2012 between North Queensland Bulk Ports Corporation Limited ACN 136 880 218 and Hancock Coal Infrastructure Pty Ltd.
 6. The rights, interests, functions and powers of North Queensland Bulk Ports Corporation Limited ACN 136 880 218 as a port authority under the *Transport Infrastructure Act 1994* (Qld).
 7. The rights and interests of Burdekin Shire Council and Whitsunday Regional Council:
 - (a) under their local government jurisdiction and functions under the *Local Government Act 2009* (Qld), under the *Land Protection (Pest and Stock Route Management Act 2002)* (Qld) and under any other legislation, for that part of the Determination Area within the area declared to be their respective local government areas;
 - (b) as the:
 - (i) lessor under any leases which were validly entered into before the date on which these orders are made and whether separately particularised in these orders or not;
 - (ii) grantor of any licences or other rights and interests which were validly granted before the date on which these orders were made and whether separately particularised in these orders or not;
 - (iii) holder of any estate or interest in land, as trustee of any reserves, that exist in the Determination Area;
 - (c) as the owner and operator of infrastructure, and those facilities and other improvements located in the Determination Area validly constructed or established on or before the date on which these orders are made, including but not limited to:
 - (i) undedicated but constructed roads except for those not operated by Council;
 - (ii) water pipelines and water supply infrastructure;
 - (iii) drainage facilities;
 - (iv) watering point facilities;
 - (d) to enter the land for the purposes described in paragraphs (a), (b) and (c) above by their employees, agents or contractors to:
 - (i) exercise any of the rights and interests referred to in paragraph 6 above;
 - (ii) inspect, maintain and repair the infrastructure, facilities and other improvements referred to in paragraph (c) above;
 - (iii) undertake operational activities in its capacity as a local government such as feral animal control, weed control, erosion control, waste management and fire management.
 8. The rights and interests of the State of Queensland or any other person existing by reason of the force and operation of the laws of the State of Queensland, including those existing by reason of the following

legislation or any regulation, statutory instrument, declaration, plan, authority, permit, lease or licence made, granted, issued or entered into under that legislation:

- (a) the *Land Act 1994* (Qld); and
 - (b) the *Fisheries Act 1994* (Qld).
9. The rights and interests of the State of Queensland, Burdekin Shire Council and Whitsunday Regional 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 the roads.
10. The rights and interests of members of the public arising under the common law, including but not limited to the following:
- (a) any subsisting public right to fish; and
 - (b) the public right to navigate.
11. So far as confirmed pursuant to s 212(2) of the *Native Title Act 1993* (Cth) and s 18 of the *Native Title Act (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.
12. Any other rights and interests:
- (a) held by the State of Queensland or Commonwealth of Australia; or
- existing by reason of the force and operation of the Laws of the State and the Commonwealth.

REGISTER ATTACHMENTS:

- 1. Schedule 1 - DETERMINATION AREA - A. Description of Determination Area, 10 pages - A4, 22/06/2015
- 2. Schedule 1 - DETERMINATION AREA - B. Map of Determination, 25 pages - A3, 22/06/2015

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.