



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6128/1998
NNTT Number: QCD2012/011

Determination Name: [Murphy on behalf of the Jinibara People v State of Queensland](#)

Date(s) of Effect: 20/11/2012

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: 20/11/2012

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Jinibara People Aboriginal Corporation RNTBC
Agent Body Corporate
PO Box 7498
REDLAND BAY Queensland 4165

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:

2. The native title is held by the Jinibara People who are the people described in Schedule 3 (the native title holders).

SCHEDULE 3 - NATIVE TITLE HOLDERS

The native title holders for the Determination Area are the Jinibara People who are the biological descendants of the following people:

- (a) Wanambi James McKenzie (who was the father of Wangirmau Johnny McKenzie and the paternal grandfather of Gaiarbau Willie McKenzie);
- (b) Dil:l (who was the father of Jowalmel Fanny Mason, wife of Wangirmau Johnny McKenzie);
- (c) Edward Ross (who was the father of Dick Dahtell Ross); and

(d) Menvil Wanmuarn and his wife, Kitty (who was the daughter of King Sambo and Queen Beauty), who identify as and are accepted by the Jinibara People as Jinibara People according to Jinibara traditional law and custom.

MATTERS DETERMINED:

BEING SATISFIED that an order in the terms set out below is within the power of the Court, and it appearing appropriate to the Court to do so, pursuant to s 87 of the Native Title Act 1993 (Cth),

BY CONSENT THE COURT ORDERS THAT:

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

BY CONSENT THE COURT DETERMINES THAT:

1. Native title exists in relation to the determination area (the Determination Area).
2. The native title is held by the Jinibara People who are the people described in Schedule 3 (the native title holders).
3. Subject to paragraphs 5, 6 and 7, the nature and extent of the native title rights and interests in relation to the Determination Area, other than in relation to Water, are:
 - (a) in relation to that part of the Determination Area identified in Part 1 of Schedule 1, the rights to possession, occupation, use and enjoyment of the area to the exclusion of all others; and
 - (b) in relation to that part of the Determination Area identified in Part 2 of Schedule 1, the non-exclusive rights to:
 - (i) access, move about on and travel over the area;
 - (ii) camp, and live temporarily on the area as part of camping, and for that purpose build temporary shelters;
 - (iii) light fires on the area for personal and domestic purposes including cooking, but not for the purpose of hunting or clearing of vegetation;
 - (iv) fish, hunt, gather, take, keep, use, share and exchange Natural Resources from the area;
 - (v) conduct, and participate in, rituals and ceremonies on the area, including those relating to initiation, birth and death;
 - (vi) be buried and bury native title holders within the area;
 - (vii) maintain sites, objects, places and areas of significance to the native title holders under their traditional laws and customs and protect by lawful means those sites, objects, places and areas from physical harm or desecration
 - (viii) teach on the area the physical, cultural and spiritual attributes of the area;
 - (ix) hold meetings on the area; and
 - (x) be accompanied on the area by certain non-native title holders, being:
 - (A) spouses of native title holders, pursuant to the exercise of traditional laws and customs;
 - (B) people required or permitted under the traditional laws acknowledged and traditional customs observed by the native title holders for the performance of, assistance with or participation in, rituals, ceremonies or cultural activities; or
 - (C) people who have rights in relation to the area according to the traditional laws and customs of the native title holders.
4. Subject to paragraphs 5, 6 and 7, the nature and extent of native title rights and interests in relation to Water within the Determination Area are the non-exclusive rights to:
 - (a) hunt, fish, gather, take, keep, use, share and exchange Natural Resources from the Water; and
 - (b) take, use, share and exchange the Water;for personal, domestic or non-commercial (including cultural or spiritual) communal purposes.

5. The native title rights and interests are subject to and exercisable in accordance with:

(a) the Laws of the State and the Commonwealth; and

(b) the traditional laws acknowledged and the traditional customs observed by the native title holders.

6. The native title rights and interests referred to in paragraphs 3(b) and 4 do not confer possession, occupation, use or enjoyment to the exclusion of all others.

