



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NSD2300/2011
NNTT Number: NCD2018/001

Determination Name: [Western Bundjalung People v Attorney General of New South Wales](#)

Date(s) of Effect: 4/05/2021

Determination Outcome: Native title exists in parts of the determination area

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

Determination Date: 27/06/2018

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Order 2 of the determination provided that 'The Part B Determination shall take effect upon the date on which the later of the agreements described in paragraphs 1 and 2 in Schedule Three of the Part B Determination is registered on the Register of Indigenous Land Use Agreements, pursuant to the *Native Title Act 1993* (Cth).'

The later of the agreements described in paragraphs 1 and 2 in Schedule Three of the Part B Determination was registered on the Register of Indigenous Land Use Agreements on 4 May 2021, therefore this determination came into effect on 4 May 2021.

REGISTERED NATIVE TITLE BODY CORPORATE:

Ngullingah Jugun (Our Country) Aboriginal Corporation RNTBC
Trustee Body Corporate
PO Box 325
Casino New South Wales 2470

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

COMMON LAW HOLDER(S) OF NATIVE TITLE:

Native title holders

5. Native title in relation to the Part B Native Title Area is held by the Western Bundjalung People who comprise all the descendants of the following apical ancestors:

- (a) Herbert 'Hunter' Avery (who was born in Grafton circa 1881),
- (b) King Bobby (who was born circa 1840s),
- (c) Queen Jinny Little (who was born in Yugalbar in 1840),
- (d) Richard 'Old Dick' Donnelly (who was born in Timbarra circa 1870),
- (e) Jane 'Jenny' 'Barbin Boatshed' Brown (who was born in Baryulgil circa 1855),
- (f) Thomas 'Tom' Donnelly (who was born in Tenterfield circa 1877),
- (g) Thomas Gordon (who was born in Copmanhurst in 1870),
- (h) Ethel Bawden (who was born in Yugalbarin 1884),
- (i) Grace Kelly also known as Grace Lardner (who was born on the Orara River circa 1876),
- (j) Mariah Little (who was born in Baryulgil circa 1855),
- (k) William 'Billy' 'Charles' Charles (who was born circa 1860),
- (l) Harry Joseph Mundine (who was born in Tabulam in 1868),
- (m) Teresa Agnes 'Ponjam' Derry (who was born in Tabulam in 1872),
- (n) Mick 'Bucky' Robinson (who was born in Timbarra/Tenterfield circa 1859),
- (o) Kate Gatton (who was born circa 1870),
- (p) Matilda 'Tilly' Gatton (who was born in Yugalbar in 1879),
- (q) Harry Walker (who was born circa 1850),
- (r) Jenny 'Ginny' Pearson (who was born circa 1860),
- (s) Alice Tindal also known as Alice Brown (who was born in Lionsville circa 1870), and
- (t) William Pearson (who was born in Gordon Brook in 1872),

and persons adopted or incorporated into the families of those persons and who identify as, and are accepted as, Western Bundjalung People in accordance with Western Bundjalung traditional laws and customs (and the biological descendants of those adopted or incorporated persons).

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. There be a determination of native title in the terms set out below (the "Part B Determination").
2. The Part B Determination shall take effect upon the date on which the later of the agreements described in paragraphs 1 and 2 in Schedule Three of the Part B Determination is registered on the Register of Indigenous Land Use Agreements, pursuant to the *Native Title Act 1993* (Cth).
3. In the event that the agreements referred to in paragraph 2 above are not registered on the Register of Indigenous Land Use Agreements within 12 months of the date of the Part B Consent Determination, or at such later time as this Court may order, the matter is to be listed before the Court for further directions.
4. The Applicant or the Attorney General have liberty to apply on 14 days' notice to the Court if either party considers it unlikely that the Western Bundjalung Settlement ILUA will be:
 - (a) varied to incorporate the relevant land and waters in Part 3 of Schedule One of the Part B Determination; or
 - (b) registered on the Register of Indigenous Land Use Agreements within 12 months of the date of this Order.
5. On the Part B Determination taking effect, Ngullingah Jugun (Our Country) Aboriginal Corporation ICN 8672 shall hold the determined native title in trust for the common law holders pursuant to section 56(3) of the *Native Title Act 1993* (Cth) and is to:

(a) be the prescribed body corporate for the purposes of section 57(1) of the *Native Title Act 1993* (Cth); and

(b) perform the functions set out in section 57(1) of the *Native Title Act 1993* (Cth) and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

THE COURT DETERMINES THAT:

1. Native title exists in the Part B Native Title Area described in Schedule One and depicted in the maps at Annexure A.
2. Native title is extinguished in the Part B Extinguished Area described in Schedule Two and depicted in the maps at Annexure A.
3. To the extent of any inconsistency between the written description in Schedules One and Two and the respective maps at Annexure A to this Part B Determination, the written description prevails.
4. Schedule One is to be read subject to Schedule Two.

