



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): SAD6011/1998
NNTT Number: SCD2021/002

Determination Name: [Croft on behalf of the Barngarla Native Title Claim Group v State of South Australia \(Port Augusta Proceeding\) \(No 5\)](#)

Date(s) of Effect: 11/02/2022

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: 24/09/2021

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Order 2 of the determination provides that the 'Determination will take effect upon the ILUA [Barngarla Determination ILUA (No 2)] being registered on the Register of Indigenous Land Use Agreements'. On 11 February 2022, the ILUA was registered on the Register of Indigenous Land Use Agreements, and therefore this determination is in effect from 11 February 2022.

REGISTERED NATIVE TITLE BODY CORPORATE:

Barngarla Determination Aboriginal Corporation RNTBC
Agent Body Corporate
C/- Norman Waterhouse
Level 11
431 King William Street
Adelaide South Australia 5000

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:

Native Title Holders

12. Under the relevant traditional laws and customs of the Barngarla People the group of persons holding the common or group rights are those Barngarla People:

(a) who are related by means of the principle of descent to the following Barngarla apical ancestors:

(i) the siblings Percy Richards and Susie Richards;

(ii) Maudie Blade who is the mother of Phyllis Croft;

(iii) George Glennie and Mary Glennie;

(iv) the siblings Bob Eyles and Harry Croft;

(v) Jack Stuart;

(vi) Arthur Davis (also known as King Arthur) and his sons, Andrew Davis, Jack Davis, Stanley Davis and Percy Davis; and

(b) who have a connection with the Determination Area in accordance with the traditional laws and customs of the Barngarla People; and

(c) who identify as a Barngarla person and who are accepted by the Barngarla People as a Barngarla person.

(Collectively, the Native Title Holders)

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. There be a determination of native title in the Determination Area in the terms set out at paragraphs 5 to 20 below (the Determination).

2. The Determination will take effect upon the ILUA being registered on the Register of Indigenous Land Use Agreements.

3. In the event that the ILUA is not registered on the Register of Indigenous Land Use Agreements within eight months of the date of this Order, or such later time as the Court may order, the matter is to be listed for further directions.

4. The applicant, the State or any other respondent have liberty to apply on 14 days' notice to a single judge of the Court:

(a) if that party considers it unlikely that the ILUA will be finalised and registered on the Register of Indigenous Land Use Agreements within eight months of the date of this Order;

(b) to establish the precise location and boundaries of any Public Works and adjacent land and waters referred to in items 2 or 3 of Schedule 5;

(c) to determine the effect on native title rights and interests of any Public Works as referred to in item 3 of Schedule 5.

THE COURT DETERMINES THAT:

Interpretation & Declaration

5. In this Determination, including its Schedules:

(a) unless the contrary intention appears, the words and expressions used have the same meaning as they are given in Pt 15 of the Native Title Act;

(b) "Adjacent land" and "Subjacent land" have the meaning given to those terms in the *Harbors and Navigation Act 1993* (SA);

(c) "Native Title Land" means the land and waters referred to in paragraphs 7, 8, and 9 of these Orders; and

(d) in the event of an inconsistency between a description of an area in a schedule and the depiction of that area on the maps in Schedule 2, the written description shall prevail.

Determination Area

6. Schedule 1 describes the external boundaries of the Determination Area (the Determination Area).

Areas within Determination Area where native title exists (Native Title Land)

7. Subject to items 1, 2, 3, 4 and 5 of Schedule 5, native title exists in the lands and waters described in Schedule 3.

8. Section 47A of the Native Title Act applies to those parcels or parts of parcels described in Part 1 of Schedule 4 and s 47B of the Native Title Act applies to those parcels or parts of parcels described in Part 2 of Schedule 4. Subject to items 1, 2, 3, 4 and 5 of Schedule 5, the prior extinguishment of native title rights and interests over those areas is disregarded and native title exists in those parcels or parts of parcels.

9. The Court notes that the State and the applicant have entered into the ILUA, the effect of which is that upon it being registered on the Register of Indigenous Land Use Agreements, native title will be recognised as existing in Adjacent land and that portion of Subjacent land that lies within the Determination Area, excluding those areas identified in Schedule 5, which is vested in the Minister under s 15(1)(a) of the *Harbors and Navigation Act 1993* (SA) and which are identified on the maps at Schedule 2 and described in Schedule 6(1).

Areas within Determination Area where native title does not exist

10. Native title has been extinguished in those areas described in Schedule 5.

11. Upon the ILUA being registered on the Register of Indigenous Land Use Agreements, native title will be extinguished in those areas described in Schedule 6(2).

