National Native Title Tribunal

Extract from the National Native Title Register

Determination Information:

Determination Reference:	Federal Court Number(s): QUD851/2018 NNTT Number: NCD2024/001
Determination Name:	McKellar on behalf of the Wongkumara People v State of Queensland [NSW Part A]
Date(s) of Effect:	6/06/2025
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:	03/07/2024
Determining Body:	Federal Court of Australia

ADDITIONAL INFORMATION:

On 1 October 2024 the Federal Court of Australia made the following Orders:

THE COURT ORDERS BY CONSENT THAT:
1. The judgment and orders granted by Justice Murphy on 3 July 2024, in respect of the NSW Part A Determination, be varied pursuant to rule 39.05(h) of the *Federal Court Rules 2011* (Cth) as follows:
(a) The words “Part 2.5” in paragraph 9 of the determination and Schedule Two be amended to “Part 2.4”.
(b) In Schedule 1, Part 1.2, item 2, the reference in ID 17, 3559/765911 be amended from “Reserve 72,200” to “Reserve 72,260”.
(c) In Schedule 1, Part 1.2, item 3, the reference to “NNTT ID 199” be amended to “NNTT ID 008”.
(d) In Schedule 1, Part 1.2, item 50, the reference to “NNTT ID 242” be amended to “NNTT ID 243”.
(e) In Schedule 1, Part 1.2, item 54 be deleted.
(f) In Schedule 1, Part 1.3, item 6 be deleted.
(g) The maps contained at Schedule 1, Part 1.6 be replaced with “**Annexure A**” to these Orders.
(h) In Schedule 2, Part 2.1, item 15, the reference in ID 17, 3559/765911 be amended from “Reserve 72,200” to “Reserve 72,260”.
(i) The map contained at Schedule 2, Part 2.4 be replaced with “**Annexure B**” to these Orders.
(j) In Schedule 3, Part 2, item 1, a reference to “Lot 2 in Deposited Plan 755462” be inserted.

The NNTR extract has been updated to reflect these Orders.

Further, Order 2 of the determination orders dated 3 July 2024 provides that ‘[t]he determination takes effect upon the date on which the agreement referred to in paragraph 1 of Schedule Four (agreements) is registered on the Register of Indigenous Land Use Agreements, pursuant to section 199B of the *Native Title Act 1993* (Cth).’ The Agreement referred to in Order 2 was registered on 6 June 2025, and therefore the determination is in effect from 6 June 2025.

REGISTERED NATIVE TITLE BODY CORPORATE:

Wangkumarra Kawalanyi Aboriginal Corporation RNTBC
Trustee Body Corporate
1/255 Castlereagh Street
SYDNEY New South Wales 2000

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:
11. The native title holders are the 'Wongkumara People'. The Wongkumara People are the descendants of ancestors who are recognised as having had a connection to the application area in accordance with the laws and customs of the regional society described by Professor A P Elkin as "the Lakes Group", and who are recognised and accepted by other Wongkumara People as being native title holders. Those ancestors include:
(a) Charlotte (mother of Jack, Queenie and May Hines, Rosie Jones and Willy Dutton);
(b) Siblings Polly (mother of Albert Ebsworth, Sam and Tommy Burgamar) and Charlie Nockatunga;
(c) Maggie and Tommy (parents of Nellie Flash and Angelina);
(d) Kutji (mother of George Dutton);
(e) Tarella and her children Elizabeth and Harry (Fred) Hartnett;
(f) Norman Harding;
(g) Siblings Nellie (mother of Lucy Harding) and Judy (mother of Donald David Gillis);
(h) Jenny (mother of Alf Barlow); and
(i) Neddie and Nancy (grandparents of Jimmy Sedeek).
12. The Wongkumara People also include persons who are adopted into the families of the Wongkumara People in accordance with traditional laws and customs, and who are recognised and accepted by other Wongkumara People as being native title holders.

