



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NSD6084/1998
NNTT Number: NCD2017/001

Determination Name: [Barkandji Traditional Owners #8 \(Part B\) v Attorney-General of New South Wales](#)

Date(s) of Effect: 13/07/2018

Determination Outcome: Native title exists in parts of the determination area

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

Determination Date: 22/08/2017

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

A consent determination of native title in respect of Part A of the application area was made by Justice Jagot on 16 June 2015 - see [Barkandji Traditional Owners #8 v Attorney-General of New South Wales \[2015\] FCA 604](#). That determination was registered on the National Native Title Register on 30 June 2015.

A consent determination of native title in respect of the remaining application area, being Part B, was made by Justice Griffiths on 22 August 2017 - see [Barkandji Traditional Owners #8 \(Part B\) v Attorney-General of New South Wales \[2017\] FCA 971](#). Order 2 of the determination provides that the 'This Part B Determination shall take effect upon the LALC Lands ILUAs being registered on the Register of Indigenous Land Use Agreements.'

On 13 July 2018 the LALC Lands ILUAs (NI2018/002 and NI2018/003) were registered on the Register of Indigenous Land Use Agreements, and therefore this determination will take effect from 13 July 2018.

REGISTERED NATIVE TITLE BODY CORPORATE:

Barkandji Native Title Group Aboriginal Corporation RNTBC
Trustee Body Corporate
545 Chapple Street
BROKEN HILL New South Wales 2880

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:

Native Title Holders

4. Native title in the Native Title Area is held by the Barkandji and Malyangapa People who comprise all the descendants of the following apical ancestors:
- (i) Manfred Mary/Mary Johnson/ Mary Brodie,
 - (ii) Manfred Tommy,
 - (iii) Louisa Brown,
 - (iv) Cuthero Jack Brown,
 - (v) Susan/Annie Webster,
 - (vi) Bill Webster,
 - (vii) Harry Whyman,
 - (viii) Kate Whyman,
 - (ix) Louisa Mclean,
 - (x) Alec Mclean,
 - (xi) Nganya,
 - (xii) Sarah Cabbage,
 - (xiii) Harry Mitchell,
 - (xiv) Daniel McGregor,
 - (xv) Lucy Benson,
 - (xvi) Jack "Doctor" Benson,
 - (xvii) Crancey,
 - (xviii) Jack Tyler,
 - (xix) Taylor Matjulum Gibson,
 - (xx) Tottie Gibson,
 - (xxi) Kutyi,
 - (xxii) Cate Newton/Maggie Tyler,
 - (xxiii) Albert Bates,
 - (xxiv) Fanny Bates,
 - (xxv) Yancannia Kitty,
 - (xxvi) Judy Quayle,
 - (xxvii) Nancy Watts,
 - (xxviii) Topsy Crowe,
 - (xxix) Alec Bridge,
 - (xxx) Olive Barton,
 - (xxxi) Margaret Payne,
 - (xxxii) Kitty Knight,

- (xxxiii) Jacky Knight,
- (xxxiv) Matilda Murray,
- (xxxv) Paddy Black,
- (xxxvi) Hero Black,
- (xxxvii) Tall Boy Keegan,
- (xxxviii) Kitty Keegan,
- (xxxix) Fanny Buugali Williams,

and persons adopted into the families of those persons who identify as, and are accepted as, members of the Barkandji and Malyangapa People in accordance with Barkandji and Malyangapa traditional laws and customs (and the biological descendants of any such adopted persons).

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. There be a determination of native title in the terms set out below (the **Part B Determination**).
2. This Part B Determination shall take effect upon the LALC Lands ILUAs being registered on the Register of Indigenous Land Use Agreements.
3. In the event that the LALC Lands ILUAs are not registered on the Register of Indigenous Land Use Agreements on or before 28 May 2018, or at such later time as this Court may order, the matter is to be listed for further directions.
4. On the Part B Determination taking effect, the Barkandji Native Title Group Aboriginal Corporation RNTBC shall hold the determined native title in trust for the common law holders pursuant to s 56(2)(b) of the *Native Title Act 1993* (Cth) and is to:
 - (i) be the prescribed body corporate for the purposes of section 57(1) of the *Native Title Act 1993* (Cth); and
 - (ii) perform the functions set out in section 57(1) of the *Native Title Act 1993* (Cth) and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

THE COURT DETERMINES THAT:

1. Native title exists in the Native Title Area described and depicted in the maps attached to Schedule One.
2. Native title is extinguished in the Extinguished Area described and depicted in the maps attached to Schedule Two.
3. To the extent of any inconsistency between the written description in Schedules One or Two and the corresponding maps attached to those Schedules, the written description prevails.

