



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6001/1998
NNTT Number: QCD2012/010

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

Date(s) of Effect: 8/02/2013

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 11/10/2012

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

This determination was handed down by the Federal Court on 11 October 2012 and was conditional on the registration of 5 Indigenous Land Use Agreements:

- QI2012/079 - Wik & Wik Way People and Piccaninny Plains Pastoral ILUA
- QI2012/080 - Wik & Wik Way People and Cook Shire Council ILUA #3
- QI2012/081 - Wik & Wik Way People and Kendall River Pastoral ILUA
- QI2012/082 - Wik & Wik Way People and Watson River Pastoral ILUA
- QI2012/084 - Wik & Wik Way People and Merluna Pastoral ILUA

These ILUAs were registered on the Register of Indigenous Land Use Agreements on 8 February 2013

The conditions attached to the determination have therefore now been met and the determination came into effect on 8 February 2013.

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

COMMON LAW HOLDER(S) OF NATIVE TITLE:

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

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 for the Court to do so,

BY CONSENT THE COURT ORDERS THAT:

1. Native title exists in relation to the Determination Area.
2. The native title in the Determination Area is held by the Wik and Wik Way Peoples (“Native Title Holders”) in accordance with traditional laws acknowledged and traditional customs observed by them as common law holders.
3. Subject to paragraphs 5, 6, and 7, the nature and extent of the native title rights and interests within the Determination Area, other than in relation to Water, are non-exclusive rights to:
 - (a) access, move about in and on and be present on, and Camp on, the Determination Area;
 - (b) take and use the Natural Resources of the Determination Area for non-commercial:
 - (i) cultural purposes;
 - (ii) personal purposes;
 - (iii) domestic purposes; or
 - (iv) communal purposes;
 - (c) maintain and protect from harm by lawful means sites and places of significance in the Determination Area;

- (d) maintain Springs and Wells in the Determination Area for the sole purpose of ensuring the free flow of Water;
- (e) conduct ceremonies and engage in cultural activities on the Determination Area;
- (f) hunt and gather in, on and from the Determination Area for non-commercial:
 - (i) cultural purposes;
 - (ii) personal purposes;
 - (iii) domestic purposes; or
 - (iv) communal purposes; and
- (g) teach the physical and spiritual attributes of sites and places of significance and areas of importance in the Determination Area,

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 the native title rights and interests in relation to Water within the Determination Area are non-exclusive rights to:

- (a) hunt and fish in or on, and gather from, the Water for non-commercial:
 - (i) cultural purposes;
 - (ii) personal purposes;
 - (iii) domestic purposes; or
 - (iv) communal purposes; and

(b) take and use the Water for non-commercial:

- (i) cultural purposes;
- (ii) personal purposes;
- (iii) domestic purposes; or
- (iv) communal purposes.

5. There are no native title rights or interests in or in relation to Minerals and Petroleum.

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:
- (a) confer possession, occupation, use or enjoyment to the exclusion of all others; and
 - (b) 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 the other rights and interests in relation to the Determination Area (or respective parts thereof) are set out in Schedule 3.
9. The relationship between the native title rights and interests described in paragraphs 3 and 4 and the other rights and interests described in Schedule 3 (the “other rights and interests”) 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) for the avoidance of doubt, the other rights and interests and 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, 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 order 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:

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

“Camp” means to camp on the Determination Area but does not include permanent residence or the construction of permanent structures or fixtures;

“Determination Area” means the land and waters described in Schedule 1 and shown on the plan in Schedule 2 and, to the extent of any inconsistency between them, Schedule 1 prevails;

“Forest Products” has the meaning given to it in the *Forestry Act 1959* (Qld);

“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;

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

“Natural Resources” means:

- (a) any Plant, Animal and Forest Products found on, or in, the Determination Area from time to time; and
- (b) flints, clays, soil, sand, gravel and rock on or below the surface of the Determination Area, that have traditionally been taken and used by the Native Title Holders, but does not include 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);

“Springs and Wells” means the land to which Water rises naturally from below the ground and the land over which the Water then flows; and

“Water” means water as defined by the *Water Act 2000* (Qld).

