



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NSD1213/2018; NSD1174/2013
NNTT Number: NCD2022/001

Determination Name: [Widjabul Wia-Bal v Attorney-General of New South Wales \(Section 87 Agreement\)](#)

Date(s) of Effect: 19/04/2023

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: 19/12/2022

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Widjabul Wia-bal Gurrumbil Aboriginal Corporation
Trustee Body Corporate
c/- NTSCORP Limited
Unit 1A, Suite 2.02
44-70 Rosehill Street
REDFERN New South Wales 2016

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

12. Native title in relation to the native title area is held by Widjabul Wia-bal who comprise all the descendants of the following apical ancestors:

- (a) Bob de Bobbin (also known as Bob Deruhbin), died 1912 at Lismore;
- (b) Topsy Brown (also known as Topsy Larken), born 1849, died 1919 at Dunoon;

- (c) Johnny Bob (also known as Bob Roberts), born circa 1820;
- (d) William "Billy" King, born 1878 at Lismore;
- (e) George Williams, born 1870;
- (f) Kitty Barry, born 1841, died 1911 at Blakebrook; and
- (g) John "Jack" Kapeen (also known as John "Jack" Capeen), born circa 1860;

including persons adopted or incorporated into the families of those persons and who identify as, and are accepted as, Widjabul Wia-bal in accordance with Widjabul Wia-bal traditional laws and customs (and the biological descendants of those adopted or incorporated persons).

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. To the extent necessary under section 84D(4)(b) of the *Native Title Act 1993* (Cth), there be a determination of native title in the terms proposed in these orders despite any actual or arguable defect in the authorisation of the Applicant seeking a proposed determination of native title by agreement pursuant to section 87 of the *Native Title Act 1993* (Cth).

BY AGREEMENT THE COURT ORDERS THAT:

- 2. There be a determination of native title in the terms set out below.
- 3. The determination of native title takes effect upon the date on which the agreement referred to in paragraph 1 of Schedule Four (agreements) is registered on the Register of Indigenous Land Use Agreements, pursuant to section 199B of the *Native Title Act 1993* (Cth).
- 4. In the event that the agreement referred to in Order 3 above is not registered on the Register of Indigenous Land Use Agreements on or before 18 December 2025, or at such later time as this Court may order, the matter is to be listed before the Court for a case management hearing.
- 5. On the determination of native title taking effect, Widjabul Wia-bal Gurrumbil Aboriginal Corporation, ICN 9856 is to 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).

BY AGREEMENT THE COURT DETERMINES THAT:

- 7. Native title exists in relation to the native title area described in Schedule One (native title area) and depicted in the maps at Part 1.7 (maps of the native title area) of Schedule One to this determination of native title.
- 8. Any extinguishment of native title in relation to the land or waters described in Part 1.5 (land or waters to which section 47A of the *Native Title Act 1993* (Cth) applies) of Schedule One (native title area) is to be disregarded in accordance with section 47A(2) of the *Native Title Act 1993* (Cth) with the effect that native title is determined to exist in relation to that land or waters.
- 9. Any extinguishment of native title in relation to the land or waters described in Part 1.6 (land or waters to which section 47B of the *Native Title Act 1993* (Cth) applies) of Schedule One (native title area) is to be disregarded in accordance with section 47B(2) of the *Native Title Act 1993* (Cth) with the effect that native title is determined to exist in relation to those areas.
- 10. Native title has been extinguished in relation to the extinguished area, described in Schedule Two (extinguished area) and depicted on the maps at Part 2.7 (maps of extinguished areas) of Schedule Two to this determination of native title, being subject to a previous exclusive possession act attributable to the State in accordance with section 20 of the *Native Title (New South Wales) Act 1994* (NSW) and to which none of sections 47A, 47B or 47C of the *Native Title Act 1993* (Cth) apply.

11. To the extent of any inconsistency between the written description in Schedule One (native title area) and Schedule Two (extinguished area) and the maps in either Schedule, the written description prevails.

