

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): SAD6001/1998, SAD163/2008
NNTT Number: SCD2014/002

Determination Name: Vincent Coulthard and Ors and Edward Lander and Ors v State of South Australia and Ors

Date(s) of Effect: 25/02/2014

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: 25/02/2014

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Adnyamathanha Traditional Lands Association (Aboriginal Corporation) RNTBC
Agent Body Corporate
c/- Johnston Withers
17 Sturt Street
ADELAIDE South Australia 5000

COMMON LAW HOLDER(S) OF NATIVE TITLE:

6. The Native Title Holders in relation to the Determination Area are those living Aboriginal persons who are described in Schedule 3 who:

- (a) identify as Adnyamathanha; and
- (b) are recognised by other Native Title Holders under the relevant Adnyamathanha traditional laws and customs as having maintained an affiliation with, and continuing to hold native title rights and interests in the Determination Area.

The descendants of Adnyamathanha Apical Ancestors

The descendants (whether biologically or by adoption) of:

- a) Mt Serle Bob;

- b) Polly, wife of Mt Serle Bob;
- c) Quartpot Tommy;
- d) Mt Serle Bob's sister, wife of Quartpot Tommy;
- e) Willy Austin Snr;
- f) Nicholas Demell;
- g) Emily McKenzie, wife of Nicholas Demell;
- h) Sydney Ryan;
- i) Mary, wife of Sydney Ryan;
- j) the siblings Angepena Billy or Mary;
- k) Fanny, wife of Angepena Billy; and
- l) the siblings Sara Johnson, Matilda Johnson, Fred Johnson, Natalie Johnson, Jessie Johnson or Sydney Jackson

MATTERS DETERMINED:

BY CONSENT THE COURT MAKES THE FOLLOWING DETERMINATION OF NATIVE TITLE PURSUANT TO SECTION 87A OF THE NATIVE TITLE ACT:

1. In this determination including its schedules, unless the contrary intention appears, the words and expressions used have the same meaning as they are given in Part 15 of the *Native Title Act*.
2. In this determination:
 - (a) "Determination Area" means that part of the land and waters of the Dieri No.2 claim and the overlapping part of the Adnyamathanha No.1 claim as is described in *Schedule 1* (and shown in the maps forming part of that Schedule), apart from those excluded areas which are described in Paragraph 16 and in *Schedule 2* ("excluded areas");
 - (b) "Dieri Determination Area" means the area of the consent determination being made in favour of the Dieri people over the remaining area of the Dieri No.2 claim.
3. In this determination including its schedules, in the event of an inconsistency between a description of an area in a schedule and the depiction of that area on the map in *Schedule 1*, the written description shall prevail.

Existence of Native Title

4. Subject to Paragraphs 12 to 16 herein, native title exists in the Determination Area.
5. Native title does not exist in relation to the areas and resources described in Paragraphs 12, 15 and 16 herein.

The Native Title Holders

6. The Native Title Holders in relation to the Determination Area are those living Aboriginal persons who are described in Schedule 3 who:
 - (a) identify as Adnyamathanha ; and
 - (b) are recognised by other Native Title Holders under the relevant Adnyamathanha traditional laws and customs as having maintained an affiliation with, and continuing to hold native title rights and interests in the Determination Area.

Native title rights and interests

7. Subject to Paragraphs 8, 9 and 10, the nature and extent of the native title rights and interests held by the Native Title Holders are rights to use, stay on and enjoy the land and waters of the Determination Area, being:

- (a) The right to access and move about the Determination Area;
- (b) The right to live, to camp and to erect shelters on the Determination Area;
- (c) The right to hunt and fish on the Determination Area;
- (d) The right to gather and use the natural resources of the Determination Area such as food, plants, timber, resin, ochre and soil;
- (e) The right to cook and to light fires for cooking and camping purposes on the Determination Area;
- (f) The right to use the natural water resources of the Determination Area;
- (g) The right to distribute, trade or exchange the natural resources of the Determination Area;
- (h) The right to conduct ceremonies and hold meetings on the Determination Area;
- (i) The right to engage and participate in cultural activities on the Determination Area including those relating to births and deaths;
- (j) The right to carry out and maintain burials of deceased native title holders and of their ancestors within the Determination Area;
- (k) The right to teach on the Determination Area the physical and spiritual attributes of locations and sites within the Determination Area;
- (l) The right to visit, maintain and preserve sites and places of cultural or spiritual significance to Native Title Holders within the Determination Area;
- (m) The right to speak for and make decisions in relation to the Determination Area about the use and enjoyment of the Determination Area by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the Native Title Holders of the Determination Area;
- (n) The right to be accompanied on to the Determination Area by those people who, though not Native Title Holders, are:
 - (i) spouses of Native Title Holders; or
 - (ii) people required by traditional law and custom for the performance of ceremonies or cultural activities on the Determination Area; or
 - (iii) people who have rights in relation to the Determination Area according to the traditional laws and customs acknowledged by the Native Title Holders.

