



Federal Court of Australia

District Registry: South Australia

Division: General

No: SAD84/2022

VINCENT BRANSON and others named in the schedule
Applicant

STATE OF SOUTH AUSTRALIA and others named in the schedule
Respondent

ORDER

JUDGE: JUSTICE STEWART

DATE OF ORDER: 06 July 2023

WHERE MADE: Adelaide

THE COURT NOTES THAT:

- A. Native Title Determination Application No. SAD 84 of 2022 (formerly SAD 304 of 2011) was first lodged with the Federal Court of Australia on 21 November 2011.
- B. On 14 December 2018, the area covering the whole area of the Adnyamathanha, Ngadjuri and Wilyakali Overlap Claim (SAD 6001 of 1998) was determined by consent: *Coulthard v State of South Australia (Adnyamathanha, Ngadjuri and Wilyakali Overlap Claim)* [2018] FCA 1993.
- C. This area was a combination of the undetermined Adnyamathanha No 1 Native Title Determination Application (SAD 6001 of 1998), the whole of the Ngadjuri Nation Native Title Determination Application (SAD 147 of 2010) (**Ngadjuri claim**) and the whole of the Wilyakali No 2 Native Title Determination Application (SAD 417 of 2015) (**Wilyakali No 2 claim**).
- D. The Application was amended in the form of documents filed on 4 May 2021 and resolved any overlap by forming a common boundary between the Application and the remainder of the formerly overlapping the Wilyakali No 1 claim (SAD 33 of 2012).
- E. The Applicant and the First Respondent (**State**) have negotiated in good faith and with full advice from their legal representatives, including counsel, and experts, and have reached a compromise which is set out in an Indigenous Land Use Agreement (Ngadjuri Nation #2 Settlement **ILUA**) and in this **Determination** of native title. This



Determination will take effect upon the registration of the ILUA under Division 3 of Part 2 of the *Native Title Act 1993* (Cth) (NTA).

- F. The Applicant and the State have carried out an analysis of the historical tenure records within the Ngadjuri Nation #2 area (**Determination Area**). The tenure position reflected in this Determination represents a compromise that has been agreed between the parties for the purposes of settlement. The Applicant and the State agree that the Determination Area (including the Native Title Land and the area where native title does not exist) was Ngadjuri country at sovereignty.
- G. The parties acknowledge that, when this Determination takes effect, the members of the native title claim group described below, in accordance with the traditional laws acknowledged and the traditional customs observed by them, will be recognised as the Native Title Holders for the Native Title Land.
- H. The Applicant and the State are currently undertaking negotiations with respect to a potential agreement to be made pursuant to Section 47C(1)(b) of the NTA over the parcels described in Schedule 4 Part B. Pursuant to Section 13(5)(c) of the NTA the Applicant and the State will seek to revise this determination upon any such agreement being finalised.

Being satisfied that a determination in the terms sought by the parties would be within the power of the Court and it appearing to the Court appropriate to do so:

THE COURT ORDERS THAT:

1. There be a Determination of native title in the Determination Area in the terms set out at paragraphs 6 to 19 below.
2. The Determination take effect upon the ILUA being registered on the Register of Indigenous Land Use Agreements.
3. In the event that the ILUA is not registered on the Register of Indigenous Land Use Agreements within eight (8) months from the date of this order, or such later time as the Court may order, the matter is to be listed for further directions.
4. The Applicant (prior to the Determination taking effect) or the Prescribed Body Corporate (after the Determination takes effect), the State and any other respondent have liberty to apply on 14 days' notice to a single judge of the Court:



- (a) If that party considers that the ILUA will not be registered on the Register of Indigenous Land Use Agreements within 8 months of the date of this order;
 - (b) To establish the precise location and boundaries of any Public Works and adjacent land and waters referred to in items 2 or 3 of Schedule 5;
 - (c) To determine the effect on native title rights and interests of any Public Works as referred to in item 3 of Schedule 5.
5. Each party to the proceeding is to bear its own costs.

