

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD53/2007
NNTT Number: QCD2015/007

Determination Name: McKellar on behalf of the Budjiti People v State of Queensland

Date(s) of Effect: 5/01/2016

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 23/06/2015

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

This determination was handed down by the Federal Court on 23 June 2015 and was to take effect upon the registration of the following Indigenous Land Use Agreements (ILUAs) on the Register of Indigenous Land Use Agreements:

QI2015/022 - Ergon Energy and Budjiti People ILUA;
QI2015/023 - Budjiti People and Local Government ILUA;
QI2015/024 - Budjiti People/ Boodgherree ILUA;
QI2015/025 - Budjiti People/Bulloo Downs ILUA;
QI2015/027 - Budjiti People/Bundoona ILUA;
QI2015/028 - Budjiti People/Dynevor ILUA;
QI2015/029 - Budjiti People/Humeburn ILUA;
QI2015/030 - Budjiti People/Jandell and Kyeenee ILUA;
QI2015/031 - Budjiti People/ Wathopa ILUA;
QI2015/032 - Budjiti People/ Kilcowera and Zenoni ILUA;
QI2015/033 - Budjiti People/ Wiralla ILUA;
QI2015/034 - Budjiti People/ Moombidary ILUA;
QI2015/035 - Budjiti People/Wombula and Yenloora ILUA;

QI2015/036 - Budjiti People/Thargo ILUA;

QI2015/037 - Budjiti People/Yakara ILUA;

QI2015/038 - Budjiti People/Merimo ILUA; and

QI2015/076 - Currawinya & Lake Bindegolly National Parks Agreement ILUA

The last of these ILUAs was registered on the Register of Indigenous Land Use Agreements on 5 January 2016. The conditions attached to the determination have therefore been met and the determination came into effect on 5 January 2016.

REGISTERED NATIVE TITLE BODY CORPORATE:

Budjiti Aboriginal Corporation
Trustee Body Corporate
c/- QSNTS
PO Box 10832
Adelaide Street
Brisbane Queensland 4001

COMMON LAW HOLDER(S) OF NATIVE TITLE:

The native title holders are the Budjiti People. The Budjiti People are the biological descendants of one or more of the following people:

- (a) Jessie Brooks;
- (b) Lizzie Brooks; or
- (c) Gypsy Brooks.

**MATTERS DETERMINED:
BY CONSENT THE COURT ORDERS THAT:**

1. There be a determination of native title in the terms set out below (the Determination).
2. The Determination will take effect upon the agreements referred to in paragraph 1(a)-(q) of Schedule 4 being registered on the Register of Indigenous Land Use Agreements.
3. In the event that the agreements referred to in paragraph 2 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.

BY CONSENT THE COURT DETERMINES THAT:

5. The Determination Area is the land and waters described in Schedule 1A and depicted on the map attached to Schedule 1B.
6. Native title exists in relation to the Determination Area described in Part 1 of Schedule 1.
7. The native title is held by the Budjiti People described in Schedule 3 (the native title holders).
8. Subject to paragraphs 9, 10 and 11 below, the nature and extent of the native title rights and interests in relation to the land and waters described in Part 1 of Schedule 1A are the non-exclusive rights to:
 - (a) access, be present on, move about on and travel over the area;
 - (b) camp, and live temporarily on the area as part of camping, and for that purpose build temporary shelters;
 - (c) hunt, fish and gather on the land and waters of the area for personal, domestic and non-commercial communal purposes;

- (d) take, use, share and exchange Natural Resources from the land and waters of the area for personal, domestic and non-commercial communal purposes;
- (e) take and use the Water of the area for personal, domestic and non-commercial communal purposes;
- (f) conduct ceremonies and hold meetings on the area;
- (g) be buried and bury native title holders within the area;
- (h) 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 from physical harm;
- (i) teach on the area the physical and spiritual attributes of the area;
- (j) light fires on the area for domestic purposes including cooking, but not for the purpose of hunting or clearing vegetation; and
- (k) be accompanied onto the area by certain non-native title holders, being:
 - (i) spouses and other immediate family members of native title holders, pursuant to the exercise of traditional laws and customs; and
 - (ii) people required under the traditional laws acknowledged and traditional customs observed by the native title holders for the performance of, or participation in ceremonies.

9. 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.

10. The native title rights and interests referred to in paragraph 8 do not confer possession, occupation, use or enjoyment to the exclusion of all others.

11. 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).

12. The nature and extent of any other interests in relation to the Determination Area (or respective parts thereof) are set out in Schedule 4.

