



## Extract from the National Native Title Register

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### Determination Information:

**Determination Reference:** Federal Court Number(s): SAD6001/1998  
NNTT Number: SCD2015/001

**Determination Name:** [Coulthard v State of South Australia](#)

**Date(s) of Effect:** 8/12/2015

**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:** 08/12/2015

**Determining Body:** Federal Court of Australia

#### ADDITIONAL INFORMATION:

Not Applicable

#### REGISTERED NATIVE TITLE BODY CORPORATE:

Adnyamathanha Traditional Lands Association (Aboriginal Corporation) RNTBC  
Agent Body Corporate  
c/- Johnston Withers  
17 Sturt 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](http://www.oric.gov.au)*

#### COMMON LAW HOLDER(S) OF NATIVE TITLE:

6. The Native Title Holders are those living Aboriginal persons who are described in Schedule 3 who:

- (a) identify as Adnyamathanha; and
- (b) are recognised by other Native Title Holders under the relevant Adnyamathanha traditional laws and customs as having maintained an affiliation with, and continuing to hold native title rights and interests in, the Determination Area.

The descendants (whether biologically or by adoption) of:

Mt Serle Bob

Polly, wife of Mt Serle Bob

Quartpot Tommy

Mt Serle Bob's sister, wife of Quartpot Tommy

Willy Austin Snr

Nicholas Demell

Emily McKenzie, wife of Nicholas Demell

Sydney Ryan

Mary, wife of Sydney Ryan

the siblings of Angepena Billy or Mary

Fanny, wife of Angepena Billy

the siblings Sara Johnson, Matilda Johnson, Fred Johnson, Natalie Johnson, Jessie Johnson

or Sydney Jackson

**MATTERS DETERMINED:**

**BY CONSENT THE COURT MAKES THE FOLLOWING DETERMINATION OF NATIVE TITLE PURSUANT TO SECTION 87 A OF THE NATIVE TITLE ACT:**

1. In this determination, including its schedules, unless the contrary intention appears, the words and expressions used have the same meaning as they are given in Part 15 of the Act.
2. In this determination, the "Determination Area" means those parcels of the Adnyamathanha No 1 Claim as are described in Schedule 1. The Determination Area does not include those parcels listed in Schedule 2.
3. 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 maps in Annexure A, the written description shall prevail.

**Existence of Native Title**

4. Subject to Paragraphs 13 and 14 herein, native title exists in the Determination Area.
5. Native title does not exist in relation to the areas and resources described in Paragraphs 13 and 14 herein.

## The Native Title Holders

6. The Native Title Holders are those living Aboriginal persons who are described in Schedule 3 who:

- (a) identify as Adnyamathanha; and
- (b) are recognised by other Native Title Holders under the relevant Adnyamathanha traditional laws and customs as having maintained an affiliation with, and continuing to hold native title rights and interests in, the Determination Area.

## Native title rights and interests

7. Subject to Paragraphs 8, 9 and 10, the nature and extent of the native title rights and interests held by the Native Title Holders in relation to the Determination Area are rights to use, stay on and enjoy the land and waters of the Determination Area, being:

- (a) The right to access and move about the Determination Area;
- (b) The right to live, to camp and to erect shelters on the Determination Area;
- (c) The right to hunt and fish on the Determination Area;
- (d) The right to gather and use the natural resources of the Determination Area such as food, plants, timber, resin, ochre and soil;
- (e) The right to cook and to light fires for cooking and camping purposes on the Determination Area;
- (f) The right to use the natural water resources of the Determination Area;
- (g) The right to distribute, trade or exchange the natural resources of the Determination Area;
- (h) The right to conduct ceremonies and hold meetings on the Determination Area;
- (i) The right to engage and participate in cultural activities on the Determination Area including those relating to births and deaths;
- (j) The right to carry out and maintain burials of deceased native title holders and of their ancestors within the Determination Area;
- (k) The right to teach on the Determination Area the physical and spiritual attributes of locations and sites within the Determination Area;
- (l) The right to visit, maintain and preserve sites and places of cultural or spiritual significance to Native Title Holders within the Determination Area;
- (m) The right to speak for and make decisions in relation to the Determination Area about the use and enjoyment of the Determination Area by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the Native Title Holders;
- (n) The right to be accompanied on to the Determination Area by those people who, though not Native Title Holders, are:
  - (i) spouses of Native Title Holders; or
  - (ii) people required by traditional law and custom for the performance of ceremonies or cultural activities on

the Determination Area; or

(iii) people who have rights in relation to the Determination Area according to the traditional laws and customs acknowledged by the Native Title Holders.

