



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): QUD607/2016  
NNTT Number: QCD2017/009

**Determination Name:** [Congo on behalf of the Bar Barrum People #10 v State of Queensland](#)

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

**Determination Outcome:** Native title exists in the entire determination area

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## 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](http://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 DETERMINES THAT:**

3. The Determination Area is the area described in Schedule 1A.
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 area 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 area for personal, domestic and non-commercial communal purposes;
  - (d) take and use Natural Resources from 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) 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;
  - (h) teach on the area the physical and spiritual attributes of the area;
  - (i) hold meetings on the area; and
  - (j) 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 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:

“Lake” has the same meaning as in the *Survey and Mapping Infrastructure Act 2003* (Qld);

“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 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) minerals as defined in the *Mineral Resources Act 1989* (Qld); or
- (b) 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;

“Watercourse” has the same meaning as in the *Survey and Mapping Infrastructure Act 2003* (Qld).

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.

14. The Mbabaram Aboriginal Corporation ICN 8449, 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 57(2) of the *Native Title Act 1993* (Cth); and
- (b) perform the functions mentioned in s 57(3) of the *Native Title Act 1993* (Cth) after becoming a registered native title body corporate.

## **SCHEDULE 1 - DETERMINATION AREA**

### **Schedule 1A - Description of Determination Area**

The Determination Area comprises all non-tidal Watercourses and Lakes to the extent that they are within the External Boundary Description appearing below, including but not limited to:

California Creek, Green Creek, Toy Creek, Carbonate Creek, Ibis Creek, Walsh River, Catherine Creek, Jamies Creek, Chinaman Creek, Macdonald Creek, Corduroy Creek, Oakey Creek, Emu Creek, Price Creek, Eureka Creek, Sandy Creek, Surveyors Creek, Gibbs Creek and Tate River but excluding:

- (1) any Watercourses or Lakes forming part of a lot on plan;
- (2) Return Creek; and
- (3) the areas described in Schedule 2.

Note: An indicative map depicting some of the Watercourses and Lakes within the Determination Area is contained in Schedule 1B below.

### **External Boundary Description**

Commencing at the southwest corner of Lot 328 on OL37 and extending easterly and northerly along the southern and eastern boundaries of that lot to a northern corner at Longitude 144.680483° East; then north easterly to the westernmost corner of Lot 18 on LD96; then again north easterly, easterly and northerly along the boundary of that lot, southern and eastern boundaries of Lot 285 on OL34 to Lot 4698 on PH801 (Scardons Hill Holding); then easterly, northerly, again easterly and again northerly along the boundaries of that lot and Lot 3 on SP150971 (Aroonbeta) to the centreline of the Walsh River; then generally easterly and generally southerly along that centreline to the intersection of the line joining the eastern and western severances of Lot 619 on OL72; then generally easterly along that line and the northern boundary of that lot to its easternmost corner; then south easterly along the southern boundary of former Lot 5 on USL21414 to its south-easternmost corner; then south easterly to the junction of the headwaters of Scrubby Creek and the watershed of the Great Dividing Range; then generally southerly and generally south westerly along that watershed to the northern boundary of Lot 156 on USL21437, also being the eastern boundary of Native Title Determination QUD6222/98 Bar-Barrum People (QCD2001/007); then generally south westerly and generally southerly along the eastern boundaries of that determination to the eastern boundary of Lot 230 on AP4557; then generally north westerly, westerly and generally south westerly along the northern boundaries of that lot and Lot 220 on CP903610 to again the Great Dividing Range; then generally south westerly and generally southerly along that watershed to the southernmost point of Lot 480 on OL427; then generally northerly along the western boundary of that lot to the prolongation east of the southern boundary of Lot 578 on AP13751; then generally westerly and northerly along that prolongation and southern boundary of that lot to the centreline of California Creek; then generally westerly along that centreline and centreline of the Tate River to Longitude 144.674367° East; then generally north westerly passing through the following coordinates:

<b>Longitude° East</b>	<b>Latitude° South</b>
144.669088	17.486926
144.661214	17.481997

then north westerly along a line to Longitude 144.653936° East, Latitude 17.478024° South to the intersection of the western boundary of Lot 423 on OL48; then northerly along that boundary back to the commencement point.

### **Data Reference and source**

Application boundary compiled by National Native Title Tribunal based on information or instructions provided by the applicants.

Native title determination QUD6222/1998 Bar-Barrum People (QCD2001/007) as determined in the Federal

Court on 28 June 2001.

Cadastre data sourced from Department of Natural Resources and Mines, Qld (August 2015).

Former Lot 5 on USL21414 sourced from QUD6030/2001 Bar Barrum People #4 (QC2001/032) description.

Rivers / Creeks based on cadastral data else 250K topo data Geoscience Australia 2015.

Watersheds based on cadastral boundaries.

### Reference datum

Geographical coordinates have been provided by the NNTT Geospatial Services and are referenced to the Geocentric Datum of Australia 1994 (GDA94), in decimal degrees and are based on the spatial reference data acquired from the various custodians at the time.

### Use of Coordinates

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome of the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

### Schedule 1B - Indicative Map of Determination Area

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

### SCHEDULE 2 - AREAS NOT FORMING PART OF THE DETERMINATION AREA

#### Schedule 2A - Description of areas not forming part of the Determination Area

The following areas are excluded from the Determination Area.