Native Title Holders

12. Native title in relation to the native title area is held by Widjabul Wia-bal who comprise all the descendants of the following apical ancestors:

- (a) Bob de Bobbin (also known as Bob Deruhbin), died 1912 at Lismore;
- (b) Topsy Brown (also known as Topsy Larken), born 1849, died 1919 at Dunoon;
- (c) Johnny Bob (also known as Bob Roberts), born circa 1820;
- (d) William "Billy" King, born 1878 at Lismore;
- (e) George Williams, born 1870;
- (f) Kitty Barry, born 1841, died 1911 at Blakebrook; and
- (g) John "Jack" Kapeen (also known as John "Jack" Capeen), born circa 1860;

including persons adopted or incorporated into the families of those persons and who identify as, and are accepted as, Widjabul Wia-bal in accordance with Widjabul Wia-bal traditional laws and customs (and the biological descendants of those adopted or incorporated persons).

Nature and Extent of Native Title Rights and Interests in the Native Title Area

13. Subject to paragraphs 14, 15 and 16, the nature and extent of the native title rights and interests in relation to the native title area are the following non-exclusive native title rights:

- (a) the right to access, move about on and traverse;
- (b) the right to camp and erect temporary shelters and other structures but not to permanently camp on, possess or occupy;
- (c) the right to live, being to enter and remain;
- (d) the right to hunt for non-commercial personal, domestic, communal and cultural purposes;
- (e) the right to fish for non-commercial personal, domestic, communal and cultural purposes;
- (f) the right to have access to and use the natural water resources for non-commercial personal, domestic, communal and cultural purposes;
- (g) the right to gather and use the natural resources for non-commercial personal, domestic, communal and cultural purposes;
- (h) the right to share and exchange the natural resources for non-commercial personal, domestic, communal and cultural purposes;
- (i) the right to share and exchange the natural resources with nearby native title groups for personal, domestic, communal and cultural purposes;
- (j) the right to conduct and participate in ceremonial, ritual and spiritual activities;
- (k) the right to maintain and protect places of importance under traditional laws and customs;
- (l) the right to transmit traditional knowledge to members of the native title claim group including knowledge of particular sites; and
- (m) the right to hold meetings.

Note: These rights include rights and interests incidental to the native title rights as expressed. For the removal of doubt, rights (i) and (l) may, where appropriate, be exercised outside the native title area.

General Qualifications on Native Title Rights and Interests

14. Native title does not exist in:

- (a) minerals as defined in the *Mining Act 1992* (NSW) and the *Mining Regulation 2016* (NSW); and
 - (b) petroleum as defined in the *Petroleum (Onshore) Act 1991* (NSW) and the *Petroleum (Offshore) Act 1982* (NSW).
15. The native title rights and interests described in paragraph 13 do not confer:

- (a) any right of possession, occupation, use and enjoyment of the land or waters in the native title area to the exclusion of all others; and
- (b) any right to control public access to or use the land or waters in the native title area.

16. The native title rights and interests in relation to the land or waters in the 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 Widjabul Wia-bal; and
- (c) the terms and conditions of the agreements referred to in Schedule Four (agreements).

The Nature and Extent of Any Other Interests

17. The other interests in relation to the native title area are described in Schedule Five (other interests in the native title area).

Relationship between Native Title Rights and Interests and Other Interests

18. Subject to paragraphs 19, 20 and 21, and except as otherwise provided by law, the relationship between the native title rights and interests in relation to land or waters in the native title area and the other interests, described in Schedule Five (other interests in the native title area), in relation to those areas is that:

- (a) the other interests continue to have effect;
- (b) the other interests co-exist with Widjabul Wia-bal's native title;
- (c) Widjabul Wia-bal do not have the right to control access to or the use of the land or waters by the holders of the other interests; 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 native title and any exercise of those native title rights and interests.

19. The relationship between the native title rights and interests in relation to the land or waters in the native title area, being:

- (a) Part 1.1 (Crown land in the native title area) of Schedule One (native title area);
- (b) Part 1.2 (the national park estate in the native title area) of Schedule One (native title area); and
- (c) Part 1.3 (State forests in the native title area) of Schedule One (native title area);

and

(d) the Aboriginal Land Council interests set out at Item 1(a) of Schedule Five (other interests in the native title area), is that the Aboriginal Land Council interests continue to have effect.

