



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): VID21/2019
NNTT Number: VCD2024/001

Determination Name: [Austin on behalf of the Eastern Maar People v State of Victoria \(No 2\)](#)

Date(s) of Effect: 21/03/2024

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 21/03/2024

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Eastern Maar Aboriginal Corporation RNTBC
Agent Body Corporate
208 Liebig Street
Warrnambool Victoria 3280

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 Holders (s 225(a) NTA)

1. The native title rights and interests are held in the Determination Area by the Eastern Maar peoples, being those descendants, including by adoption, of the following persons: 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) and Richard Sharp; and who:

(a) either 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; or

(b) otherwise identify as Maar, Gunditjmara, Tjap Wurrung, Peek Whurrung, Keeray Wooroong (Kirrae Whurrung), Kuurn Kopan Noot, Yarro Waetch (Tooram Tribe), Djargurd Wurrung, Gulidjan and/or Gadubanud and are recognised as being from the eastern domain by the Eastern Maar people.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

- (a) There be a determination of native title in proceedings VID 21 of 2019 in terms of the determination of native title that follows, in relation to the land and waters covered by the proceeding within the locations identified in Schedule 1 of the determination, as shown in Areas 1, 2 and 3 on the map at Schedule 3.
- (b) Eastern Maar Aboriginal Corporation shall hold the determined native title as an agent for the Eastern Maar peoples pursuant to s 57(2) of the NTA.

THE COURT DETERMINES THAT:

The Native Title Holders (s 225(a) NTA)

1. The native title rights and interests are held in the Determination Area by the Eastern Maar peoples, being those descendants, including by adoption, of the following persons: 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) and Richard Sharp; and who:

- (a) either 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; or
- (b) otherwise identify as Maar, Gunditjmara, Tjap Wurrung, Peek Whurrung, Keeray Wooroong (Kirrae Whurrung), Kuurn Kopan Noot, Yarro Waetch (Tooram Tribe), Djargurd Wurrung, Gulidjan and/or Gadubanud and are recognised as being from the eastern domain by the Eastern Maar people.

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

2. Subject to Orders 3-7, the native title that exists in the Determination 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.

3. The native title rights and interests referred to in Order 2(c) and (d) must only be exercised for a non-commercial purpose to satisfy personal, cultural, domestic or communal needs.

4. The native title rights and interests referred to in Order 2 do not confer possession, occupation, use and enjoyment of the land and waters on the native title holders to the exclusion of all others.

5. The native title rights and interests referred to in Order 2 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.

Determined Area (s 225 NTA)

6. Native title exists in relation to land and waters wholly located within the External Boundary described in Schedule 1, as shown in Areas 1, 2 and 3 on the map at Schedule 3, with the exception of land and waters described in Order 7.

Excluded Areas

7. Subject to Order 8, the following areas of land and waters are excluded from the Determination Area:

(a) any area that is subject to any of the following kinds of acts as they are defined in either the NTA (where the act in question is attributable to the Commonwealth) or in the *Land Titles Validation Act 1994 (Vic)* (the **LTV Act**) (where the act in question is attributable to the State of Victoria):

- (i) Category A past acts;
- (ii) Category A intermediate period acts;
- (iii) Category B past acts that are wholly inconsistent with the continued existence of any native title rights or interests;

(iv) Category B intermediate period acts that are wholly inconsistent with the continued existence of any native title rights or interests;

(b) any area in relation to which a previous exclusive possession act under ss 13H or 13I of the LTV Act was done and that act is attributable to the State of Victoria;

(c) any area in relation to which a previous exclusive possession act as defined by s 23B (including s 23B(7) of the NTA) was done in relation to the area and the act was attributable to the Commonwealth;

(d) any area where native title rights and interests have otherwise been wholly extinguished including any area where there has been:

- (i) an unqualified grant of an estate in fee simple; or
- (ii) a public work as defined in s 253 of the NTA and any adjacent land or waters referred to in s 251D of the NTA.

Extinguishment required to be disregarded by ss 47A, 47B or 47C of the NTA

8. The Determination Area includes land and waters where extinguishment is required to be disregarded by ss 47A, 47B or 47C of the NTA.

9. The Determination Area includes areas where, on 14 December 2012, one or more members of the native title claim group occupied an area, and:

- (a) a freehold estate existed, or a lease was in force, over the area or the area was vested in any person, if the grant of the freehold estate or lease or the vesting took place under legislation that makes provision for the grant or vesting of such things only to, in or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
- (b) the area was held expressly for the benefit of, or was held on trust, or reserved, expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders.

10. The Determination Area includes areas where, on 14 December 2012, one or more members of the native title claim group occupied an area, and the area was not:

- (a) covered by a freehold estate or a lease;
- (b) covered by a reservation, proclamation, dedication, condition, permission or authority ("reservation"), made or conferred by the Crown in any capacity, or by the making, amendment or repeal of legislation of the Commonwealth, a State or a Territory, under which the whole or a part of the land or waters in the area was to be used for public purposes or for a particular purpose (unless the reservation is to be disregarded by operation of an agreement made under s 47C NTA); or
- (c) subject to a resumption process (see s 47B(5)(b) NTA).

11. A party has liberty to apply to the Court on 90 days written notice to establish the location and boundaries of the area where extinguishment is required to be disregarded by operation of ss 47A and 47B of the NTA.

12. There is no native title in the Determination 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.

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

13. The nature and extent of other interests in relation to the Determination Area, as they exist at the date of the determination ("other interests"), are those set out in Schedule 2.

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

14. The relationship between the native title rights and interests and the other interests referred to in Schedule 2, Part 1 is that where and to the extent that any of the other interests are inconsistent with the continued enjoyment or exercise of the native title rights and interests:

- (a) 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
- (c) 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.

15. The relationship between the native title rights and interests and the other interests referred to in Schedule 2, Part 2 is that those interests, and rights held under them, coexist 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

16. 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 NTA 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 Order 6 and 8 which fall within the External Boundary described in Schedule 1, as shown in Areas 1, 2 and 3 on the map at Schedule 3;

"External Boundary" means the written description described in Schedule 1;

"land" and "waters" respectively have the same meanings as in the NTA;

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

"native title rights and interests" means those rights and interests set out in Order 2 subject to Orders 3 – 5;

"other interests" means the interests referred to in Order 13, being the interests set out in Schedule 2;

"public rights" means the other interests identified in paragraphs 10 and 11 of Part 2 of Schedule 2;

"public work" has the same meaning as in s 253 of the NTA and, in relation to any public work described in Order 7, includes any adjacent land or waters under s 251D of the NTA;

"statutory authority" has the same meaning as in s 253 of the NTA;

"valid" has the same meaning as in s 253 of the NTA;

"validated" includes a right or interest which has been confirmed pursuant to s 15 of the *Land Titles Validation Act 1994* (Vic); and
"waterway" has the same meaning as in s 3 of the *Water Act 1989* (Vic) as in force at the date of this determination.

17. 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 3, the written description shall prevail.

REGISTER ATTACHMENTS:

1. Schedule 1 - External Boundary Description, 3 pages - A4, 21/03/2024
2. Schedule 2 - Other Interests, 3 pages - A4, 21/03/2024
3. Schedule 3 - Determination Area Map, 1 page - A4, 21/03/2024
4. Schedule 4 - Proposed Section 47C Agreement, 4 pages - A4, 21/03/2024

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.