



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6027/2001
NNTT Number: QCD2012/001

Determination Name: [Kearns on behalf of the Gunggari People #2 v State of Queensland](#)

Date(s) of Effect: 7/09/2012

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 22/06/2012

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

This determination was handed down by the Federal Court on 22 June 2012 and was conditional on the registration of 6 Indigenous Land Use Agreements: QI2012/046 - Gunggari People and Ergon Energy ILUA QI2012/047 - Gunggari People/Leinster West ILUA QI2012/048 - Gunggari People/Rundalua ILUA QI2012/049 - Gunggari People/Ularunda ILUA QI2012/057 - Gunggari People/Kalyan ILUA QI2012/058 - Gunggari People/Sherwood (aka Karatang) ILUA. These ILUAs were registered on the Register of Indigenous Land Use Agreements on 7 September 2012. The conditions attached to the determination have therefore now been met.

REGISTERED NATIVE TITLE BODY CORPORATE:

Gunggari Native Title Aboriginal Corporation RNTBC
Trustee Body Corporate
41 Cambridge St
MITCHELL Queensland 4465

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):

Gunggari Native Title 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:

2. The native title is held by the persons described in Schedule 1 (the "native title holders").

SCHEDULE 1 - NATIVE TITLE HOLDERS

The native title holders are the Gunggari People. The Gunggari People are the descendants of the following people:

- (a) Jinnegah;
- (b) Jimmy and Nelly Flourbag;
- (c) Harry Collins;
- (d) Old Frog;
- (e) Coombra Jack;
- (f) Kitty of St George and Maggie of the Moonie;
- (g) King Billy Dick;
- (h) Maria of Tongi Station;
- (i) Harry Rookwood;
- (j) Lucy of the Balonne River;
- (k) Charlotte Moffatt;
- (l) Mary of the Maranoa;
- (m) Nellie Walker;
- (n) Clifton George;
- (o) Mary of Bollon;
- (p) Kate Meadows/Meathers.

MATTERS DETERMINED:

Being satisfied that a determination in the terms sought by the parties is within the power of the Court, and it appearing appropriate to the Court to do so,

BY CONSENT THE COURT DETERMINES THAT:

1. Native title exists in relation to the Determination Area.
2. The native title is held by the persons described in Schedule 1 (the "native title holders").
3. Subject to paragraphs 5, 6 and 7 the nature and extent of the native title rights and interests in relation to the Determination Area, other than in relation to Water, are the non-exclusive rights to:
 - (a) access, be present on, move about on and travel over the Determination Area;
 - (b) Camp on the Determination Area and, for that purpose, erect temporary shelters on the Determination Area;
 - (c) take (including by hunting and gathering) and use Traditional Natural Resources from the Determination Area for personal, domestic and non-commercial communal purposes;
 - (d) conduct religious and spiritual activities and ceremonies on the Determination Area;
 - (e) maintain places of importance and areas of significance to the native title holders under their traditional laws and customs and protect those places and areas, by lawful means, from physical harm;
 - (f) teach on the Determination Area the physical and spiritual attributes of the Determination Area; and
 - (g) light fires on the Determination Area for domestic purposes including cooking, but not for the purposes of hunting or clearing vegetation.

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

(a) hunt and fish in or on, and gather from, the Water for personal, domestic and non-commercial communal purposes; and

(b) take and use the Water for personal, domestic and non-commercial communal purposes.

5. There are no native title rights in or in relation to minerals as defined by the Mineral Resources Act 1989 (Qld) and petroleum as defined by the Petroleum Act 1923 (Qld) and the Petroleum and Gas (Production and Safety) Act 2004 (Qld).

6. 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.

7. The native title rights and interests referred to in paragraphs 3 and 4 do not confer the right to possession, occupation, use or enjoyment to the exclusion of all others.

8. The nature and extent of any other rights and interests in relation to the Determination Area (or respective parts thereof) are set out in Schedule 5.

9. The relationship between the native title rights and interests described in paragraphs 3 and 4 and the other interests described in Schedule 5 (the "Other Interests") is that:

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

(b) the Other Interests and any activity that is required or permitted by or under, and done in accordance with, the Other Interests or any activity that is associated with or incidental to such an activity, prevail over the native title rights and interests and any exercise of the native title rights and interests.

