



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): QUD6029/2001  
NNTT Number: QCD2009/002

**Determination Name:** [Wik and Wik Way Native Title Claim Group v State of Queensland](#)

**Date(s) of Effect:** 5/10/2009

**Determination Outcome:** Native title exists in the entire determination area

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

**Determination Date:** 29/07/2009

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

This application was determined on 29 July 2009. The determination was conditional on the registration of an Indigenous Land Use Agreement which was registered on 5 October 2009. The determination was therefore registered on this Register, and removed from the Register of Native Title Claims, on that date.

### 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](http://www.oric.gov.au)*

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

The native title is held by the Wik and Wik Way Peoples ("the Native Title Holders") in accordance with the traditional laws acknowledged and traditional customs observed by them as common law holders.

### MATTERS DETERMINED:

THE COURT 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 ("the Native Title Holders") in accordance with the traditional laws acknowledged and traditional customs observed by them as common law holders.

3. The nature and extent of native title rights and interests in relation to the Determination Area, other than in relation to Water and subject to paragraphs 5, 6 and 7, are non-exclusive rights to:

- (a) live on the Determination Area, to camp, erect shelters and other structures;
- (b) access, be present on, move about in and on and use the Determination Area;
- (c) take and use the Natural Resources of the Determination Area for the purpose of satisfying the personal, domestic or non-commercial communal needs of the Native Title Holders;
- (d) maintain and protect from harm by lawful means sites and places of significance in the Determination Area;
- (e) conduct social, religious, cultural, spiritual and ceremonial activities on the Determination Area;
- (f) hunt and gather in, on and from the Determination Area for the purpose of satisfying the personal, domestic or non-commercial communal needs of the Native Title Holders,

and the right to inherit and succeed to the native title rights and interests.

4. Subject to paragraphs 5, 6 and 7, the nature and extent of native title rights and interests in relation to Water are non-exclusive rights to:

- (a) hunt and fish in or on, and gather from Water for the purpose of satisfying the personal, domestic or non-commercial communal needs of the Native Title Holders; and
- (b) take, use and enjoy the Water for the purpose of satisfying the personal, domestic or non-commercial communal needs of the Native Title Holders.

5. There is no native title in Minerals and Petroleum.

6. The native title is subject to and exercisable in accordance with:

- (a) the Laws of the Commonwealth and the State of Queensland; and
- (b) the traditional laws acknowledged and traditional customs observed by the Native Title Holders.

7. Notwithstanding anything in paragraphs 3, 4, 5 and 6, the native title rights and interests:

- (a) do not confer possession, occupation, use and enjoyment of the Determination Area on the Native Title Holders to the exclusion of all others; and
- (b) do not extend to a right to control access to or a right to control the use of the Determination Area.

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

(a) the rights and interests of Rio Tinto Aluminium Limited under:

(i) the Commonwealth Aluminium Corporation Pty Limited Agreement Act 1957 (Qld) ("the Comalco Act") and the Commonwealth Aluminium Corporation Pty Limited Agreement (which is given statutory force by the Comalco Act) ("the Comalco Agreement") to mine and/or perform other activities on the Determination Area, including the Comalco Interests and the rights to perform the Comalco Activities; and

(ii) the WCCCA between it, representatives of the Native Title Holders and other parties;

(iii) Mining Lease No. 7024;

(iv) Mining Lease No. 6024; and

(b) the following rights and interests in relation to the Determination Area as they exist at the date of this determination:

(i) 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;

(ii) the rights and interests of the Cook Shire Council under its local government jurisdiction and as an entity

exercising statutory powers in respect of land and waters within the Determination Area including its interests under an Indigenous Land Use Agreement dated 27 April 2009 between the Native Title Holders and Cook Shire Council;

(iii) the rights and interests of the Napranum Aboriginal Shire Council under its local government jurisdiction and as an entity exercising statutory powers in respect of land and waters within the Determination Area;

(iv) the rights and interests of the North Queensland Bulk Ports Corporation Limited 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;

(v) any rights of the public:

(A) whether granted by Rio Tinto Aluminium Limited or otherwise, to travel through or across the Determination Area;

(B) arising under the common law to fish and navigate in any Tidal Navigable River or Tidal Water of the Determination Area;

(vi) any other rights or interests held by the Crown or by reason of the force and operation of Laws of the Commonwealth of Australia and the State of Queensland.