7. There are no native title rights in 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).

8. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) as at the date of this Determination of native title are set out in Schedule 4 (the Other Interests).

9. The relationship between the native title rights and interests described in paragraphs 3 and 4 and the Other Interests described in Schedule 4 as they exist at the date of this Determination of native title is that, taking into account the effect of the Native Title Act 1993 (Cth):

(a) the Other Interests co-exist with the native title rights and interests;

(b) in the event of inconsistency, the Other Interests prevail over the native title rights and interests and any exercise of the native title rights and interests, but do not extinguish them except in accordance with the law; and

(c) the existence of the native title rights and interests does not prevent the doing of any activity required or permitted to be done by, in accordance with, or under the Other Interests.

10. The native title is not held in trust.

11. The Jinibara People Aboriginal Corporation, incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth), is to:

(a) be the agent prescribed body corporate for the purpose of s 57(2) of the Native Title Act 1993 (Cth); and

(b) perform the functions set out in s 57(3) of the Native Title Act 1993 (Cth) after becoming a registered native title body corporate.

12. In this Determination, unless the contrary intention appears:

"Determination Area" means the land and waters described in Parts 1 and 2 of Schedule 1 and shown on the maps attached to Schedule 1 to the extent that the land and waters fall within the External Boundary, but does not include those areas of land and waters described in Schedule 2. To the extent of any inconsistency between the written description and the maps, the written description prevails;

"External Boundary" means the boundary described in Schedule 5;

"land" and "waters", respectively, have the meaning given by 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;

"Local Government Act" has the meaning in the Local Government Act 2009 (Qld);

"Local Government Area" has the meaning in the Local Government Act 2009 (Qld);

"Natural Resources" means:

(a) "animals" as defined in the Nature Conservation Act 1992 (Qld), and for certainty includes eggs and honey;

(b) "plants" as defined in the Nature Conservation Act 1992 (Qld), and for certainty includes wax, gum and resin; and

(c) any clays, soil including sub-soil, sand, gravel, shale, ochre, stone or rock found on or below the surface,

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).

"Protected Area" has the same meaning as in the Nature Conservation Act 1992 (Qld);

"Reserves" means reserves that are dedicated or taken to be reserves under the Land Act 1994 (Qld); and

"Water" means water as defined by the Water Act 2000 (Qld).

Other words and expressions used in this Determination have the same meaning as they have in Part 15 of the Native Title Act 1993 (Cth).

SCHEDULE 1 - DETERMINATION AREA

[See NNTR Attachment 1: "Schedule 1 - Description of Determination Area" and NNTR Attachment 2: "Schedule 1 Maps of the Determination Area"]

SCHEDULE 2 - AREAS NOT FORMING PART OF THE DETERMINATION AREA

The following areas of land and waters are wholly excluded from the Determination Area on the grounds that they have been the subject of a previous exclusive possession act, as defined in s 23B of the Native Title Act 1993 (Cth), that none of ss 47, 47A or 47B of the Native Title Act 1993 (Cth) applied to them at the time at which the Application was made and therefore, in accordance with s 61A of the Native Title Act 1993 (Cth), could not be claimed:

1. The waters situated within the area covered by any previous exclusive possession act as defined in the Native Title Act 1993 (Cth).

2. The land or waters on which any public work, as defined in s 253 of the Native Title Act 1993 (Cth), is constructed, established or situated, and to which ss 23B(7) and 23C(2) of the Native Title Act 1993 (Cth) and/or 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).

3. Specifically, the land or waters described in Item 2 above includes the whole of the land or waters described as:

(a) that part of Lot 809 on NPW751 formerly described as Lot 80 on SL6396 (the Mount Glorious VHF tower and shelter site); and

(b) areas A and B within Mount Mee State Forest as shown on the attached map labelled "Mt Mee Previous Exclusive Possession Acts (Public Works and Historical Tenure)".

