



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): SAD65/2022; SAD185/2021
NNTT Number: SCD2023/003

Determination Name: [Weetra-Height on behalf of the Nauo People v State of South Australia](#)

Date(s) of Effect: 23/02/2024

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: 15/05/2023

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Order 2 of the determination provides that '[t]he Determination will take effect upon the Nauo Settlement ILUA being registered on the Register of Indigenous Land Use Agreements.' The Agreement referred to in Order 2 was registered on 23 February 2024, and therefore the determination is in effect from 23 February 2024.

REGISTERED NATIVE TITLE BODY CORPORATE:

Nauo Aboriginal Corporation
Trustee Body Corporate
Level 4
345 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

11. Under the traditional laws and customs acknowledged and observed by the Nauo people, the Native Title Holders are those living Aboriginal people who are the descendants whether by birth or traditional adoption from any of the following Nauo antecedents:

- (a) Topsy Ahang;
- (b) Mother of Elizabeth Anderson;

(c) Mary, mother of Henry Weetra; and

(d) Frederick Milerah;

and who identify as Nao and are recognised by the other Native Title Holders under those traditional laws and customs as having rights and interests in the Determination Area (together the **Native Title Holders**).

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

1. There be a determination of native title in the Nao Application and the Nao #4 Application (**Nao Applications**) in the terms set out at paragraphs 5 to 18 below (**the Determination**).

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

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

4. The Applicants, 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 Nao Settlement ILUA will be 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 item 2 of Schedule 6; and

(c) to determine the effect on native title rights and interests of any Public Works referred to in item 2 of Schedule 6.

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 Part 15 of the Native Title Act;

(b) **adjacent land** and **subjacent land** have the meaning given to them in the *Harbors and Navigation Act 1993* (SA);

(c) **Determination Area** has the meaning given in paragraph 6;

(d) **Native Title Holders** has the meaning given in paragraph 11;

(e) **Native Title Land** means the land and waters referred to in paragraphs 7, 8 and 9 of these orders; and

(f) **Natural Resources** means:

(i) any animal, plant, fish and bird life found on or in the land and waters of the Native Title Land, including but not limited to medicinal plants, wild tobacco, feathers and resin;

(ii) any clays, soil, sand, gravel, rock or ochre found on or below the surface of the Native Title Land;

that have traditionally been taken and used by the Native Title Holders, but does not include:

(iii) animals that are the private personal property of another;

(iv) crops that are the private personal property of another; and

(v) minerals as defined in the *Mining Act 1971* (SA) and petroleum as defined in the *Petroleum and Geothermal Energy Act 2000* (SA);

(g) **Nao Applications** has the meaning given in paragraph 1;

(h) 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. The **Determination Area** comprises all of the land and waters within the external boundary of the Nauro Applications as described at Schedule 1.

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

7. Subject to Schedule 6, native title exists in the land and waters described in Schedules 3, 4 and 5.

8. Sections 47A or 47B of the NTA apply to those parcels or parts of parcels described in parts A and B respectively of Schedule 4. The prior extinguishment of native title over those areas is disregarded for the purpose of this Determination and native title exists in those parcels or parts of parcels in accordance with the terms of these orders.

9. The Court notes that the State and the Applicants have agreed to enter into the Nauro Settlement ILUA. In accordance with the agreement recorded in that ILUA, native title exists, subject to the terms of these orders, in adjacent land and subjacent land within the Determination Area that is vested in the Minister under section 15(1)(a) of the *Harbors and Navigation Act 1993* (SA), including the areas identified in Schedule 5 but excluding those areas identified in Schedule 6.

Areas within Determination Area where native title does not exist by virtue of extinguishment

10. Native title has been extinguished in those areas described in Schedule 6.

Native Title Holders

11. Under the traditional laws and customs acknowledged and observed by the Nauro people, the Native Title Holders are those living Aboriginal people who are the descendants whether by birth or traditional adoption from any of the following Nauro antecedents:

- (a) Topsy Ahang;
- (b) Mother of Elizabeth Anderson;
- (c) Mary, mother of Henry Weetra; and
- (d) Frederick Milerah;

and who identify as Nauro and are recognised by the other Native Title Holders under those traditional laws and customs as having rights and interests in the Determination Area (together the **Native Title Holders**).

Rights and Interests

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

- (a) the right of access, to be present on, move about on and travel over the Native Title Land;
- (b) the right to take, enjoy, share and exchange the Natural Resources of the Native Title Land for traditional purposes;
- (c) the right to use the natural water resources of the Native Title Land for traditional purposes;
- (d) the right to conduct ceremonies on the Native Title Land;
- (e) the right to maintain and protect sites and places of cultural significance under the traditional laws and customs of the Native Title Holders on the Native Title Land;
- (f) the right to teach on the Native Title Land the physical and spiritual attributes of the Native Title Land;
- (g) the right to hold meetings on the Native Title Land;
- (h) the right to light fires on the Native Title Land for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation; and
- (i) the right to be accompanied onto the Native Title Land by those people who, although not Native Title Holders,

recognise and are bound by the traditional laws and customs of the Native Title Holders and who are:

- (i) spouses of Native Title Holders; or
- (ii) people required by traditional law and custom for the performance of cultural activities on the Native Title Land.

