



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD1076/2015
NNTT Number: QCD2017/008

Determination Name: [Congo on behalf of the Bar Barrum People #9 v State of Queensland](#)

Date(s) of Effect: 12/12/2017

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 12/12/2017

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Mbabaram Aboriginal Corporation RNTBC
Agent Body Corporate
PO Box 1148
Atherton Queensland 4883

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:

5. The native title is held by the Bar Barrum People described in Schedule 3 (the native title holders).
1. The native title holders are the Bar Barrum People.
2. The Bar Barrum People are the biological descendants of one or more of the following people:
 - (a) Rosie aka Lucy (mother of William Congo);
 - (b) Nellie (mother of Albert Bennett);
 - (c) Millie (mother of Alick/Aleck Collins aka Chalk aka Stevens) or of her siblings Fred and Jack Solomon;
 - (d) Maggie Watsonville (mother of May Thynne);

- (e) Nora Miller nee Clark or of her brother Billy;
- (f) Arkaragan and Kurimbu (parents of Jack Robinson);
- (g) Jack Brumby (father of Peter Fagan and Monday);
- (h) Archie Perrott aka Campbell (father of Margaret Perrott);
- (i) Lizzie Simmonds (mother of Mamie Simmonds);
- (j) John Burt Grainer (father of John Grainer and Paddy Hastie);
- (k) Nellie Williams or of her sister Ethel Perrott;
- (l) Bessie Tiger (mother of Peter Freeman); or

people who are or were adopted into one of the above descent groups in accordance with the traditional laws and customs of the Bar Barrum People.

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:

3. The Determination Area is the land and waters described in Schedule 1, and depicted in the map attached to Schedule 1.
4. Native title exists in relation to the Determination Area described in Schedule 1A.
5. The native title is held by the Bar Barrum People described in Schedule 3 (the native title holders).
6. Subject to paragraphs 7, 8 and 9 below the nature and extent of the native title rights and interests in relation to the land and waters described in 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;
 - c. hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;
 - d. take and use 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 ceremonies on the area;
 - g. be buried and bury native title holders within the area;
 - h. maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas from physical harm;
 - i. teach on the area the physical and spiritual attributes of the area;
 - j. hold meetings on the area;
 - k. light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation.
7. 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.
8. The native title rights and interests referred to in paragraph 6 do not confer possession, occupation, use or enjoyment to the exclusion of all others.
9. 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).
10. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) are set out in Schedule 4.
11. The relationship between the native title rights and interests described in paragraph 6 and the other interests described in Schedule 4 (the other interests) 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.

DEFINITIONS AND INTERPRETATION

12. 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 meaning given in the *Local Government Act 2009* (Qld);

“Local Government Area” has the meaning given in the *Local Government Act 2009* (Qld);

“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 or rock 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;
- c. minerals as defined in the *Mineral Resources Act 1989* (Qld); or
- d. petroleum as defined in the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (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:

13. The native title is not held in trust:

a. The Mbabaram Aboriginal Corporation ICN 8449, incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), is to:

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

iii. perform the functions mentioned in s 57(3) of the *Native Title Act 1993* (Cth) after becoming a registered native title body corporate in relation to the determination.

SCHEDULE 1 - DETERMINATION AREA

Schedule 1A - Description of Determination Area

The determination area comprises all of the land and waters described as Lot 301 on plan HG843491 and depicted in the map contained in Schedule 1B, excluding the areas described in Schedule 2.

To the extent of any inconsistency, the written description set out in Schedule 1A and Schedule 2 prevails over the map contained in Schedule 1B.

Data Reference and source

Cadastral data sourced from the Department of Natural Resources and Mines, Qld (June 2017)

Reference datum

GDA 1994 MGA Zone 55

Schedule 1B - Map of Determination Area

[See NNTR attachment 1: "Schedule 1B - Map of Determination Area"]

SCHEDULE 2 - AREAS NOT FORMING PART OF THE DETERMINATION AREA

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

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 251D of the *Native Title Act 1993* (Cth).

SCHEDULE 3 - NATIVE TITLE HOLDERS

1. The native title holders are the Bar Barrum People.

2. The Bar Barrum People are the biological descendants of one or more of the following people:

a. Rosie aka Lucy (mother of William Congoo);

b. Nellie (mother of Albert Bennett);

c. Millie (mother of Alick/Aleck Collins aka Chalk aka Stevens) or of her siblings Fred and Jack Solomon;

d. Maggie Watsonville (mother of May Thynne);

e. Nora Miller nee Clark or of her brother Billy;

f. Arkaragan and Kurimbu (parents of Jack Robinson);

- g. Jack Brumby (father of Peter Fagan and Monday);
- h. Archie Perrott aka Campbell (father of Margaret Perrott);
- i. Lizzie Simmonds (mother of Mamie Simmonds);
- j. John Burt Grainer (father of John Grainer and Paddy Hastie);
- k. Nellie Williams or of her sister Ethel Perrott;
- l. Bessie Tiger (mother of Peter Freeman); or

people who are or were adopted into one of the above descent groups in accordance with the traditional laws and customs of the Bar Barrum 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 Osborne Property Company Pty Ltd under Rolling Term Lease 17727227 over Lot 301 on HG843491.
2. The rights and interests of Mareeba Shire Council as the local government for that part of the Determination Area within its Local Government Area, including:
 - a. its powers, functions, responsibilities and jurisdiction under a Local Government Act;
 - b. its 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. its rights to use, operate, maintain, replace, restore, remediate, repair and otherwise exercise all other rights as the owner and operator of infrastructure, structures, earthworks, access works, facilities and other improvements within the Determination Area;
 - d. its rights under any agreements between the Council and third parties which relate to land or water in the Determination Area; and
 - e. the right of its employees, agents and contractors to enter upon the Determination Area for the purpose of performing its powers and responsibilities under paragraphs (a) - (d).
3. 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.
4. To avoid any doubt paragraphs 3(a) and 3(b) include 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; and
 - b. beds and banks or foreshores of waterways.

REGISTER ATTACHMENTS:

1. Schedule 1B - Map of Determination Area, 1 page - A4, 12/12/2017

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.