

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6009/1999
NNTT Number: QCD2013/006

Determination Name: Barry Fisher & Ors on behalf of the Ewamian People #2 v State of Queensland & Ors

Date(s) of Effect: 26/11/2013

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 26/11/2013

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Tatampi Puranga Aboriginal Corporation RNTBC
Agent Body Corporate
9A Hort Street
Mareeba Queensland 4880

COMMON LAW HOLDER(S) OF NATIVE TITLE:

The Native Title Holders are the Ewamian People. The Ewamian People are the:

1. biological descendants of the following people:

- (a) Norman Clarke;
- (b) Harry Plate;
- (c) Emily Collins;
- (d) Arthur Georgetown;
- (e) Pearl Georgetown;
- (f) Ethel Georgetown;
- (g) Thomas Lacey;

- (h) Dora Hudson;
- (i) Frank Hudson;
- (j) Minnie Willie;
- (k) Mick Morris; or
- (l) Ben Sloppa aka Ben Mudd; or

2. the adopted persons of Ethel Georgetown, Jim Harvey, Minnie Willie, John Edward Morris and Alfred Morris being persons who have been recruited by adoption as a member of the Ewamian People in accordance with their traditional law and custom.

MATTERS DETERMINED:

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 and to the extent of any inconsistency between the written description and the map, the written description prevails (the "Determination Area").
4. Native title exists in relation to that part of the Determination Area described in Part 1, Part 2 and Part 3 of Schedule 1.
5. The native title is held by the Ewamian People described in Schedule 3 ("the Native Title Holders").
6. Subject to paragraphs 9, 10 and 11 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.
7. Subject to paragraphs 9, 10 and 11 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) to occupy, use and camp on the area, but not to reside permanently, and for that purpose to construct temporary structures;
 - (c) hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;
 - (d) take and use 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; and
 - (j) light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation.
8. Subject to paragraphs 9, 10 and 11 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.
9. 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.
10. The native title rights and interests referred to in paragraphs 6(b), 7 and 8 do not confer possession, occupation, use or enjoyment to the exclusion of all others.
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 the Determination Area (or respective parts thereof) are set out in Schedule 4.
13. The relationship between the native title rights and interests described in paragraphs 6, 7 and 8 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;
 - (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;
 - (d) when the native title rights (referred to in paragraphs 6, 7 and 8) are intended to be exercised on a pastoral lease, they may only be exercised if the lessee of the pastoral lease, or a person otherwise responsible for the management of the pastoral lease, is given sufficient prior notice of the intention to access the pastoral lease in order to allow:
 - (i) any safety issues to be addressed; and
 - (ii) a suitable route of access to be agreed;
 - (e) when the native title right to hunt (referred to in paragraph 7(c) above) is intended to be conducted on a pastoral lease using firearms, it may only be exercised:
 - (i) in areas where stock are not present; and
 - (ii) if the lessee of the pastoral lease, or a person otherwise responsible for the management of the pastoral lease, is given sufficient prior notice of the intention to hunt in order to allow any safety issues to be addressed;
 - (f) when the native title right to maintain and protect places of importance and areas of significance (referred to in paragraph 7(h) above) is intended to involve the erection of a structure to protect from physical harm a place or area on a pastoral lease, it may only be exercised if:
 - (i) the structure will not materially impact on activities permitted or required by the pastoral lease; and

- (ii) the lessee of the pastoral lease, or a person otherwise responsible for the management of the pastoral lease, is given sufficient advance notice of the intention to erect the structure in order to allow any safety issues to be addressed.
14. The native title is not held in trust.
15. The Tatampi Puranga Aboriginal Corporation ICN 7950, incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), is to:
- (a) be the prescribed body corporate for the purpose of s 57(2) of the *Native Title Act 1993* (Cth); and
 - (b) perform the functions mentioned in s 57(3) of the *Native Title Act 1993* (Cth) after becoming a registered native title body corporate.

Definitions and Interpretations

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

"firearm" has the same meaning as in the *Weapons Act 1990* (Qld);

"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);

"stock" has the same meaning as in the *Stock Act 1915* (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; 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).