MATTERS DETERMINED:

BY AGREEMENT THE COURT ORDERS THAT:
1. There be a determination of native title in the terms set out below.
2. The determination takes effect upon the date on which the agreement referred to in paragraph 1 of Schedule Four (agreements) is registered on the Register of Indigenous Land Use Agreements, pursuant to section 199B of the *Native Title Act 1993* (Cth).
3. In the event that the agreement referred to in Order 2 above is not registered on the Register of Indigenous Land Use Agreements on or before 12 months, or at such later time as this Court may order, the matter is to be listed before the Court for a case management hearing.
4. On the determination of native title taking effect, Wangkumarra Kawalanyi Aboriginal Corporation, ICN 7384 is to hold the determined native title in trust for the common law holders pursuant to section 56(3) of the *Native Title Act 1993* (Cth) and is to:
(a) be the prescribed body corporate for the purposes of section 57(1) of the *Native Title Act 1993* (Cth); and
(b) perform the functions set out in section 57(1) of the *Native Title Act 1993* (Cth) and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

BY AGREEMENT THE COURT DETERMINES THAT:
6. Native title exists in relation to the native title area described in Schedule One (native title area) and depicted in the maps at Part 1.6 (maps of the native title area) of that Schedule.
7. Any extinguishment of native title in relation to the land or waters described in Part 1.5 (land or waters to which section 47A of the *Native Title Act 1993* (Cth) applies) of Schedule One (native title area) is to be disregarded in accordance with section 47A(2) of the *Native Title Act 1993* (Cth) with the effect that native title is determined to exist in relation to that land or waters.
8. Any extinguishment of native title in relation to the land or waters described in Part 1.1 (Exclusive native title area) of Schedule One (native title area) is to be disregarded in accordance with section 47B(2) of the *Native Title Act 1993* (Cth) with the effect that native title is determined to exist and to be exclusive in relation to those areas.
9. Native title has been extinguished in relation to the extinguished area, described in Schedule Two (extinguished area) and depicted on the maps at Part 2.4 (maps of extinguished areas) of that Schedule, being subject to a previous exclusive possession act attributable to the State of New South Wales in accordance with section 20 of the *Native Title (New South Wales) Act 1994* (NSW) and to which none of sections 47A, 47B or 47C of the *Native Title Act 1993* (Cth) apply.
10. To the extent of any inconsistency between the written description in Schedule One (native title area) and Schedule Two (extinguished area) and the maps in either Schedule, the written description prevails.

Native title holders

11. The native title holders are the 'Wongkumara People'. The Wongkumara People are the descendants of ancestors who are recognised as having had a connection to the application area in accordance with the laws and customs of the regional society described by Professor A P Elkin as "the Lakes Group", and who are recognised and accepted by other Wongkumara People as being native title holders. Those ancestors include:
(a) Charlotte (mother of Jack, Queenie and May Hines, Rosie Jones and Willy Dutton);
(b) Siblings Polly (mother of Albert Ebsworth, Sam and Tommy Burgamar) and Charlie Nockatunga;
(c) Maggie and Tommy (parents of Nellie Flash and Angelina);
(d) Kutji (mother of George Dutton);
(e) Tarella and her children Elizabeth and Harry (Fred) Hartnett;
(f) Norman Harding;
(g) Siblings Nellie (mother of Lucy Harding) and Judy (mother of Donald David Gillis);
(h) Jenny (mother of Alf Barlow); and
(i) Neddie and Nancy (grandparents of Jimmy Sedeek).
12. The Wongkumara People also include persons who are adopted into the families of the Wongkumara People in accordance with traditional laws and customs, and who are recognised and accepted by other Wongkumara People as being native title holders.