20. The relationship between the native title rights and interests in relation to the land or waters in the native title area being:

- (a) Part 1.1 (Crown land in the native title area) of Schedule One (native title area);
- (b) Part 1.2 (the national park estate in the native title area) of Schedule One (native title area); and
- (c) Part 1.3 (State forests in the native title area) of Schedule One (native title area);

and

(d) the Aboriginal Land Council interests set out at Item 1(b) of Schedule Five (other interests in the native title area);

is that:

(e) pursuant to section 36(9) of the *Aboriginal Land Rights Act 1983* (NSW), the Aboriginal Land Council interests shall be subject to the native title rights and interests existing in relation to the land or waters in the native title area immediately before the transfer, meaning that the native title rights and interests have full effect and may be exercised; and

(f) the land or waters in the native title area 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).

21. The relationship between the native title rights and interests in relation to the land or waters described in Part 1.5 (land or waters to which section 47A of the *Native Title Act 1993* (Cth) applies) of Schedule One (native title area) and the Aboriginal Land Council Interests described at Item 1(c) of Schedule Five (other interests in the native title area) is that:

(a) the Aboriginal Land Council interests continue to have effect;

(b) the non-extinguishment principle described in section 238 of the *Native Title Act 1993* (Cth) applies to the grant or vesting of the Aboriginal Land Council interests and 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 Aboriginal Land Council interests;

(d) the Aboriginal Land Council interests, and any activity that is required or permitted by or under and done in accordance with the Aboriginal Land Council 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 Aboriginal Land Council interests while those Aboriginal Land Council interests exist;

(f) if the Aboriginal Land Council interests or their effects are wholly removed or otherwise wholly cease to operate the native title rights and interests again have full effect; and

(g) if the Aboriginal Land Council interests or their 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.

Definitions and Interpretation

22. In this approved determination of native title, unless the contrary intention appears:

Aboriginal Land Council means the New South Wales Aboriginal Land Council or 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 land and waters in the native title determination area, and includes Ngulingah Local Aboriginal Council and Jali Local Aboriginal Land Council.

Aboriginal Land Council interests means the rights and interests set out in Item 1 of Schedule Five (other interests in the native title area).

extinguished area means the land or waters described in Schedule Two (extinguished area).

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 and **native title rights and interests** means the rights and interests described in paragraph 13 of the determination.

native title area means the land or waters described in Schedule One (native title area).

native title determination application means the native title determination application filed on 24 June 2013 by the Applicant in the Federal Court and given the number NSD1213/2018, as amended.

native title determination area means the land or waters described in Schedule Three (native title determination area), being the land and waters:

(a) within the external boundary of the native title determination application, described in Part 1 (external boundaries

of the native title determination application) of Schedule Three (native title determination area) excluding:

(i) the land and waters excluded from the native title determination application on 6 July 2022, described in Part 2 (land and waters excluded from the native title determination application on 6 July 2022) of Schedule Three; and

(ii) the land and waters excluded from the native title determination application on 19 October 2022, described in Part 3 (land and waters excluded from the native title determination application on 19 October 2022) of Schedule Three.

native title holders and **Widjabul Wia-bal** means the persons described in paragraph 12 of the determination.

natural resources includes but is not limited to animals (including mammals, birds, reptiles, amphibians, insects, crustaceans, worms and fish), plants (including medicinal plants, timber and tubers), charcoal, wax, stone, ochre and resin as well as food and material for fabricating tools, hunting implements, and domestic items, and making artwork and musical instruments.

other interests means the rights and interests described in Schedule Five (other interests in the native title area).

Widjabul Wia-bal has the same meaning as native title holders.

Widjabul Wia-bal Gurrumbil Aboriginal Corporation means Widjabul Wia-bal Gurrumbil Aboriginal Corporation, ICN 9856 incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

23. If a word or expression is not defined in these orders or this determination of native title, but is defined in the *Native Title Act 1993* (Cth), the *Native Title (New South Wales) Act 1994* (NSW) or the *Interpretation Act 1987* (NSW), then it has the meaning given to it in those statutes, whichever is relevant.

REGISTER ATTACHMENTS:

1. Schedule One (Native Title Area) - Part 1, 55 pages - A4, 19/12/2022
2. Schedule One (Native Title Area) - Part 2, 34 pages - A4, 19/12/2022
3. Schedule Two (Extinguished Area), 614 pages - A4, 19/12/2022
4. Schedule Three (Native Title Determination Area), 16 pages - A4, 19/12/2022
5. Schedule Four (Agreements), 1 page - A4, 19/12/2022
6. Schedule Five (Other Interests in the Native Title Area), 10 pages - A4, 19/12/2022

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.