Native Title Holders

4. Native title in the Native Title Area is held by the Barkandji and Malyangapa People who comprise all the descendants of the following apical ancestors:
 - (i) Manfred Mary/Mary Johnson/ Mary Brodie,
 - (ii) Manfred Tommy,
 - (iii) Louisa Brown,

- (iv) Cuthero Jack Brown,
- (v) Susan/Annie Webster,
- (vi) Bill Webster,
- (vii) Harry Whyman,
- (viii) Kate Whyman,
- (ix) Louisa Mclean,
- (x) Alec Mclean,
- (xi) Nganya,
- (xii) Sarah Cabbage,
- (xiii) Harry Mitchell,
- (xiv) Daniel McGregor,
- (xv) Lucy Benson,
- (xvi) Jack "Doctor" Benson,
- (xvii) Crancey,
- (xviii) Jack Tyler,
- (xix) Taylor Matjulum Gibson,
- (xx) Tottie Gibson,
- (xxi) Kutyi,
- (xxii) Cate Newton/Maggie Tyler,
- (xxiii) Albert Bates,
- (xxiv) Fanny Bates,
- (xxv) Yancannia Kitty,
- (xxvi) Judy Quayle,
- (xxvii) Nancy Watts,
- (xxviii) Topsy Crowe,
- (xxix) Alec Bridge,
- (xxx) Olive Barton,
- (xxxi) Margaret Payne,
- (xxxii) Kitty Knight,
- (xxxiii) Jacky Knight,
- (xxxiv) Matilda Murray,
- (xxxv) Paddy Black,
- (xxxvi) Hero Black,
- (xxxvii) Tall Boy Keegan,

(xxxviii) Kitty Keegan,

(xxxix) Fanny Buugali Williams,

and persons adopted into the families of those persons who identify as, and are accepted as, members of the Barkandji and Malyangapa People in accordance with Barkandji and Malyangapa traditional laws and customs (and the biological descendants of any such adopted persons).

Nature and extent of native title rights and interests

5. Subject to paragraph 9 below, the native title rights and interests in relation to the Exclusive Area, in respect of which s 47A of the *Native Title Act 1993* (Cth) applies, comprise the right of possession, occupation, use and enjoyment to the exclusion of all others.
6. Subject to paragraphs 8 and 9, the native title rights and interests in relation to the Non-Exclusive Area are:
 - (a) the right to enter, travel over and remain on the Non-Exclusive Area;
 - (b) the right to take and use the natural resources (other than water) of the Non-Exclusive Area;
 - (c) the right to take and use the water of the Non-Exclusive Area for personal, domestic and communal purposes (including cultural purposes and for watering native animals, cattle and other stock, and watering gardens not exceeding 2 hectares), but not extending to a right to control the use and flow of the water in any rivers or lakes which flow through or past or are situated within the land of two or more occupiers;
 - (d) the right to camp and for that purpose to erect temporary shelters and temporary structures in the Non-Exclusive Area;
 - (e) the right to light fires in the Non-Exclusive Area for domestic purposes, but not for the clearance of vegetation;
 - (f) the right to engage in cultural activities on the land, to conduct ceremonies, to hold meetings, and to participate in cultural practices relating to birth and death including burials on the land the subject of the Non-Exclusive Area;
 - (g) the right to have access to, to maintain and to protect from physical harm sites and places of importance in the Non-Exclusive Area which are of significance to the Barkandji and Malyangapa People under their traditional laws and customs;
 - (h) the right to teach on the Non-Exclusive Area the physical, cultural and spiritual attributes of places and areas of importance on or in the Non-Exclusive Area;
 - (i) the right to hunt in the Non-Exclusive Area;
 - (j) the right to fish in the Non-Exclusive Area; and
 - (k) the right to be accompanied on the Non-Exclusive Area by persons who, though not Native Title Holders, are:
 - (i) spouses, partners or parents of Native Title Holders, together with their children and grandchildren;
 - (ii) people whose presence is required under traditional laws and customs for the performance of cultural activities, practices or ceremonies; and
 - (iii) people requested by the Native Title Holders to assist in, observe or record cultural activities, practices or ceremonies.

General qualifications on native title rights and interests

7. Native title does not exist in:

- (a) minerals as defined in the *Mining Act 1992* (NSW) and the *Mining Regulation 2010* (NSW); and
 - (b) petroleum as defined in the *Petroleum (Onshore) Act 1991* (NSW) and the *Petroleum (Submerged Lands) Act 1982* (NSW).
8. The native title rights and interests referred to in paragraph 6 do not confer:
- (a) possession, occupation, use or enjoyment of the Non-Exclusive Area to the exclusion of all others; or
 - (b) any right to control access to, or use of, the Non-Exclusive Area.
9. The native title rights and interests in the Native Title Area are subject to and exercisable in accordance with:
- (a) the laws of the State of New South Wales and of the Commonwealth;
 - (b) the traditional laws acknowledged and the traditional customs observed by the Barkandji and Malyangapa People; and
 - (c) the terms of any Indigenous Land Use Agreement which may be registered by the National Native Title Tribunal in respect of any part of the Determination Area whether made before or after the making of this Part B Determination.

