



## Extract from the National Native Title Register

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### Determination Information:

**Determination Reference:** Federal Court Number(s): QUD780/2016  
NNTT Number: QCD2017/005

**Determination Name:** [Anderson on behalf of the Northern Cape York #3 Native Title Claim Group v State of Queensland](#)

**Date(s) of Effect:** 26/07/2017

**Determination Outcome:** Native title exists in the entire determination area

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

**Determination Date:** 26/07/2017

**Determining Body:** Federal Court of Australia

#### ADDITIONAL INFORMATION:

Not Applicable

#### REGISTERED NATIVE TITLE BODY CORPORATE:

Ipima Ikaya Aboriginal Corporation RNTBC  
Trustee Body Corporate  
C/- Cape York Land Council  
32 Florence Street  
Cairns Queensland 4870

*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](http://www.oric.gov.au)*

#### COMMON LAW HOLDER(S) OF NATIVE TITLE:

5. The native title is held by the Northern Cape York #3 Native Title Claim Group described in Schedule 3 ("the native title holders").

The native title holders are the Northern Cape York #3 Native Title Claim Group, being the persons descended by birth or adoption from the following apical ancestors:

(a) Peter (Pahding) Pablo;

- (b) Wymarra (Wymara Outaiakindi);
- (c) Mathew (Charlie) Gelapa;
- (d) Annie Blanco;
- (e) Ela / Illa (father of Tommy Dodd, Polly and Tommy Somerset);
- (f) Wooundinagrun and Tariba (parents of Tom Redhead);
- (g) Charlotte Ware;
- (h) Queen Baki and Chief Tchiako/Tchiaku/Chiaku;
- (i) Jipsit and Dolly;
- (j) Mary McDonnell and Jack Snake;
- (k) Ourinda and Emara McDonnell Charcoal (grandparents of Willy and Louisa Charcoal);
- (l) Ralph Coconut;
- (m) Charlie Nataki;
- (n) William McDonnell;
- (o) Charlie Otomo McDonnell and his wife, Agemo (parents of Charlie Woolhead (Pascoe));
- (p) Wondorognu Alligator McDonnell and Mary Brown;
- (q) Wargo (father of Kitty McDonnell, Jacko, and Frank Doyle);
- (r) Clara and Jimmy McDonnell;
- (s) Epidin and Eteman (parents of Doris Harry);
- (t) Kaio;
- (u) Sambo Wooleye (father of Simon and Sarah Peter);
- (v) Woobumu and Inmare;
- (w) Bullock (father of Mamoose Pitt, husband of Rosie/Lena Braidley);
- (x) Charlie Mamoose (father of Silas, Larry, Johnny and Harry Mamoose);
- (y) Charlie Seven River;
- (z) Toby Seven River (father of Jack Toby);
- (aa) Asai Charlie;
- (bb) Sam and Nellie (parents of George Stephen);
- (cc) Mammus/Mamoos/Mark/Mamoose plus his siblings Peter and Elizabeth;
- (dd) Charlie Maganu (husband of Sarah McDonnell);
- (ee) Polly (wife of Wautaba Charlie Ropeyarn).

**MATTERS DETERMINED:**

**BY CONSENT THE COURT ORDERS THAT:**

1. There be a determination of native title in the terms set out below ("the determination").

**BY CONSENT THE COURT DETERMINES THAT:**

3. The Determination Area is the land and waters described in Schedule 1, and depicted in the map attached to Schedule 1.

4. Native title exists in relation to that part of the Determination Area described in Part 1 and Part 2 of Schedule 1.

5. The native title is held by the Northern Cape York #3 Native Title Claim Group described in Schedule 3 ("the native title holders").

6. Subject to paragraphs 8, 9 and 10 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 cultural, personal, domestic and communal purposes.

