



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): VID6004/1998; VID655/2006
NNTT Number: VCD2007/001

Determination Name: [Lovett on behalf of The Gunditjmarra People v State of Victoria](#)

Date(s) of Effect: 30/03/2007

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: 30/03/2007

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Please note that the native title determination made on 30 March 2007 was amended by court order on 19 July 2011 by inserting Area 2057 to Area 2073 into Schedules 2 and 3 of the determination. The Schedule 2 and Schedule 3 Determination Area Table (attached as NNTR Attachment 1) has been amended as ordered.

REGISTERED NATIVE TITLE BODY CORPORATE:

Gunditj Mirring Traditional Owners Aboriginal Corporation RNTBC
Trustee Body Corporate
PO Box 216
HEYWOOD VIC 3304

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:

The native title is held by those the descendants of the following persons who identify as Gunditjmarra: Jenny Green (Alberts), Timothy James Arden, Barbara Winter, Mary (mother of James Egan), Billy Gorrie, Mary (wife of Billy Gorrie), William King, Hannah (wife of William King), James Lancaster, Susannah McDonald (Lovett), James McKinnon and Mary, Eliza Mitchell (Saunders), John Henry Rose, Lucy Sutton, James Sutton and Mary, Louisa (mother of Agnes and Alex Taylor), and Andrew Winter.

MATTERS DETERMINED:

BEING SATISFIED that a determination of native title in the terms set out in the following minute of consent determination of native title in respect of proceedings VID6004 of 1998 and VID655 of 2006 would be within the

power of the Court and, it appearing to the Court appropriate to do so, pursuant to section 87 of the Native Title Act 1993 (Cth) and by the consent of the parties:

THE COURT ORDERS THAT:

6. There be a determination of native title in proceedings VID6004 of 1998 and VID655 of 2006 in terms of the determination of native title that follows, in relation to the land and waters covered by the proceedings within the location identified in Schedule 1 of the determination.

7. Gunditj Mirring Traditional Owners Aboriginal Corporation shall hold the determined native title in trust for the native title holders pursuant to s56(2) of the Native Title Act 1993 (Cth).

THE COURT DETERMINES THAT:

Existence of native title (s 225)

1. Native title exists as provided in Order 5 in the areas described in Schedule 2 ("Native Title Area").

2. Native title does not exist in the areas described in Schedule 3. To be clear, where Schedule 3 refers to an area covered by a public work, the land and waters in relation to which native title does not exist includes the land and waters adjacent to that public work, as described in s 251D of the Native Title Act.

3. There is no native title in the Native Title Area in or in relation to:

(a) minerals as defined in the Mineral Resources Development Act 1990 (Vic), as in force at the date of the determination, as are owned by the Crown;

(b) petroleum as defined in the Petroleum Act 1998 (Vic), as in force at the date of the determination, as is owned by the Crown;

(c) groundwater as defined in the Water Act 1989 (Vic), as in force at the date of the determination.

The Native Title Holders (s 225(a))

4. The native title is held by those the descendants of the following persons who identify as Gunditjmarra: Jenny Green (Alberts), Timothy James Arden, Barbara Winter, Mary (mother of James Egan), Billy Gorrie, Mary (wife of Billy Gorrie), William King, Hannah (wife of William King), James Lancaster, Susannah McDonald (Lovett), James McKinnon and Mary, Eliza Mitchell (Saunders), John Henry Rose, Lucy Sutton, James Sutton and Mary, Louisa (mother of Agnes and Alex Taylor), and Andrew Winter.

The nature and extent of native title rights and interests (s 225(b)) and exclusiveness of native title (s 225(e))

5. Subject to Orders 6-9, the native title that exists in the Native Title Area ("native title rights and interests") consists of the non-exclusive:

(a) right to have access to or enter and remain on the land and waters;

(b) right to camp on the land and waters landward of the high water mark of the sea;

(c) right to use and enjoy the land and waters;

(d) right to take the resources of the land and waters; and

(e) right to protect places and areas of importance on the land and waters.

6. Insofar as the native title rights and interests may provide a right to take water from waterways, that right is limited to a right to take water from waterways for domestic and ordinary use.