8. The native title rights and interests described in Paragraph 7 do not confer possession, occupation, use and enjoyment of the Determination Area on the Native Title Holders to the exclusion of others.

9. The native title rights and interests are for personal, domestic and non-commercial communal use.

10. The native title rights and interests are subject to and exercisable in accordance with:

- (a) the traditional laws and customs of the Native Title Holders;
- (b) the valid laws of the State and Commonwealth, including the common law.

For the avoidance of doubt, the native title rights and interests expressed in Paragraph 7(f) are subject to the *Natural Resources Management Act 2004* (SA).

Nature and extent of other rights and interests and Relationship with Native Title

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

- (a) The rights and interests within the Determination Area created by the pastoral leases described in Schedule 5;
- (b) the interests of the Crown in right of the State of South Australia;

- (c) the interests of persons to whom valid or validated rights and interests have been granted or recognised by the Crown in right of the State of South Australia or by the Commonwealth of Australia pursuant to statute or otherwise in the exercise of executive power;
- (d) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth;
- (e) the rights to access land by an employee or agent or instrumentality of the State, Commonwealth or other statutory authority as required in the performance of his or her statutory or common law duties (in accordance with any valid legislation);
- (f) the rights and interests of Telstra Corporation Limited:
- (i) as the owner or operator of telecommunications facilities within the Determination Area;
- (ii) 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:
- (1) to inspect land;
- (2) to install and operate existing and new telecommunications facilities;
- (3) to alter, remove, replace, maintain, repair and ensure the proper functioning of its existing and any new telecommunications facilities, including cabling, customer terminal sites and ancillary facilities; and
- (iii) for its employees, agents or contractors to enter the Determination Area to access its facilities, in and in the vicinity of, the Determination Area in the performance of their duties;
- (iv) under any leases, licences, access agreements or easements relating to its telecommunications facilities in the Determination Area;
- (g) the rights and interests of Epic Energy South Australia Pty Ltd (formerly Tenneco Gas South Australia Pty Ltd) ("Epic"):
- (i) as:
- (i) holders of Pipeline Licence No. 1 (PL1) issued pursuant to the *Petroleum Act 1940* (SA) on 12 March 1969 and renewed on 27 March 1990 pursuant to the *Petroleum Act 1940* (SA) and continuing in force by the operation of clause 2 of the Schedule to the *Petroleum Act 2000* (SA); and
- (ii) owner of the pipeline the subject thereof by virtue of having been a *purchaser* of the pipeline (as *purchaser* is defined in section 16 of the *Natural Gas Authority Act 1967* (SA) as amended by the *Pipelines Authority (Sale of Pipelines) Amendment Act 1995* (SA) ("Sale Legislation") from the former Pipeline Authority of South Australia ("PASA", now the Natural Gas Authority of South Australia ("NGASA")) pursuant to a Sale Agreement dated 30 June 1995 under the Sale Legislation;
- (ii) where the licensed pipeline was established pursuant to the *Natural Gas Authority Act 1967* and is located within a statutory easement established by section 9 of the Sale Legislation and section 28 of the Sale Legislation provides:
- "(1) The creation of the statutory easement under this Act, or the grant of a pipeline lease, does not affect any native title that may exist in the land to which the easement or lease relates.
- (2) The statutory easement or a pipeline lease under this Act does not derogate from pre-existing rights of Aboriginal people to enter, travel across or stay on land subject to the easement or lease.";
- (iii) the statutory easement entitles Epic, *inter alia*, to install, maintain and operate the pipeline and to carry out authorised purposes including the installation, operation, inspection, extension, alteration, repair and removal of the pipeline or associated equipment and the carrying out of maintenance work on the pipeline or associated equipment;
- (iv) for Epic, its employees, agents and contractors (or any of them) to enter the Determination Area to access Epic's rights and interests and to do all things necessary to exercise those rights and interests and perform all obligations in the vicinity of the Determination Area in performance of their duties;