7. Subject to paragraphs 8, 9 and 10 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) hunt and fish in or on, and gather from, the area;

(c) take, use, share and exchange Natural Resources on the area;

(d) take and use the Water from the area for cultural, personal, domestic and communal purposes;

(e) live and camp on the area and for those purposes to erect shelters and other structures thereon;

(f) conduct ceremonies on the area;

(g) be buried and to 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 on the area and to protect those places and areas from harm;

- (i) teach on the area the physical and spiritual attributes of the area;
- (j) hold meetings on the area;
- (k) light fires on the area for cultural, spiritual or domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation; and
- (l) be accompanied on to the area by those persons who, though not native title holders, are:

- (i) spouses or partners of native title holders;
- (ii) people who are members of the immediate family of a spouse or partner of a native title holder; or
- (iii) people reasonably required by the native title holders under traditional law and custom for the performance of ceremonies or cultural activities on the area.

8. 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.

9. The native title rights and interests referred to in paragraphs 6(b) and 7 of this determination do not confer possession, occupation, use or enjoyment to the exclusion of all others.

10. 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).

11. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) are set out in Schedule 4.

12. The relationship between the native title rights and interests described in paragraphs 6 and 7 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.

13. For the avoidance of doubt, the relationship between the native title rights and interests described in paragraphs 6 and 7 and the other interests of RTA Weipa Pty Ltd and Rio Tinto Aluminium Limited in paragraph

5 of Schedule 4 is that the other interests continue to have effect and the rights conferred by or held under those other interests (including new rights and interests conferred pursuant to those other interests after the date of this determination) may be exercised notwithstanding the existence of the native title rights and interests, and any activity that is required or permitted by or held under, and done in accordance with, the other interests (including new rights and interests conferred pursuant to the rights and interests after the date of this determination) or any activity that is associated with or incidental to, such an activity, prevails over the native title rights and interests and any exercise of the native title rights and interests, but, subject to any application of s 24JA of the *Native Title Act 1993* (Cth), does not extinguish them.

14. For the avoidance of doubt, the relationship between the native title rights and interests described in paragraphs 6 and 7 and the other interests of Alcan South Pacific Pty Ltd in paragraph 6 of Schedule 4 is that the other interests continue to have effect and the rights conferred by or held under those other interests (including new rights and interests conferred pursuant to those other interests after the date of this determination) may be exercised notwithstanding the existence of the native title rights and interests, and any activity that is required or permitted by or held under, and done in accordance with, the other interests (including new rights and interests conferred pursuant to the rights and interests after the date of this determination) or any activity that is associated with or incidental to, such an activity, prevails over the native title rights and interests and any exercise of the native title rights and interests, but, subject to any application of s 24JA of the *Native Title Act 1993* (Cth), does not extinguish them.

## DEFINITIONS AND INTERPRETATION

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

“Alcan Act” has the meaning given in paragraph 6 of Schedule 4;

“Alcan Agreement” has the meaning given in paragraph 6 of Schedule 4;

“Comalco Act” has the meaning given in paragraph 5 of Schedule 4;

“Comalco Agreement” has the meaning given in paragraph 5 of Schedule 4;

“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;

“Local Government” has the meaning in the *Local Government Act 2009* (Qld);

“Local Government Act” has the meaning in the *Local Government Act 2009* (Qld);

“Local Government Areas” has the meaning in the *Local Government Act 2009* (Qld);

“Natural Resources” means:

- (a) animals;
- (b) plants; and
- (c) charcoal, wax, resin, clay, soil, sand, shell, gravel, rock or other such material naturally occurring in the land and waters of the Determination Area,

but does not include:

- (d) animals that are the private personal property of another;
- (e) crops that are the private personal property of another; and
- (f) 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).

“Reserve” means a reserve dedicated or taken to be a reserve under the *Land Act 1994* (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:

16. The native title is held in trust.

17. The Ipima Ikaya Aboriginal Corporation RNTBC (ICN: 8114), 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.

## SCHEDULE 1

### DETERMINATION AREA

#### A. Description of Determination Area

The Determination Area comprises all of the land and waters described in Parts 1 and 2 below, and depicted in the determination map, excluding the areas described in Schedule 2.