9. The relationship between the native title rights and interests in paragraphs 3 and 4 and the other rights and interests in relation to the Determination Area in paragraph 8 is that:

(a) in relation to the rights and interests of Rio Tinto Aluminium Limited in paragraph 8(a) - on the enactment of the Comalco Act in 1957, the making of the Comalco Agreement, the grant of Special Bauxite Mining Lease 1 or the registration of the WCCCA, the Comalco Act, the Comalco Agreement, the conferral of the Comalco Interests, the performance of the Comalco Activities or the WCCCA, whether done before or after the date of this Determination, prevail over the native title rights and interests to the extent of any inconsistency;

(b) in relation to the other rights and interests in sub-paragraphs 8(b)(i), (ii), (iii), (iv) and (vi):

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

(ii) for avoidance of doubt, any activity that is required or permitted by or held 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, subject to any application of section 24JA of the Native Title Act 1993 (Cth), does not extinguish them;

(c) in relation to the other rights and interests in sub-paragraph 8(b)(v), those rights and interests co-exist with the native title rights and interests and, to the extent of any inconsistency with the native title rights and interests, will prevail over the native title rights and interests but will not extinguish them; and

(d) the native title is subject to extinguishment by:

(i) the lawful powers of the Commonwealth and of the State of Queensland; and/or

(ii) the lawful grant or creation of interests pursuant to the Laws of the Commonwealth and the State of Queensland.

10. If a word or expression is not defined in this paragraph, but is defined in the Native Title Act 1993 (Cth) then it has the meaning given to it in the Native Title Act 1993 (Cth). In addition:

"Animal" and "Plant" have the meanings given to them in the Nature Conservation Act 1992 (Qld);

"Comalco Activities" has the meaning given to it in the WCCCA;

"Comalco Interests" has the meaning given to it in the WCCCA;

"Determination Area" means the land and waters within the area described in Annexure A to Schedule One and shown on the plan in Annexure B to Schedule One, except that to the extent of any inconsistency between the written description and the plan, the written description prevails;

"Fish" has the meaning given to it in the Fisheries Act 1994 (Qld);

"High Water Mark" has the meaning given to it in the Land Act 1994 (Qld);

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

"Minerals" has the meaning given to it in the Mineral Resources Act 1989 (Qld);

"Natural Resources" means:

(a) any Plant and Animal, including Fish and bird life found on, or in, the lands and waters of the Determination Area from time to time;

(b) flints, clays, ochres, stones and soils found on or below the surface of the Determination Area,

but does not include:

(c) Minerals or Petroleum;

"Petroleum" has the meaning given to it in the Petroleum Act 1923 (Qld) and the Petroleum and Gas (Production and Safety) Act 2004 (Qld);

"Tidal Navigable River" has the meaning given to it in the Land Act 1994 (Qld);

"Tidal Water" has the meaning given to it in the Land Act 1994 (Qld);

"Water" means water as defined in the Water Act 2000 (Qld) and Tidal Water.

## AND THE COURT ORDERS

11. Native title is not to be held in trust.

12. Ngan Aak-Kunch Aboriginal Corporation RNTBC (formerly 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. The determination of native title is to take effect on the registration of the agreement referred to in sub-paragraph 8(b)(ii) on the Register of Indigenous Land Use Agreements.

14. In the event that the agreement referred to in sub-paragraph 8(b)(ii) is not registered on the Register of Indigenous Land Use Agreements within six 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)

The "Determination Area" means the land and waters within the area described in Annexure A to Schedule One and shown on the plan in Annexure B to Schedule One, except that to the extent of any inconsistency between the written description and the plan, the written description prevails.