Schedule 1 – DETERMINATION AREA

A. Description of Determination Area

The Determination Area comprises all of the land and waters described in Parts 1, 2 and 3 below, and depicted in the map, excluding the areas described in Schedule 2.

Part 1 - Exclusive Areas

[See NNTR attachment 1: "Schedule 1 - Determination Area - Description of Determination Area - Part 1 - Exclusive Areas"]

Part 2 – Non-Exclusive Areas

[See NNTR attachment 2: “Schedule 1 - Determination Area - Description of Determination Area - Part 2 - Non-Exclusive Areas”]

Part 3 - Non-Exclusive Town Areas

[See NNTR attachment 3: “Schedule 1 - Determination Area - Description of Determination Area - Part 3 - Non-Exclusive Town Areas”]

B. Map of Determination Area

[See NNTR attachment 4: “Schedule 1 - Map of Determination Area”]

Schedule 2 – AREAS NOT FORMING PART OF THE DETERMINATION AREA

The following areas of land and waters are excluded from the Determination Area.

Part A

On the basis that native title has been extinguished and is not claimed, the parties have agreed that the excluded areas include any land or waters on which any permanent improvement consisting of:

- (a) a homestead, house, shed or other building;
- (b) an airstrip;
- (c) a constructed dam or any other constructed stock watering point, bore, turkey nest, squatters' tank or other water storage facility; or
- (d) stock yards and trap yards,

has, at the date of the Determination, been constructed (including any adjacent land the exclusive use of which is reasonably necessary for the enjoyment of the improvement) in accordance with the rights of the lessee under, and within the boundaries of the following pastoral leases:

- (i) Term Lease No. 236442 comprising Lot 4 on Plan GB31 and commonly known as Mount Sullivan;
- (ii) Preferential Pastoral Holding 18/5235 comprising Lot 5 on Plan SP140908 and commonly known as Helliman Creek; and
- (iii) Preferential Pastoral Holding No 18/5250 comprising Lot 5250 on Plan SP242983 and commonly known as Townley.

Part B

The areas in this Part are excluded from the Determination Area on the grounds that at the time at which the native title determination application was made:

- i. these areas 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
- ii. in relation to the areas in paragraph 1 of this Part, none of ss 47, 47A or 47B of the *Native Title Act 1993* (Cth) applied; and
- iii. therefore, in accordance with s 61A of the *Native Title Act 1993* (Cth), these areas could not be claimed.

Public Works Based Exclusions:

- A. 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).

B. Land or waters described in paragraph A immediately above includes, for the avoidance of doubt:

1. the whole of the land and waters shown on the map included in this Schedule and described as:

- i. Lot 20 on C8131 (Georgetown Cemetery);
- ii. Lot 25 on C8215 (Cumberland Cemetery);
- iii. Lot 30 on CP900291 (Mt Surprise Rodeo Grounds);
- iv. Lot 1 on PY4 (Kidston Cemetery);
- v. Lot 3 on PY9 (Kidston Airstrip);
- vi. Lot 31 on TE19 (Mt Surprise Airstrip);

2. that part of the land and waters shown on the map included in this Schedule and described as:

i. Lot 24 on GB100 (Cumberland Township Reserve), the part being more particularly described as within Lot 24 on GB 100 and east of a line passing through the following co-ordinates

Latitude (South)	Longitude (East)
18.302858	143.350957
18.302740	143.350104
18.302180	143.349860
18.300708	143.350060
18.299836	143.351249
18.299896	143.351398
18.300338	143.351881

ii. Lot 21 on C153517 (Cumberland Water Reserve), the part being more particularly described as within Lot 21 on C153517 and west of a line commencing at 143.351398° east, 18.299896° south, then passing through the following co-ordinate

Latitude (South)	Longitude (East)
18.300338	143.351881

then southerly to the northern boundary of the Dam Wall at 143.351750° east, then generally south westerly and generally south easterly along that dam wall (including the dam wall) to a point on its southern boundary at 143.351579° east, then southerly and generally westerly passing through the following coordinates

Latitude (South)	Longitude (East)
18.302688	143.351520
18.302858	143.350957
18.302740	143.350104

iii. Lot 7 on SP121873 (Kidston Racecourse), the part being more particularly described as within Lot 7 on SP 121873 and southeast of a line commencing at a point on the southern boundary of that lot at 144.177843° East, then passing through the following co-ordinates

Latitude (South)	Longitude (East)
18.860219	144.177459
18.859458	144.177980

to a point on the eastern boundary of Lot 7 on SP 121873 at 18.859664° South.