General Limitations

13. The native title rights and interests described in paragraph 12 do not confer possession, occupation, use and enjoyment of the land and waters on the Native Title Holders to the exclusion of others.

14. The native title rights and interests set out at paragraph 12 are subject to and exercisable in accordance with:

- (a) the traditional laws acknowledged and traditional customs observed by the Native Title Holders; and
- (b) the laws of the State and Commonwealth.

15. For the avoidance of doubt, the native title interest expressed in paragraph 12(c) (the right to use natural water resources) is subject to the *Landscapes South Australia Act 2019* (SA).

Others Interests and Relationship with the Native Title

16. 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) the interests of the Crown in right of the Commonwealth of Australia;
- (c) in relation to reserves as defined in the *National Parks and Wildlife Act 1972* (SA):
 - (i) the rights and interests of the Crown in right of the State of South Australia pursuant to the *National Parks and Wildlife Act 1972* (SA);
 - (ii) the rights and interests of any person or persons validly granted or created in accordance with the *National Parks and Wildlife Act 1972* (SA); and
 - (iii) the rights and interests of the public to use and enjoy those reserves consistent with the *National Parks and Wildlife Act 1972* (SA);
- (d) the rights and interests of the Crown in right of the State of South Australia pursuant to the *Harbors and Navigation Act 1993* (SA);
- (e) the interests of the Aboriginal Lands Trust in the lands set out in Schedule 4 pursuant to the *Aboriginal Lands Trust Act 1966* (SA);
- (f) 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 *Aquaculture Act 2001* (SA), *Crown Land Management Act 2009* (SA), *Crown Lands Act 1929* (SA), *Native Vegetation Act 1991* (SA), *Fisheries Management Act 2007* (SA), *Natural Resources Management Act 2004* (SA), *Mining Act 1971* (SA), and *Petroleum and Geothermal Energy Act 2000* (SA), all as amended from time to time;
- (g) the rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth;
- (h) 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;
- (i) the rights and interests of the Australian Fisheries Management Authority in relation to plans of management made under the *Fisheries Management Act 1991* (Cth), including for the Southern Bluefin Tuna Fishery, the Western Tuna and Billfish Fishery, and permits issued for the Western Skipjack Tuna Fishery;
- (j) the rights and interests of the State and the Native Title Holders pursuant to the Naou Settlement ILUA;
- (k) the rights and interests of Telstra Corporation Limited (ACN 051 775 556), Amplitel Pty Ltd (ACN 648 133 073), any related bodies corporate and successors in title;

(i) as the owner or operator of telecommunications facilities within the Determination Area;

(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:

- to inspect land;
- to install, occupy and operate telecommunications facilities; and
- 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 Determination Area in performance of their duties; and

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

(l) 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 within 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;

(m) the rights and interests of each of the Wudinna District Council, the District Council of Elliston and the District Council of Lower Eyre Peninsula in their relevant local government areas in the Native Title Land:

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

(ii) as an entity exercising statutory powers in respect of land and waters within the Native Title Land;

(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);

(n) the interests of persons to whom valid or validated interests have been granted by a Council under the *Local Government Act 1934* (SA) or the *Local Government Act 1999* (SA).

17. The relationship between the native title rights and interests in the Native Title Land that are described in paragraph 12 and the other rights and interests that are described in paragraph 16 (**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 NTA or the *Native Title (South Australia) Act 1994* (SA), do not extinguish them; and

(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:

18. The native title the subject of this determination is to be held on trust.

19. The Nauo Aboriginal Corporation (ICN 9948), a prescribed body corporate, is to hold the rights and interests from time to time comprising the native title the subject of this determination in trust for the Native Title Holders.

REGISTER ATTACHMENTS:

1. SCD2023/003 Schedule 1 – External boundary description of the Determination Area, 4 pages - A4, 15/05/2023
2. SCD2023/003 Schedule 2 – Part A: Map of the External Boundaries of the Determination Area, 32 pages - A4, 15/05/2023
3. SCD2023/003 Schedule 2 – Part B: Maps depicting Native Title Land (Section 1), 90 pages - A4, 15/05/2023
4. SCD2023/003 Schedule 2 – Part B: Maps depicting Native Title Land (Section 2), 88 pages - A4, 15/05/2023
5. SCD2023/003 Schedule 3 – Land and waters where native title exists (Native Title Land), 9 pages - A4, 15/05/2023
6. SCD2023/003 Schedule 4 – Areas where extinguishment is disregarded due to s47A or s47B of the NTA, 2 pages - A4, 15/05/2023
7. SCD2023/003 Schedule 5 – Areas where native title exists pursuant to the Nauo Settlement ILUA, 1 page - A4, 15/05/2023
8. SCD2023/003 Schedule 6 – Areas where native title does not exist, 139 pages - A4, 15/05/2023
9. SCD2023/003 Schedule 7 – Existing interests of SA Power Networks, 3 pages - A4, 15/05/2023

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.