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:

(a) "Application" means the native title determination application in the Federal Court of Australia proceedings QUD 6027 of 2001;

(b) "Camp" does not include permanent residence or the construction of permanent structures or fixtures;

(c) "Determination Area" means the land and waters described in Schedule 2 (which excludes the land and waters described in Schedule 3) and shown on the plan in Schedule 4, and to the extent of any inconsistency between the Schedules and the plan, the Schedules prevail;

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

(e) "Traditional Natural Resources" means:

(i) "animals" as defined in the Nature Conservation Act 1992 (Qld);

(ii) "plants" as defined in the Nature Conservation Act 1992 (Qld); and

(iii) any clay, soil, sand, gravel or rock on or below the surface of the Determination Area,

that have traditionally been taken and used by the native title holders; and

(f) "Water" means water as defined by the Water Act 2000 (Qld).

THE COURT ORDERS THAT:

11. Paragraphs 1 to 10 take effect upon the agreements referred to in paragraphs 3(d) and 4(a), (b), (c), (d) and (e) of Schedule 5 being registered on the Register of Indigenous Land Use Agreements.

12. Upon paragraphs 1 to 10 taking effect:

(a) The native title is held in trust.

(b) The Gunggari Native Title Aboriginal Corporation ICN 7725, incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth), is to:

(i) be the prescribed body corporate for the purpose of s 56(1) of the Native Title Act 1993 (Cth); and

(ii) perform the functions mentioned in s 57(1) of the Native Title Act 1993 (Cth) after becoming a registered native title body corporate.

13. In the event that the agreements referred to in paragraph 11 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 1 - NATIVE TITLE HOLDERS

The native title holders are the Gunggari People. The Gunggari People are the descendants of the following people:

- (a) Jinnegah;
- (b) Jimmy and Nelly Flourbag;
- (c) Harry Collins;
- (d) Old Frog;
- (e) Coombra Jack;
- (f) Kitty of St George and Maggie of the Moonie;
- (g) King Billy Dick;
- (h) Maria of Tongi Station;
- (i) Harry Rookwood;
- (j) Lucy of the Balonne River;
- (k) Charlotte Moffatt;
- (l) Mary of the Maranoa;
- (m) Nellie Walker;
- (n) Clifton George;
- (o) Mary of Bollon;
- (p) Kate Meadows/Meathers.

SCHEDULE 2 - AREAS WHERE NATIVE TITLE EXISTS

The Determination Area comprises all the land and waters described in column 1 of the following table and shown on the determination plan described in column 2 of the following table, excluding:

- (a) the areas described in Schedule 3; and
- (b) any area of land and waters on which a public work is, or was, established on or before 23 December 1996, and any adjacent land and waters the use of which is or was necessary for, or incidental to, the construction, establishment or operation of the work.

Area Description	Determination Plan Description
Part Lot 5244 on PH1377	Lot 2 on AP20085
Lot 2501 on PH2052	Lot 3 on AP20085
Part Lot 5105 on PH595	Lot 2 on AP20085

Part Lot 5140 on PH708	Lot 2 on AP20085
Lot 7 on UL65	Lot 2 on AP20085
Lot 6 on MAR42	Lot 25 on AP20085
Lot 8 on MAR3	Lot 26 on AP20085
Lot 6 on MAR19	Lot 23 on AP20085
Lot 2 on MAR24	Lot 28 on AP20085
Lot 7 on CP857801	Lot 27 on AP20085
Lot 28 on KE107	Lot 12 on AP20085
Lot 1 on KE16	Lot 5 on AP20085
Lot 8 on KE18	Lot 14 on AP20085
Lot 8 on KE29	Lot 4 on AP20085
Part of Lot 50 on KE6	Lot 6 on AP20085
Lot 49 on KE67	Lot 8 on AP20085
Lot 8 on KE70	Lot 8 on AP20085
Lot 30 on SP145274	Lot 11 on AP20085
Lot 4 on KE93	Lot 15 on AP20085
Lot 5 on KE94	Lot 13 on AP20085
Lot 11 on TM14	Lot 16 on AP20085
Lot 5 on TM16	Lot 19 on AP20085
Part of Lot 6 on TM17	Lot 20 on AP20085
Lot 10 on TM47	Lot 18 on AP20085
Lot 5 on TM53	Lot 21 on AP20085
Lot 7 on TM65	Lot 22 on AP20085
Lot 6 on TM67	Lot 22 on AP20085
Lot 9 on TM67	Lot 22 on AP20085
Lot 6 on UL13	Lot 1 on AP20085
Lot 2 on UL59	Lot 2 on AP20085
Part of Lot 21 on WV1334	Lot 7 on AP20085
Lot 13 on FTY1632	Lot 29 on AP20085
Lot 18 on FTY837	Lot 9 on AP20085
	Lot 10 on AP20085
Lot 7 on MAR22	Lot 24 on AP20085
Lot 4 on USL42867	Lot 3 on AP20085
Lot 6 on TM3	Lot 17 on AP20085