Native title holders

5. Native title in relation to the Part B Native Title Area is held by the Western Bundjalung People who comprise all the descendants of the following apical ancestors:

- (a) Herbert 'Hunter' Avery (who was born in Grafton circa 1881),
- (b) King Bobby (who was born circa 1840s),
- (c) Queen Jinny Little (who was born in Yugilbar in 1840),
- (d) Richard 'Old Dick' Donnelly (who was born in Timbarra circa 1870),
- (e) Jane 'Jenny' 'Barbin Boatshed' Brown (who was born in Baryulgil circa 1855),
- (f) Thomas 'Tom' Donnelly (who was born in Tenterfield circa 1877),
- (g) Thomas Gordon (who was born in Copmanhurst in 1870),
- (h) Ethel Bawden (who was born in Yugilbar in 1884),
- (i) Grace Kelly also known as Grace Lardner (who was born on the Orara River circa 1876),
- (j) Mariah Little (who was born in Baryulgil circa 1855),
- (k) William 'Billy' 'Charles' Charles (who was born circa 1860),
- (l) Harry Joseph Mundine (who was born in Tabulam in 1868),
- (m) Teresa Agnes 'Ponjam' Derry (who was born in Tabulam in 1872),
- (n) Mick 'Bucky' Robinson (who was born in Timbarra/Tenterfield circa 1859),
- (o) Kate Gaton (who was born circa 1870),
- (p) Matilda 'Tilly' Gaton (who was born in Yugilbar in 1879),
- (q) Harry Walker (who was born circa 1850),
- (r) Jenny 'Ginny' Pearson (who was born circa 1860),
- (s) Alice Tindal also known as Alice Brown (who was born in Lionsville circa 1870), and
- (t) William Pearson (who was born in Gordon Brook in 1872),

and persons adopted or incorporated into the families of those persons and who identify as, and are accepted as, Western Bundjalung People in accordance with Western Bundjalung traditional laws and customs (and the biological descendants of those adopted or incorporated persons).

Nature and Extent of Non-Exclusive Native Title Rights and Interests

6. Subject to paragraphs 8 and 9, the nature and extent of the native title rights and interests in relation to the Part B Native Title Area are the non-exclusive native title rights to:

- (a) enter, traverse across and remain on the land;
- (b) camp on, erect shelters and live but not to permanently camp on, possess or occupy the land;
- (c) take and use the water for personal, domestic, communal purposes (including cultural purposes) but not extending to a right to control the use and flow of the water in any rivers or lakes;
- (d) gather and use the traditional natural resources (other than water) including food, medicinal plants, timber, stone, charcoal, ochre and resin as well as materials for fabricating tools and hunting implements, and making artwork and musical instruments;
- (e) hunt;
- (f) fish;
- (g) light fires for domestic purposes, but not for the clearance of vegetation;
- (h) engage in cultural activities including:
 - (i) visiting places of cultural or spiritual importance and protecting those places by carrying out lawful activities to preserve their physical or spiritual integrity;
 - (ii) conducting and participating in ceremonies and rituals including in relation to birth and death;
 - (iii) holding cultural gatherings; and
 - (iv) passing on knowledge about the physical and spiritual attributes of places of importance; and
- (i) be accompanied by persons who, though not Native Title Holders, are:
 - (i) spouses, partners or parents of Native Title Holders, together with their children and grandchildren;
 - (ii) people whose presence is required under traditional laws and customs for the performance of cultural activities, practices or ceremonies; and
 - (iii) people requested by the Native Title Holders to assist in, observe or record cultural activities, practices or ceremonies.

General qualifications on native title rights and interests

7. Native title does not exist in:

- (a) minerals as defined in the *Mining Act 1992* (NSW) and the *Mining Regulation 2010* (NSW); and
- (b) petroleum as defined in the *Petroleum (Onshore) Act 1991* (NSW) and the *Petroleum (Submerged Lands) Act 1982* (NSW).

8. The native title rights and interests described in paragraph 6 do not confer:

- (a) any right of possession, occupation, use and enjoyment of the land or waters in the Part B Native Title Area to the exclusion of all others;
- (b) any right to control public access to or use the land or waters in the Part B Native Title Area.

9. The native title rights and interests in relation to the land or waters in the Part B Native Title Area are subject to and exercisable in accordance with:

- (a) the laws of the State of New South Wales and of 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 Schedule Three.

The nature and extent of any Other Interests

10. The Other Interests in relation to the Part B Native Title Area are described in Schedule Four.

Relationship between native title rights and interests and Other Interests

11. Subject to paragraphs 12 and 13, and except as otherwise provided by law, the relationship between the native title rights and interests in relation to land or waters in the Part B Native Title Area and the Other Interests, described in Schedule Four, in relation to those areas is that:

- (a) the Other Interests continue to have effect;
- (b) the Other Interests co-exist with the native title rights and interests;
- (c) the Native Title Holders do not have the right to control access to or the use of the land or waters by the holders of the Other Interest; and
- (d) to the extent of any inconsistency, the Other Interests and any activity that is required or permitted by or under the exercise of a right conferred or held under the Other Interests, while they are in existence, prevail over but do not extinguish the native title rights and interests and any exercise of those native title rights and interests.

