



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6001/1998
NNTT Number: QCD2004/002

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

Date(s) of Effect: 24/03/2005

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 13/10/2004

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Note: The Indigenous Land Use Agreement (QI2003/002) referred to at Order 13 was registered on the Register of Indigenous Land Use Agreements on 24 March 2005.

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 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 THAT:

1. Native title exists in relation to the Determination Area.
2. The native title is held by the Wik and Wik Way Peoples 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, other than the flowing, tidal and underground waters, are that, subject to paragraph 5 and but for the rights and interests identified in paragraph 6, they confer possession, occupation, use and enjoyment of the Determination Area on the Native Title Holders, including rights to do the following:
 - (a) speak for, on behalf of and authoritatively about the Determination Area;
 - (b) inherit and succeed to 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) 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) hunting and gathering on, in and from the Determination Area;
 - (iii) living on and erecting residences and other infrastructure on the Determination Area;
 - (iv) conducting ceremonies on the Determination Area;
 - (v) being buried on, and burying Native Title Holders on, the Determination Area;
 - (vi) maintaining and caring for springs, wells and other places in the Determination Area where underground water rises naturally, for the purpose of ensuring the free flow of water;
 - (e) take, use and enjoy the natural resources from the Determination Area;
 - (f) maintain and protect by lawful means those places of importance and areas of significance to the Native Title Holders under their traditional laws and customs in the Determination Area; and
 - (g) use and enjoy the Determination Area and its natural resources for the purposes of teaching, communicating and maintaining cultural, social, environmental, spiritual and other knowledge, traditions, customs and practices of the Native Title Holders in relation to the Determination Area.
4. The nature and extent of the native title rights and interests in relation to the flowing, tidal and underground waters of the Determination Area are that, subject to paragraph 5 and the rights and interests identified in paragraph 6, they confer on the Native Title Holders non-exclusive rights to:
 - (a) hunt, gather and fish on, in and from the flowing, tidal and underground waters for personal, domestic, social, cultural, religious, spiritual, ceremonial or communal needs;
 - (b) take, use and enjoy the flowing, tidal and underground waters and natural resources and fish in such waters for personal, domestic, social, cultural, religious, spiritual, ceremonial or communal needs;and, to avoid any doubt, the rights to take, use and enjoy the flowing, tidal and underground waters and natural resources and fish in such waters are only rights to do so for non-commercial purposes.
5. The native title rights and interests are subject to and exercisable in accordance with:
 - (a) the laws of the State and the Commonwealth; and
 - (b) the traditional laws acknowledged and traditional customs observed by the Native Title Holders.
6. The nature and extent of any other interests in relation to the Determination Area (or the respective parts thereof identified below) are:

(a) the rights and interests of the lessee and others under a term lease for pastoral purposes dated 9 April 1959 known as Coen River Pastoral Holding, being Title Reference No. 17668093 comprising Lot 3819 on Crown Plan PH2262 ("the Merapah Lease");

(b) the rights and interests of the lessee and others under Lease No 601426920, being former Special Lease No. 34/48011 dated 10 July 1986, comprising Lease A in Lot 5 on Plan LK2 as shown on Plan LK3;

(c) the rights and interests of:

(i) the lessee and others under the Lease (Aboriginal Lands) No.1 dated 18 January 1979 comprising Lot 1 on Plan SC211 ("the Aurukun Shire Lease");

(ii) the Council of the Shire of Aurukun as an entity exercising statutory powers in respect of the Aurukun Shire Lease, in particular, pursuant to the Local Government (Aboriginal Lands) Act 1978 (Qld);

(iii) the grantee and others under the Deed of Grant in Trust dated 27 October 1988, being Title Reference No. 21378037 comprising Lot 127 on Plan WP49, Lots 2, 4 to 11, 63, 65 and 66 on Plan WP50 and Lot 12 on Plan SP135863 ("the Napranum DOGIT");

(iv) the Napranum Aboriginal Council as an entity exercising statutory powers in respect of the Napranum DOGIT, in particular, pursuant to the Community Services (Aborigines) Act 1984 (Qld) and the Aborigines and Torres Strait Islanders (Land Holding) Act 1985 (Qld);

(v) the grantee and others under the Deed of Grant in Trust dated 23 July 1987, being Title Reference No. 21345063 comprising Lot 5 on Plan LK2 and Lots 2 and 3 on Crown Plan KO8 ("the Pormpuraaw DOGIT");

(vi) the Pormpuraaw Aboriginal Council as an entity exercising statutory powers in respect of the Pormpuraaw DOGIT, in particular, pursuant to the Community Services (Aborigines) Act 1984 (Qld) and the Aboriginal and Torres Strait Islander (Land Holding) Act 1985 (Qld);

(d) the rights and interests of Telstra Corporation Limited:

(i) as the owner and operator of telecommunication facilities installed within the Determination Area;

(ii) 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) for its employees, agents or contractors to access its telecommunication facilities in, and in the vicinity of the Determination Area, in the performance of their duties;

(e) the rights and interests of the Cook Shire Council under its local government jurisdiction and as an entity exercising statutory powers in respect of the land and waters comprising the Merapah Lease and Lot 2 on Plan SP161882 including its interests under an Indigenous Land Use Agreement dated 11 October 2004 between the Native Title Holders and the Cook Shire Council;

