



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): VID6007/1998; VID482/2009  
NNTT Number: VCD2010/001

**Determination Name:** [Mullett on behalf of the Gunai/Kurnai People v State of Victoria](#)

**Date(s) of Effect:** 22/10/2010

**Determination Outcome:** Native title exists in parts of the determination area

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

**Determination Date:** 22/10/2010

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

Not Applicable

### REGISTERED NATIVE TITLE BODY CORPORATE:

GunaiKurnai Land & Waters Aboriginal Corporation RNTBC  
Trustee Body Corporate  
PO Box 1699  
BAIRNSDALE VIC 3875

*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:

The native title is held by the Gunai/Kurnai People, being those persons who identify as Gunai, Kurnai or Gunai/Kurnai and are descended from one or more of the Gunai/Kurnai Apical Ancestors described in Schedule 4.

### MATTERS DETERMINED:

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 the Determination Area Table

refers to an area covered by a public work, the land and waters in respect of which native title does not exist include the land and waters adjacent to that public work, as described in s 251D of the Native Title Act 1993 (Cth).

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

- (a) minerals as defined in the Mineral Resources (Sustainable Development) Act 1990 (Vic), as in force at the date of this determination, as are owned by the Crown;
- (b) petroleum as defined in the Petroleum Act 1998 (Vic), as in force at the date of this determination, as is owned by the Crown;
- (c) groundwater as defined in the Water Act 1989 (Vic), as in force at the date of this determination.

#### THE NATIVE TITLE HOLDERS (s 225(a))

4. The native title is held by the Gunai/Kurnai People, being those persons who identify as Gunai, Kurnai or Gunai/Kurnai and are descended from one or more of the Gunai/Kurnai Apical Ancestors described in Schedule 4.

#### 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 use and enjoy the land and waters;
- (c) right to take the resources of the land and waters for the purpose of satisfying their personal, domestic or communal needs, but not for any commercial purposes;
- (d) right to protect and maintain places and areas on the land and waters which are of importance according to Gunai/Kurnai traditional laws and customs; and
- (e) without limiting the generality of the rights and interests referred to in (a) to (d), they include the right to undertake the following activities on the land and waters:
  - (i) camping, and for that purpose, erecting shelters and other temporary structures landward of the high water mark of the sea;
  - (ii) engaging in cultural activities;
  - (iii) engaging in rituals and ceremonies;
  - (iv) holding meetings and gatherings; and
  - (v) teaching and learning about the physical, spiritual and cultural attributes of places and areas of importance.

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(d) 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 of Victoria 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 this determination ("other interests"), are those set out in Schedule 5.

#### 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), (e), (f) or (g) of Schedule 5, 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 the State 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;

"Determination Area Map" means the map in Schedule 6;

"Determination Area Table" means the table of that name forming part of Schedules 2 and 3;

"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 5;

"public work" has the same meaning as in s 253 of the Native Title Act.

"Unidentified Extinguishing Public Work" means any public work in the Native Title Area:

(a) the construction or establishment of which has extinguished native title in accordance with the Native Title Act; and

(b) the extinguishing effect of which has not been considered by the State and the Applicants prior to the date of this determination.

"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, the written description shall prevail.

## SCHEDULE 1 - Location of the Determination Area

[ORDER 12]

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

The Determination Area is located wholly within the following external boundaries and comprises the particular allotments and areas identified in the Determination Area Table and as generally shown on the Determination Area Map.

The determination area covers all the land parcels listed within Schedule 2 and Schedule 3 to the extent that they are within the external boundary described as:

Commencing at a point on the western boundary of the Township of Mirboo North, being the intersection of the Parishes of Allambee East, Mirboo and Mardan and extending generally westerly, generally northerly and generally easterly along boundaries of the Parish of Allambee East to the western boundary of the Parish of Moe; then generally northerly along boundaries of that parish to the southern boundary of the Parish of Darnum; then generally westerly along boundaries of that parish to the centreline of Moe River; then generally easterly along the centreline of that river to its intersection with the western boundary of the Parish of Yarragon; then generally easterly and generally north westerly along boundaries of that parish to its intersection with the southern boundary of the Parish of Neerim East; then generally north westerly and generally northerly along boundaries of that parish to its intersection with the southern boundary of the Parish of Fumina; then generally north westerly, generally northerly and generally easterly along boundaries of that parish to its intersection with the western boundary of the Parish of Fumina North; then generally northerly and generally easterly along the western boundaries of that parish and western and northern boundaries of the Parish of Baw Baw to the south western corner of the Parish of Toombon; then generally northerly along boundaries of that parish to the southern boundary of the Parish of Moolpah; then westerly generally north easterly and generally easterly along boundaries of that parish and northern boundaries of the Parish of Binnuc to the western boundary of the Parish of Licola; then generally north easterly, generally north westerly, generally northerly and generally easterly along western boundaries of that parish, eastern boundaries of the Parish of Licola North, western and northern boundaries of the Parish of Magdala South to the south western corner of the Parish of Howitt Plains; then generally northerly, generally north easterly, generally easterly and southerly along western boundaries of that parish, northern boundaries of the Parish of Bolaira, northern boundaries of the Parish of Kybeyan, northern and eastern boundaries of the Parish of Yertoo and the eastern boundary of the Parish of Cooma to the north western corner of the Parish of Bulgaback; then easterly along the boundary of that parish to the centreline of the Dargo River, then generally easterly and generally southerly along the centreline of that river to the north western corner of the Parish of Quag-munjie, then generally easterly and generally north easterly along boundaries of that parish, western and northern boundaries of the Parish of Doodwuk to the western boundary of the Parish of Binnican; then generally north easterly, generally northerly and generally easterly along boundaries of that parish, western and northern boundaries of the Parish of Tabberabbera and northern boundaries of the Parish of Angora to the northern western corner of the Parish of Numbie-Munjie; then generally easterly, generally northerly, easterly and southerly along the boundaries of that parish, western, northern and eastern boundaries of the Parish of Noyong to a point on the centreline of the Timbarra River at Latitude 37.253946° South; then generally easterly and generally southerly along the centreline of that river to its intersection with the northern boundary of the Parish of Mellick-Munjie; then generally easterly and generally southerly along boundaries of that parish to the north west corner of Allotment 21, Parish of Murrindal West; then easterly and southerly along boundaries of that allotment to the northern most point of Crown allotment 34F Parish of Murrindal West; then generally south easterly along boundaries of that allotment to its easternmost point and onwards to the northern most point of Crown Allotment 34E Parish of Murrindal West; then generally south easterly and generally easterly along boundaries of that allotment and southern and eastern boundaries of Crown Allotment 50 Parish of Murrindal West to the intersection of the prolongation westerly of the northern boundary of Lot 2 on PS309037; then easterly to and along the boundary of that lot and the northern boundary of Lot 1 PS309037 and onwards to the western boundary of the Parish of Murrindal East; then north easterly and generally easterly along boundaries of that parish to the centreline of the Snowy River; then generally southerly along the centreline of that River to its mouth at the intersection of the southern boundaries of the Parishes of Newmerella and Orbost East; then south to a point 200 metres seaward of the Territorial Sea Baseline; then generally westerly and generally south westerly along that line 200 metres seaward of that baseline to its intersection with the eastern boundary of Native Title Determination Application VID6005/98 Gunai/Kurnai/Boonerwung (VC97/2), as lodged with the Federal Court 17 March 1997, at Longitude 146.513163° East; then north westerly along that application boundary to a point on the north eastern boundary of Crown Allotment 2 Parish of Warreen at Longitude 146.472505° East; then generally northerly to the southern boundary of Crown Allotment 22D Section B Parish of Wonga Wonga South; then generally westerly, generally north westerly and generally easterly along boundaries of that allotment to the southern boundary of the Parish of Toora; then generally northerly and generally westerly along boundaries of that parish to the eastern bank of the Franklin River; then generally north westerly along the bank of that river to Latitude 38.665785° South; then westerly to a point 20.12 metres (100 links) north easterly of the eastern bank of Deep Creek at Latitude 38.665785° South; then generally north westerly along a 20.12 metre buffer east of the eastern bank of that river to a point 20.12 metres north easterly of the source of Deep Creek at Latitude 38.601030° South; then north westerly to a point on the western boundary of the Parish of Mirboo South at its intersection with a line drawn between the source of Deep Creek and the source of Stony Creek; then generally north westerly and generally northerly along boundaries of that parish to its intersection with the southern boundary of the Parish of Mirboo; then generally westerly and generally northerly along southern and western boundaries of that parish back to the commencement point.

## NOTES

### Data Reference and source

Application boundary data compiled by the National Native Title Tribunal based on maps, and instructions supplied by the Department of Sustainability and Environment VIC (September 2010).

Freehold cadastral data sourced from Public Sector Mapping Agency (August 2010).

Non freehold cadastral data sourced from Sinclair Knight Merz Pty Ltd under license from Dept of Sustainability and Environment, VIC (August, 2010).

Parish boundaries sourced from Dept of Sustainability and Environment (July 2009) and compiled to cadastral boundaries.

River based on cadastral boundaries where possible or topographic vector data (1:25,000) sourced from Geoimage Pty Ltd under license from Geoscience Australia (March 2001).

Territorial Sea Baseline sourced from Maritime boundaries data and is © Commonwealth of Australia (Geoscience Australia) 2006. AMB 6th Edition released in February 2006.

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 to 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.

SCHEDULES 2 AND 3 - WHERE NATIVE TITLE DOES AND DOES NOT EXIST - DETERMINATION AREA TABLE - DETERMINATION AREA TABLE NOTES

SCHEDULE 2 - WHERE NATIVE TITLE EXISTS - ORDER 1

Subject to Orders 3(c) and 6-9 and the Determination Area Table Notes 3 and 4, native title exists in:

- i. land and waters of the areas and parts of areas listed in the column marked "Schedule 2 Areas" in the Determination Area Table and shown generally on the Determination Area Map, excluding any land or waters on which there is an Unidentified Extinguishing Public Work; and
- ii. other waters within the area described in Schedule 1, excluding any waters listed in the column marked "Schedule 3 Areas" in the Determination Area Table and shown generally on the Determination Area Map and also excluding any waters on which there is an Unidentified Extinguishing Public Work .