THE COURT DETERMINES THAT:

Interpretation

6. In this Determination, including its schedules:
- (a) unless the contrary intention appears, the words and expressions used have the same meaning as they are given in Part 15 of the NTA;
 - (b) **Native Title Land** means the land and waters referred to in paragraph 8 of these orders; and
 - (c) in the event of an inconsistency between a written description of an area in a schedule and the depiction of that area on the maps in Schedule 2, the written description shall prevail.

Determination Area

7. Schedule 1 describes the external boundaries of the Determination Area.

Areas within Determination Area where native title exists (Native Title Land)

8. Subject to Schedule 5, native title exists in the land and waters described in Schedules 3, 4 and 6.
9. Section 47B of the NTA apply to those parcels or parts of parcels described in part A of Schedule 4. Save for public works described in items 2, 3 and 4 of Schedule 5 the extinguishment of native title rights and interests over those areas prior to 10 April 1996 is disregarded and native title exists in those parcels or parts of parcels.

Areas within Determination Area where native title does not exist



10. Pursuant to section 225 of the NTA, native title does not exist in relation to all of the land and waters comprised in those areas described in Schedule 5.
11. Native title is extinguished in the area described in Schedule 6, being an area in respect of which native title is surrendered pursuant to the ILUA.

Native Title Holders

12. Under the traditional laws and customs of the Ngadjuri Nation the Native Title Holders are those living Aboriginal people who are the descendants (including by adoption, as defined below) of the following apical ancestors:

- (i) Fanny Winnininnie and her spouse Gudjari;
- (ii) Richard (Dick) Warrior;
- (iii) The un-named mother of Ned Edwards;
- (iv) The un-named mother of the Armstrong siblings;
- (v) The un-named mother of Alice Morris;
- (vi) The un-named mother of William John Miller and Amelia Miller;
- (vii) Eliza McGrath, antecedent of the McGrath family.

and who identify as Ngadjuri and are recognised by the other Native Title Holders under those traditional laws and customs as having rights and interests in the Determination Area (collectively, **Native Title Holders**).

In the foregoing, the words 'including by adoption' are intended to include as Native Title Holders:

- (a) those Aboriginal persons, who were or are raised as children and as part of the families of any of the apical ancestors or their biological descendants; and
- (b) descendants of the Aboriginal persons described in (a) above.

Rights and Interests

13. Subject to paragraphs 14, 15 and 16, the nature and extent of the native title rights and interests in the Native Title Land are the non-exclusive rights to use and enjoy those lands and waters, being:
 - (a) The right to access and move about;
 - (b) The right to live, to camp and to erect shelters;
 - (c) The right to hunt and fish;



- (d) The right to gather and use the natural resources such as food, plants, timber, resin, ochre and soil;
- (e) The right to cook and to light fires for cooking and camping purposes;
- (f) The right to use the natural water resources, subject to the *Landscape South Australia Act 2019 (SA)*;
- (g) The right to distribute, trade or exchange the natural resources;
- (h) The right to conduct ceremonies and hold meetings;
- (i) The right to engage and participate in cultural activities including those relating to births and deaths;
- (j) The right to carry out and maintain burials of deceased native title holders and of their ancestors;
- (k) The right to teach on the Native Title Land the physical and spiritual attributes of locations and sites;
- (l) The right to visit, maintain and preserve sites and places of cultural or spiritual significance to Native Title Holders under their traditional laws and customs;
- (m) the right to be accompanied on the land and waters by those people who, though not Ngadjuri persons, are
 - (i) spouses of Ngadjuri persons; or
 - (ii) people required by the traditional laws and customs for the performance of ceremonies or cultural activities.