Nature and extent of Other Interests

10. The Other interests in relation to the Native Title Area are described in Schedule Four (**Other Interests**).

Relationship between native title rights and Other Interests

11. Except as otherwise provided by law, the relationship between the native title rights and interests in the Non-Exclusive Area and the Other Interests in those areas is as follows:
- (a) the Part B Determination does not affect the validity of those Other Interests;
 - (b) to the extent of any inconsistency between the Other Interests and the continued existence, enjoyment or exercise of the native title rights and interests, the native title rights and interests continue to exist in their entirety, but the native title rights and interests have no effect in relation to the Other Interests to the extent of the inconsistency during the currency of the Other Interests; and
 - (c) otherwise, the Other Interests co-exist with the native title rights and interests and, for the avoidance of doubt, the doing of an activity required or permitted under those Other Interests prevails over the native title rights and interests and their exercise, but does not extinguish them.
12. The relationship between the native title rights and interests in the Exclusive Area (in relation to which section 47A of the *Native Title Act 1993* (Cth) applies) and the Other Interests described in Paragraph 1 of Schedule Four (**Wilcannia and Menindee Local Aboriginal Land Councils' Interests**) is as follows:
- (a) Wilcannia and Menindee Local Aboriginal Land Councils' Interests continue to have effect;
 - (b) the non-extinguishment principle in section 238 of the *Native Title Act 1993* (Cth) applies to the grant or vesting of Wilcannia and Menindee Local Aboriginal Land Councils' Interests and any prior interest in relation to the area;
 - (c) the native title continues to exist in its entirety but the rights and interests have no effect in relation to Wilcannia and Menindee Local Aboriginal Land Councils' Interests;
 - (d) Wilcannia and Menindee Local Aboriginal Land Councils' Interests, and any activity that is required or permitted by or under and done in accordance with Wilcannia and Menindee Local Aboriginal Land Councils' Interests, may be exercised and enjoyed in their entirety notwithstanding the existence of the native title rights and interest;
 - (e) The native title rights and interests may not be exercised in the Exclusive Area while Wilcannia and

Menindee Local Aboriginal Land Councils' Interests exist;

- (f) If Wilcannia and Menindee Local Aboriginal Land Councils' Interests or their effects are wholly removed or otherwise wholly cease to operate the native title rights and interests again have full effect; and
- (g) If Wilcannia and Menindee Local Aboriginal Land Councils' Interests or their effects are removed to an extent or otherwise cease to operate only to an extent, the native title rights and interests again have effect to that extent.

Definitions

13. In this Part B Determination, unless the contrary intention appears:

'Barkandji and Malyangapa People' has the same meaning as Native Title Holders.

'Barkandji Native Title Group Aboriginal Corporation RNTBC' means the Barkandji Native Title Group Aboriginal Corporation RNTBC ICN 4740 incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

'cultural purposes', within the meaning of paragraph 6(c), means the purposes of performing the following activities or activities of a similar kind, all of which involve the use of insubstantial quantities of water:

- (a) cleansing ceremonies;
- (b) introductions to country (in which individuals are immersed in water or water is otherwise applied to them);
- (c) the preparation of food or bush medicines;
- (d) the manufacture of artefacts, art and ochre;
- (e) digging out soakages; and
- (f) activities involving the teaching of Native Title Holders about traditional laws, customs and practices.

'Determination Area' means the Native Title Area together with the Extinguished Area.

'Discontinued Area' means the land or waters as described in Schedule Six of the Part A Determination, but were excised as a consequence of the amended native title determination application filed on 16 March 2017.

'Extinguished Area' means the land or waters described in Schedule Two and hatched in red in the maps in Schedule Two.

'land' has the same meaning as in the *Native Title Act 1993* (Cth).

'laws of the State of New South Wales and of the Commonwealth' include statutes, regulations and other subordinate legislation, and the common law.

'Native Title Area' means the land or waters described and mapped in Schedule One and includes the Exclusive Area and the Non-Exclusive Area.

'Non-Exclusive Area' means the land or waters described in Part 2 of Schedule One and shaded in green in the maps in Schedule One.

'Exclusive Area' means the land or waters described in Part 1 of Schedule One and shaded in orange in the maps in Schedule One.

'LALC Lands ILUAs' means the agreements referred to in paragraph 1 and 2 of Schedule Three, which are intended to be registered on the Register of Indigenous Land Use Agreements under the *Native Title Act 1993* (Cth).

'Native Title Holders' means the persons described in paragraph 4.

'Other Interests' means the rights and interests described in Schedule Four.

'waters' has the same meaning as in the *Native Title Act 1993* (Cth).

'Wilcannia and Menindee Local Aboriginal Land Councils' Interests' are those interests described in Paragraph 1 of Schedule Four.

14. If a word or expression is not defined in these orders or this Part B Determination, but is defined in the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* (NSW), then it has the meaning given to it in the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* (NSW), whichever is relevant.

REGISTER ATTACHMENTS:

1. Schedule One - Native Title Area, 3 pages - A4, 22/08/2017
2. Schedule Two - Extinguished Area, 5 pages - A4, 22/08/2017
3. Schedule Three - Agreements, 1 page - A4, 22/08/2017
4. Schedule Four - Other rights and interests, 5 pages - A4, 22/08/2017

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.