### General Limitations

8. The native title rights and interests described in Paragraph 7 do not confer possession, occupation, use and enjoyment of the Determination Area on the Native Title Holders to the exclusion of others.

9. The native title rights and interests are for personal, domestic and non-commercial communal use.

10. 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 valid laws of the State and Commonwealth, including the common law.

For the avoidance of doubt, the native title rights and interests expressed in Paragraph 7(f) are subject to the *Natural Resources Management Act 2004 (SA)*.

### Nature and extent of the other rights and interests and Relationship with Native Title

11. The nature and extent of the other rights and interests in relation to the Determination Area are:

(a) the rights and interests within the Determination Area created by the pastoral leases described in Schedule 4;

(b) the interests of the Crown in right of the State of South Australia;

(c) in relation to the Strzelecki Regional Reserve:

(i) the rights and interests of the Crown of South Australia pursuant to the *National Parks and Wildlife Act 1972 (SA)*; and

(ii) the rights and interests of the public to use and enjoy the Reserve consistent with the *National Parks and Wildlife Act 1972 (SA)*;

(d) 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;

(e) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth;

- (f) 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 (in accordance with any valid legislation);
- (g) 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 on the Determination Area;
- (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 (Easements);
- (vi) to provide its employees, agents or contractors with access to Existing Infrastructure, New Infrastructure and the Easements on 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.
- (h) the rights and interests of the “Producers” as defined in the *Cooper Basin (Ratification) Act 1975* (SA):
- (i) as holders of Pipeline Licence No.2 (PL2) granted to the Producers on 26 November 1981 under the *Petroleum Act 1940* (SA) and renewed on 3 May 2003 under the *Petroleum Act 2000* (SA) and continuing in force by the operation of clause 2 of the Schedule to the *Petroleum Act 2000* (SA);
- (ii) created pursuant to the *Stoney Point (Liquids Project) Ratification Act 1981* (SA);
- (iii) granted to the Producers pursuant to the former PASA (now NGASA) and the Producers’ Right of Way Agreement dated 26 November 1981;
- (iv) for the Producers’ employees, agents or contractors to enter the Determination Area to access the Producers’ rights and interests and to do all things necessary to exercise those rights and interests in the vicinity of the Determination Area in performance of their duties.

12. The relationship between the native title rights and interests in the Determination Area that are described in Paragraph 7 and the other rights and interests that are referred to in Paragraph 11 (the Other rights and interests) is that:

- (a) the Other rights and interests co-exist with the native title rights and interests;
- (b) in the event of inconsistency, the Other rights and interests prevail over the native title rights and

interests and any exercise of the native title rights and interests, but do not extinguish them;

(c) the existence of the native title rights and interests does not prevent the doing of any activity required or permitted to be done by, in accordance with or under the Other rights and interests.

13. Native title rights and interests do not exist in:

(a) Minerals, as defined in s 6 of the *Mining Act 1971* (SA); or

(b) Petroleum, as defined in s 4 of the *Petroleum and Geothermal Energy Act 2000* (SA); or

(c) a naturally occurring underground accumulation of a regulated substance as defined in s 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth; or

(d) a natural reservoir, as defined in s 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth;

(e) geothermal energy, as defined in s 4 of the *Petroleum and Geothermal Energy Act 2000* (SA) the source of which is below a depth of 100 metres from the surface of the earth.

For the purposes of this Paragraph 13 and the avoidance of doubt:

(i) a geological structure (in whole or in part) on or at the earth's surface or a natural cavity which can be accessed or entered by a person through a natural opening in the earth's surface, is not a natural reservoir;

(ii) thermal energy contained in a hot or natural spring is not geothermal energy as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA);

(iii) the absence from this order of any reference to a natural reservoir or a naturally occurring accumulation of a regulated substance, as those terms are defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), above a depth 100 metres below the surface of the earth or geothermal energy the source of which is above a depth of 100 metres below the surface of the earth is not, of itself, to be taken as an indication of the existence or otherwise of native title rights or interests in such natural reservoir, naturally occurring accumulation of a regulated substance or geothermal energy.

14. Native title rights do not exist in the areas covered by public works attributable to the State or Commonwealth (including the land defined in s 251 D of the Act) which were constructed, established or situated prior to 23 December 1996 or commenced to be constructed or established on or before that date.

15. Public works constructed, established or situated after 23 December 1996 have had such effect on native title rights and interests as has resulted from Part 2 Division 3 of the Act.

**AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:**

16. The native title is not to be held in trust.

17. Adnyamathanha Traditional Lands Association (Aboriginal Corporation) RNTBC is to:

- (a) be the prescribed body corporate for the purposes of s 57(2) of the Act; and
- (b) perform the functions mentioned in s 57(3) of the Act after becoming the registered native title body corporate in relation to the Determination Area.