The Determination Area does not include any part of the land or waters which are subject to the agreement known as the Western Cape Communities Co-existence Agreement dated 14 March 2001 which was registered as the Comalco ILUA on the Register of Indigenous Land Use Agreements on 24 August 2001.

**Part 1 - Exclusive Areas**, depicted in dark blue on the determination map:

All of the land and waters described in column 1 of the following table and shown on the determination map described in column 2 of the following table:

| Area Description (at date of Determination)  | Determination Map Sheet Number |
|--|--------------------------------|
| That part of Lot 8 on SP252492 (formerly part of Lot 1 on WP53) being the part north of the Ducie River and South of Palm Creek* |                                |

\*denotes a lot to which s 47A of the  
*Native Title Act 1993* (Cth) applies.

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**Part 2 - Non-Exclusive Areas**, depicted in light blue on the determination map:

All of the land and waters described in column 1 of the following table and shown on the determination plan described in column 2 of the following table:

| Area Description (at date of Determination)            | Determination Map Sheet Number |
|--|--------------------------------|
| Lot 1 on SO67  | 1                              |
| That part of Lot 8 on MP14466 north of the Ducie River | 2                              |

## B. Map of Determination Area

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

### SCHEDULE 2

#### AREAS NOT FORMING PART OF THE DETERMINATION AREA

For the avoidance of doubt, the areas described below are excluded from the Determination Area as they could not be claimed in accordance with s 61A of the *Native Title Act 1993* (Cth):

The land or waters on 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 23B(7) of the *Native Title Act 1993* (Cth) and 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).

### SCHEDULE 3

#### NATIVE TITLE HOLDERS

The native title holders are the Northern Cape York #3 Native Title Claim Group, being the persons descended by birth or adoption from the following apical ancestors:

- (a) Peter (Pahding) Pablo;
- (b) Wymarra (Wymara Outaiakindi);
- (c) Mathew (Charlie) Gelapa;
- (d) Annie Blanco;
- (e) Ela / Illa (father of Tommy Dodd, Polly and Tommy Somerset);
- (f) Woonduinagrun and Tariba (parents of Tom Redhead);
- (g) Charlotte Ware;
- (h) Queen Baki and Chief Tchiako/Tchiaku/Chiaku;
- (i) Jipsit and Dolly;
- (j) Mary McDonnell and Jack Snake;
- (k) Ourinda and Emara McDonnell Charcoal (grandparents of Willy and Louisa Charcoal);
- (l) Ralph Coconut;
- (m) Charlie Nataki;



- (n) William McDonnell;
- (o) Charlie Otomo McDonnell and his wife, Agemo (parents of Charlie Woolhead (Pascoe));
- (p) Wondorognu Alligator McDonnell and Mary Brown;
- (q) Wargo (father of Kitty McDonnell, Jacko, and Frank Doyle);
- (r) Clara and Jimmy McDonnell;
- (s) Epidin and Eteman (parents of Doris Harry);
- (t) Kaio;
- (u) Sambo Wooleye (father of Simon and Sarah Peter);
- (v) Woobumu and Inmare;
- (w) Bullock (father of Mamoose Pitt, husband of Rosie/Lena Braidley);
- (x) Charlie Mamoose (father of Silas, Larry, Johnny and Harry Mamoose);
- (y) Charlie Seven River;
- (z) Toby Seven River (father of Jack Toby);
- (aa) Asai Charlie;
- (bb) Sam and Nellie (parents of George Stephen);
- (cc) Mammus/Mamoos/Mark/Mamoose plus his siblings Peter and Elizabeth;
- (dd) Charlie Maganu (husband of Sarah McDonnell);
- (ee) Polly (wife of Wautaba Charlie Ropeyarn).

