



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6001/1998
NNTT Number: QCD2004/003

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 Agreements (QI2003/002, QI2003/026, QI2004/047 and QI2004/048) referred to at Order 13 were 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 and underground waters, are, subject to paragraph 5 and the rights and interests identified in paragraph 7, non-exclusive rights to:
 - (a) be present on, use and enjoy the Determination Area;
 - (b) make use of the Determination Area by:
 - (i) hunting and gathering on, in and from the Determination Area;
 - (ii) conducting ceremonies on the Determination Area;
 - (iii) being buried on, and burying Native Title Holders on, the Determination Area;
 - (iv) maintaining springs and wells in the Determination Area where underground water rises naturally, for the sole purpose of ensuring the free flow of water;
 - (c) take, use and enjoy the natural resources found on or within the Determination Area;
 - (d) 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
 - (e) 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,and the right to inherit and succeed to the native title rights and interests.
4. The nature and extent of the native title rights and interests in relation to the flowing and underground waters of the Determination Area are that, subject to paragraph 5 and the rights and interests identified in paragraph 7, they confer on the Native Title Holders non-exclusive rights to:
 - (a) hunt, gather and fish on, in and from the flowing and underground waters for personal, domestic, social, cultural, religious, spiritual, ceremonial or communal needs;
 - (b) take, use and enjoy the flowing 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 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. Notwithstanding anything in paragraphs 3 and 4, the native title rights and interests in relation to the Determination Area do not extend to a right to control access to or a right to control the use of the Determination Area.
7. 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:
 - (i) the lessee and others under the term lease for pastoral purposes known as Strathburn Holding dated 23 January 1964, being Title Reference No. 17668099 comprising Lot 4149 on Crown Plan PH31 ("the Strathburn Lease");
 - (ii) the lessee and the Native Title Holders under a deed of agreement dated 8 October 2004 between the Gregory

Paul Jenkins and Margaret Glennie Atkinson as lessees of the Strathburn Lease, the State of Queensland and the Native Title Holders;

(iii) the lessee and others under the term lease for pastoral purposes known as Holroyd River Holding dated 27 March 1975, being Title Reference No. 17668104 comprising Lot 4652 on Crown Plan PH988 ("the Holroyd River Lease");

(iv) the lessee and the Native Title Holders under a deed of agreement dated 8 October 2004 between the Holroyd River Lessee, the State of Queensland and the Native Title Holders;

(v) the lessee and others under the term lease for pastoral purposes known as Southwell Pastoral Development Holding dated 19 February 1987, being Title Reference No. 17668135 comprising Lot 1 on Crown Plan LK4 ("the Southwell Lease");

(vi) the lessee and the Native Title Holders under a deed of agreement dated 8 October 2004 between the Southwell Lessee, the State of Queensland and the Native Title Holders;

(b) 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;

(c) the rights and interests of Cook Shire Council under its local government jurisdiction and functions and as an entity exercising statutory powers including its interests under an Indigenous Land Use Agreement dated 11 October 2004 between the Native Title Holders and Cook Shire Council;

(d) any rights or interest 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;

(e) 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.

8. The relationship between the native title rights and interests and the other rights and interests described in paragraph 7 ("the other rights and interests") is that:

(a) the other rights and interests continue to have effect; 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 do not confer possession, occupation, use and enjoyment of the Determination Area 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 words and expressions:

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

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

"flowing 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,

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 regulations, statutory instruments, local planning instruments and local laws; and

"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 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); and

(c) flowing 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 agreements referred to in paragraphs 7(a)(ii), 7(a)(iv), 7(a)(vi) and 7(c) on the Register of Indigenous Land Use Agreements.

14. In the event that the agreements referred to in paragraph 7(a)(ii), 7(a)(iv), 7(a)(vi) and 7(c) are 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 - where native title is determined to exist) Area"

"Determination Area" is the land and waters within the area described and shown on the plan in Annexure A, being Lots 7 and 8 on Crown Plan AP9681 covering Lot 1 on ABL3, Lot 1 on LK4, Lot 4652 on PH988 and part of Lot 4149 on PH31, but does not include:

(a) the land and waters described in Schedule Two; and

(b) 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 Strathburn Lease as described and shown on Lot 8 on Crown Plan AP9681 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 it is an area where previous exclusive possession acts have occurred, native title has been extinguished in relation to the whole of the area and no claimant application to the area can be made.

REGISTER ATTACHMENTS:

1. ANNEXURE A to SCHEDULE 1 - Determination Area, 1 page - 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.