4. Specifically, the land or waters described in Item 2 above include the location of the weirs referred to in Items 4(a) - 4(d) below, which are operated and owned by Queensland Bulk Water Supply Authority (trading as Seqwater) ABN 75 450 239 876:

(a) in Kilcoy Creek, Kilcoy Creek Weir as shown on the attached map labelled "S1";

(b) in Obi Obi Creek:

(i) Maleny Weir as shown on the attached map labelled "S2"; and

(ii) Kings Lane Weir aka Obi Obi Creek Weir as shown on the attached map labelled "S3";

(c) in the Stanley River, Stanley River (Woodford) Weir as shown on the attached map labelled "S4";

(d) in the South Maroochy River, South Maroochy Intake Weir, as shown on the attached map labelled "S5". For the avoidance of doubt, in respect of this weir, there are areas of land and waters hatched in red on the map labelled "S5" that are covered or affected by the operation of section 251D of the Native Title Act 1993 (Cth) (namely Lot 7 on AP19232 and part of Lot 1008 on CG134), these being areas the use of which is (or was) necessary for, or incidental to, the construction, establishment or operation of the weir.

[See NNTR Attachment 3: "Attached Maps to Schedule 2"]

SCHEDULE 3 - NATIVE TITLE HOLDERS

The native title holders for the Determination Area are the Jinibara People who are the biological descendants of the

following people:

- (a) Wanambi James McKenzie (who was the father of Wangirmau Johnny McKenzie and the paternal grandfather of Gaiarbau Willie McKenzie);
 - (b) Dil:l (who was the father of Jowalmel Fanny Mason, wife of Wangirmau Johnny McKenzie);
 - (c) Edward Ross (who was the father of Dick Dahtell Ross); and
 - (d) Menvil Wanmuarn and his wife, Kitty (who was the daughter of King Sambo and Queen Beauty),
- who identify as and are accepted by the Jinibara People as Jinibara People according to Jinibara traditional law and custom.

SCHEDULE 4 - OTHER INTERESTS IN THE DETERMINATION AREA

The nature and extent of Other Interests in relation to the Determination Area are the following, as they exist at the date of this Determination:

1. The rights and interests of the parties under the Deed of Agreement between the Jinibara People Aboriginal Corporation, the Applicant and the State of Queensland dated 30 October 2012 providing for the exercise of native title rights and interests in selected Protected Areas.
2. The rights and interests of the State of Queensland in Reserves, the rights and interests of the trustees of those Reserves and of the persons entitled to access and use those Reserves for the respective purpose for which they are reserved.
3. The rights and interests of the State of Queensland and the Somerset Regional Council to access, use, operate and maintain the area delineated as road on Plan SP164074 for its dedicated purpose and the rights and interests of the general public to access and use the road.
4. The rights and interests of the State of Queensland and the Moreton Bay Regional Council to access, use, operate and maintain the area delineated as road on Plan SP124807 for its dedicated purpose and the rights and interests of the general public to access and use the road.
5. The rights and interests of Moreton Bay Regional Council, Sunshine Coast Regional Council and Somerset Regional Council as local governments for those parts of the Determination Area within their respective Local Government Areas, including:
 - (a) their powers, functions, responsibilities and jurisdiction under a Local Government Act;
 - (b) their rights and interests under any interest in land or waters within the Determination Area including under any lease, licence, access agreement, easement or Reserve in the Determination Area;
 - (c) the rights to use, operate, maintain, replace, restore, remediate, repair and otherwise exercise all other rights as the owners and operators of infrastructure, structures, earthworks, access works, facilities and other improvements within the Determination Area;
 - (d) the rights under any agreements between them and any third party which relates to land or water in the Determination Area; and
 - (e) the rights of their employees, agents and contractors to enter upon the Determination Area for the purpose of performing their powers and responsibilities under paragraphs (a)-(d).
6. The rights and interests of Brisbane City Council as local government for that part of the Determination Area within their Local Government Area, including its powers, functions, responsibilities and jurisdiction under the City of Brisbane Act 2010 (Qld) and any rights and interests it or employees or agents have to enter land to perform those functions.
7. The rights and interests of Energex Limited:
 - (a) as the owner and operator of electricity distribution, generation and transmission facilities within the Determination Area;
 - (b) as an Electricity Entity under the Electricity Act 1994 (Qld), including but not limited to:
 - (i) as the holder of a distribution authority; and
 - (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 to inspect, maintain and manage any distribution, generation and transmission facilities in the Determination Area; and

(c) in relation to any connection contract, way leave agreement, permit to occupy or easement relating to the Determination Area.