AND THE COURT FURTHER ORDERS THAT:

11. Upon paragraphs 1-9 taking effect:

- (a) the native title is not to be held in trust; and
- (b) Ngan Aak-Kunch Aboriginal Corporation RNTBC, incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), is to:
 - (i) be the prescribed body corporate for the purpose of section 57(2) of the *Native Title Act 1993* (Cth); and
 - (ii) perform the functions mentioned in section 57(3) of the *Native Title Act 1993* (Cth) after becoming a registered native title body corporate.

12. Paragraphs 1-9 will take effect on the agreements referred to in item 6 of Schedule 3 being registered on

the register of indigenous land use agreements.

13. In the event that the agreements referred to in item 6 of schedule 3 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 the Court may order, the matter is to be listed for further directions.
14. Each party to the proceeding to bear their own costs.
15. The parties have liberty to apply for the following purposes:
 - (a) to establish the precise location and boundaries of land on which the improvements referred to in Schedule 4 have been constructed and any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvements; and
 - (b) to establish whether any of the improvements referred to at Schedule 4 have been constructed unlawfully.

SCHEDULE 1 - Determination Area (see Order 10)

The Determination Area is the land and waters within the area described as Lots 4, 5, 6, & 7 on AP17644 covering:

- (a) Lot 1 on YK4 (“the Watson River Lease”), excluding areas identified on YK4 as “Road 60 Wide”;
- (b) Lot 653 on SP178000 (“the Kendall River Lease”) including an area identified as “Road 60 Wide” and delineated by stations “A - B” on SP178000;
- (c) that part of the Holroyd River where it adjoins the southern boundary of Lot 653 on SP178000;
- (d) part of Lot 2 on SP140870 (previously part of Lot 2 on YK11) (“the Piccaninny Plains Lease”), excluding area identified as “Road 60 Wide” within that part;
- (e) that part of the Archer River where it adjoins the southern boundary of that part of Lot 2 on SP140870 which falls within the Determination Area;
- (f) part of Lot 3 on SP140870 (previously part of Lot 2 on YK11) (“the Merluna Lease”), excluding areas identified as “Road 60 Wide” within that part;
- (g) part of Lot 1 on SP177772, (“the Leconsfield Lease”), excluding areas identified as “Road 60 Wide”

within that part, but not excluding areas identified as "Road 60 Wide" and delineated by:

- (i) stations "A - B" on SP177772;
 - (ii) stations "A - B" on SP148760; and
 - (iii) from station "C" on SP148760 extending in an easterly direction to its intersection with the eastern boundary of the Determination Area;
- (h) that part of the Holroyd River where it adjoins a south western boundary of that part of Lot 1 on SP177772 which falls within the Determination Area,

but excluding the areas identified in Schedule 4.

The land and waters within the road areas that are excluded from the Determination Area are excluded 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, accordingly native title has been extinguished in relation to the whole of the area and no claimant application to the area can be made.

SCHEDULE 2 - Determination Plan (see Order 10)

[See NNTR attachment 1 - 'Schedule 2 - Determination Plan']

SCHEDULE 3 - Other interests in the determination area (see Orders 8 and 9)

1. The rights and interests of:
 - (a) the lessee and others under a term lease being title reference No. 17669036 comprising Lot 1 on YK4;
 - (b) the lessee and others under a term lease being title reference No. 40037990 comprising Lot 2 on SP140870;
 - (c) the lessee and others under a term lease, being title reference No. 40037991 comprising Lot 3 on SP140870;
 - (d) the lessee and others under a term lease being title reference No. 17668105 comprising Lot 653 on SP178000; and
 - (e) the lessee and others under a term lease being title reference No. 40033877 comprising Lot 1 on SP177772.