13. The relationship between the native title rights and interests described in paragraph 8 and the other interests described in Schedule 4 (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;
- (b) to the extent the other interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests in relation to the land and waters of the Determination Area, the native title continues to exist in its entirety but the native title rights and interests have no effect in relation to the other interests to the extent of the inconsistency for so long as the other interests exist; and
- (c) 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.

14. The Applicant (through the Prescribed Body Corporate), the State of Queensland, or any other Respondent Party have liberty to apply to the Court on 14 days' notice to establish the precise location and boundaries of any public works and adjacent land and waters referred to in Schedule 2.

DEFINITIONS AND INTERPRETATION

15. In this Determination, unless the contrary intention appears:

“land” and “waters”, respectively, have the same meanings as in the *Native Title Act 1993* (Cth);

“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;

“Local Government Act” has the same meaning as in the *Local Government Act 2009* (Qld);

“Local Government Area” has the same meaning as in the *Local Government Act 2009* (Qld);

“Natural Resources” means:

- (a) any animal, plant, fish and bird life found on or in the lands and waters of the Determination Area; and
- (b) any clays, soil, sand, gravel or rock found 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:

- (a) animals that are the private personal property of another;
- (b) crops that are the private personal property of another; and
- (c) minerals as defined in the *Mineral Resources Act 1989* (Qld) or petroleum as defined in the *Petroleum Act 1923* (Qld) and the *Petroleum and Gas (Production and Safety) Act 2004* (Qld);

“Plant” has the same meaning as in the *Nature Conservation Act 1992* (Qld);

“Reserves” means reserves that are dedicated or taken to be reserves under the *Land Act 1994* (Qld);

“Water” means:

- (a) water which flows, whether permanently or intermittently, within a river, creek or stream;
- (b) water from an underground water source; and
- (c) any natural collection of water, whether permanent or intermittent.

Other words and expressions used in this Determination have the same meanings as they have in Part 15 of the *Native Title Act 1993* (Cth).

THE COURT DETERMINES THAT:

16. The native title is held in trust.

17. The Budjiti Aboriginal Corporation (ICN: 8210), incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth), is to:

- (a) be the prescribed body corporate for the purpose of ss 56(2)(b) and 56(3) of the *Native Title Act 1993* (Cth); and
- (b) perform the functions mentioned in s 57(1) of the *Native Title Act 1993* (Cth) after becoming a registered native title body corporate.

Schedule 1 - DETERMINATION AREA

A. Description of Determination Area

The Determination Area comprises all of the following land and waters described in Part 1 of Schedule 1A to the extent that they fall within the External Boundary described in Part 2 of Schedule 1A and depicted in the Map at Schedule 1B, excluding the areas described in Schedule 2.

Part 1 - Non-Exclusive Areas

- (a) The land and waters comprised of the lots and part lots listed below:

That part of Lot 8 on CP892351 that falls within the External Boundary

Lot 10 on WN123

Lot 15 on NPW591

Lot 1 on WN125

Lot 2 on WN125

That part of Lot 4 on WN234 that falls within the External Boundary

That part of Lot 4 on CP880081 that falls within the External Boundary

Lot 1 on WN19

That part of Lot 5 on SP126466 that falls within the External Boundary

That part of Lot 5213 on PH1110 that falls within the External Boundary

That part of Lot 1 on SP271973 that falls within the External Boundary

Lot 1306 on SP274642

That part of Lot 2 on WN7 that falls within the External Boundary

Lot 1 on WN101

Lot 6 on WELL5382

Lot 8 on WELL5382

Lot 301 on Y2521

Lot 302 on Y2521

Lot 303 on Y2521

Lot 304 on Y2521

Lot 305 on Y2521

Lot 307 on Y2521

Lot 308 on Y2521

Lot 309 on Y2521

Lot 401 on Y2521

Lot 402 on Y2521

Lot 403 on Y2521

Lot 404 on Y2521

Lot 405 on Y2521

Lot 407 on Y2521

Lot 408 on Y2521

Lot 409 on Y2521

Lot 410 on Y2521

Lot 501 on Y2521

Lot 502 on Y2521

Lot 503 on Y2521

Lot 504 on Y2521

Lot 505 on Y2521

Lot 507 on Y2521

Lot 508 on Y2521

Lot 509 on Y2521

Lot 510 on Y2521

Lot 2 on WN120

That part of Lot 1295 on PH1617 that falls within the External Boundary

That part of Lot 21 on HU53 that falls within the External Boundary

That part of Lot 2 on WN122 that falls within the External Boundary

Lot 9 on W51224

Lot 26 on WN185

Lot 7 on WELL5389

Lot 35 on W51224

Lot 33 on WN147

Lot 5 on WN216

Lot 32 on AP15633

That part of Lot 46 on SP132689 excluding previous Allotments 6 & 7 of Section 9, Allotment 10 of Section 10 on plan E1813 and an area identified as road to be closed (part of Shea Street) and delineated by station numbers 5-16-14-8-5 on SP132689 .