- iv. Lot 42 on GB99 (Einasleyh Cemetery), the part being more particularly described as within Lot 42 on GB99 and bounded by the following co-ordinates

Latitude (South)	Longitude (East)
18.522900	144.090283
18.523617	144.090567
18.523733	144.089867
18.523083	144.089583

- v. Lot 5 on GB35 (Forsayth Cemetery), the part being more particularly described as within Lot 5 on GB35 and southeast of a line commencing at a point on the southern boundary of that lot at 143.583983° east, then passing through the following co-ordinates

Latitude (South)	Longitude (East)
18.564967	143.583717

to a point on the eastern boundary of Lot 5 on GB35 at 18.564842° south.

Reference datum: Geocentric Datum of Australia 1994 (GDA94)

Note: to the extent of any inconsistency between the written description in this Schedule and the map, the written description prevails.

Map of Public Works Based Exclusions

[See NNTR attachment 5: "Schedule 2 - Map of Public Works Based Exclusions"]

Schedule 3 – NATIVE TITLE HOLDERS

The Native Title Holders are the Ewamian People. The Ewamian People are the:

1. biological descendants of the following people:
 - (a) Norman Clarke;
 - (b) Harry Plate;
 - (c) Emily Collins;
 - (d) Arthur Georgetown;
 - (e) Pearl Georgetown;
 - (f) Ethel Georgetown;
 - (g) Thomas Lacey;
 - (h) Dora Hudson;
 - (i) Frank Hudson;
 - (j) Minnie Willie;
 - (k) Mick Morris; or
 - (l) Ben Sloppa aka Ben Mudd; or
2. the adopted persons of Ethel Georgetown, Jim Harvey, Minnie Willie, John Edward Morris and Alfred Morris being persons who have been recruited by adoption as a member of the Ewamian People in accordance with their traditional law and custom.

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) Barry Fisher, Katie Georgetown, David Hudson, Noel Lacey and Ronald Richards and the State of Queensland as parties to the Ewamian-Etheridge Townships Indigenous Land Use Agreement registered on 12 March 2004;
 - (b) Barry Fisher, Katie Georgetown, David Hudson, Noel Lacey and Ronald Richards and the State of Queensland as parties to the Ewamian (Towns of Forsayth, Einasleigh, Georgetown and Mount Surprise) Indigenous Land Use Agreement registered on 1 December 2008;
 - (c) the agreement between Barry Fisher, David Hudson, Ron Richards and Noel Lacey and the State of Queensland, which was authorised by the native title claim group on 19, 21 and 22 August 2013 and executed by Barry Fisher on 11 November 2013, David Hudson on 15 November 2013, Ron Richards on 14 November 2013 and Noel Lacey on 7 November 2013 and the State of Queensland on 23 and 29 October 2013 (the Ewamian Protected Areas ILUA), and that agreement once it becomes registered as a body corporate ILUA following execution of the agreement by the Registered Native Title Body Corporate;
 - (d) the agreement between Barry Fisher, David Hudson, Ron Richards and Noel Lacey and Ergon Energy Corporation Limited, which was authorised by the native title claim group on 19, 21 and 22 August 2013 (the Ergon ILUA), and that agreement once it becomes registered as a body corporation ILUA following execution of the agreement by the Registered Native Title Body Corporate;
 - (e) the agreement between Barry Fisher, Katie Georgetown, David Hudson, Noel Lacey and Ronald Richards and the Etheridge Shire Council as parties to the Ewamian-Etheridge Shire Area ILUA No. 3 (QI 2005/04) registered on 25 February 2008 ;
 - (f) the agreement between Barry Fisher, Katie Georgetown, David Hudson, Noel Lacey and Ronald Richards and the Etheridge Shire Council as parties to the Ewamian-Etheridge Shire Council (Ten Mile Landfill Project) ILUA (QI 2011/051) registered on 6 February 2012; and
 - (g) the agreement between Ronald Richards, David Charles Hudson, Noel Lacey, Graham Fisher, Frank Fisher and Alex Sandow and Telstra Corporation Limited as parties to the Ewamian People #2 (Telstra ILUA) Indigenous Land Use Agreement (QI 1999/003) registered 23 December 1999.
2. The rights and interests of the holders of any leases, licences, reservations, permits, easements or authorities granted under the *Land Act 1994* (Qld), and any relevant regulations or subordinate legislation made under that Act, including the following leases:
 - (a) Pastoral Holding Term Lease No. 236442 comprising Lot 4 on Plan GB31 and commonly known as Mount Sullivan;
 - (b) Preferential Pastoral Holding 18/5235 comprising Lot 5 on Plan SP140908 and commonly known as Helliman Creek; and
 - (c) Preferential Pastoral Holding No 18/5250 comprising Lot 5250 on Plan SP242983 and commonly known as Townley.
3. The rights and interests of Telstra Corporation Limited ACN 051 755 566:
 - (a) as the owner or operator of telecommunications facilities installed 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 existing and new telecommunication facilities, including cabling, customer terminal sites, customer radio sites and ancillary facilities;
- (iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its existing and any new telecommunications facilities including cabling, customer terminal sites, customer radio sites, and ancillary facilities;
- (c) for its employees, agents or contractors to access the Determination Area for the purposes of exercising the rights in (i)(ii) and (iii) above in respect of telecommunication facilities in and in the vicinity of the Determination Area;
- (d) under any leases, relating to its telecommunications facilities in the Determination Area.