1. Those areas within the External Boundary Description in Schedule 1A, which at the time the native title determination application was made were the subject of one or more Previous Exclusive Possession Acts, within the meaning of s 23B of the *Native Title Act 1993* (Cth) 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 areas described in (1) above include:
  - (a) the Previous Exclusive Possession Acts described in 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; and
  - (b) the areas 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) and includes, but is not limited to, the whole of the land and waters depicted in the map contained in Schedule 2B and more particularly described as all the land and waters within the areas bounded by the following sets of co-ordinates that fall within the External Boundary Description in Schedule 1A:

#### Bridge 1 - BR-000221

Point	Longitude	Latitude
A	145.095384	-17.142880
B	145.095921	-17.142713
C	145.096321	-17.143938
D	145.095806	-17.144163

#### Bridge 2 - BR-000058

Point	Longitude	Latitude
A	145.190674	-17.126275
B	145.190766	-17.126292
C	145.191148	-17.126191
D	145.191253	-17.126266
E	145.191442	-17.126990
F	145.190885	-17.127080

Causeway 1 - BR-000056

Point	Longitude	Latitude
A	145.298915	-17.121762
B	145.299356	-17.122115
C	145.298541	-17.122782
D	145.298166	-17.122389

Causeway 2 - BR-019104

Point	Longitude	Latitude
A	145.114818	-17.167397
B	145.114875	-17.167382
C	145.115380	-17.167362
D	145.115371	-17.167547
E	145.115266	-17.167554
F	145.114807	-17.167556

Bridge 6 - BR-000261

Point	Longitude	Latitude
A	145.304272	-17.172845
B	145.304864	-17.173054
C	145.304787	-17.173391
D	145.304762	-17.173597
E	145.304068	-17.173351

Bridge 7 - BR-019253

Point	Longitude	Latitude
A	145.326611	-17.354212
B	145.326823	-17.354124
C	145.327187	-17.354532
D	145.326949	-17.354623

#### Bridge 8 - BR-019137

Point	Longitude	Latitude
A	145.309998	-17.343688
B	145.310141	-17.343682
C	145.310472	-17.343872
D	145.310588	-17.343977
E	145.310647	-17.344671
F	145.310612	-17.344659
G	145.310377	-17.344579
H	145.310066	-17.344490

#### Bridge 9 - BR-109109

Point	Longitude	Latitude
A	145.204537	-17.427636
B	145.204727	-17.427759
C	145.204381	-17.428188
D	145.204181	-17.428054

#### Causeway 3 - BR-019233

Point	Longitude	Latitude
A	145.204152	-17.431126
B	145.204410	-17.431057
C	145.204762	-17.431482
D	145.204501	-17.431554

#### Reference datum

Geographical coordinates have been provided by the NNTT Geospatial Services and are referenced to the Geocentric Datum of Australia 1994 (GDA94), in decimal degrees and are based on the spatial reference data acquired from the various custodians at the time.

#### Use of Coordinates

Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome of the custodians of cadastral and topographic data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

Prepared by Geospatial Services, National Native Title Tribunal (13 October 2017)

Note: An indicative map depicting the public works described at 2(b) is contained in Schedule 2B below. To the extent of any inconsistency between the written description in this Schedule 2A and the map in Schedule 2B, the written description prevails.

#### **Schedule 2B - Indicative map of public works particularly described at paragraph 2(b) of Schedule 2A above**

[See NNTR attachment 2: "Schedule 2B - Indicative map of public works particularly described at paragraph 2

(b) of Schedule 2A above”]

### 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 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).
2. 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) in the Determination Area;
  - (b) as a distribution entity and holder of a distribution authority under the *Electricity Act 1994* (Qld); and
  - (c) created under the *Electricity Act 1994* (Qld) and the *Government Owned Corporations Act 1993* (Qld), including:



- (i) rights in relation to any agreement relating to the Determination Area existing or entered into before the date these orders were 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.

3. The rights and interests of Consolidated Tin Mines Limited ABN 57 126 634 606 as the holder of Exploration Permit (Minerals) 17623 granted on 4 August 2010 and Exploration Permit (Minerals) 18000 granted on 13 December 2012 under the *Mineral Resources Act 1989* (Qld).

4. The rights and interests of Bookall Mining Company Pty Ltd ACN 110 689 748 as the holder of the following Mining Tenements granted under the *Mineral Resources Act 1989* (Qld):

Tenement No.	Date Granted
ML 4326	1 June 1985
ML 4887	13 September 1973
ML 4940	1 April 1975
ML 4955	10 April 1975
ML 4974	17 August 1978
ML 4978	15 June 1978
ML 4998	17 August 1978
ML 4999	10 October 1977
ML 5000	17 August 1978
ML 5001	17 August 1978
ML 5020	13 August 1981
ML 5021	13 August 1981
ML 5096	20 September 1983
ML 5125	17 December 1987
ML 5126	3 May 1984
ML 20124	29 October 1992

5. 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.

6. To avoid any doubt paragraphs 5(a) and 5(b) include:

(a) The rights and interests of members of the public arising under the common law, including but not limited to the following:

- (i) any subsisting public right to fish; and
- (ii) the public right to navigate.

(b) 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:

- (i) waterways;
- (ii) beds and banks or foreshores of waterways; and
- (iii) areas that were public places at the end of 31 December 1993.

**REGISTER ATTACHMENTS:**

1. Schedule 1B - Indicative Map of Determination Area, 25 pages - A4, 12/12/2017
2. Schedule 2B - Indicative map of public works particularly described at paragraph 2(b) of Schedule 2A above, 3 pages - 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.*