Lot 1 on AP5785

That part of Lot 2 on AP5785 excluding former Allotment 8 of Section 9 on plan E1813

Lot 101 on E1811

Lot 804 on E1813

Lot 7 on WN187

That part of Lot 1673 on PH2276 that falls within the External Boundary

That part of Lot 2828 on PH276 that falls within the External Boundary

That part of Lot 2829 on PH307 that falls within the External Boundary

That part of Lot 23 on NPW450 excluding an area identified as Lot 15 on NL8025469

Lot 4904 on SP207172

Lot 1 on SP207172

Lot 4907 on PH2235

That part of Lot 2669 on PH2064 that falls within the External Boundary

Lot 1803 on PH635

Lot 4903 on SP271327

Lot 3 on WY11

That part of Lot 11 on CP855300 that falls within the External Boundary

That part of Lot 10 on CP855300 that falls within the External Boundary

Lot 2 on NL24

Lot 1 on WY15

Lot 103 on C2561

Lot 104 on C2561

Lot 105 on C2561

Lot 106 on C2561

Lot 107 on C2561

Lot 108 on C2561

Lot 109 on C2561

Lot 110 on C2561

Lot 201 on C2561

Lot 202 on C2561

Lot 204 on C2561

Lot 205 on C2561

Lot 206 on C2561

Lot 207 on C2561

Lot 208 on C2561

Lot 209 on C2561

Lot 210 on C2561

Lot 1 on NL24

Lot 5096 on PH550

Lot 5098 on PH547

Lot 1 on NL13

Lot 12 on NL25

Lot 1 on AP19910

Lot 1 on NL7

Lot 2 on NL7

Lot 3 on NL7

Lot 13 on H2346

Lot 11 no NL12

Lot 1 on H2344

Lot 2 on H2344
Lot 3 on H2344
Lot 4 on H2344
Lot 5 on H2344
Lot 6 on H2344
Lot 7 on H2344
Lot 8 on H2344
Lot 10 on H2344
Lot 3 on H2341
Lot 4 on H2341
Lot 7 on H2341
Lot 8 on H2341
Lot 9 on H2341
Lot 10 on H2341
Lot 12 on H2341
Lot 13 on H2341
Lot 14 on H2341
Lot 16 on H2341
Lot 17 on H2341
Lot 18 on H2341
Lot 21 on H2341
Lot 22 on H2341
Lot 23 on H2341
Lot 203 on H2341
Lot 907 on H2341
Lot 908 on H2341
Lot 909 on H2341
Lot 807 on H2341
Lot 808 on H2341
Lot 14 on NL26
Lot 1 on AP19910
Lot 8 on WELL534
Lot 7 on W5165

That part of Lot 1 on KU77 that falls within the External Boundary

Lot 2 on WY12

Lot 2 on SP271973

Lot 3 on SP271973

Lot 1257 on PH1992

Lot 4852 on PH1531

That part of Lot 36 on WN217 that is not subject to the Eulo Telecommunications Facility, which is a public work as defined in paragraph 2(b) of schedule 2

Lot 3 on WY802468

That part of Lot 102 on H2341 that is not subject to the Hungerford Telecommunications Facility, which is a public work as defined in paragraph 2(b) of schedule 2

(b) The waters within the External Boundary Description including but not limited to:

- (i) Paroo River;
- (ii) Bow Creek;
- (iii) Bundilla Creek;
- (iv) Mirraparoo Creek; and
- (v) Yowah Creek.

Part 2 - External Boundary of the Determination Area

[See NNTR attachment 1: "Schedule 1 - Part 2 - External Boundary of the Determination Area"]

B. Map of Determination Area

[See NNTR attachment 2: "Schedule 1 - Map of Determination Area"]

Schedule 2 - AREAS NOT FORMING PART OF THE DETERMINATION AREA

The following areas of land and waters are excluded from the Determination Area.