Native Title Holders

12. Under the relevant traditional laws and customs of the Barngarla People the group of persons holding the common or group rights are those Barngarla People:

(a) who are related by means of the principle of descent to the following Barngarla apical ancestors:

(i) the siblings Percy Richards and Susie Richards;

(ii) Maudie Blade who is the mother of Phyllis Croft;

(iii) George Glennie and Mary Glennie;

(iv) the siblings Bob Eyles and Harry Croft;

(v) Jack Stuart;

(vi) Arthur Davis (also known as King Arthur) and his sons, Andrew Davis, Jack Davis, Stanley Davis and Percy Davis; and

(b) who have a connection with the Determination Area in accordance with the traditional laws and customs of the Barngarla People; and

(c) who identify as a Barngarla person and who are accepted by the Barngarla People as a Barngarla person.

(Collectively, the Native Title Holders)

Rights And Interests

13. Subject to paragraphs 14, 15 and 16 the nature and extent of the native title rights and interests in the Native Title Land are non-exclusive rights to use and enjoy, in accordance with the Native Title Holders' traditional laws and customs, those lands and waters, being:

(a) The right to live on, use and enjoy the land and waters;

(b) The right to make decisions about the use and enjoyment of the land and waters by those Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the Native Title Holders;

(c) The right of access to the land and waters;

(d) The right to control the access of other Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the Native Title Holders to the land and waters;

(e) The right to use and enjoy resources of the land and waters but excluding those resources referred to in item 1 of

Schedule 5;

(f) The right to control the use and enjoyment of resources on the land and waters by other Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the Native Title Holders but excluding those resources referred to in item 1 of Schedule 5;

(g) The right to maintain and protect places of importance under traditional laws, customs and practices on the land and waters; and

(h) The right to conduct burial ceremonies on the land and waters.

General Limitations

14. The native title rights and interests set out at paragraph 13 are for personal, domestic and communal use but do not include the right to trade in, or the commercial use of, the Native Title Land or the resources from it.

15. For the avoidance of doubt, the native title rights and interests described in paragraph 13 do not confer possession, occupation, use and enjoyment of the land and waters on the Native Title Holders to the exclusion of others.

16. The native title rights and interests set out at paragraph 13 are subject to and exercisable in accordance with:

(a) the traditional laws and customs of the Native Title Holders;

(b) the valid rights of other interest holders in the Native Title Land in accordance with paragraphs 17 and 18 of this Order; and

(c) the valid laws of the State and Commonwealth, including the common law.

Other Interests & Relationship with Native Title

17. The nature and extent of other interests in the Native Title Land are:

(a) the interests of the Crown in right of the State of South Australia;

(b) any subsisting public right to fish in the Determination Area;

(c) the public right to navigate in the Determination Area;

(d) where applicable, the international right of innocent passage over waters affected by the Determination;

(e) the rights and interests of the Crown in right of the State of South Australia pursuant to the *Harbors and Navigation Act 1993* (SA);

(f) the interests of the registered proprietors of the lands set out in Schedule 4;

(g) the interests of persons to whom valid or validated rights and interests have been granted or recognised by the Crown in right of the State of South Australia or by the Commonwealth of Australia pursuant to statute or otherwise in the exercise of executive power including, but not limited to, rights and interests granted or recognised pursuant to the *Crown Land Management Act 2009* (SA), the *Crown Lands Act 1929* (SA), the *Mining Act 1971* (SA), the *Petroleum and Geothermal Energy Act 2000* (SA) and the *Opal Mining Act 1995* (SA), all as amended from time to time;

(h) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth;

(i) the rights to access land by an employee or agent or instrumentality of the State, Commonwealth or other statutory authority as required in the performance of his or her statutory or common law duties where such access would be permitted to private land;

(j) the rights and interests of Telstra Corporation Limited (ACN 051 775 556):

(i) as the owner or operator of telecommunications facilities within the Native Title Land;

(ii) 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:

A. to inspect land;

B. to install, occupy and operate telecommunications facilities; and

C. to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities;

(iii) for its employees, agents or contractors to access its telecommunications facilities in and in the vicinity of the Native Title Land in performance of their duties; and

(iv) under any lease, licence, permit, access agreement or easement relating to its telecommunications facilities within the Native Title Land;

(k) the rights, interests and entitlements of SA Power Networks (a partnership of Spark Infrastructure SA (No.1) Pty Ltd, Spark Infrastructure SA (No.2) Pty Ltd, Spark Infrastructure SA (No.3) Pty Ltd, CKI Utilities Development Limited and PAI Utilities Development Limited) and its related and successor entities, including its rights, interests and entitlements:

(i) to exercise its entitlements and discharge its obligations as the owner and/or operator of electricity infrastructure (as defined in the *Electricity Act 1996 (SA)*) (Electricity Act) and telecommunications facilities and infrastructure within the Determination Area including but not limited to existing infrastructure identified in Schedule 7 (Existing Infrastructure);

(ii) to exercise its entitlements and discharge its obligations as the holder of a licence under the Electricity Act and/or as an electricity entity under the Electricity Act;

(iii) to exercise its entitlements and discharge its obligations as the holder of a carrier licence under the *Telecommunications Act 1997 (Cth)*;

(iv) to install new electricity and telecommunications infrastructure on the Determination Area (New Infrastructure) and modify, maintain and repair Existing Infrastructure;

