



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): VID6004/1998; VID655/2006
NNTT Number: VCD2011/001

Determination Name: [Lovett on behalf of the Gunditjmarra People v State of Victoria \(No 5\)](#)

Date(s) of Effect: 27/07/2011

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: 27/07/2011

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

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

Eastern Maar Aboriginal Corporation RNTBC
Agent Body Corporate
C/- Native Title Services Victoria
Level 2, 642 Queensbury Street
NORTH MELBOURNE Victoria 3051

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:

4. The native title rights and interests are held in the Native Title Area by:

(a) the Gunditjmarra people, who are those 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; and

(b) the Eastern Maar peoples, who are those descendants, including by adoption, of the following persons, who identify as being from the eastern domain of the Maar speaking people and are recognised as being from the eastern domain by the Eastern Maar people: King of Port Fairy and Eliza; Old Jack (father of John Dawson); Charlie and Alice (parents of Albert Austin); Samuel Robinson and Mary Caramut; Lizzie (mother of Frank Clarke); Robert and Lucy (parents of Alice Dixon); Barney Minimalk; Nellie Whiturboin; Louisa (mother of William Rawlings).

4A. A reference to adoption in Order 4(b) is a reference to a person who was reared up by members of the Eastern Maar peoples, who identifies as being an Eastern Maar person, and is recognised by the Eastern Maar peoples as being an Eastern Maar person.

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 VID6007 of 1998 and VID 655 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:

1. There be a determination of native title in proceedings VID 655 of 2006 and VID 6004 of 1998 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.

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

3. Eastern Maar Aboriginal Corporation shall act as agent for the Eastern Maar People pursuant to s57(2) and (3) of the Native Title Act 1993 (Cth) and perform the functions as provided for in that Act.

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 (Sustainable 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; and

(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 rights and interests are held in the Native Title Area by:

(a) the Gunditjmara people, who are those descendants of the following persons who identify as Gunditjmara: 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; and

(b) the Eastern Maar peoples, who are those descendants, including by adoption, of the following persons, who identify as being from the eastern domain of the Maar speaking people and are recognised as being from the eastern domain by the Eastern Maar people: King of Port Fairy and Eliza; Old Jack (father of John Dawson); Charlie and Alice (parents of Albert Austin); Samuel Robinson and Mary Caramut; Lizzie (mother of Frank Clarke); Robert and Lucy (parents of Alice Dixon); Barney Minimalk; Nellie Whiturboin; Louisa (mother of William Rawlings).

4A. A reference to adoption in Order 4(b) is a reference to a person who was reared up by members of the Eastern Maar peoples, who identifies as being an Eastern Maar person, and is recognised by the Eastern Maar peoples as being an Eastern Maar person.

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; and
- (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), (e) or (f) 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), (e) and (f) 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 under 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 south easterly along a buffer 100m seaward of the mean low water mark to Longitude 142.063308 degrees east. Then north to the intersection of the centreline of the Shaw River. Then generally north east, generally north west, generally north east, generally north along the centreline of that river to Latitude 38.035268 degrees South. Then north easterly to the intersection of the westerly boundary of the Peshurst- Dunkeld road reserve and Latitude 37.816927 degrees south. Then generally northerly along the boundary of the road reserve to the northern boundary of the Glenelg Highway road reserve. Then generally southwesterly along the boundary of that highway reserve to the centreline with the Tarrington-Strathkellar Road; Then southerly along that road to the centreline of the Hamilton Highway; Then easterly along that highway to the intersection with the centreline of 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 Byaduk-Peshurst Road and the centreline of the Macarthur-Warrabkook Road; Then southerly along the Macarthur-Warrabkook Road to the centreline of the Macarthur-Peshurst Road; Then generally south-westerly along that road for approximately 5.5 kms to the centreline of the Macarthur-Hawkesdale Road; Then generally south-westerly along Macarthur-Peshurst Road for approximately 800 metres to the centreline of the Hamilton-Port Fairy Road; Then south-easterly 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 Portland 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.

AREA 2

All the land and waters of Lady Julia Percy Island contained within the outer limit of a 100 m buffer seaward of the mean low water mark surrounding the island.

NOTES

Reference Datum

Geographical coordinates 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 Low Water Mark based on coastline data sourced from Dept of Sustainability & Environment VIC (May 2011).
- River data based on Vicmap Hydro vector data (1:25,000) sourced from Dept of Sustainability & Environment, VIC (May 2011).
- 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 (May 2011).

- Road information based upon Vicmap Transport vector data (1:25,000) sourced from the Dept of Sustainability and Environment (May 2011).

- Shire boundary data based on LGA data sourced from Dept of Sustainability & Environment, VIC (May 2011).

SCHEDULE 2 - WHERE NATIVE TITLE EXISTS - ORDER 1

Subject to Orders 3(c) and 6-9, 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; and

(ii) other waters within the area described in Schedule 1 and shown generally on the Determination Area Map, excluding any waters listed in the column marked 'Schedule 3 Areas' in the Determination Area Table

SCHEDULE 3 - WHERE NATIVE TITLE DOES NOT EXIST - 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 in the column marked 'Schedule 3 Areas' in the Determination Area Table and shown generally on the Determination Area Map.

DETERMINATION AREA TABLE

Table of Areas referred to in Schedules 2 and 3

(To be read in conjunction with the following Determination Area 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, 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 'A' is used for the part of a parcel where native title does not exist. The letter 'B' is used for an area where native title exists. 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 extinguishing act or interest referred to under the column headed 'Native Title Assessment'. In a given parcel it is possible that, as a result of the spatial extent of an extinguishing act or interest 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 1 December 2010. 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 1 December 2010, whether before or after the date of the determination, do not affect the area within the Determination Area Table.

(See NNTR Attachment 1 "Determination Area Table - Table of Areas referred to in Schedules 2 and 3')

SCHEDULE 4 - 'OTHER INTERESTS'

'Other interests' Orders 10 and 11

The other interests, as they exist as at the date of the 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 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

- (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 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

(i) 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);

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

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

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

(j) 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 MAPS

(See NNTR Attachment 2 'Schedule 5 - Determination Area Maps')

REGISTER ATTACHMENTS:

1. Determination Area Table - Table of Areas referred to in Schedules 2 and 3, 24 pages - A4, 27/07/2011

2. Schedule 5 - Determination Area Maps, 2 pages - A3, 27/07/2011

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.