1. Those land and waters within the External Boundary, which at the time the native title determination application was made:

- (a) were the subject of one or more Previous Exclusive Possession Acts, within the meaning of s 23B of the *Native Title Act 1993* (Cth); and
- (b) to which none of ss 47, 47A or 47B of the *Native Title Act 1993* (Cth) applied at the time of the native title determination application.

are excluded from the Determination Area as they could not be claimed in accordance with s 61A of the *Native Title Act 1993* (Cth).

2. Specifically, and to avoid any doubt, the land and waters described in (1) above includes:

- (a) the tenure based exclusions under ss 23B(2) and 23B(3) of the *Native Title Act 1993* (Cth) to which s 20 of the *Native Title (Queensland) Act 1993* (Qld) applies;
- (b) the land or waters on which any public work, as defined in s 253 of the *Native Title Act 1993* (Cth), is or was constructed, established or situated, and to which ss 23B(7) and 23C(2) of the *Native Title Act 1993* (Cth) and to which s 21 of the *Native Title (Queensland) Act 1993* (Qld), applies, together with any adjacent land or waters in accordance with s 251D of the *Native Title Act 1993* (Cth); and

(c) but is not limited to, the whole of the land and waters described as:

- (i) Lot 14 on E1813;

- (ii) Lot 15 on E1813;
- (iii) Lot 8 on WN108;
- (iv) Lot 11 on SP256402;
- (v) Lot 12 on SP256402;
- (vi) Lot 1 on CP867479;
- (vii) that part of Lot 23 on NPW450 identified as Lot 15 on NL8025469;
- (viii) Lot 3 on WN226;
- (ix) Lot 36 on WN217 that is subject to the Eulo Telecommunications Facility, which is a public work as defined in paragraph 2(b) of Schedule 2;
- (x) Lot 20 on HU802463;
- (xi) Lot 10 on CP867479;
- (xii) Lot 14 on NL802466;
- (xiii) Lot 44 on WN223;
- (xiv) Lot 15 on NL802467; and
- (xv) that part of Lot 102 on H2341 that is subject to the Hungerford Telecommunications Facility, which is a public work as defined in paragraph 2(b) of schedule 2.

Schedule 3 - NATIVE TITLE HOLDERS

1. The native title holders are the Budjiti People. The Budjiti People are the biological descendants of one or more of the following people:

- (a) Jessie Brooks;
- (b) Lizzie Brooks; or
- (c) Gypsy Brooks.

Schedule 4 - OTHER INTERESTS IN THE DETERMINATION AREA

The nature and extent of the other interests in relation to the Determination Area are the following as they exist as at the date of the Determination:

- 1. The rights and interests of the parties under the following agreements:
 - (a) the agreement between Dinny McKellar on his own behalf and on behalf of the Budjiti People (QUD532007) and the State of Queensland, which was authorised by the native title claim group on 19 April 2015 and executed by Dinny McKellar on his own behalf and on behalf of the Budjiti People (QUD532007) (the Currawinya National Park, Lake Bindigolly National Park Protected Areas Indigenous Land Use Agreement), and that agreement once it becomes registered as a body corporate ILUA following execution of the agreement by the Registered Native Title Body Corporate;
 - (b) Indigenous Land Use Agreement between Bulloo Shire Council and Dinny McKellar, Phillip Eulo, Margaret Hearn, Carolyn Hooper and Melissa Bryan on behalf of the Budjiti People QUD53/200 which was authorised by the native title claim group on 19 April 2015;
 - (c) Indigenous Land Use Agreement between Ergon Energy Corporation Limited and Dinny McKellar, Phillip Eulo, Margaret Hearn, Carolyn Hooper and Melissa Bryan on behalf of the Budjiti People QUD53/200 which was authorised by the native title claim group on 19 April 2015;
 - (d) the Budjiti People/Yakara ILUA authorised on 19 April 2015;
 - (e) the Budjiti People/Boodgherree ILUA authorised on 19 April 2015;