18. The Parties have liberty to apply on 14 days' notice to a single judge of the Court for the following purposes:

- (a) to establish the precise location and boundaries of any public works and adjacent land and waters referred to in Paragraphs 14 and 15 of this Order; or
- (b) to establish the effect on native title rights and interests of any public works referred to in Paragraph 15 of this Order.

**AND THE COURT MAKES THE FOLLOWING ANCILLARY ORDERS PURSUANT TO SECTION 87A(5) OF THE NATIVE TITLE ACT:**

19. The Court notes in relation to the Determination Area as follows:

- (a) The Adnyamathanha People and the Malyangapa People have entered into a Memorandum of Understanding between them in the terms of the document comprising the "Annexure B" to Schedule 5, under which the Adnyamathanha people recognise that the Malyangapa People hold traditional rights and interests in the Determination Area.
- (b) The Agreement provides that the traditional rights and interests referred to in sub-paragraph (a):
  - (i) are not native title rights and interests; and
  - (ii) co-exist with the native title rights and interests.
- (c) The State and other Respondent parties are not bound by the Memorandum of Understanding referred to in Paragraph 19(a) but acknowledge that the provisions of relevant State and Commonwealth legislation apply according to their terms from time to time in relation to the Determination Area.

**SCHEDULE 1 – Areas where native title is recognised in this Consent Determination (Determination Area) - See Mapsheets at Annexure A**

DCDBID	Hundred	Title Reference	Locality
H833200 S1002	OH (Callabonna)	CR 5759/715	
F219039 A10 (portion)	OH (Frome)	CR 5974/577	
D42203 A24	OH (Callabonna)	CL 1598/37	Murnpeowie Pastoral Lease 2519
H834000 B1172	OH (Frome)	CL 1326/35	Lakeside Pastoral Lease 2394

H834000 B1252	OH (Frome)	CL 1606/4	Quinyambie Pastoral Lease 2404
H833200 S1001	OH (Callabonna)	CR 5440/758	Strzelecki Regional Reserve

[See NNTR attachment 1: "Annexure A - Maps of Determination Area"]

## **SCHEDULE 2 - Areas that have been excluded from the Determination Area - See Mapsheets at Annexure A**

1. The following listed parcels are agreed to have been excluded from the Determination Area by reason of the fact that native title has been extinguished in those areas:

<b>DCDBID</b>	<b>Hundred</b>	<b>Title Reference</b>
F219039 A10 (portion)	OH (Frome)	CR 5974/577

2. Native title rights have been extinguished over all roads which have been delineated in a public map pursuant to section 5(d)(II) of the *Crown Lands Act 1929* (SA) or s70(3) or (4) of the *Crown Land Management Act 2009* (SA) or which have otherwise been validly established pursuant to South Australian Statute or common law.

[See NNTR attachment 1: "Annexure A - Maps of Determination Area"]

## **SCHEDULE 3 - The descendants of Adnyamathanha Apical Ancestors**

The descendants (whether biologically or by adoption) of:

Mt Serle Bob

Polly, wife of Mt Serle Bob

Quartpot Tommy

Mt Serle Bob's sister, wife of Quartpot Tommy

Willy Austin Snr

Nicholas Demell

Emily McKenzie, wife of Nicholas Demell

Sydney Ryan

Mary, wife of Sydney Ryan

the siblings Angepena Billy or Mary

Fanny, wife of Angepena Billy

the siblings Sara Johnson, Matilda Johnson, Fred Johnson, Natalie Johnson, Jessie Johnson or Sydney Jackson



#### **SCHEDULE 4 - Pastoral leases partially in the Determination Area**

<b>Pastoral Lease Name</b>	<b>Pastoral Lease Number</b>	<b>Crown Lease Number</b>	<b>Volume/Folio</b>
Lakeside (portion)	PE 2394	CL 1326/35	
Murnpeowie (portion)	PE 2519	CL 1598/37	
Quinyambie (portion)	PE 2404	CL 1606/4	

#### **SCHEDULE 5 – Annexure B - The Memorandum of Understanding between the Adnyamathanha People and the Malyangapa People**

[See NNTR attachment 2: “SCHEDULE 5 – Annexure B - The Memorandum of Understanding between the Adnyamathanha People and the Malyangapa People”]

#### **REGISTER ATTACHMENTS:**

1. Annexure A - Maps of Determination Area, 2 pages - A4, 08/12/2015
2. Schedule 5 - Annexure B - The MOU, 7 pages - A4, 08/12/2015

*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.*