8. The interests of Queensland Electricity Transmission Corporation Limited (trading as Powerlink Queensland) ACN 078 849 233 as an electricity entity exercising statutory functions, powers or rights and as owner and operator of electricity transmission facilities and associated infrastructure situated upon the Determination Area, including but not limited to the right to enter upon the Determination Area at any reasonable time in order to access, use, maintain, repair, replace, upgrade, or otherwise deal with those facilities and infrastructure in accordance with the law.

9. The rights and interests of Queensland Bulk Water Supply Authority (trading as Seqwater) ABN 75 450 239 876:

(a) as trustee of Lot 83 on Crown Plan S311786 (RI070 Stanley, Reserve for Camping and Water);

(b) in relation to any agreement with any third party which relates to land or waters in the Determination Area existing or entered into on or before the date of this Determination; and

(c) to enter the Determination Area by its employees, agents or contractors to exercise any of the rights and interests referred to in this Item 9 of Schedule 4.

10. The rights and interests of Telstra Corporation Limited:

(a) as the owner or operator of telecommunications facilities 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 telecommunication facilities; and

(iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its existing and any new telecommunication facilities;

(c) for its employees, agents or contractors to access its telecommunications facilities in, and in the vicinity of, the Determination Area, in the performance of their duties; and

(d) under any lease, licence, access agreement or easement relating to its telecommunication facilities in the Determination Area.

11. The rights and interests of Forestry Plantations Queensland Pty Limited in and under Plantation Licence No 713331865.

12. Any existing public access to and enjoyment of, the following places in the Determination Area:

(a) waterways;

(b) beds and banks or foreshores of waterways;

(c) stock routes; and

(d) areas that were public places at the end of 31 December 1993,

pursuant to s 212(2) of the Native Title Act 1993 (Cth) and s 18 of the Native Title (Queensland) Act 1993 (Qld).

13. The rights and interests of the State of Queensland or any other person (as applicable) 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 Petroleum Act 1923 (Qld) and Petroleum and Gas (Production and Safety) Act 2004 (Qld);

- (d) the Forestry Act 1959 (Qld);
- (e) the Water Act 2000 (Qld);
- (f) the Integrated Planning Act 1997 (Qld) or Sustainable Planning Act 2009 (Qld);
- (g) the Transport Infrastructure Act 1994 (Qld); and
- (h) the Fire and Rescue Services Act 1990 (Qld) and the Ambulance Service Act 1991 (Qld).

14. Any other rights and interests of members of the public arising under the common law, including but not limited to the following:

- (a) any subsisting public right to fish;
- (b) the public right to navigate; and
- (c) the public's right to access and use the formed roads on Lot 401 on Plan C311073, namely Storrs Road, Fortune Avenue and Jannaii Court.

15. Any other rights and interests held by the State or Commonwealth, or by reason of the force and operation of the Laws of the State or Commonwealth.

SCHEDULE 5 - EXTERNALBOUNDARY

[See NNTR Attachment 4: "Schedule 5 - External Boundary"]

REGISTER ATTACHMENTS:

1. Attachment 1 Schedule 1 - Determination Area Description, 15 pages - A4, 20/11/2012
2. Attachment 2 Schedule 1 - Maps of Determination Area - Sheet 1 to 24, 24 pages - A3, 20/11/2012
3. Attachment 2 Schedule 1 - Maps of Determination Area - Insert Sheet 1 to 10, 10 pages - A3, 20/11/2012
4. Attachment 3 Schedule 2 Maps, 6 pages - A4, 20/11/2012
5. Attachment 4 Schedule 5 - External Boundary, 7 pages - A4, 20/11/2012

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.