General Limitations

- 14. The native title rights and interests set out at paragraph 13 are for personal, domestic and communal use but do not include the right to trade in, or the commercial use of, the Native Title Land or the resources from it.
- 15. The native title rights and interests described in paragraph 13 do not confer possession, occupation, use and enjoyment of the land and waters on the Native Title Holders to the exclusion of others.
- 16. The native title rights and interests set out at paragraph 13 are subject to and exercisable in accordance with:
 - (a) the traditional laws and customs of the Native Title Holders; and



- (b) the valid laws of the State and Commonwealth, including the common law.

Other Interests and Relationship with Native Title

17. The nature and extent of other interests in the Native Title Land are:

- (a) the interests of the Crown in right of the State of South Australia;
- (b) the interests of the Commonwealth of Australia, if any;
- (c) in relation to reserves as defined in the *National Parks and Wildlife Act 1972* (SA):
- (i) the rights and interests of the Crown in right of the State of South Australia pursuant to the *National Parks and Wildlife Act 1972* (SA);
and
- (ii) the rights and interests of the public to use and enjoy those reserves consistent with the *National Parks and Wildlife Act 1972* (SA);
- (d) interests of persons to whom valid or validated rights and interests have been granted or recognised by the Crown in right of the State of South Australia or by the Commonwealth of Australia pursuant to statute or otherwise in the exercise of executive power including, but not limited to, rights and interests granted or recognised pursuant to the *Crown Land Management Act 2009* (SA), *Crown Lands Act 1929* (SA), *Native Vegetation Act 1991* (SA), *Fisheries Management Act 2007* (SA), *Landscape South Australia Act 2019* (SA), *Mining Act 1971* (SA), and *Petroleum and Geothermal Energy Act 2000* (SA), all as amended from time to time;
- (e) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth;
- (f) the rights 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 where such access would be permitted to private land;
- (g) the rights and interests of all parties to the ILUA;



- (h) the rights and interests of Telstra Corporation Limited (ACN 051 775 556) and Amplitel Pty Ltd as trustee of the Towers Business Operating Trust (ABN 75 357 171 746):
- (i) as the owners or operators of telecommunications facilities within the Native Title Land;
 - (ii) 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:
 - A. to inspect land;
 - B. to install, occupy and operate telecommunications facilities; and
 - C. to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities;
 - (iii) for their employees, agents or contractors to access their telecommunications facilities in and in the vicinity of the Native Title Land in performance of their duties; and
 - (iv) under any lease, licence, permit, access agreement or easement relating to their telecommunications facilities within the Native Title Land;
- (i) the rights and interests of Havilah Resources Ltd, Clare Quarry Pty Ltd, Mantina Earthmovers & Construction, Mantina Investments Pty Ltd, and Trenel Pty Ltd:
- (i) for the employees, agents or contractors of the above named entities to enter the Determination Area to access their respective rights and interests and to do all things necessary to exercise those rights and interests in the vicinity of the Determination Area in performance of their duties.
- (j) the rights and interests of Magnetite Mines Ltd (formerly Royal Resources Ltd) and its related entities and successors in title from time to time in the mineral tenements listed below:



- (i) as the holder of exploration licence number 5902, 6037, 6126, 6127, 6353, 6788 and 6878 and as applicant for exploration licence application number 2020/00132 granted or applied for pursuant to the *Mining Act 1971* (SA) and any subsequent licence,
- for the employees, agents or contractors of the above named entities to enter the Determination Area to access their respective rights and interests and to do all things necessary to exercise those rights and interests in the vicinity of the Determination Area in performance of their duties.
- (k) The rights and interests of Epic Energy South Australia Pty Ltd (formerly Tenneco Gas South Australia Pty Ltd) (**Epic**):
- (i) as:
- A. holder of Pipeline Licence No. 1 (PL1) issued pursuant to the *Petroleum Act 1940* (SA) on 12 March 1969 and renewed on 27 March 1990 pursuant to the *Petroleum Act 1940* (SA) and continuing in force by the operation of clause 2 of the Schedule to the *Petroleum and Geothermal Energy Act 2000* (SA); and
- B. owner of the pipeline the subject thereof by virtue of having been a purchaser of the pipeline (as purchaser is defined in section 16 of the *Natural Gas Authority Act 1967* (SA) as amended by the *Pipelines Authority (Sale of Pipelines) Amendment Act 1995* (SA) (**Sale Legislation**) from the former Pipeline Authority of South Australia (PASA, now the Natural Gas Authority of South Australia (NGASA)) pursuant to a Sale Agreement dated 30 June 1995 under the Sale Legislation;
- (ii) where the licensed pipeline was established pursuant to the *Natural Gas Authority Act 1967* (SA) and is located within a statutory easement established by section 9 of the Sale Legislation and s 28 of the Sale Legislation provides:
- A. “The creation of the statutory easement under this Act, or the grant of a pipeline lease, does not affect any native title that may exist in the land to which the easement or lease relates;



- B. The statutory easement or a pipeline lease under this Act does not derogate from pre-existing rights of Aboriginal people to enter, travel across or stay on land subject to the easement or lease”;
- (iii) the statutory easement entitles Epic, inter alia, to install, maintain and operate the pipeline and to carry out authorised purposes including the installation, operation, inspection, extension, alteration, repair and removal of the pipeline or associated equipment and the carrying out of maintenance work on the pipeline or associated equipment;
 - (iv) for Epic, its employees, agents and contractors (or any of them) to enter the Determination Area to access Epic’s rights and interests and to do all things necessary to exercise those rights and interests and perform all obligations in the vicinity of the Determination Area in performance of their duties;
- (l) the rights, interests and entitlements of SA Power Networks (a partnership of Spark Infrastructure SA (No.1) Pty Ltd, Spark Infrastructure SA (No.2) Pty Ltd, Spark Infrastructure SA (No.3) Pty Ltd, CKI Utilities Development Limited and PAI Utilities Development Limited) and its related and successor entities, including its rights, interests and entitlements:
- (i) to exercise its entitlements and discharge its obligations as the owner and/or operator of electricity infrastructure (as defined in the *Electricity Act 1996 (SA)*) (**Electricity Act**) and telecommunications facilities and infrastructure within the Native Title Land including but not limited to the existing infrastructure identified in Schedule 7 (**Existing Infrastructure**);
 - (ii) to exercise its entitlements and discharge its obligations as the holder of a licence under the Electricity Act and/or as an electricity entity under the Electricity Act;
 - (iii) to exercise its entitlements and discharge its obligations as the holder of a carrier licence under the *Telecommunications Act 1997 (Cth)*;



- (iv) to install new electricity and telecommunications infrastructure on the Native Title Land (**New Infrastructure**) and modify, maintain and repair Existing Infrastructure;
 - (v) under easements, leases or licences (whether registered, unregistered, statutory or otherwise) relating to Existing Infrastructure or New Infrastructure on the Native Title Land including but not limited to the easements identified in Schedule 7 (**Easements**);
 - (vi) to provide its employees, agents or contractors with access to Existing Infrastructure, New Infrastructure and the Easements on the Native Title Land; and
 - (vii) to the extent permitted by law, to restrain any person from performing any act, or compel any person to perform any act, for the purposes of ensuring that SA Power Networks complies with its obligations under any law, including, but not limited to, excluding any person from entering an area containing Existing Infrastructure or New Infrastructure for the purposes of maintaining the safety of any person and the security and protection of such infrastructure;
- (m) the rights and interests of each of The Barossa Council, The District Council of Orroroo/Carrieton, The District Council of Peterborough, Clare and Gilbert Valleys Council, Light Regional Council, Regional Council of Goyder, Port Pirie Regional Council, Wakefield Regional Council, Mid Murray Council, Northern Areas Council in their relevant local government areas in the Native Title Land:
- (i) under the *Local Government Act 1934 (SA)* and the *Local Government Act 1999 (SA)*;
 - (ii) as an entity exercising statutory powers in respect of land and waters within the Native Title Land; and
 - (iii) in relation to dedicated land placed under its care, control and management pursuant to the *Crown Lands Act 1929 (SA)* or the *Crown Land Management Act 2009 (SA)*.