- (f) the Budjiti People/Bulloo Downs ILUA authorised on 19 April 2015;
- (g) the Budjiti People/Bundoona ILUA authorised on 19 April 2015;
- (h) the Budjiti People/Dynevor Downs ILUA authorised on 19 April 2015;
- (i) the Budjiti People/Humeburn ILUA authorised on 19 April 2015;
- (j) the Budjiti People/Jandell and Kyeenee ILUA authorised on 19 April 2015;
- (k) the Budjiti People/Kilcowera and Zenoni ILUA authorised on 19 April 2015;
- (l) the Budjiti People/Merimo ILUA authorised on 19 April 2015;
- (m) the Budjiti People/Moombidary ILUA authorised on 19 April 2015;
- (n) the Budjiti People/Thargo (aka Besm) ILUA authorised on 19 April 2015;
- (o) the Budjiti People/Wathopa ILUA authorised on 19 April 2015;
- (p) the Budjiti People/Wiralla ILUA authorised on 19 April 2015;
- (q) the Budjiti People/Wombula and Yenloora ILUA authorised on 19 April 2015;
- (r) the deed of agreement between Dinny McKellar on his own behalf and on behalf of the Budjiti People (QUD532007) and Michael Connolly, Stephen Hagan, Judy Conlon, Brenda Fisher, Elizabeth McAvoy and Kayleen Hopkins for themselves and as the Kullilli Bulloo River Aboriginal Corporation Directors dated 4 March 2015; and
- (s) the deed of agreement between Dinny McKellar on his own behalf and on behalf of the Budjiti People (QUD532007) and Ronald Herbert McKellar and Maureen Alison McKellar on behalf of the Kunja People dated 5 March 2015.

2. The rights and interests of Santos Limited, Vamgas Pty Ltd, Bridgefield Pty Ltd, Moonie Pipeline Company Pty Ltd, Delhi Petroleum Pty Ltd, and Origin Energy Resources Limited as joint holders of Petroleum Pipeline Licence 6 granted under the *Petroleum Act 1923* (Qld).

3. The rights and interests of the holders of any authority, permit, lease or licence made, granted, issued or entered into under the *Land Act 1994* (Qld).

4. The rights and interests of Telstra Corporation Limited:

- (a) as the owner or operator of telecommunications facilities installed 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 existing and new telecommunication facilities, including cabling, customer terminal sites, customer radio sites and ancillary facilities;
 - (iii) to alter, remove, replace, maintain, repair and ensure the proper functioning of its existing and any new telecommunications facilities including cabling, customer terminal sites, customer radio sites, and ancillary facilities;
- (c) 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 telecommunication facilities in and in the vicinity of the Determination Area;
- (d) under any licences, leases, access agreements or easements relating to its telecommunications facilities in the Determination Area.
- (e) The rights and interests in Term Lease 0/238257 over Lot 3 on WY802468.

5. The rights and interests of Ergon Energy Corporation ACN 087 646 062:
- (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; and
 - (iii) to inspect, maintain and manage any Works in the Determination Area.
6. The rights and interests of the State of Queensland, the Bulloo Shire Council and the Paroo Shire Council to access, use, operate, maintain and control the dedicated roads in the Determination Area and the rights and interests of the public to use and access the roads.
7. The rights and interests respectively of the Bulloo Shire Council and Paroo Shire Council as the local government for that part of the determination area within their respective Local Government Area, including:
- (a) its powers, functions, responsibilities and jurisdiction under a Local Government Act;
 - (b) its rights and interests under any interest in land or waters within the Determination Area including under any lease, license, access agreement, easement or reserve in the Determination Area;
 - (c) its rights to use, operate, maintain, replace, restore, remediate, repair and otherwise exercise all other rights as the owner and operator of infrastructure, structures, earthworks, access works, facilities and other improvements within the Determination Area;
 - (d) its rights under any agreements between the local government and third parties which relate to land or water in the Determination Area; and
 - (e) the rights of its employees, agents and contractors to enter upon the Determination Area for the purpose of performing their powers and responsibilities under paragraphs (a) to (d).
8. The rights and interests of the State of Queensland in Reserves, the rights and interests of the trustees of those Reserves and of the persons entitled to access and use those Reserves for the respective purpose for which they are reserved.
9. The rights and interests of members of the public arising under the common law, including but not limited to the following:
- (a) any subsisting public right to fish; and
 - (b) the public right to navigate.
10. So far as confirmed pursuant to s 212(2) of the *Native Title Act 1993* (Cth) and s 18 of the *Native Title Act (Queensland) Act 1993* (Qld) as at the date of this Determination, any existing public access to, and enjoyment of, the following places in the Determination Area:
- (a) waterways;
 - (b) beds and banks or foreshores of waterways;
 - (c) stock routes; and
 - (d) areas that were public places at the end of 31 December 1993.
11. Any other rights and interests:
- (a) held by the State of Queensland or Commonwealth of Australia; or

(b) existing by reason of the force and operation of the Laws of the State and the Commonwealth.

REGISTER ATTACHMENTS:

1. Schedule 1 - Part 2 - External Boundary of the Determination Area, 24 pages - A4, 23/06/2015
2. Schedule 1 - Map of the Determination Area, 17 pages - A4, 23/06/2015

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.