



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6131/1998
NNTT Number: QCD2016/006

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

Date(s) of Effect: 23/12/2016

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: 21/06/2016

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 21 June 2016, the Federal Court of Australia made a determination that native title exists in part of the determination area - see *Hatfield on behalf of the Darumbal People v State of Queensland (No 3)* [2016] FCA 723.

Order 2 of the determination provides that the determination is to take effect upon the registration of four agreements on the Register of Indigenous Land Use Agreements.

The last of those agreements was registered on the Register of Indigenous Land Use Agreements on 23 December 2016.

REGISTERED NATIVE TITLE BODY CORPORATE:

Darumbal People Aboriginal Corporation RNTBC
Trustee Body Corporate
PO Box 8581
Allerstown Queensland 4700

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:

The native title holders are the Darumbal People. The Darumbal People are those people:

(a) who are descendants of the following deceased persons:

- (i) Brothers John McPherson or Harry Bauman;
- (ii) Kate Reid and James Hector;
- (iii) Clara McKenzie;
- (iv) Jack Naylor (Jnr);
- (v) Maria McKenzie;
- (vi) Clara Wallace;
- (vii) Mundabel;
- (viii) Mary Jones;
- (ix) Maggie (Mitchell);
- (x) Yorky; or
- (xi) Kitty Mulway and Pompey of Stanage: and

(b) who are recognised by the living Darumbal People according to their traditional laws and customs as Darumbal People.

**MATTERS DETERMINED:
THE COURT ORDERS BY CONSENT THAT:**

1. There be a determination of native title in the terms set out below (the **determination**).
2. The determination will take effect upon the agreements referred to in paragraph 1 of Schedule 4 being registered on the Register of Indigenous Land Use Agreements.
3. In the event that the agreements referred to in paragraph 2 are not registered on the Register of Indigenous Land Use Agreements within six (6) months of the date of this order or such later time as this Court may order, the matter is to be listed for further directions.

THE COURT DETERMINES BY CONSENT THAT:

5. The Determination Area is the land and waters described in Schedule 1A and depicted on the map attached to Schedule 1B. To the extent of any inconsistency between the written description and the map, the written description prevails.
6. Native title exists in relation to the Determination Area described in Part 1 and Part 2 of Schedule 1A. Native title does not exist in relation to the Determination Area described in Part 3 of Schedule 1A.

7. The native title is held by the Darumbal People described in Schedule 3 (the native title holders).

8. Subject to paragraphs 10, 11 and 12 below, the nature and extent of the native title rights and interests in relation to the land and waters described in Part 1 of Schedule 1A are the non-exclusive rights to:

- (a) access, be present on, move about on and travel over the area;
- (b) camp, and live temporarily on the area as part of camping, and for that purpose build temporary shelters on the area;
- (c) hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;
- (d) take, use and share Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;
- (e) take and use the Water of the area for personal, domestic and non-commercial communal purposes;
- (f) conduct smoking, welcome and cleansing ceremonies and ceremonies associated with repatriation of remains on the area;
- (g) be buried and bury native title holders within the area;
- (h) maintain and protect places of importance and areas of significance to the native title holders under their traditional laws and customs;
- (i) teach on the area the physical, cultural and spiritual attributes of the area;
- (j) hold meetings on the area; and
- (k) light fires on the area for personal and domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation.

9. Subject to paragraphs 10, 11 and 12 below, the nature and extent of the native title rights and interests in relation to the land and waters described in Part 2 of Schedule 1A are the non-exclusive rights described in paragraphs 8(a), (c), (d), (h) and (i) above.

10. 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.

11. The native title rights and interests referred to in paragraphs 8 and 9 do not confer possession, occupation, use or enjoyment of the Determination Area to the exclusion of all others.

12. 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).

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

14. The relationship between the native title rights and interests described in paragraphs 8 and 9 and the Other Interests described in Schedule 4, with the exception of JUMP Station RKH1, is that:

- (a) the Other Interests continue to have effect, and the rights conferred by or held under the Other Interests may be exercised notwithstanding the existence of the native title rights and interests;
- (b) to the extent the Other Interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests in relation to the land and waters of the Determination Area, the native title continues to exist in its entirety but the native title rights and interests have no effect in relation to the Other Interests to the extent of the inconsistency for so long as the Other Interests exist; and
- (c) the Other Interests and any activity that is required or permitted by or under, and done in accordance with, the Other Interests, or any activity that is associated with or incidental to such an activity, prevail over the native title rights and interests and any exercise of the native title rights and interests, but will not extinguish them.