SCHEDULE 3 - AREAS EXCLUDED FROM THE DETERMINATION AREA

1. The parties have agreed that the following areas are wholly excluded from the determination area and the Application on the grounds that native title has been extinguished and cannot be claimed:

(a) Those areas of land and waters on which any permanent improvement consisting of:

(i) a house, shed or other outbuilding;

(ii) an airstrip;

(iii) a constructed dam or any other constructed stock watering point, bore, turkey nest, squatters' tank or other water storage facility; or

(iv) stock yards or trap yards

that at the date of the determination have been constructed or established (including any adjacent land the exclusive use of which is reasonably necessary for the enjoyment of the improvement) in accordance with the rights of the lessee under the following pastoral leases:

A. Term lease (Pastoral) TL234977 (previously Preferential Pastoral Holding PPH 10/5105) comprising part of Lot 5105 on Crown Plan PH595 as shown on the plans in Schedule 4 and known as Rundalua;

B. Pastoral Holding PH 36/1054 comprising Lot 7 on Crown Plan UL65 and known as Ularunda;

C. Preferential Pastoral Holding PPH 10/5140 comprising part of Lot 5140 on Crown Plan PH708 as shown on the plans in Schedule 4 and known as Sherwood (also known as Karatang);

D. Pastoral Development Holding PDH 36/2501 comprising Lot 2501 on Crown Plan PH2052 and known as Leinster West; and

E. Preferential Pastoral Holding PPH 10/5244 comprising part of Lot 5244 on Crown Plan PH1377 as shown on the plans in Schedule 4 and known as Kalyan.

2. The parties have agreed that Lot 6 on UL 62 is wholly excluded from the Determination Area and the Application on the grounds that the area has been the subject of a previous exclusive possession act, as defined in s 23B of the Native Title Act 1993 (Cth) and therefore, in accordance with s 61A of the Native Title Act 1993 (Cth), cannot be claimed.

SCHEDULE 4 - DETERMINATION PLAN

[See NNTR Attachment 1: "Schedule 4 - Determination Plan"]

SCHEDULE 5 - OTHER INTERESTS IN THE DETERMINATION AREA

1. The rights and interests of the Balonne Shire Council, Maranoa Regional Council and Murweh Shire Council under:

(a) the Local Government Act 2009 (Qld) for that part of the Determination Area within its local government area, as defined in that Act, including:

(i) as owner and operator of infrastructure, facilities and other improvements which are in the Determination Area as at the date of this determination; and

(ii) to enter and exercise rights within the Determination Area; and

(b) an Indigenous Land Use Agreement between Robert John Munn as the registered native title claimant for the Gunggari People and the Maranoa Regional Council, Balonne Shire Council and Murweh Shire Council registered on 15 December 2008.

2. The rights and interests of Telstra Corporation Limited:

(a) as the owner or operator of telecommunications facilities within the Determination Area;

(b) 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) including rights:

(i) to inspect land;

(ii) to install and operate telecommunication facilities;

(iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its existing and any new telecommunication facilities; and

(iv) for its employees, agents or contractors to access the Determination Area for the purposes of exercising the rights in (i), (ii) and (iii) above in respect of telecommunications facilities in and in the vicinity of the Determination Area;

(c) for its employees, agents or contractors to access its telecommunications facilities in and in the vicinity of the Determination Area along existing roads and tracks; and

(d) under any licences or access agreements relating to its telecommunication facilities in the Determination Area.

3. The rights and interests of Ergon Energy Corporation Ltd:

(a) as the owner and operator of any "Works" as that term is defined in the Electricity Act 1994 (Qld) within the Determination Area;

(b) as a distribution entity and the holder of a distribution authority under the Electricity Act 1994 (Qld);

(c) created under the Electricity Act 1994 (Qld) and the Government Owned Corporations Act 1993 (Qld), including:

(i) rights in relation to any agreement relating to the Determination Area existing or entered into before the date on which these orders are made;

(ii) rights to enter the Determination Area by its employees, agents or contractors to exercise any of the rights and interests referred to in this paragraph;

(iii) and to inspect, maintain and manage any Works in the Determination Area.