[Refer to NNTR Attachment 1 for Determination Area Table and NNTR Attachment 2 for Determination Area Map]

SCHEDULE 3 - WHERE NATIVE TITLE DOES NOT EXIST - ORDER 2

Native title does not exist, because it has been wholly extinguished:

- (a) in the land and waters of the areas and parts of areas listed in the column marked "Schedule 3 Areas" in the Determination Area Table and shown generally on the Determination Area Map; and
- (b) in any [other] land or waters on which there is an Unidentified Extinguishing Public Work.

DETERMINATION AREA TABLE - Table of Areas referred to in Schedules 2 and 3

(To be read in conjunction with the following Determination Area Notes)

[See NNTR Attachment 1: "Determination Area Table - Table of Areas referred to in Schedules 2 and 3"]

DETERMINATION AREA TABLE NOTES

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. Where further description appears useful and convenient, or it 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 "Native Title

Assessment".

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 separate entries in the Determination Area Table; distinguished by adding "A" and "B" respectively in the column headed "Entry" next to the relevant parcel reference. The letter "B" is used for an area where native title exists. The letter "A" is used for the part 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 "Native Title Assessment" 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 "Native Title Assessment" (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.

Note 6: The parcel identifiers in the Determination Area Table (Parcel ID, Allotment and Section) were current as at 13 December 2009. The entries in the Determination Area Table relate to the area that was within the parcels, as described by the parcel identifiers, at that date. Fixing the parcel identifiers at a specific date is necessary, because regular changes are made to parcel identifiers, whether because of parcel subdivision or otherwise. Any changes in parcel boundaries and parcel identifiers after 13 December 2009, whether before or after the date of the determination, do not affect the area within the Determination Area Table.

#### SCHEDULE 4 - GUNAI/KURNAI APICAL ANCESTORS

[ORDER 4]

- (1) Charles Boldin / Bolden and Emily Clarke
- (2) Jemmy Bull and Mary
- (3) Tommy Bumberrah
- (4) Bungil Narran
- (5) Bungil Wrekallak
- (6) Bungil Tay-a-bung
- (7) Jack Chase and Kitty
- (8) Dan Bun-gyl Tambo and Kitty Wangung
- (9) Old Darby Tar-loomba and Mary Tur-un-gook
- (10) Charles Rivers and Kitty
- (11) Charles Hammond and Annabella / Hannah McLeod
- (12) Jimmy
- (13) Billy Login / Logan and Mary
- (14) King Tom Kee-lum-bedine and Mary War-gyle
- (15) Old Ngary and Mary Woon-grook
- (16) James Scott
- (17) George Thomas
- (18) Timothy Bungil Barlijan and Patty Tu-duk

- (19) Charlotte Mercawan
- (20) Yallung / Tharnaberrang Kitty and Wookalnom Dukalunern Mary
- (21) Wood-a-turn
- (22) Merriguin Lucy Goold
- (23) William McDougall
- (24) Edward 'Neddy' O'Rourke
- (25) John Wilson and Polly

SCHEDULE 5 - "OTHER INTERESTS"

[ORDER 10]

The other interests, as they exist at the date of this determination, are as follows:

(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;

(d) the rights and interests of Telstra Corporation Limited:

(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:

(A) to inspect land;

(B) to install and operate telecommunications facilities;

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

(D) for its employees, agents or contractors to access the Determination Area for the purposes of exercising the rights in (A),(B) and (C) above in respect of telecommunications facilities in and in the vicinity of the Determination Area;

(iii) under any leases, licences, access agreements or easements relating to its telecommunications facilities in the Determination Area.

(e) any public right to fish;

- (f) the public right to navigate;
- (g) the international right of innocent passage through the territorial sea;
- (h) the interest of a holder of a pipeline licence granted pursuant to:
  - (i) the Pipelines Act 2005 (Vic); or
  - (ii) the Pipelines Act 1967 (Vic) and now governed by the Pipelines Act 2005 (Vic); or
  - (iii) the Petroleum (Submerged Lands) Act 1982 (Vic);
- (i) the interest of a holder of a licence granted pursuant to Part 3A of the Victorian Plantations Corporation Act 1993 (Vic);
- (j) 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; and
- (k) 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 6 - DETERMINATION AREA MAP

[ORDER 12]

[See NNTR Attachment 2: "Determination Area Map"]

#### **REGISTER ATTACHMENTS:**

1. Attachment 1 Determination Area Table - Table of Areas referred to in Schedules 2 and 3, 165 pages - A4, 22/10/2010
2. Attachment 2 Determination Area Map, 1 page - A4, 22/10/2010

*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.*