

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6022/2002
NNTT Number: QCD2015/005

Determination Name: Johnson Chippendale & Ors On Behalf Of The Wuthathi People #2

Date(s) of Effect: 29/04/2015

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 29/04/2015

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Wuthathi Aboriginal Corporation RNTBC
Trustee Body Corporate
242 Sheridan Street
Cairns Queensland 4870

COMMON LAW HOLDER(S) OF NATIVE TITLE:

The native title holders are the Wuthathi People being:

1. the descendants of:
 - (a) Pintharra;
 - (b) Johnson Moreton;
 - (c) Frank Wilson;
 - (d) Ida Temple (Waterbag);
 - (e) Moe Rie Warren;
 - (f) Innis Pascoe;
 - (g) Dinah;

- (h) Ada Lancaster;
- (i) Annie Punda (Athanamu);
- (j) Nara Jira Para;
- (k) Ela (Illa);
- (l) Eliza (wife of Tom Ware); and

2. those persons adopted by any Wuthathi People referred to in item 1 in accordance with traditional laws and customs.

**MATTERS DETERMINED:
THE COURT ORDERS BY CONSENT THAT:**

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

THE COURT DETERMINES BY CONSENT THAT:

3. The Determination Area is the land and waters described in Part A of Schedule 1, and depicted on the plan in Part B of Schedule 1.

4. Native title exists in relation to the Determination Area described in Part A of Schedule 1.

5. The native title is held by the Wuthathi People described in Schedule 2 (“the native title holders”).

6. Subject to paras 7, 8 and 9 below the nature and extent of the native title rights and interests in relation to the land and waters described in Part A 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 Water of the area; and

(iii) access and be present on and in the Water of the area,

for cultural, personal, domestic and communal purposes.

7. 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 agreement referred to in item 1 of Schedule 3.

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

9. 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).

10. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) are set out in Schedule 3.

11. The relationship between the native title rights and interests described in para 6 and the other interests described in Schedule 3 (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

12. 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; and

“Water” means:

(a) water which flows, whether permanently or intermittently, within a river, creek or stream; and

(b) any natural collection of water, whether permanent or intermittent.

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:

13. Upon the determination taking effect:

(a) the native title is held in trust; and

(b) the Wuthathi Aboriginal Corporation (ICN: 7157), 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

A. Description of Determination Area

1. The Determination Area comprises all of the land and waters described as:

(a) Lot 3 on SP189937;

(b) Lot 17 on SP189951;

(c) Lot 18 on SP189951 excluding areas identified as:

(i) Former Mining Lease No. 5940;

(ii) Former Mining Lease No. 5941; and

(iii) “Road 60 Wide” delineated by stations “A-B-C-D-A” on Crown Plan 857658;

- (d) Lot 20 on SP189951 excluding an area identified as "Road 60 Wide" delineated by stations "A-B-C-D-A" on Crown Plan 857658;
- (e) Lot 4 on SP189951;
- (f) Balance part of Lot 5117 on SP137279;
- (g) Lot 1 on AP15618;
- (h) Lot 2 on AP15618;
- (i) Lot 3 on AP15618;
- (j) Lot 4 on AP15618; and
- (k) "Road 60 Wide" delineated by stations "A-B-C-A", "D-E-F-D" and "G-H-J-Ck-K-G" on SP137279.

2. The land and waters described above do not include any:

- (a) land and waters below the High-Water Mark; or
- (b) esplanade.

2. Plan of Determination Area

[See NNTR attachment 1: "Plan of Determination Area"]

SCHEDULE 2

NATIVE TITLE HOLDERS

The native title holders are the Wuthathi People being:

1. the descendants of:

- (a) Pintharra;
- (b) Johnson Moreton;
- (c) Frank Wilson;
- (d) Ida Temple (Waterbag);
- (e) Moe Rie Warren;
- (f) Innis Pascoe;
- (g) Dinah;
- (h) Ada Lancaster;
- (i) Annie Punda (Athanamu);
- (j) Nara Jira Para;
- (k) Ela (Illa);
- (l) Eliza (wife of Tom Ware); and

2. those persons adopted by any Wuthathi People referred to in item 1 in accordance with traditional laws and customs.

SCHEDULE 3

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 Wuthathi People and Cook Shire Council (Area Agreement) indigenous land use agreement (QI2007/020) registered on 26 June 2009.

The rights and interests of the Cook Shire Council including any rights the Council, its employees, agents and contractors have:

(a) under its local government jurisdiction and functions contained in the *Local Government Act 2009* (Qld), under the *Land Protection (Pest and Stock Route Management) Act 2002* (Qld) and any other legislation, for that part of the determination area within its local government area as defined in the *Local Government Act 2009* (Qld);

(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 dedicated roads controlled by Council;

(c) to enter land described in paras 2(a) and 2(b) in compliance with any legislative requirements regarding notice or otherwise to:

(i) exercise any of the rights and interests referred to in paras 2(a) and 2(b);

(ii) inspect, maintain and repair the infrastructure facilities and other improvements referred to in para 2(b); 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.

The rights and interests of the State of Queensland and the Cook Shire Council to access, use, operate and maintain the area delineated as road on Plan SP137279 for its dedicated purpose and the rights and interests of the general public to access and use that road.

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 or the Commonwealth.

REGISTER ATTACHMENTS:

1. Schedule 1 - Plan of Determination Area, 2 pages - A4, 29/04/2015

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.