#### **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 grantee and beneficiaries of an estate in fee simple under Deed of Grant Title Reference 50914995.
2. The rights and interests of the Torres Shire Council as the Local Government for the Determination Area within its Local Government Area, including:
  - (a) its powers, functions, responsibilities and jurisdiction under a Local Government Act;
  - (b) its rights and interests under any valid interest in land or waters within the Determination Area including under any lease, licence, access agreement, easement or Reserve in the Determination Area;
  - (c) its rights to use, operate, maintain, replace, restore, remediate, repair and otherwise exercise all other

rights as the owners and operators of valid infrastructure, structures, earthworks, access works, facilities and other improvements within the Determination Area;

- (d) the rights under any valid agreements between the Local Government and third parties which relate to land or waters in the Determination Area; and
- (e) the rights of its employees, agents and contractors to enter upon the Determination Area for the purpose of performing their powers and responsibilities under paras 2(a) to 2(d).

3. The rights and interests of the State of Queensland in the Reserve, the rights and interests of the trustee of that Reserve and of the persons entitled to access and use that Reserve for the purpose for which it is reserved.

4. The rights and interests of Cook Shire Council ("the Council") including any rights the Council, its employees, agents or contractors have:

(a) under its local government jurisdiction and functions under the Local Government Act, under the *Stock Route Management Act 2002* (Qld) and under any other legislation, for that part of the Determination Area within its local government area, as defined in the Local Government Act;

(b) as the owner and operator of infrastructure, facilities and other improvements located in the Determination Area as at the date of the determination, including but not limited to:

- (i) dedicated roads operated by Council;
- (ii) gravel pits operated by Council;
- (iii) undedicated but constructed roads except for those not operated by Council;
- (iv) water pipelines and water supply infrastructure;
- (v) drainage facilities;

(c) to enter the land described in paragraphs 4(a) to 4(b):

- (i) exercise any of the rights and interests referred to in paragraph 4(a) to 4(b);
- (ii) inspect, maintain or repair infrastructure, facilities and other improvements; and
- (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.

5. The rights and interests of RTA Weipa Pty Ltd and Rio Tinto Aluminium Limited (and any successors in title) under the *Commonwealth Aluminium Corporation Pty Limited Agreement Act 1957* (Qld) ("Comalco Act") and the Commonwealth Aluminium Corporation Pty Limited Agreement (which is given statutory force by the Comalco Act) ("Comalco Agreement") to utilise, be present on, mine and/or perform other activities on the Determination Area, including:

- (a) access;
- (b) areas adjacent to, in the vicinity of or outside the "bauxite field" (as defined in the Comalco Agreement)

or the “western bauxite field” (as defined in the Comalco Agreement), being any part of the Determination Area;

- (c) land outside Mining Lease No. 7024;
- (d) foreshores, tidal land and tidal water; and
- (e) the Wenlock River and its tributaries and areas on or in the vicinity of the Wenlock River and its catchment area.

6. The rights and interests of Alcan South Pacific Pty Ltd (and any successors in title) under:

(a) the *Alcan Queensland Pty Limited Agreement Act 1965* (Qld) (“Alcan Act”) and the agreement made and varied pursuant to the Alcan Act (which is given statutory force by the Alcan Act) (“Alcan Agreement”) to utilise, be present on, mine and/or perform other activities on, and to obtain other rights and interests with respect to, the Determination Area, including the rights in the Alcan Agreement with respect to:

- (i) access;
- (ii) areas within the “bauxite field” (as defined in the Alcan Agreement);
- (iii) areas adjacent to, in the vicinity of or outside the bauxite field, being any part of the Determination Area;
- (iv) the Wenlock River and the Ducie River and their respective tributaries and areas on or in the vicinity of the Wenlock River and/or the Ducie River and their respective catchment areas; and
- (v) areas adjacent to Mining Lease No. 7031; and

(b) Mining Lease No. 7031.

7. 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.

8. 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.

9. 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 B - Map of Determination Area, 3 pages - A4, 26/07/2017

*Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.*