18. The relationship between the native title rights and interests in the Native Title Land that are described in paragraph 13 and the other rights and interests that are described in paragraph 17 (the **Other Interests**) is that:
- (a) to the extent that any of the Other Interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title rights and interests continue to exist in their entirety, but the native title rights and interests have no effect in relation to the Other Interests to the extent of the inconsistency during the currency of the Other Interests;
 - (b) the existence and exercise of the native title rights and interests do not prevent the doing of any activity required or permitted to be done by or under the Other Interests, and the Other Interests, and the doing of any activity required or permitted to be done by or under the Other Interests, prevail over the native title rights and interests and any exercise of the native title rights and interests, but, subject to any application of the NTA or the *Native Title (South Australia) Act 1994* (SA), do not extinguish them.
19. For the avoidance of doubt, the relationship between the Aboriginal-held interests listed in Schedule 4 and the native title rights and interests in the Determination Area that are described in paragraph 13 is governed by the non-extinguishment principle as defined in section 238 of the Native Title Act.

AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:

20. The native title is not to be held on trust.
21. The Ngadjuri Nation Aboriginal Corporation ICN 7713 is to:
- (a) be the prescribed body corporate for the purposes of section 57(2) of the NTA;
and
 - (b) perform the functions mentioned in section 57(3) of the NTA after becoming the registered native title body corporate in relation to the Native Title Land.



Date that entry is stamped: **6 July 2023**

Sia Lagos
Registrar



Schedule

No: SAD84/2022

Federal Court of Australia

District Registry: South Australia

Division: General

Applicant	JOSIE AGIUS
Applicant	QUENTIN AGIUS
Respondent	AMPLITEL PTY LTD AS TRUSTEE OF THE TOWERS BUSINESS OPERATING TRUST (ABN 75 357 171 746)
Respondent	REGIONAL COUNCIL OF GOYDER
Respondent	EPIC ENERGY SOUTH AUSTRALIA PTY LTD
Respondent	AJ & PA MCBRIDE LIMITED
Respondent	SA POWER NETWORKS (FORMERLY KNOWN AS ETSA UTILITIES)
Respondent	THE DISTRICT COUNCIL OF PETERBOROUGH
Respondent	THE DISTRICT COUNCIL OF ORROROO/ CARRIETON
Respondent	CLARE & GILBERT VALLEYS COUNCIL
Respondent	THE BAROSSA COUNCIL
Respondent	WORTHING PROPERTIES PTY LTD
Respondent	TRENEL PTY LTD ACN 008 282 880
Respondent	CLARE QUARRY PTY LTD ACN 008 052 846
Respondent	YVONNE DIXON SCHMIDT
Respondent	TELSTRA CORPORATION LIMITED
Respondent	LIGHT REGIONAL COUNCIL
Respondent	WAKEFIELD REGIONAL COUNCIL
Respondent	PORT PIRIE REGIONAL COUNCIL
Respondent	MID MURRAY COUNCIL



Respondent	NORTHERN AREAS COUNCIL
Respondent	MAGNETITE MINES LIMITED
Respondent	HAVILAH RESOURCES NL
Respondent	FARAWAY BRAEMER PASTORAL CO PTY LTD
Respondent	THE MUTOOROO PASTORAL CO PTY LTD
Respondent	MANTINA EARTHMOVERS & CONSTRUCTION PTY LTD ACN 007 820 886
Respondent	MANTINA INVESTMENTS PTY LTD ACN 110 431 386
Respondent	TREVOR ROBERT SCHMIDT