



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6001/1998
NNTT Number: QCD2000/006

Determination Name: [Wik Peoples v State of Queensland](#)

Date(s) of Effect: 3/10/2000

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 03/10/2000

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Ngan Aak-Kunch Aboriginal Corporation RNTBC
Agent Body Corporate
Level 1
19 Aplin Street
Cairns City Queensland 4870

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

ORIGINAL REGISTERED NATIVE TITLE BODY CORPORATE(S):

Ngan Aak Kunch Aboriginal Corporation

Note: details of the Corporation name change can be found on the Office of the Registrar of Indigenous Corporations website www.oric.gov.au

COMMON LAW HOLDER(S) OF NATIVE TITLE:

The native title is held by the Wik and Wik Way peoples for their respective communal, group and individual rights and interests in the determination area in accordance with the traditional laws acknowledged and traditional customs observed by them ("the native title holders") as common law holders.

MATTERS DETERMINED:

THE COURT ORDERS, DECLARES AND DETERMINES BY CONSENT THAT:

1. Native title exists in relation to the determination area.
2. The native title is held by the Wik and Wik Way peoples for their respective communal, group and individual rights and interests in the determination area in accordance with the traditional laws acknowledged and traditional customs observed by them ("the native title holders") as common law holders.
3. The nature and extent of the native title rights and interests in relation to the determination area are that, subject to Orders 4 and 5, they confer possession, occupation, use and enjoyment of the determination area on the native title holders and, in particular, include rights, duties and responsibilities to do the following:
 - (a) speak for, on behalf of and authoritatively about the determination area and assert proprietary and possessory claims over the determination area;
 - (b) inherit and transmit the native title rights and interests;
 - (c) give or refuse, and determine the terms of any, permission to enter, remain on, use or occupy the determination area by others;
 - (d) as between Aboriginal people:
 - (i) resolve disputes about who is or who is not a Wik person or a Wik Way person;
 - (ii) determine as between native title holders what are the particular native title rights and interests that are held by particular native title holders in relation to particular parts of the determination area;
 - (iii) exclude particular native title holders from the exercise of particular native title rights and interests in relation to particular parts of the determination area;
 - (iv) resolve disputes between Aboriginal people concerning native title rights and interests in relation to the determination area, with the assistance of native title holders of adjoining areas where such assistance is necessary;
 - (v) uphold, regulate, monitor and enforce the customary laws of the native title holders in relation to the native title rights and interests in the determination area;
 - (e) make use of the determination area by:
 - (i) engaging in a way of life consistent with the traditional connection of the native title holders to the determination area;
 - (ii) physically occupying, using and enjoying the determination area;
 - (iii) living on and erecting residences and other infrastructure on the determination area;
 - (iv) protecting, managing and using the determination area;
 - (v) being buried on, and burying native title holders on, the determination area;
 - (f) take, use and enjoy the natural resources from the determination area for the purposes of:
 - (i) manufacturing artefacts, objects and other products;
 - (ii) disposing of those natural resources and manufactured items, by trade, exchange or gift save that the right of disposal of natural resources taken from the waterways (as that term is defined in the Fisheries Act 1994 (Qld) as at the date of this determination) of the determination area is only a right to do so for non-commercial purposes;
 - (g) maintain and protect places of importance under traditional laws, customs and practices in the determination area;
 - (h) be acknowledged as the traditional Aboriginal owners of the land and waters within the determination area;
 - (i) use and enjoy the determination area and its natural resources for the purposes of teaching, determining, maintaining, communicating and expanding cultural, social, natural, environmental, spiritual, cosmological and other knowledge, traditions, beliefs, customs, relationships, practices and institutions in relation to the determination area so as to ensure the continuing vitality of the culture and well-being of the native title holders, and also include those rights, duties and responsibilities that are necessary for or ancillary to the full exercise and enjoyment of the native

title and the native title rights and interests.

4. The native title rights and interests are and the native title is subject to and exercisable in accordance with:

(a) the laws of the State and the Commonwealth; and

(b) traditional laws acknowledged and traditional customs observed by the native title holders.

5. Notwithstanding anything in this determination, in respect of tidal and flowing water the native title rights and interests only confer on the native title holders such rights and obligations as the common law recognises.

6. The nature and extent of any other interests in relation to the determination area are:

(a) the rights and interests of the lessee and others under the Lease (Aboriginal Lands) No. 1 dated 18 January 1979 comprising the land and waters in Lot 1 on Plan SC211 ("the Lease");

(b) the rights and interests of the grantee and others under the Deed of Grant in Trust dated 23 July 1987, being indefeasible Title Reference No 21345063 in respect of the land and waters delineated in Plan LK2;

(c) any rights and interests of a holder of an authority issued under the Fisheries Act 1994 (Qld) that authorises a commercial fishing operation in the waters of the determination area as may be current at the date of this determination;

(d) any other rights and interests held by or under the Crown by the force and operation of the laws of the State or the Commonwealth as may be current at the date of this determination.