- (h) the rights and interests of the "Producers" as defined in the *Cooper Basin (Ratification) Act 1975* (SA):
- (i) as holders of Pipeline Licence No.2 (PL2) granted to the Producers on 26 November 1981 under the *Petroleum Act 1940* (SA) and renewed on 3 May 2003 under the *Petroleum Act 2000* (SA) and continuing in force by the operation of clause 2 of the Schedule to the *Petroleum Act 2000* (SA);
- (ii) created pursuant to the *Stoney Point (Liquids Project) Ratification Act 1981* (SA);
- (iii) granted to the Producers pursuant to the former PASA (now NGASA) and the Producers' Right of Way Agreement dated 26 November 1981;
- (iv) for the Producers' employees, agents or contractors to enter the Determination Area to access the Producers' rights and interests and to do all things necessary to exercise those rights and interests in the vicinity of the Determination Area in performance of their duties.

12. Native title rights and interests do not exist in respect of those parts of the Determination Area being any house, shed or other building or airstrip or any dam or other stock watering point constructed pursuant to the pastoral leases referred to in Paragraph 11(a). These areas comprise the land on which the improvements of the kind referred to herein have been constructed prior to the date hereof and include any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvements referred to.

13. For the avoidance of doubt, Paragraph 12 does not preclude the possibility of further extinguishment, according to law, of native title over other limited parts of the Determination Area by reason of the construction of new pastoral improvements of the kind referred to in Paragraph 12 after the date of this determination.

14. Subject to Paragraph 15, the relationship between the native title rights and interests in the Determination Area that are described in Paragraph 7 and the other rights and interests that are referred to in Paragraph 11 ("the Other rights and interests") is that:

- (a) the Other rights and interests co-exist with the native title rights and interests;
- (b) in the event of inconsistency, the Other rights and interests prevail over the native title rights and interests and any exercise of the native title rights and interests, but do not extinguish them; and
- (c) the existence of the native title rights and interests does not prevent the doing of any activity required or permitted to be done by, in accordance with or under the Other rights and interests.

15. Native title rights and interests do not exist in:

- (a) Minerals, as defined in section 6 of the *Mining Act 1971* (SA); or
- (b) Petroleum, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA); or
- (c) a naturally occurring underground accumulation of a regulated substance as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth; or
- (d) a natural reservoir, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth;
- (e) geothermal energy, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA) the source of which is below a depth of 100 metres from the surface of the earth.

For the purposes of this Paragraph 15 and the avoidance of doubt:

- (i) a geological structure (in whole or in part) on or at the earth's surface or a natural cavity which can be accessed or entered by a person through a natural opening in the earth's surface, is not a natural reservoir;
- (ii) thermal energy contained in a hot or natural spring is not geothermal energy as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA);
- (iii) the absence from this order of any reference to a natural reservoir or a naturally occurring accumulation of a regulated substance, as those terms are defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), above a depth 100 metres below the surface of the earth or geothermal energy the source of which is above a depth of 100 metres below the surface of the earth is not, of itself, to be taken as an indication of the existence or otherwise of native title rights or interests in such natural reservoir, naturally occurring accumulation of a regulated substance or geothermal energy.

16. Native title rights do not exist in the areas covered by public works attributable to the State or Commonwealth (including the land defined in section 251D of the *Native Title Act*) which were constructed, established or situated prior to 23 December 1996 or commenced to be constructed or established on or before that date.

17. Public works constructed, established or situated after 23 December 1996 have had such effect on native title rights and interests as has resulted from Part 2 Division 3 of the *Native Title Act*.

AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:

18. The native title is not to be held in trust.

19. In respect of the Determination Area, Adnyamathanha Traditional Lands Association (Aboriginal Corporation) RNTBC is to:

- (a) be the prescribed body corporate for the purposes of section 57(2) of the *Native Title Act*, and
- (b) perform the functions mentioned in section 57(3) of the *Native Title Act* after becoming the registered native title body corporate in relation to Part 1 of the Determination Area.