15. The relationship between the native title rights and interests in paragraph 8 and JUMP Station RKH1 referred to in paragraph 7 of Schedule 4 is that JUMP Station RKH1 is:

- (a) wholly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests;
- (b) the native title continues to exist but has no effect in relation to JUMP Station RKH1;
- (c) if JUMP Station RKH1 or its effects are wholly removed or otherwise cease to operate the native title rights and interests again have full effect;
- (d) if JUMP Station RKH1 or its effects are removed to any extent or otherwise cease to operate only to any extent, the native title rights and interests again have effect to that extent.

DEFINITIONS AND INTERPRETATION

16. In this determination, unless the contrary intention appears:

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

“Local Government Act” has the same meaning as in the *Local Government Act 2009* (Qld);

“Local Government Area” has the same meaning as in the Local Government Act;

“Natural Resources” means:

- (a) any animal, plant, fish and bird life found on or in the lands and waters of the Determination Area; and

(b) any clays, soil, sand, gravel, rock or ochre found on or below the surface of the Determination Area that have traditionally been taken and used by the native title holders, 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 (except ochre taken in accordance with the traditional laws and customs of the native title holders) 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);

“Reserves” means reserves that are dedicated or taken to be reserves under the *Land Act 1994* (Qld);

“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; and
- (c) water from an underground water source.

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

THE COURT DETERMINES THAT:

17. The native title is held in trust.

18. The Darumbal People Aboriginal Corporation (ICN: 8405), 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(2)(b) and s 56(3) 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 a registered native title body corporate.

Schedule 1 - DETERMINATION AREA

[See NNTR attachment 1: “Schedule 1 - DETERMINATION AREA”]

Schedule 1B - Map of Determination Area

[See NNTR attachment 2: "Schedule 1B - Map of Determination Area - Part 1 of 2"; and attachment 3: "Schedule 1B - Map of Determination Area Part 2 of 2"]

Schedule 2 - AREAS NOT FORMING PART OF THE DETERMINATION AREA

The following areas of land and waters are excluded from the Determination Area.

1. Those land and waters within the External Boundary described in Part 4 of Schedule 1A, which at the time the native title determination application was made;

(a) were the subject of one or more Previous Exclusive Possession Acts, within the meaning of s 23B of the *Native Title Act 1993* (Cth); and

(b) to which none of ss 47, 47A or 47B of the *Native Title Act 1993* (Cth) applied at the time of the native title determination application;

are excluded from the Determination Area as they could not be claimed in accordance with s 61A of the *Native Title Act 1993* (Cth).

2. Specifically, and to avoid any doubt, the land and waters described in (1) above includes:

(a) the tenure based exclusions under ss 23B(2) and 23B(3) of the *Native Title Act 1993* (Cth) to which s 20 of the *Native Title (Queensland) Act 1993* (Qld) applies;

(b) the land or waters on which any public work, as defined in s 253 of the *Native Title Act 1993* (Cth), is or was constructed, established or situated, and to which ss 23B(7) and 23C(2) of the *Native Title Act 1993* (Cth) and to which s 21 of the *Native Title (Queensland) Act 1993* (Qld), applies, together with any adjacent land or waters in accordance with s 251 D of the *Native Title Act 1993* (Cth); and

(c) but is not limited to, the whole of the land and waters described as:

(i) Lot 1 on Registered Plan 898342;

(ii) Lot 46 on Crown Plan LBG40179;

(iii) Lot 53 on Survey Plan 213740;

(iv) Lot 1771 on Survey Plan 213741;

(v) Lot 25 on Survey Plan 213742;

(vi) Lot 1329 on Crown Plan LBG4074;

(vii) Lot 44 on Survey Plan 213742;

(viii) Lot 1 on Registered Plan 605138;

(ix) Lot 3 on Registered Plan 605138;

(x) Lot 412 on Crown Plan LN2447;