(f) any rights and interests of the 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;

(g) the rights and interests of the Ports Corporation of Queensland as an entity exercising statutory powers in respect of that part of the land and waters of the Determination Area within the limits of the Port of Weipa;

(h) any rights of the public arising under the common law to fish and navigate in any tidal navigable river or tidal waters of the Determination Area; and

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

7. In relation to the following areas within the Determination Area:

(a) section 47A(1)(b)(i) of the Native Title Act 1993 (Cth) applies to the land and waters comprising the Aurukun Shire Lease;

(b) section 47A(1)(b)(ii) of the Native Title Act 1993 (Cth) applies to the land and waters comprising the Merapah Lease, the Pormpuraaw DOGIT and the Napranum DOGIT; and

(c) section 47B(1)(b) of the Native Title Act 1993 (Cth) applies to the land and waters comprising Lot 2 on Plan

SP161882.

8. The relationship between the native title rights and interests and the other rights and interests described in paragraph 6 ("the other rights and interests") is that:

(a) to the extent that the other rights and interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title continues to exist in its entirety but the native title rights and interests have no effect in relation to the other rights to the extent of the inconsistency for so long as the other rights and interests exist; and

(b) for avoidance of doubt, any activity that is required or permitted by or under, and done in accordance with, the other rights and interests or any activity that is associated with or incidental to, such an activity, prevails over the native title rights and interests and any exercise of the native title rights and interests, but does not extinguish them.

9. The native title rights and interests confer, subject to paragraph 5 and the rights and interests identified in paragraph 6, possession, occupation, use and enjoyment of the Determination Area, other than the flowing, tidal and underground waters, on the Native Title Holders to the exclusion of all others.

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 expressions:

"Determination Area" means the land and waters within the area described and shown in Schedule One to this Determination;

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

"flowing, tidal and underground waters" means:

(a) water in a watercourse, lake or spring;

(b) underground water, being artesian water, sub-artesian water and water from an underground source of supply;

(c) water forming part of the sea ordinarily within the ebb and flow of the tide at spring tides,

but, except where the phrase is used in paragraph 3, only extends to underground water accessed by traditional means.

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

"lake" means a natural collection of water including a lagoon, swamp or marsh whether permanent or intermittent;

"laws of the State and the Commonwealth" means the common law and the laws of the State and the Commonwealth of Australia, and includes legislation, regulations, statutory instruments, local planning instruments and local laws;

"natural resources" means:

(a) any plant and animal (other than fish), including shells and forest products, found on, or in the land and waters of the Determination Area from time to time, and flints, clays, soil, sand, gravel and rock on or below the surface of 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); or

(c) flowing, tidal and underground waters;

"plant" and "animal" have the meanings attributed to them in the Nature Conservation Act 1992 (Qld);

"spring" means the land to which water rises naturally from below the ground and the land over which the water then flows; and

"watercourse" means a river, creek or stream in which water flows permanently or intermittently.

AND THE COURT FURTHER ORDERS THAT

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

12. Ngan Aak Kunch Aboriginal Corporation is 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.

13. This determination of native title is to take effect on the registration of the agreement referred to in paragraph 6(e) on the Register of Indigenous Land Use Agreements.

14. In the event that the agreement referred to in paragraph 6(e) is not registered on the Register of Indigenous Land Use Agreements within six (6) months of the date of this order or such later time as this Court may order, the matter is to be listed for further directions.

SCHEDULE ONE

("Determination Area" - where native title is determined to exist)

"Determination Area" is the land and waters within the area described and shown on the plan in Annexure A, being Lots 1 to 6 (inclusive) on Crown Plan AP9682 covering Lot 3819 on PH2262, part of Lot 1 on SC211, part of Lot 5 on LK2, part of Lot 2 on WP50, Lot 10 on WP50, Lot 11 on WP50, Lot 12 on SP135863 and Lot 2 on SP161882, and includes the land and waters inland of the high water mark at mean Spring tide of the main sea of the Gulf of Carpentaria but does not include:

- (a) the land and waters described in Schedule Two;
- (b) that part of the land and waters comprising the Aurukun Shire Lease 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 as described and shown on Lot 4 on Crown Plan AP9682; and
- (c) minerals as defined in the Minerals Resources Act 1989 (Qld) or petroleum as defined in the Petroleum Act 1923 (Qld).

SCHEDULE TWO

(Areas excluded from the Determination Area)

The land and waters within the area the subject of the road traversing the Merapah Lease as described and shown on Lot 5 on Crown Plan AP9682, the two roads traversing part of the Napranum DOGIT as described and shown on the northerly section of Lot 4 on Crown Plan AP9682 and Sub-lease A on the Aurukun Shire Lease as described and shown on Lot 4 on Crown Plan AP9682 are excluded from the Determination Area in accordance with section 61A of the Native Title Act 1993 (Cth) (and section 23B(7) of the Native Title Act 1993 (Cth) and sections 20 and 21 of the Native Title (Queensland) Act 1993 (Qld)) because they are areas where previous exclusive possession acts have occurred, native title has been extinguished in relation to the whole of these areas and no claimant application to these areas can be made.

REGISTER ATTACHMENTS:

1. ANNEXURE A to SCHEDULE 1 - Determination Area, 5 pages - A4, 13/10/2004

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.