12. The relationship between the native title rights and interests in relation to the land or waters described in Part 2 of Schedule One (land or waters to which section 47A of the *Native Title Act 1993* (Cth) applies) and the Other Interests described at item 1(b) of Schedule Four is that:

- (a) the Other Interests continue to have effect;
- (b) the non-extinguishment principle in section 238 of the *Native Title Act 1993* (Cth) applies to the grant or vesting of the Other Interests or any prior interest in relation to the area in accordance with section 47A(3)(b) of the *Native Title Act 1993* (Cth);
- (c) the native title rights and interests continue to exist in their entirety, but have no effect in relation to the Other Interests;
- (d) the Other Interests, and any activity that is required or permitted by or under and done in accordance with the Other Interests, may be exercised and enjoyed in their entirety notwithstanding the existence of the native title rights and interests;
- (e) the native title rights and interests may not be exercised on land or waters the subject of the Other Interests while those Other Interests exist;
- (f) if the Other Interests or its effects are wholly removed or otherwise wholly cease to operate the native title rights and interests again have full effect; and
- (g) if the Other Interests or its effects are removed to an extent or otherwise cease to operate only to an extent, the native title rights and interests again have effect to that extent.

13. The relationship between the native title rights and interests in Lot 409 DP 48826 (ID2965) and any land or waters which are transferred to an Aboriginal Land Council under the *Aboriginal Land Rights Act 1983* (NSW) after the date of the Part B Determination as a result of a claim lodged under that Act on or after 28 November 1994 and the Other Interests described in Item (1)(c) of Schedule Four is that:

- (a) pursuant to section 36(9) of the *Aboriginal Land Rights Act 1983* (NSW), the Other Interests referred to in this paragraph shall be subject to any native title rights and interests existing in relation to the land or waters immediately before the transfer; and
- (b) the land or waters may only be dealt with by the Aboriginal Land Council in accordance with the *Aboriginal Land Rights Act 1983* (NSW) and the *Native Title Act 1993* (Cth).

14. Pursuant to section 47B of the *Native Title Act 1993* (Cth) any extinguishment effected by the creation of prior interests within those areas described in Part 3 of Schedule One is to be disregarded.

DEFINITIONS

15. In this Part B Determination, unless the contrary intention appears:

'Aboriginal Land Council' means New South Wales Aboriginal Land Council and any Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983* (NSW) for a Local Aboriginal Land Council area, within the meaning of that Act, that is within the Part B Native Title Area, and includes, Grafton Ngerrie Local Aboriginal Land Council and Jana Ngalee Local Aboriginal Land Council.

'external boundary of the Application' means the external boundary of the native title determination application filed by the Western Bundjalung people in Federal Court of Australia proceeding NSD 2300 of 2011, taking into

account the Part A Determination and section 64(1B) of the *Native Title Act 1993* (Cth).

'**land**' has the same meaning as in the *Native Title Act 1993* (Cth).

'**laws of the State of New South Wales and of the Commonwealth**' include statutes, regulations and other subordinate legislation, and the common law.

'**Native Title Holders**' means the persons described in paragraph 5.

'**native title rights and interests**' means the rights and interests described in paragraph 6.

'**Ngullingah Jugun (Our Country) Aboriginal Corporation**' means Ngullingah Jugun (Our Country) Aboriginal Corporation ICN 8672 incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

'**Other Interests**' means the rights and interests described in Schedule Four.

'**Part B Determination Area**' means the Part B Native Title Area together with the Part B Extinguished Area

'**Part B Extinguished Area**' means the land or waters described in Schedule Two.

'**Part B Native Title Area**' means the land or waters described in Schedule One.

'**waters**' has the same meaning as in the *Native Title Act 1993* (Cth).

'**Western Bundjalung People**' has the same meaning as Native Title Holders.

'**Western Bundjalung Settlement ILUA**' means the Indigenous Land Use Agreement under section 24CA of the *Native Title Act 1993* referred to at paragraph 1 of Schedule Three.

16. If a word or expression is not defined in these orders or this Part B Determination, but is defined in the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* (NSW), then it has the meaning given to it in the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* (NSW), whichever is relevant.

REGISTER ATTACHMENTS:

1. NCD2018/001 Schedule One - Part B Native Title Area, 3 pages - A4, 27/06/2018
2. NCD2018/001 Schedule Two - Part B Extinguished Area, 3 pages - A4, 27/06/2018
3. NCD2018/001 Schedule Three - Agreements, 1 page - A4, 27/06/2018
4. NCD2018/001 Schedule Four - Other Interests In The Part B Native Title Area, 3 pages - A4, 27/06/2018
5. NCD2018/001 Annexure A - Maps of the Determination Area, 3 pages - A4, 27/06/2018

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.