- (xi) Lot 186 on Survey plan 103550;
- (xii) Lot 25 on Survey Plan 213742;
- (xiii) Lot 177 on Crown Plan DS495;
- (xiv) Lot 7 on Registered Plan 613401;
- (xv) Lot 1 on Registered Plan 610740;
- (xvi) Lot 1 on Registered Plan 609703;
- (xvii) Volumetric Lot 1 on Survey Plan 247734;
- (xviii) Lot 4 on Registered Plan 616455;
- (xix) Lot 1 on Registered Plan 609417;
- (xx) Lot 1 on Registered Plan 610741;
- (xxi) Lot 40 on Crown Plan LI 221;
- (xxii) Lot 1 on Registered Plan 617335;
- (xxiii) Lot 8 on Registered Plan 602167;
- (xxiv) Lot 1 on Registered Plan 618120;
- (xxv) Lot 2 on Registered Plan 618120 (or part thereof - easement);
- (xxvi) Lot 318 on Crown Plan O7501;
- (xxvii) Lot 29 on Crown Plan LI203;
- (xxviii) Lot 30 on Crown Plan L1203;
- (xxix) Lot 2 on Registered Plan 613179;
- (xxx) Lot 362 on Registered Plan 611221;
- (xxxi) Lot 1 on Registered Plan 609407;
- (xxxii) Lot 41 on Crown Plan S948;
- (xxxiii) Lot 188 on Crown Plan PN408;
- (xxxiv) Lot 1 on Registered Plan 609411;
- (xxxv) Lot 2 on Registered Plan 613173;
- (xxxvi) Lease A on Lot 1 on Registered Plan 609516 on Survey Plan 242418;
- (xxxvii) Lot 95 on Registered Plan 805004;
- (xxxviii) Lease on part of Lot 16 on Crown Plan LI140;
- (xxxix) Lease B in Lot 2 on Registered Plan 616821 on Survey Plan 248231;
- (xl) Lease A in Lot 1 on Registered Plan 615920 on Survey Plan 246689;
- (xli) Lease T in Lot 3 on Registered Plan 619202 on Survey Plan 211605;
- (xlii) Lease A in Lot 1 on Survey Plan 153932 on Survey Plan 233356;
- (xliii) Lease A in Lot 12 on Registered Plan 909499 on Survey Plan 181245;
- (xliv) Lease E in Lot 7 of Survey Plan 148734 as shown on Survey Plan 178470;

- (xlv) Lease A in Lot 74 on Survey Plan 133750 on Survey Plan 170915;
- (xlvi) Lease A in Lot 1 on Registered Plan 607792 on Survey Plan 216310;
- (xlvii) Lease A in Lot 13 on Crown Plan LN372 on Survey Plan 121274;
- (xlviii) Lease HR in Lot 201 on Survey Plan 236447 on Survey Plan 156088;
- (xlix) Lease A in Survey Plan 232629:
 - (l) Lease T in Lot 1 on Registered Plan 835024 on Survey Plan 217426;
 - (li) Lease A in Lot 1 on Registered Plan 864505 on Survey Plan 276134;
 - (lii) Lease C in Lot 1 on Registered Plan 612715 on Survey Plan 232632;
 - (liii) Lease A on Survey Plan 232207;
 - (liv) Lease T in Lot 176 on Crown Plan PAK40221 on Survey Plan 263310;
- (lv) Lease B in Lots 75 and 78 on Registered Plan 601977;
- (lvi) Lot 18 on Crown Plan 859789;
- (lvii) Lot 70 on Crown Plan LN2378;
- (lviii) Lot 201 on Survey Plan 125765;
- (lix) Lease T in Lot 1 on Survey Plan 101816 on Survey Plan 118288;
- (lx) Lot 11 on Crown Plan R26353;
- (lxi) Lot 11 on Survey Plan 120480;
- (lxii) Lot 128 on Crown Plan LN2048;
- (lxiii) Lot 142 on Crown Plant LN597;
- (lxiv) Lot 150 on Crown Plan LN2379;
- (lxv) Lot 178 on Crown Plan LN1332;
- (lxvi) Lot 1 on Crown Plan LN844289;
- (lxvii) Lot 1 on Crown Plan R26124;
- (lxviii) Lot 211 on Grown Plan LN2764;
- (lxix) Lot 235 on Crown Plan LN2505;
- (lxx) Lot 279 on Crown Plan LN1901;
- (lxxi) Lot 2 on Crown Plan 860880;
- (lxxii) Lot 2 on Crown Plan R26100;
- (lxxiii) Lot 39 on Crown Plan LN2298;
- (lxxiv) Lot 40 on Survey Plan 240869;
- (lxxv) Lot 41 on Survey Plan 240869;
- (lxxvi) Lot 443 on Crown Plan LN2789;
- (lxxvii) Lot 4 on Crown Plan R266;
- (lxxviii) Lot 5 on Crown Plan R26325;