Nature and extent of native title rights and interests in the native title area
13. Subject to paragraphs 15 and 17, the native title rights and interests in respect of the land and waters identified in Part 1.1 (Exclusive native title area), the native title rights and interests are as follows:
(a) other than in relation to water, the right to possession, occupation, use and enjoyment of the area to the exclusion of all others;
(b) in relation to water, the non-exclusive right to:
(i) hunt, fish and gather from the water of the area;
(ii) take the natural resources of the water in the area; and
(iii) take the water of the area, subject to the operation and any vesting effect of the *Water Act 1912* (NSW) and the *Water Management Act 2000* (NSW).
14. Subject to paragraphs 15, 16 and 17, the nature and extent of the native title rights and interests in relation to the non-exclusive native title area identified in Part 1.2 (Crown land in the non-exclusive native title area) and Part 1.3 (the national park estate in the non-exclusive native title area) are the following non-exclusive native title rights:
(a) access, be present on, move about on and travel over the area;
(b) live and camp on the area and for those purposes to erect shelters and other structures thereon;
(c) hunt, fish and gather on the land and waters of the area;
(d) take the natural resources from the land and waters of the area;
(e) take the water of the area, subject to the operation and any vesting effect of the *Water Act 1912* (NSW) and the *Water Management Act 2000* (NSW);
(f) conduct rituals, ceremonies and other religious, spiritual and cultural activities on the area;
(g) conduct mortuary related rituals including to bury native title holders within the area;
(h) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs on the area and protect those places and areas from harm;
(i) teach on the area the physical and spiritual attributes of the area and its sites and the traditional laws and customs of the native title holders to native title holders or persons otherwise entitled to access the area;
(j) hold meetings on the area;
(k) light fires on the area for cultural, spiritual or domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation;
(l) be accompanied on to the area by those persons who, though not native title holders, are:
(i) spouses or partners of native title holders;
(ii) people who are members of the immediate family of a spouse or partner of a native title holder; or
(iii) people reasonably required by the native title holders under traditional law and custom including for the performance of ceremonies or cultural activities on the area.

General qualifications on native title rights and interests
15. Native title does not exist in:
(a) minerals as defined in the *Mining Act 1992* (NSW) and the *Mining Regulation 2016* (NSW); and
(b) petroleum as defined in the *Petroleum (Onshore) Act 1991* (NSW).
16. The native title rights and interests described in paragraphs 13(b) and 14 do not confer:
(a) any right of possession, occupation, use and enjoyment of the land or waters in the native title area to the exclusion of all others; and
(b) any right to control public access to or use the land or waters in the native title area.
17. The native title rights and interests in relation to the land or waters in the native title area are subject to and exercisable in accordance with:
(a) the laws of the State of New South Wales and of the Commonwealth;
(b) the traditional laws acknowledged and traditional customs observed by Wongkumara People; and
(c) the terms and conditions of the agreements referred to in Schedule Four (agreements).

The nature and extent of any other interests
18. The other interests in relation to the native title area are the rights described in Schedule Five (other interests in

the native title area).

Relationship between native title rights and interests and other interests

19. Subject to paragraphs 20, 21 and 22, the relationship between the native title rights and interests in relation to land or waters in the native title area and the other interests, described in Schedule Five (other interests in the native title area), in relation to those areas is that:

(a) the other interests continue to have effect;

(b) the other interests co-exist with Wongkumara People's native title;

(c) Wongkumara People do not have the right to control access to or the use of the land or waters by the holders of the other interests; and

(d) to the extent of any inconsistency, the other interests and any activity that is required or permitted by or under the exercise of a right conferred or held under the other interests, while they are in existence, prevail over but do not extinguish native title and any exercise of those native title rights and interests.

20. The relationship between the native title rights and interests in relation to the land or waters in the native title area and the Aboriginal Land Council interests set out at Item 1(a) of Schedule Five (other interests in the native title area) is that the Aboriginal Land Council interests continue to have effect.

21. The relationship between the native title rights and interests in relation to the land or waters in the native title area and the Aboriginal Land Council interests set out at Item 1(b) of Schedule Five (other interests in the native title area) is that:

(a) pursuant to section 36(9) of the *Aboriginal Land Rights Act 1983* (NSW), the Aboriginal Land Council interests shall be subject to the native title rights and interests existing in relation to the land or waters in the native title area immediately before the transfer, meaning that the native title rights and interests have full effect and may be exercised; and

(b) the land or waters in the native title area may only be dealt with by the Aboriginal Land Council in accordance with the *Aboriginal Land Rights Act 1983* (NSW) and the *Native Title Act 1993* (Cth).