## ANNEXURE A TO SCHEDULE ONE

(Description of the Determination Area)

AREA 1 (shown as Lot 1 on the plan in Annexure B to Schedule One)

Unless otherwise stated, monument numbers referred to in the following description are derived from Plan MP41159 that is registered in the Department of Environment and Resource Management. The description is derived from the following plans which are available from the Department of Environment and Resource Management: MP31643, MP41159, SP120446 and SP135863.

Commencing at monument 047 P1 of ML 7024, proceed along the mining lease boundary through monuments 046 O1, 198, 199 and then along the boundary of ML 7024 towards 045 L1 until the boundary intersects with the High Water Mark; then generally north westerly and generally north easterly along that High Water Mark to its intersection with the ML 7024 boundary defined by station 038 DB and monument 037 DA, proceed along the boundary of ML 7024 through monuments 037 DA, 036 D1 and along the boundary of ML 7024 towards 035 C1 until it intersects with the High Water Mark; then generally north easterly along the High Water Mark until it intersects with the boundary of ML 7024 defined by monuments 036 D1 and 035 C1 then along the boundary of ML7024 through monument 035 C1 and towards 034 B1 until it intersects with the High Water Mark then generally north easterly along the High Water Mark until it intersects with the boundary of ML 7024 defined by monuments 035 C1 and 034 B1 then along the

boundary of ML 7024 through monuments 034 B1, 224, 223, 058 AR, 057 AQ, 056 AP, 055 AU, 226 (defined on Plan MP31643), then along the boundary of ML 6024 towards monument 225 (defined on MP31643) until the intersection of High Water Mark then along the High Water Mark in a general north westerly direction around Lot 12 on Plan SP135863 until the intersection of the boundary of Lot 14 on Plan SP120446 defined by monuments 056 AP and 083 AO, then north easterly along the eastern boundary of that Lot 14 on Plan SP120446 towards monument 083 AO to the centreline of Embley River; then generally south easterly along the centreline of the Embley River to the boundary of ML 7024 defined by monuments 216 and 105, then along the boundary of ML 7024 through monuments 105, 104, 106, 107, 217, 002 B3, 001 C3, 053 AW, 220, 221, 222, 052 D3, 051 U1, 050 T1, 049 R1, 048 Q1 back to the point of commencement.

AREA 2 (shown as Lot 2 on the plan in Annexure B to Schedule One)

Unless otherwise stated, monument numbers referred to in the following description are derived from Plan SP120446 which is registered in the Department of Environment and Resource Management. The description is derived from the following plans which are available from the Department of Environment and Resource Management: SP120446 and SC211.

Commencing at the point where High Water Mark intersects the boundary of Lot 14 on Plan SP120446 which is located generally northwest of monument AR along the boundary to monument AS proceed along the High Water Mark around Roberts Creek to the intersection of the boundary of Lot 14 on Plan SP120446 defined by monuments AS and AR, then follow the boundary of Lot 14 on Plan SP120446 back to the point of commencement.

ANNEXURE B TO SCHEDULE ONE - Plan of the Determination Area

(See NNTR Attachment 1: 'Annexure B to Schedule One - Plan of the Determination Area')

SCHEDULE TWO - Extracts of the Western Cape Communities Co-existence Agreement dated 14 March 2001

(See NNTR Attachment 2: 'Schedule Two - Extracts of the Western Cape Communities Co-Existence Agreement dated 14 March 2001')

#### **REGISTER ATTACHMENTS:**

1. Attachment 1 - Annexure B to Schedule One - Plan of the Determination Area, 1 page - A4, 29/07/2009
2. Attachment 2 - Schedule Two - Extracts of the Western Cape Communities Co-Existence Agreement dated 14 March 2001, 15 pages - A4, 29/07/2009

*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.*