



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD98/2007
NNTT Number: QCD2014/010

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

Date(s) of Effect: 19/06/2014

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 19/06/2014

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Kulkalgal (Torres Strait Islanders) Corporation RNTBC
Trustee Body Corporate
C/-Yorke Island Council Office
100 William Road
Yorke Island Queensland 4875

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:

3. The native title is held by the persons described in Sch 2 (the “native title holders”).

The native title holders are members of the Warraberalgal, Porumalgal and Masigalgal sub-groups of the Kulkalgal People, being collectively:

- (a) the descendants of one or more of the following apical ancestors:
Gagabe, Wawa, Mapoo, Baki, Laieh, Gavid, Kalai, Gaibiri, Aklan, Alau Messiah, Apelu, Asaia Messiah, Auara, Gewe Jack, Kudin, Maudar, Sidmu, Seregay, Tabu, Wabu, Largud, Panipani, Garibu, Ikasa; or
- (b) Torres Strait Islanders who have been adopted by one or more of the descendants of the above listed apical ancestors referred to in para (a) in accordance with the traditional laws acknowledged and traditional

customs observed by those persons.

**MATTERS DETERMINED:
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. The Determination Area is the land and waters described in Sch 1 and depicted in the plan attached to Sch 1.
2. Native title exists in relation to the Determination Area.
3. The native title is held by the persons described in Sch 2 (the “native title holders”).
4. Subject to paras 5 and 6 the nature and extent of the native title rights and interests in relation to the Determination Area is the right to possession, occupation, use and enjoyment of the area to the exclusion of all others.
5. Subject to para 6 the nature and extent of the native title rights and interests in relation to Water in the Determination Area are limited to the non-exclusive right to take and use the Water for personal, domestic and non-commercial communal purposes.
6. 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 traditional customs observed by the Native Title Holders.
7. 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).
8. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) are set out in Sch 3 (the “Other Interests”).
9. The relationship between the native title rights and interests described in paras 4 and 5 and the other interests set out in Sch 3 is that:
 - (a) the Other Interests co-exist with the native title rights and interests;
 - (b) the determination does not affect the validity of those Other Interests; and
 - (c) to the extent of any inconsistency, the native title rights and interests yield to the other interests referred to in Sch 3.
10. The native title is held in trust.
11. The **Kulkalgal (Torres Strait Islanders) Corporation RNTBC** (ICN 3915), 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 56(1) of the *Native Title Act 1993* (Cth); and
 - (b) perform the functions mentioned in s 57(1) of the *Native Title Act 1993* (Cth) after becoming the registered native title body corporate.
12. In this determination, unless the contrary intention appears:

“**High Water Mark**” means the ordinary high-water mark at spring tides;

“**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 Commonwealth of Australia and includes legislation, regulations, statutory instruments, local planning instruments and local laws;

“**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;

“**Treaty**” means the *Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters* signed at Sydney on 18 December 1978.

Other words and expressions used in this determination have the same meanings as they have in Pt 15 of the *Native Title Act 1993* (Cth).

SCHEDULE 1 - DETERMINATION AREA

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

SCHEDULE 2 - NATIVE TITLE HOLDERS

The native title holders are members of the Warraberalgal, Porumalgal and Masigalgal sub-groups of the Kulkalgal People, being collectively:

- (a) the descendants of one or more of the following apical ancestors:
Gagabe, Wawa, Mapoo, Baki, Laieh, Gavid, Kalai, Gaibiri, Aklan, Alau Messiah, Apelu, Asaia Messiah, Auara, Gewe Jack, Kudin, Maudar, Sidmu, Seregay, Tabu, Wabu, Largud, Panipani, Garibu, Ikasa; or
- (b) Torres Strait Islanders who have been adopted by one or more of the descendants of the above listed apical ancestors referred to in para (a) in accordance with the traditional laws acknowledged and traditional customs observed by those persons.

SCHEDULE 3 - OTHER INTERESTS

The nature and extent of the other interests in relation to the Determination Area are the following so far as they exist as at the date of this determination:

- (a) the rights and interests of the State of Queensland in Reserve 65 (Reserve for the Use of the Aboriginal Inhabitants of the State), the interests of any persons in whom it is vested and the interests of the persons entitled to access and use the reserve for the purpose for which it is reserved;

- (b) the rights and interests of the Torres Shire Council as the local government for the Determination Area, including the rights of its employees, agents and contractors to enter upon the Determination Area for the purpose of performing Council's powers and responsibilities under the *Local Government Act 2009* (Qld);
- (c) Subject to the laws of Australia, a customary right, if any, that:
- (i) is held by a person or persons who: live in the Protected Zone or the adjacent coastal area of Papua New Guinea (as each is defined in the Treaty); is a citizen, or are citizens, of Papua New Guinea; and maintain traditional customary associations with areas or features in or in the vicinity of the Protected Zone in relation to their subsistence or livelihood or social, cultural or religious activities;
 - (ii) applies within the determination area;
 - (iii) is recognised by the law of Australia;
 - (iv) does not purport to authorise the control of access to or conduct in the determination area by any person; and
 - (v) involves free movement or the performance of lawful traditional activities within the Determination Area.
- (d) any other rights and interests held by the State or the Commonwealth, or by reason of the force or operation of the Laws of the State and the Commonwealth.

REGISTER ATTACHMENTS:

1. Schedule 1 - Determination Area, 2 pages - A4, 19/06/2014

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.