7. The right in Order 5(e) does not entail a right to use physical force in a manner that would be unlawful.

8. The native title rights and interests do not confer possession, occupation, use and enjoyment of the land and waters on the native title holders to the exclusion of all others.

9. The native title rights and interests are subject to and exercisable in accordance with:

(a) the traditional laws and customs of the native title holders;

(b) the laws of the State in which the land or waters concerned are situated and of the Commonwealth, including the common law.

Nature and extent of any other interests (s 225(c))

10. The nature and extent of other interests in relation to the Native Title Area, as they exist at the date of the determination ("other interests"), are those set out in Schedule 4.

Relationship between native title and other interests (s 225(d))

11. The relationship between the native title rights and interests and the other interests is that:

(a) where and 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,

(i) the native title rights and interests continue to exist in their entirety; but

(ii) 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) otherwise, except where (c) applies:

(i) 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

(ii) 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 do not extinguish them; and

(c) in relation to the other interests referred to in paragraph (a), (f) or (g) of Schedule 4, those interests, and rights held under them, co-exist with the native title rights and interests, and both the rights held under the other interests and the native title rights must be exercised reasonably.

Definitions and interpretation

12. In this determination, including its schedules, unless the contrary intention appears, words and expressions have the same meaning as they have in Part 15 of the Native Title Act and:

"Crown" means the Crown in right of Victoria or the Crown in right of the Commonwealth, as the case requires;

"Determination Area" means the land and waters referred to in Orders 1 and 2, being the land and waters of the areas described in the Determination Area Table in Schedules 2 and 3, and being certain lands and waters within the location described in Schedule 1;

"land" and "waters" respectively have the same meanings as in the Native Title Act;

"Native Title Act" means the Native Title Act 1993 (Cth);

"Native Title Area" means the areas referred to in Order 1;

"native title rights and interests" means those rights and interests set out in Order 5 always as subject to Orders 6 -9;

"other interests" means the interests referred to in Order 10, being the interests set out in Schedule 4;

"public rights" means the other interests identified in paragraphs (a), (f) and (g) of Schedule 4;

"public work" has the same meaning as in s 253 of the Native Title Act and, in relation to any public work described in the Determination Area Table, includes any adjacent land or waters referred to in s 251D of the Native Title Act;

"waterway" has the same meaning as in s 3 of the Water Act 1989 (Vic) as in force at the date of this determination.

13. In this determination including its schedules, in the event of an inconsistency between a description of an area in a schedule and the depiction of that area on the Determination Area Map in Schedule 5, the written description shall prevail.

SCHEDULE 1 - Location of the Determination Area

External Perimeter within which the various areas comprising the Determination Area are located

The Determination Area is located wholly within the following locations only and comprises the particular allotments and areas identified in the Determination Area Table and as generally shown on the Determination Area Map in Schedule 5.

Location 1

Commencing at the intersection of the boundary between the Shire of Glenelg and the Shire of Moyne and the mean high water mark (coast) and extending south to a point 100m seaward of the mean low water mark; then generally westerly and generally north-westerly along a buffer 100m seaward of the mean low water mark to Longitude 140.988031° east. Then north to the intersection with a point 100m west of the top of the west bank of the Oxbow lake, then generally north-easterly along a buffer 100m west of the top of the west bank to intersect a 100m buffer west of the top of the west bank of the Glenelg river then generally north-westerly along a buffer 100m west of the top of the west bank of that river to the South Australian / Victorian border; then north along that border to a point 100m north of the top of the north bank of the Glenelg River; then upstream along a buffer 100m north of the top of the north bank of that river to the intersection with a buffer 100m west of the top of the west bank of the mouth of the Wannon river; then upstream, along a buffer 100m north of the top of the north bank of the Wannon River to Longitude 142.325156° east; then generally southerly through the following coordinate points.