(v) under easements, leases or licences (whether registered, unregistered, statutory or otherwise) relating to Existing Infrastructure or New Infrastructure on the Determination Area including but not limited to the Easements identified in Schedule 7 (Easements);

(vi) to provide its employees, agents or contractors with access to Existing Infrastructure, New Infrastructure and the Easements on the Determination Area; and

(vii) to the extent permitted by law, to restrain any person from performing any act, or compel any person to perform any act, for the purposes of ensuring that SA Power Networks complies with its obligations under any law, including, but not limited to, excluding any person from entering an area containing Existing Infrastructure or New Infrastructure for the purposes of maintaining the safety of any person and the security and protection of such infrastructure;

(l) the rights and interests of the Port Augusta City Council:

(i) under the *Local Government Act 1934 (SA)* or the *Local Government Act 1999 (SA)*;

(ii) as an entity exercising statutory powers in respect of land and waters within the Determination Area; and

(iii) in relation to dedicated land placed under its care, control and management pursuant to the *Crown Lands Act 1929 (SA)* or the *Crown Land Management Act 2009 (SA)*.

(m) the rights and interests of the holder from time to time of Pipeline Licence No. 2 (PL 2), who at the date of this determination is comprised of Santos Limited, Santos Petroleum Pty Ltd, Santos (BOL) Pty Ltd, Vamgas Pty Ltd, Reef Oil Pty Ltd, Alliance Petroleum Australia Pty Ltd, Bridge Oil Developments Pty Ltd, Delhi Petroleum Pty Ltd, Beach Energy (Operations) Limited, Basin Oil Pty Ltd and Santos (NARNL Cooper) Pty Ltd; and

(n) the rights and interests of BHP Olympic Dam Corporation Pty Ltd:

(i) in the Indenture (as amended) and ratified by the *Roxby Downs (Indenture Ratification) Act 1982 (SA)*, and rights, powers, privileges and interests comprised in, conferred under or in accordance with or pursuant to that Indenture and the *Roxby Downs (Indenture Ratification) Act 1982 (SA)*;

(ii) in the Variation Deed amending the Indenture and ratified by the *Roxby Downs (Indenture Ratification) (Amendment of Indenture) Amendment Act 2011 (SA)*, and rights, powers, privileges and interests comprised in, conferred under or in accordance with or pursuant to that Variation Deed amending the Indenture and the *Roxby Downs (Indenture Ratification) (Amendment of Indenture) Amendment Act 2011 (SA)*; and

(iii) for its employees, agents or contractors to enter the Determination Area to access BHP Olympic Dam Corporation Pty Ltd's rights and interests and to do all things necessary to exercise those rights and interests in the vicinity of the Determination Area in performance of their duties.

18. The relationship between the native title rights and interests in the Native Title Land that are described in paragraph 13 and the other rights and interests that are described in paragraph 17 (the Other Interests) is that:

(a) to the extent that any of the Other Interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title rights and interests continue to exist in their entirety, but the native title rights and interests have no effect in relation to the Other Interests to the extent of the inconsistency during the currency of the Other Interests;

(b) the existence and exercise of the native title rights and interests do not prevent the doing of any activity required or permitted to be done by or under the Other Interests, and the Other Interests, and the doing of any activity required or permitted to be done by or under the Other Interests, prevail over the native title rights and interests and any exercise of the native title rights and interests, but, subject to any application of the Native Title Act or the *Native Title (South Australia) Act 1994* (SA), do not extinguish them;

(c) in relation to the land and waters set out in Schedule 4 the non-extinguishment principle applies in relation to the grant or vesting of the land, or the creation of any other prior interest in the land.

AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:

19. The native title is not to be held in trust.

20. On this Determination coming into effect, Barnjarla Determination Aboriginal Corporation RNTBC (ICN 8603) is to be the prescribed body corporate for the purpose of s 57(2) Native Title Act, and shall perform the functions mentioned in s 57(3).

REGISTER ATTACHMENTS:

1. SCD2021/002 Schedule 1 - Determination Area, 4 pages - A4, 24/09/2021
2. SCD2021/002 Schedule 2 - Maps - Part A, 14 pages - A4, 24/09/2021
3. SCD2021/002 Schedule 2 - Maps - Part B, 22 pages - A4, 24/09/2021
4. SCD2021/002 Schedule 3 - land and waters where native title exists (Native Title Land), 2 pages - A4, 24/09/2021
5. SCD2021/002 Schedule 4 - Native Title Land where prior extinguishment disregarded, 1 page - A4, 24/09/2021
6. SCD2021/002 Schedule 5 - Areas where native title extinguished - Part 1, 64 pages - A4, 24/09/2021
7. SCD2021/002 Schedule 5 - Areas where native title extinguished - Part 2, 63 pages - A4, 24/09/2021
8. SCD2021/002 Schedule 6 - Native Title pursuant to the ILUA, 1 page - A4, 24/09/2021
9. SCD2021/002 Schedule 7 - Existing Interests of SA Power Networks Assets, 4 pages - A4, 24/09/2021

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.