



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD598/2015
NNTT Number: QCD2022/002

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

Date(s) of Effect: 22/03/2022

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 22/03/2022

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Kunja Aboriginal Corporation
Trustee Body Corporate
c/- Queensland South Native Title Services
Level 10
307 Queen Street
Brisbane Queensland 4000

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 Kunja People described in Schedule 1 (the Native Title Holders).

SCHEDULE 1 – NATIVE TITLE HOLDERS

1. The Native Title Holders are the Kunja People. The Kunja People are the descendants (including such people descended by rearing up) who are recognised and accepted in accordance with traditional law and custom of the following ancestors:

- (a) Killamunda (including her children, Margaret Turner (Granny McKellar), Annie/Nannie Widgell and Jack Brennan);
- (b) Unnamed mother of Flora Maranoa;

(c) Maria Major (including her children, Jack Oliffe, Ron Wyman, Walter Wyman and Lila Lynett); or

(d) Jimmy Nyngan.

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 4 and depicted in the map attached to Schedule 6 to the extent those areas are within the External Boundary and not otherwise excluded by the terms of Schedule 5 (the Determination Area). To the extent of any inconsistency between the written description and the map, the written description prevails.

4. Native title exists in the Determination Area.

5. The native title is held by the Kunja People described in Schedule 1 (the Native Title Holders).

6. Subject to orders 8, 9 and 10 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 4 are:

(a) other than in relation to Water, the right to possession, occupation, use and enjoyment of the area to the exclusion of all others; and

(b) in relation to Water, the non-exclusive rights to:

(i) hunt, fish and gather from the Water of the area;

(ii) take the Natural Resources of the Water in the area; and

(iii) take the Water of the area,

for personal, domestic and non-commercial communal purposes.

7. Subject to orders 8, 9 and 10 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 4 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 Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;

(e) take the Water of the area for personal, domestic and non-commercial communal purposes;

(f) conduct ceremonies on the area;

(g) 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, cultural and spiritual attributes of the area;

(j) hold meetings on the area; and

(k) light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation.

8. 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.

9. The native title rights and interests referred to in orders 6(b) and 7 do not confer possession, occupation, use or enjoyment to the exclusion of all others.

10. 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).

11. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) are set out in Schedule 2.

12. The relationship between the native title rights and interests described in orders 6 and 7 and the other interests described in Schedule 2 (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 but will not extinguish them except in relation to acts that consist of the construction or establishment of a valid public work, done after this determination where s 24JA of the *Native Title Act 1993* (Cth) applies.

DEFINITIONS AND INTERPRETATION

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

“**External Boundary**” means the area described in Schedule 3;

“**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; and

(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);

“**Reserve**” means a reserve dedicated or taken to be a reserve 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;

"Works" has the same meaning as in the *Electricity Act 1994* (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:

14. The native title is held in trust.

15. The Kunja Aboriginal Corporation (ICN: 9600), incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), is to:

- (a) be the prescribed body corporate for the purpose of ss 56(2)(b) and 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);
- (c) after becoming a registered native title body corporate.

REGISTER ATTACHMENTS:

1. QCD2022/002 Schedule 3 - External Boundary, 6 pages - A4, 22/03/2022
2. QCD2022/002 Schedule 6 - Map of Determination Area, 21 pages - A4, 22/03/2022
3. QCD2022/002 Schedule 2 - Other interests in the Determination Area, 4 pages - A4, 22/03/2022
4. QCD2022/002 Schedule 4 - Description of Determination Area, 3 pages - A4, 22/03/2022
5. QCD2022/002 Schedule 5 - Areas Not Forming Part of the Determination Area, 1 page - A4, 22/03/2022

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.