Longitude Latitude

(east) (south)

142.324971 37.647563

142.324624 37.651086

142.324461 37.652733

Then south to the northern boundary of the Glenelg Highway road reserve at Longitude 142.324413° east, then generally southwesterly along the boundary of that highway reserve to the centreline with the Tarrington-Strathkeller Road; Then southerly along that road to the centreline of the Hamilton Highway; Then easterly along that highway to with the centreline of the Yatchaw Road; Then southerly and generally south-westerly along that road to the centreline of the Research Station Road; Then westerly along that road to the centreline of the Mount Napier Road; Then south-south-easterly along that road for approximately 3 kms to the intersection of the Mount Napier Road and the centreline of Murroa-Buckley Swamp Road in Buckley Swamp; Then south-south-westerly to the summit of Mount Napier; Then south-south-westerly to the intersection of the centreline of the Byaduck-Penhurst Road and the centreline of the Macarthur-Warrakook Road; Then southerly along the Macarthur-Warrakook Road to the centreline of the Macarthur-Penhurst Road; Then generally south-westerly along that road for approximately 5.5 kms to the centreline of the Macarthur-Hawkesdale Road; Then generally south-easterly along that road for approximately 800 metres to the centreline of the Hamilton-Port Fairy Road; Then south-westerly along that road for approximately 450 metres to the centreline of the Eumeralla River in Macarthur; Then generally southerly, westerly and again southerly along that river to the centreline of the Portland-Woolsthorpe Road; Then generally south-westerly and southerly along that road to the centreline of Condons Road; Then southerly along that road to the centreline of the Princes Highway; Then generally north-westerly along that highway to intersect the boundaries of the Shire of Glenelg and the Shire of Moyne; Then generally southerly along those boundaries to the commencement point.

Notes

Reference Datum

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

Reference Data and Source:

- Mean Low Water Mark/Mean High Water Mark based on coastline data sourced from Geoscience Australia (1998) and Dept of Sustainability & Environment VIC (October 2006).
- River data based on Vicmap Hydro vector data (1:25,000) sourced from Dept of Sustainability & Environment, VIC (Oct 2006).
- State borders based on Vicmap Shared vector data (1:25,000) sourced from Dept of Sustainability and Environment.
- Cadastre information based upon Vicmap Property sourced from the Dept of Sustainability and Environment (Oct 2006).
- Road information based upon Vicmap Transport vector data (1:25,000) sourced from the Dept of Sustainability and Environment (Oct 2006).
- Shire boundary data based on LGA data sourced from the Dept of Sustainability and Environment (Aug 2006)
- Area 9 in Schedule 4 of the Aboriginal and Torres Strait Islander Heritage Protection Regulations 1984 (Cth)

SCHEDULES 2 and 3 - Determination Area & where native title does and does not exist

Determination Area

The Determination Area comprises the land and waters of the areas described in the Determination Area Table that follows and shown generally on the maps.

Note 1: In the Determination Area Table areas are generally identified using parcel numbers and further described by official descriptions of allotment and section identifiers and parish and (where applicable) township names. Parcel numbers are internal references used by the State of Victoria for convenience and are shown on the maps. Where still further description appears useful and convenient, or is necessary to distinguish between areas where native title exists and areas where it does not (as to which, see Note 2), such further description is also included in the column headed "Further Description".

Note 2: In many instances native title exists over part of a parcel but has been extinguished over the balance of the parcel. In those instances, the parcel has two or more separate entries in the Determination Area Table; distinguished by adding "A" and "B" respectively (and further letters if necessary) in the column headed "Entry" next to the relevant parcel reference. The letter "A" is used for an area where native title exists. The letter "B" is used for the part of a parcel where native title does not exist. Further entries labelled with subsequent letters are used where multiple entries are need to identify the parts of a parcel where native title does not exist. Where an entry refers to part of a parcel where native title has been extinguished, the column headed "Further Description" contains a short reference to the act or fact that has caused the extinguishment of the native title over those areas.

Note 3: The spatial extent of extinguishment has not been surveyed or otherwise fixed but is to be determined by the spatial extent of the act or fact referred to under the column headed "Further Description" (and which, in the case of a public work, will include the land and waters referred to in s 251D of the Native Title Act). In a given parcel it is a possibility that, as a result of the spatial extent of an act or fact being determined, native title may be found to have been extinguished over the entire parcel.

Note 4: In the Determination Area Table, the numbers in the first column against each row are sequential and for convenience of reference only.