- (lxxix) Lot 5 on Crown Plan R26352;
- (lxxx) Lot 706 on Crown Plan R26291;
- (lxxxi) Lot 7 on Crown Plan LN2678;
- (lxxxii) Lot 8 on Crown Plan R26157; and
- (lxxxiii) Lot 52 on Crown Plan DS731.

Schedule 3 - NATIVE TITLE HOLDERS

The native title holders are the Darumbal People. The Darumbal People are those people:

(a) who are descendants of the following deceased persons:

- (i) Brothers John McPherson or Harry Bauman;
- (ii) Kate Reid and James Hector;
- (iii) Clara McKenzie;
- (iv) Jack Naylor (Jnr);
- (v) Maria McKenzie;
- (vi) Clara Wallace;
- (vii) Mundabel;
- (viii) Mary Jones;
- (ix) Maggie (Mitchell);
- (x) Yorky; or
- (xi) Kitty Mulway and Pompey of Stanage: and

(b) who are recognised by the living Darumbal People according to their traditional laws and customs as Darumbal People.

Schedule 4 - OTHER INTERESTS IN THE DETERMINATION AREA

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

1. The rights and interests of the parties under the following agreements:

- () the agreement between Alan Douglas Hatfield, Pauline Cora, Warren John Malone, Rodney William

Mann, Amanda Meredith and Vanessa Ross on their own behalf and on behalf of the Darumbal People (QUD6131/1998) and the State of Queensland, which was authorised by the native title claim group on 21 May 2016 and executed by Alan Douglas Hatfield on his own behalf and on behalf of the Darumbal People (QUD6131/1998) on 13 June 2016 and by the State of Queensland on 14 June 2016 (the Darumbal People Protected Areas Indigenous Land Use Agreement);

(a) the agreement between Alan Douglas Hatfield, Pauline Cora, Warren John Malone, Rodney William Mann, Amanda Meredith and Vanessa Ross on their own behalf and on behalf of the Darumbal People (QUD6131/1998) and the State of Queensland, which was authorised by the native title claim group on 21 May 2016 and executed by Alan Douglas Hatfield on his own behalf and on behalf of the Darumbal People (QUD6131/1998) on 13 June 2016 and by the State of Queensland on 14 June 2016 (the Darumbal People Tenure Resolution ILUA);

(b) the agreement between Alan Douglas Hatfield, Pauline Cora, Warren John Malone, Rodney William Mann, Amanda Meredith and Vanessa Ross on their own behalf and on behalf of the Darumbal People (QUD6131/1998) and the Livingstone Shire Council and Rockhampton Regional Council, which was authorised by the native title claim group on 27 February 2016 and executed by Alan Douglas Hatfield on his own behalf and on behalf of the Darumbal People (QUD6131/1998) (the Darumbal People and Local Government Indigenous Land Use Agreement); and

(c) the agreement between Alan Douglas Hatfield, Pauline Cora, Warren John Malone, Rodney William Mann, Amanda Meredith and Vanessa Ross on their own behalf and on behalf of the Darumbal People (QUD6131/1998) and Ergon Energy Corporation Limited ACN 087 646 062, which was authorised by the native title claim group on 27 February 2016 (the Darumbal People and Ergon Energy Indigenous Land Use Agreement).

2. The rights and interests of the State of Queensland, Banana Shire Council, Livingstone Shire Council and Rockhampton Regional Council to access, use, operate, maintain and control the dedicated roads in the Determination Area and the rights and interests of the public to use and access the roads.