7. The relationship between the native title rights and interests and the other rights and interests described in Order 6 is that:

(a) the other rights and interests continue to have effect and the rights conferred by or held under the other rights and interests may be exercised notwithstanding the existence of the native title rights and interests; and

(b) the other rights and interests and an activity done in exercise of the rights conferred by or held under the other rights and interests prevail over the native title rights and interests and any exercise of those native title rights and interests.

8. The native title rights and interests confer, subject to Orders 4 and 5, possession, occupation, use and enjoyment of the determination area on the native title holders to the exclusion of all others, except those having rights and interests identified in Order 6.

9. In the event at any time that that part of the determination area comprising the area covered by the waters of the Archer River seaward of the area referred to in paragraph (d) of the definition of "Determination Area", cease to be subject of the Lease, then the native title shall be subject to a right of ingress and egress by the Council of the Shire of Aurukun or any successor in title or function, for itself and for its servants or agents, by barge over the said waters for the purpose of transporting materials, provisions and supplies for the residents of Aurukun, the native title holders and as may be required by the Council of the Shire of Aurukun for the performance of its powers and functions.

10. The words and expressions used in this determination have the same meanings as they have in Part 15 of the Native Title Act 1993 (Cth) except for the following defined words and expressions:

"natural resources" means:

(a) plant, animal, fish, bird, amphibian, reptile, insect life, and any other flora and fauna, and shells and forest products found on, or in the lands and waters of the determination area from time to time, and water, flints, clays, soil, sand, gravel and rock on or below the surface of the determination area and all other matter comprising the determination area;

but does not include:

(b) minerals as defined in the Minerals Resources Act 1989 (Qld) and petroleum as defined in the Petroleum Act 1923 (Qld);

"fauna" has the meaning attributed to it in the Fauna Conservation Act 1974 (Qld);

"fish" has the meaning attributed to it in the Fisheries Act 1994 (Qld);

"forest products" has the meaning attributed to it in the Forestry Act 1959 (Qld); and

"laws of the State and the Commonwealth" means the common law and the laws of the State and the Commonwealth of Australia, and includes regulations, statutory instruments, local government schemes and by-laws.

THE COURT FURTHER ORDERS THAT:

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

12. Within six months of the date of this order the registered native title claimant is to nominate in writing given to the Federal Court of Australia a prescribed body corporate to:

(a) be the prescribed body corporate for the purposes of s 57 (2) of the Native Title Act 1993 (Cth); and

(b) perform the functions mentioned in s 57 (3) of the Native Title Act 1993 (Cth) after becoming a registered native title body corporate, as to which there is liberty to apply.

13. In the event that there is no nomination within the time specified in accordance with Order 12 or such later time as the Court may order, the applicants shall forthwith apply to the Court for further orders.

14. Until such time as there is a registered native title body corporate in relation to the determination area any notices required under the Native Title Act 1993 (Cth) or otherwise to be served on the native title holders, the native title claim group or the registered native title claimant may be served upon the solicitors for the applicants and the representative Aboriginal body for the determination area, and such service shall be deemed to be sufficient.

NOTE: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

NOTE: Recital F notes that: "McNaught Ngallametta, as the registered native title claimant, is in the process of seeking to incorporate, pursuant to the Aboriginal Councils and Associations Act 1976 (Cth), an Aboriginal association to be a prescribed body corporate and perform the functions mentioned in s57(3) of the Native Title Act 1993 (Cth)."

SCHEDULE 1

"Determination Area" is the land and waters within the area described and shown on the plan in Annexure 1 and includes:

(a) the land and waters inland of the high water mark at mean Spring tide of the main sea of the Gulf of Carpentaria;

(b) the land and waters inland of lines drawn at such high water mark across the mouth of the bays, creeks and rivers of that area including but not limited to Archer Bay, Ward River, Watson River, Archer River, Love River, Kirke River, Knox Creek, Kendall River, Holroyd River (known locally as South Kendall River), Hersey Creek (known locally as Thugu or Thuuk River) and Christmas Creek (known locally as Holroyd River);

and also includes:

(c) only such airspace over the land and waters and such subsoil under the land and waters as is necessary for the full exercise and enjoyment of the native title and the native title rights and interests;

but does not include:

(d) the land and waters in and around the town of Aurukun within the area described in and shown on the aerial photograph and plan in Annexure 2;

(e) the land and waters within the area covered by a corridor 15 metres either side of the centre line of the present alignment of the existing road which connects the town of Aurukun to the Peninsula Development Road, commencing at point Z on the aerial plan in Annexure 2 and continuing on the present alignment of the existing road in an easterly and north-easterly direction to the junction of that road with the Peninsula Development Road as shown on the plan in Annexure 1; and

(f) minerals as defined in the Minerals Resources Act 1989 (Qld) or petroleum as defined in the Petroleum Act 1923 (Qld).

REGISTER ATTACHMENTS:

1. Attachment A, Map of Determination Area, 1 page - A4, 03/10/2000

2. Attachment B, Map of Township Area, 1 page - A4, 03/10/2000

3. Attachment C, Federal Court of Australia - Reasons for Judgement, 5 pages - A4, 03/10/2000

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.