4. 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 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.

5. The rights and interests of the Etheridge 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 2009* (Qld), under the *Land Protection (Pests and 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 2009* (Qld);
- (b) as the:
 - (i) lessor under any leases which were entered into as at the date of the Determination;
 - (ii) grantor of any licences or other rights and interests which were granted as at the date of the Determination;
 - (iii) holder of any estate or interest in land, and as trustee of any reserves, that exist in the Determination Area as at the date of the Determination;
 - (iv) the grantee of any easements under the *Land Act 1994* (Qld) which were granted as at the date of the Determination;
- (c) 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 the Council;
 - (ii) gravel pits operated by the Council;
 - (iii) undedicated but constructed roads except for those not operated by the Council;
 - (iv) water pipelines and other water supply infrastructure;
 - (v) drainage facilities; and
 - (vi) cemetery and cemetery related facilities; and

- (d) to enter the land described in paragraphs 5(a) to 5(c) to:
 - (i) exercise any of the rights and interests referred to in paragraphs 5(a) to 5(c) of Schedule 4;
 - (ii) inspect, maintain and repair the infrastructure, facilities and other improvements referred to in paragraph 5(c) of Schedule 4; 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.
6. 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);
 - (b) the *Nature Conservation Act 1992* (Qld);
 - (c) the *Forestry Act 1959* (Qld);
 - (d) the *Water Act 2000* (Qld);
 - (e) the *Petroleum Act 1923* (Qld) or *Petroleum and Gas Act 2004* (Qld);
 - (f) the *Mineral Resources Act 1989* (Qld);
 - (g) the *Integrated Planning Act 1997* (Qld) or *Sustainable Planning Act 2009* (Qld);
 - (h) the *Transport Infrastructure Act 1994* (Qld); and
 - (i) the *Fire and Rescue Service Act 1990* (Qld) or *Ambulance Service Act 1991* (Qld);
7. 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.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REGISTER ATTACHMENTS:

1. Schedule 1 - Determination Area - Description of Determination Area - Part 1 - Exclusive Areas, 4 pages - A4, 26/11/2013
2. Schedule 1 - Determination Area - Description of Determination Area - Part 2 - Non-Exclusive Areas, 6 pages - A4, 26/11/2013
3. Schedule 1 - Determination Area - Description of Determination Area - Part 3 - Non-Exclusive Town Areas, 1 page - A4, 26/11/2013
4. Schedule 1 - Map of Determination Area, 36 pages - A3, 26/11/2013
5. Schedule 2 - Map of Public Works Based Exclusions, 1 page - A3, 26/11/2013

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.