3. The rights and interests of Banana Shire Council, Livingstone Shire Council and Rockhampton Regional Council:

(a) under their local government jurisdiction and functions under the Local Government Act, under the *Land Protection (Pest and Stock Route Management Act 2002)* (Qld) and under any other legislation, for that part of the Determination Area within the area declared to be their respective local government areas;

b) as the:

(i) lessor under any leases which were validly entered into before the date on which these orders are made and whether separately particularised in these orders or not;

(ii) grantor of any licences or other rights and interests which were validly granted before the date on which these orders were made and whether separately particularised in these orders or not;

(iii) holder of any estate or interest in land, as trustee of any reserves, that exist in the Determination Area;

(c) as the owner and operator of infrastructure, and those facilities and other improvements located in the Determination Area validly constructed or established on or before the date on which these orders are made, including but not limited to:

(i) undedicated but constructed roads except for those not operated by Council;

(ii) water pipelines and water supply infrastructure;

(iii) drainage facilities;

(iv) watering point facilities;

(v) recreational facilities;

(d) to enter the land for the purposes described in paragraphs 3(a), 3(b) and 3(c) of Schedule 4 by their employees, agents or contractors to:

(i) exercise any of the rights and interests referred to in paragraphs 2 and 3 of Schedule 4;

(ii) inspect, maintain and repair the infrastructure, facilities and other improvements referred to in paragraph (c) above;

(iii) undertake operational activities in its capacity as a local government such as feral animal control, weed control, erosion control, waste management and fire management.

4. The rights and interests of Telstra Corporation Limited (ACN 051 775 556):

(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 telecommunications facilities; and

(iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities, including:

(A) Lease A in Lot 294 on Crown Plan 897750 as shown on SP181921; and

(B) Lease A in Lot 1 on Crown Plan 893310 on SP185336;

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

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

5. The rights and interests of Ergon Energy Corporation Limited ACN 087 646 062:

(a) as the owner and operator of any "works" as that term is defined in the *Electricity Act 1994* (Qld) within the Determination Area;

(b) as a distribution entity and the holder of a distribution authority under the *Electricity Act 1994* (Qld);

(c) created under the *Electricity Act 1994* (Qld) and the *Government Owned Corporations Act 1993* (Qld) including:

- (i) rights in relation to any agreements relating to the Determination Area existing or entered into before the date on which these orders are made;
- (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
- (iii) to inspect, maintain and manage any works in the Determination Area.

6. The rights and interests of Jemena Queensland Gas Pipeline (1) Pty Ltd and Jemena Queensland Gas Pipeline (2) Pty Ltd as the holder of pipeline licence 30 granted under the *Petroleum Act 1923* (Qld).

7. The rights and interests of the Commonwealth of Australia in the Joint Urban Monitoring Program ("JUMP") Station, known as JUMP Station RK1H, located on Lot 322 on LN2810.

8. The rights and interests of Cheetham Salt Ltd as the holder of:

- (a) mining lease ML5783, granted under the *Mining Act 1968-1974* (Qld);
- (b) mining lease ML5787, granted under the *Mining Act 1898-1967* (Qld);
- (c) mining lease ML5790, granted under the *Mining Act 1968-1974* (Qld);
- (d) mining lease ML5796, granted under the *Mining Act 1968-1976* (Qld);
- (e) mining lease ML5797, granted under the *Mining Act 1968-1976* (Qld);
- (f) mining lease ML5798, granted under the *Mining Act 1968-1976* (Qld);
- (g) mining lease ML5799, granted under the *Mining Act 1968-1976* (Qld);
- (h) mining lease ML5822, granted under the *Mining Act 1968-1976* (Qld);
- (i) water licence 178330, granted under the *Water Act 2000* (Qld); and
- (j) water licence 13490U, granted under the *Water Act 2000* (Qld).

9. 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.

10. The 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; and
- (b) the public right to navigate.

11. So far as confirmed pursuant to s 212(2) of the *Native Title Act 1993* (Cth) and s 18 of the *Native Title Act (Queensland) Act 1993* (Qld) as at the date of this Determination, 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.

12. Any other rights and interests:

- (a) held by the State of Queensland or Commonwealth of Australia; or
- (b) existing by reason of the force and operation of the Laws of the State and the Commonwealth.

REGISTER ATTACHMENTS:

- 1. Schedule 1B - Map of Determination Area - Part 1 of 2, 42 pages - A4, 21/06/2016
- 2. Schedule 1B - Map of Determination Area - Part 2 of 2, 43 pages - A4, 21/06/2016
- 3. Schedule 1 - DETERMINATION AREA, 28 pages - A4, 21/06/2016

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.