Note 5: For the avoidance of doubt, there is only a determination in respect of the land and waters identified in Schedules 2 and 3 to the extent those land and waters or parts thereof fall within the boundary described in Schedule 1.

Where native title exists - Schedule 2, Order 1

Subject to Orders 6 to 9, native title exists in the land and waters of the areas and parts of areas listed as being in Schedule 2 in the Determination Area Table that follows and shown generally on the maps.

Where native title does not exist - Schedule 3, Order 2

Native title does not exist, because it has been wholly extinguished, in the land and waters of the areas and parts of areas listed as being in Schedule 3 in the Determination Area Table that follows and shown generally on the maps.

SCHEDULE 4 - "other interests"

"Other interests" - Orders 10 and 11

The following interests as they exist as at the date of the determination:

(a) so far as confirmed pursuant to s 15 of the Land Titles Validation Act 1994 (Vic) as at 24 November 1998, public access to and enjoyment of the following places:

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

(b) the right of an employee or agent or instrumentality of the Crown, or of any local government or other statutory authority, to access land or waters in the Determination Area as required in the performance of statutory or common law duties;

(c) the interests of the Crown, or a local government body or other statutory authority of the Crown, in any capacity in any public works and other facilities whose construction or establishment:

(i) was valid or has been validated;

(ii) did not extinguish native title (even as a consequence of validation); and

(iii) commenced prior to the date of this determination.

(e) the following interests of Telstra Corporation Limited:

(i) rights and interests as the owner or operator of telecommunications facilities installed within the Determination Area and as the holder of a carrier licence under the Telecommunication Act 1997 (Cth);

(ii) rights and interests 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); and

(iii) rights to enter land or waters in the Determination Area by employees, agents or contractors of Telstra Corporation Limited to enable access to its telecommunications facilities in, and in the vicinity of, the Determination Area; and

(f) any public right to fish;

(g) the public right to navigate;

(h) the interest of the holder of a licence granted pursuant to Part 3A of the Victorian Plantations Corporation Act 1993 (Vic);

(i) the interests of persons holding licences, permits, statutory fishing rights, or other statutory rights pursuant to:

(i) the Fisheries Act 1995 (Vic) or regulations or management plans made under that Act;

(ii) the Fisheries Management Act 1991 (Cth), or regulations or management plans made under that Act;

(iii) any other legislative scheme for the control, management and exploitation of the living resources within the Determination Area

(j) the interest of the holder of petroleum exploration permit number PEP 160 pursuant to the Petroleum Act 1998 (Vic) and the interest of any other person in that permit as registered in the petroleum register established under Division 1 of Part 14 of that Act;

(k) rights and interests created under and granted pursuant to the Alcoa (Portland Aluminium Smelter) Act 1980 (Vic) other than interests the existence of which have extinguished native title;

(l) rights and interests of Port of Portland Pty Ltd pursuant to the Port Services Act 1995 (Vic) and the Marine Act 1988 (Vic) other than interests the existence of which have extinguished native title;

(m) the interests of Powercor Australia Limited (and its related entities), including:

(i) rights and interests as an entity holding a distribution licence under the Electricity Industry Act 2000 (Vic);

(ii) rights and interests created pursuant to the Electricity Industry Act 2000 (Vic);

(iii) rights and interests as holder of a carrier licence under the Telecommunications Act 1997 (Cth);

(iv) rights and interests as owner or operator of electrical and telecommunications facilities and infrastructure (facilities) installed within the Determination Area; and

(v) rights of access for the performance of their duties by employees, agents or contractors of Powercor Australia Limited to its facilities in, and in the vicinity of, the Determination Area; and

(n) the interests of persons to whom valid and validated rights have been:

(i) granted by the Crown pursuant to statute or otherwise in the exercise of its executive power; or

(ii) otherwise conferred by statute.

SCHEDULE 5 - Determination Area Map [see Attachment 2]

REGISTER ATTACHMENTS:

1. Attachment 1 DA TABLE FOR PART A OF PROCEEDINGS VID6004 OF 1998 and VID655 OF 2006, 155 pages - A4, 30/03/2007
2. Attachment 2 SCHEDULE 5 - DETERMINATION AREA MAP, 1 page - A3, 30/03/2007

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.