22. The relationship between the native title rights and interests in relation to the land or waters described in Part 1.5 (land or waters to which section 47A of the *Native Title Act 1993* (Cth) applies) of Schedule One (native title area) and the Aboriginal Land Council Interests described at Item 1(c) of Schedule Five (other interests in the native title area) is that:

(a) the Aboriginal Land Council interests continue to have effect;

(b) the non-extinguishment principle described in section 238 of the *Native Title Act 1993* (Cth) applies to the grant or vesting of the Aboriginal Land Council interests and any prior interest in relation to the area in accordance with section 47A(3)(b) of the *Native Title Act 1993* (Cth);

(c) the native title rights and interests continue to exist in their entirety, but have no effect in relation to the Aboriginal Land Council interests;

(d) the Aboriginal Land Council interests, and any activity that is required or permitted by or under and done in accordance with the Aboriginal Land Council interests, may be exercised and enjoyed in their entirety notwithstanding the existence of the native title rights and interests;

(e) the native title rights and interests may not be exercised on land or waters the subject of the Aboriginal Land Council interests while those Aboriginal Land Council interests exist;

(f) if the Aboriginal Land Council interests or their effects are wholly removed or otherwise wholly cease to operate the native title rights and interests again have full effect; and

(g) if the Aboriginal Land Council interests or their effects are removed to an extent or otherwise cease to operate only to an extent, the native title rights and interests again have effect to that extent.

DEFINITIONS AND INTERPRETATION

23. In this approved determination of native title, unless the contrary intention appears:

Aboriginal Land Council means the New South Wales Aboriginal Land Council or any Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983* (NSW) for a Local Aboriginal Land Council area, within the meaning of that *Act* that is within the land and waters in the native title determination area, and includes Tibooburra Local Aboriginal Council.

Aboriginal Land Council interests means the rights and interests set out in Item 1 of Schedule Five (other interests in the native title area)

animal means any member of the animal kingdom (other than human), whether alive or dead.

application area means the land and waters within the external boundaries of the native title determination application filed by the registered native title claimants on behalf of the Wongkumara People on 11 March 2008, as amended.

extinguished area means the land or waters described in Schedule Two (extinguished area).

laws of the State of New South Wales and of the Commonwealth include the relevant statutes, regulations, planning instruments and other subordinate legislation of the jurisdiction, and the common law.

native title and **native title rights and interests** means the rights and interests described in paragraph 13 of the determination.

native title area means the land or waters described in Schedule One (native title area).

native title determination application means the native title determination application filed on 11 March 2008 by the Applicant in the Federal Court and given the number QUD 851 of 2018, as amended.

native title holders and **Wongkumara People** means the persons described in paragraph 11 of the Application Area.

natural resources means:
(a) any animals and plants found on or in the lands and waters of the native title area;
and
(b) any clays, soil, sand, gravel or rock found on or below the surface of the native title area;
that have traditionally been taken by the native title holders;
(c) but does not include:
(i) minerals as defined in the *Mining Act 1992* (NSW) and the *Mining Regulation 2016* (NSW); and
(ii) petroleum as defined in the *Petroleum (Onshore) Act 1991* (NSW)
NSW Part A determination area means the land or waters within the external boundaries described in Schedule Three (NSW Part A determination area).
plant means any member of the plant or fungus kingdom, whether alive or dead and standing or fallen.
Wongkumara People has the same meaning as native title holders.
Wangkumarra Kawalanyi Aboriginal Corporation means Wangkumarra Kawalanyi Aboriginal Corporation, ICN 7384 incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).
24. If a word or expression is not defined in these orders or this determination of native title, but is defined in the *Native Title Act 1993* (Cth), the *Native Title (New South Wales) Act 1994* (NSW) or the *Interpretation Act 1987* (NSW), then it has the meaning given to it in those statutes, whichever is relevant.

REGISTER ATTACHMENTS:

1. Schedule One (Native Title Area), 23 pages - A4, 03/07/2024

2. Schedule Two (Extinguished Area), 22 pages - A4, 03/07/2024

3. Schedule Three (NSW Part A Determination Area), 5 pages - A4, 03/07/2024

4. Schedule Four (Agreements), 1 page - A4, 03/07/2024

5. Schedule Five (Other Interests in the Native Title Area), 9 pages - A4, 03/07/2024

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.