(d) under an Indigenous Land Use Agreement between the native title holders and Ergon Energy Corporation Limited executed on 13 March 2012.

4. The rights and interests of:

(a) Hugh Arthur Cameron and Marcia Joyce Cameron under:

(i) Term lease (Pastoral) TL234977 (previously Preferential Pastoral Holding PPH 10/5105) comprising part of Lot 5105 on Crown Plan PH595 as shown on the plans in Schedule 4 and known as Rundalua; and

(ii) an Indigenous Land Use Agreement between the lessee and the Applicant dated 15 April 2012 - "Gunggari People/Rundalua ILUA".

(b) McInnerney Bros Penang Pty Ltd under:

(i) Pastoral Holding PH 36/1054 comprising Lot 7 on Crown Plan UL65 and known as Ularunda;

(ii) Permit to Occupy 0/217454 comprising Lot 2 on Crown Plan UL59; and

(iii) an Indigenous Land Use Agreement between the lessee and the Applicant dated 15 April 2012 - "Gunggari People/Ularunda ILUA".

(c) Owen Douglas Murphy and Jeanette Coral Murphy under:

(i) Preferential Pastoral Holding PPH 10/5140 comprising part of Lot 5140 on Crown Plan PH708 as shown on the plans in Schedule 4 and known as Sherwood (also known as Karatang); and

(ii) an Indigenous Land Use Agreement between the lessee and the Applicant dated 18 April 2012 - "Gunggari People/Sherwood ILUA".

(d) Jon James Warby and Belinda Anne Warby under:

(i) Pastoral Development Holding PDH 36/2501 comprising Lot 2501 on Crown Plan PH2052 and known as Leinster West; and

(ii) an Indigenous Land Use Agreement between the lessee and the Applicant dated 15 April 2012 - "Gunggari People/ Leinster West ILUA".

(e) John Charles Denver Warren and Rosemary Susan Warren under:

(i) Preferential Pastoral Holding PPH 10/5244 comprising part of Lot 5244 on Crown Plan PH1377 as shown on the plans in Schedule 4 and known as Kalyan; and

(ii) an Indigenous Land Use Agreement between the lessee and the Applicant dated 25 April 2012 - "Gunggari People/Kalyan ILUA".

(f) Darryl Alan Abraham and Thora Valmai Abraham under Term Lease 0/222112 comprising Lot 49 on Crown Plan KE67.

(g) Donald John Allen and Teresa Emilie Allen under:

(i) Term Lease 0/231045 comprising Lot 30 on Survey Plan 145274; and

(ii) Special Lease 36/40252 comprising Lots 26 and 27 on Crown Plan KE100 (also known as lot 18 on FTY837).

(h) Darcy Gordon Cavanough under Term Lease 0/232121 comprising Lot B on Crown Plan 846121.

(i) Jane Alexandra Hanly under Special Lease 36/52727 comprising Lot 8 on Crown Plan KE18.

(j) Donald Walter McLean and Christine Elizabeth McLean under Term Lease 0/214614 comprising Lot 11 on Crown Plan TM14.

(k) Eric Peter Noon and Susanne Noon under Permit to Occupy 0/221932 comprising Lot 28 on Crown Plan KE107.

(l) Bruce Windsor Tiller, Stella Jessie Tiller, Adrian Bruce Tiller and Margaret Anne Tiller under Term Lease 0/206515 comprising Lot 1 on Crown Plan KE16.

5. The rights and interests of the holders of any permits, claims, licences or leases granted under the Mineral Resources Act 1989 (Qld), the Petroleum Act 1923 (Qld) and the Petroleum and Gas (Production and Safety) Act 2004 (Qld) as may be current at the date of this determination.

6. The rights and interests of the holders of any leases, licences, permits or authorities granted under the Forestry Act 1959 (Qld) as may be current as at the date of this determination.

7. The rights and interests of the holders of any authority, licence or permit issued under the Water Act 2000 (Qld) as may be current at the date of this determination.

8. Any other rights and interests held by the State of Queensland or Commonwealth of Australia, or by reason of the force and operation of the Laws of the State and the Commonwealth, as may be current at the date of this determination.

REGISTER ATTACHMENTS:

1. Attachment 1 - Schedule 4 - Determination Plan, 18 pages - A4, 22/06/2012

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.