2. The rights, interests, powers and responsibilities of the Cook Shire Council as a local government established under the *Local Government Act 2009* (Qld) and as an entity exercising statutory powers in respect of the land and waters in its local government area.
3. The rights and interests granted by the State pursuant to statute or otherwise in the exercise of its executive power including, but not limited to, the rights and interests of persons holding licences, permits, authorities, allocations, leases, claims, agreements or other instruments granted or issued pursuant to:
 - (a) the *Mineral Resources Act 1989* (Qld) and any subordinate legislation, declarations or management plans made under that Act;
 - (b) the *Geothermal Exploration Act 2004* (Qld) and any subordinate legislation, declarations or management plans made under that Act;
 - (c) the *Forestry Act 1959* (Qld) and any subordinate legislation, declarations or management plans made under that Act;
 - (d) the *Water Act 2000* (Qld) and any subordinate legislation, declarations or management plans made under that Act; and
 - (e) the *Integrated Planning Act 1997* (Qld) or *Sustainable Planning Act 2009* (Qld) and any subordinate legislation, declarations or management plans made under those Acts,

as may be current at the date of this determination.

4. The rights and interests of the State pursuant to any licence, permit or authority granted or issued pursuant to the Radio Communicators Act 1992 (Cth) as may be current at the date of the determination.
5. Any other rights and interests held by the State, 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 including, but not limited to, the rights and interests of the State under section 35 of the Transport Infrastructure Act 1994 (Qld) in relation to an area within Lot 1 on YK4.
6. The rights and interests of the parties under the following agreements:
 - (a) the indigenous land use agreement (“ILUA”) between Anthony Kerindun, Victor Lawrence, Hogan Shortjoe and Silas Wolmby and Cook Shire Council entitled the Wik & Wik Way - Cook Shire Council - Local Government ILUA (#3) executed on 22 August 2012;

- (b) the ILUA between Anthony Kerindun, Victor Lawrence, Hogan Shortjoe and Silas Wolmby and Cameron Clive Quartermaine and Doreen Ruth Quartermaine entitled the Wik & Wik Way - Watson River Pastoral Lease ILUA executed on 7 September 2012;
- (c) the ILUA between Anthony Kerindun, Victor Lawrence, Hogan Shortjoe and Silas Wolmby and Cameron Stuart Maclean and Michelle Margaret Maclean entitled the Wik & Wik Way - Merluna Pastoral Lease ILUA executed on 12 September 2012;
- (d) the ILUA between Anthony Kerindun, Victor Lawrence, Hogan Shortjoe and Silas Wolmby and John Ernest Lynch entitled the Wik & Wik Way - Kendall River Pastoral Lease ILUA executed on 30 August 2012; and
- (e) the ILUA between Anthony Kerindun, Victor Lawrence, Hogan Shortjoe and Silas Wolmby and The Tony and Lisette Lewis Settlement Pty Limited and Australian Wildlife Conservancy entitled the Wik & Wik Way - Piccaninny Plains Pastoral Lease ILUA executed on 29 August 2012.

7. 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 new telecommunication facilities;
 - (iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its existing and any new telecommunications 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 the telecommunications facilities in and in the vicinity of the Determination Area;
- (c) under any licences relating to its telecommunications facilities in the Determination Area.

SCHEDULE 4 - Other areas excluded from the Determination Area (see Order 15)

The following areas are wholly excluded from the Determination Area on the grounds that native title has been extinguished and cannot be claimed:

- 1. In relation to the Watson River Lease, Kendall River Lease and Leconsfield Lease, those parts of those

areas on which any permanent improvement consisting of:

- (a) a house, shed or other outbuilding;
- (b) an airstrip;
- (c) a constructed dam or other constructed stock watering point, bores, turkey nest, squatters' tank or other water storage facility;
- (d) stockyards; or
- (e) trapyards,

have been constructed prior to the date of this determination, and any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvements, in accordance with the rights of the lessees under the Watson River Lease, Kendall River Lease and Leconsfield Lease.

2. In relation to the Merluna Lease and Piccaninny Plains Lease, those parts of those areas on which any permanent improvement consisting of:

- (a) a shed or other outbuilding;
- (b) a constructed dam or other constructed stock watering point, bores, turkey nest, squatters' tank or other water storage facility;
- (c) stockyards; or
- (d) trapyards,

have been constructed prior to the date of this determination, and any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvements, in accordance with the rights of the lessees under the Merluna Lease and Piccaninny Plains Lease.

REGISTER ATTACHMENTS:

1. Schedule 2 - Determination Plan, 5 pages - A4, 11/10/2012

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.