20. The Native Title Holders (through Adnyamathanha Traditional Lands Association (Aboriginal Corporation) RNTBC), the State or any other Respondent have liberty to apply on 14 days' notice to a single judge of the Court for the following purposes:

- (a) to establish the precise location and boundaries of any public works and adjacent land and waters referred to in Paragraphs 16 and 17 of this Order;
- (b) to establish the effect on native title rights and interests of any public works referred to in Paragraph 17 of this Order; or
- (c) to determine whether any particular area is included in the description in Paragraph 12 or *Schedule 2* of this Order.
- (d) to address, if appropriate, any changes to paragraphs 12 and 13 above in light of the decision of the High Court of Australia in *State of Western Australia v Brown & Others* (No P37 of 2012 HCA) as it relates to pastoral improvements.

AND THE COURT MAKES THE FOLLOWING ANCILLARY ORDERS PURSUANT TO SECTION 87A(5) OF THE NATIVE TITLE ACT:

21. The Court notes in relation to the Determination Area as follows:

- (a) The Dieri People and the Adnyamathanha People have entered into a Memorandum of Understanding between them in the terms of the document comprising the "Annexure A" to Schedule 5, under which both groups agree in particular that:
 - (i) the Adnyamathanha People hold traditional rights and interests in the Dieri Determination Area;
 - (ii) the Dieri People hold traditional rights and interests in the Determination Area;
- (b) The Agreement provides that the traditional rights and interests referred to in sub-paragraph (a):
 - (i) are not native title rights and interests; and
 - (ii) co-exist with the native title rights and interests.
- (c) The State and other Respondent parties are not bound by the Memorandum of Understanding referred to in Paragraph 21(a) but acknowledge that the provisions of relevant State and Commonwealth legislation apply according to their terms from time to time in relation to the Determination Area.
- (d) The consent determination made [or expected to be made] in relation to the Dieri Determination Area is in the terms of the document comprising Schedule 6.

SCHEDULE 1 - Description and Map of the Determination Area

[See NNTR attachment 1: "Schedule 1 - External boundary description"]

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

[See NNTR attachment 3: "Schedule 1 - Map of the Consent Determination Area"]

SCHEDULE 2 - Areas that have been excluded from the Determination Area

1. The following areas are agreed to have been excluded from the Determination Area by reason of the fact that native title has been extinguished in those areas:

1.1. Any areas in relation to which native title has been extinguished by an act attributable to the State of South Australia pursuant to any of the following sections of the *Native Title (South Australia) Act 1994* (SA):

- a) Sections 33 and 34 (Category A past acts);
- b) Section 35 (Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests);
- c) Sections 36B and 36C (Category A intermediate period acts);
- d) Section 36D (Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests);
- e) Sections 36F and 36G (previous exclusive possession acts other than "excepted acts");

1.2. Any areas in relation to which native title has been extinguished by an act attributable to the Commonwealth of Australia pursuant to any of the following sections of the *Native Title Act*:

- a) Section 15(1)(a), (b) (Category A past acts);
- b) Section 15(1)(c) (Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests);
- c) Section 22B(a), (b) (Category A intermediate period acts);
- d) Section 22B(c) (Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests);
- e) Sections 23B and 23C (previous exclusive possession acts).

1.3. Any areas in relation to which native title rights and interests have otherwise been wholly extinguished.

2. For the avoidance of doubt and without limiting the above, Native Title has been extinguished in relation to areas in respect of which any of the following acts have been done by the Crown in right of the State of South Australia on or before 23 December 1996:

- 2.1. Freehold grants (other than pursuant to the *Aboriginal Lands Trust Act 1966* (SA));
- 2.2. Perpetual leases (other than leases which are subject to a reservation or condition expressly for the benefit of Aboriginal people);
- 2.3. Non-perpetual leases (other than pastoral leases or non-exclusive agricultural leases or leases subject to a reservation or condition expressly for the benefit of Aboriginal people), where:
- 2.4. in the case of grants to the Crown or a statutory authority, made prior to 31 October 1975 (or after 1 January 1994, if an "intermediate period act");
- 2.5. in the case of grants other than to the Crown or a statutory authority, made prior to 1 January 1994 (or after 1 January 1994, if a "past act" or "intermediate period act")."

3. Native title rights have been extinguished over all roads which have been delineated in a public map pursuant to section 5(d)(II) of the *Crown Lands Act 1929* (SA) or s70(3) or (4) of the *Crown Land Management Act 2009* (SA) or which have otherwise been validly established pursuant to South Australian Statute or common law.

SCHEDULE 3 - The descendants of Adnyamathanha Apical Ancestors

The descendants (whether biologically or by adoption) of:

- a) Mt Serle Bob;
- b) Polly, wife of Mt Serle Bob;
- c) Quartpot Tommy ;
- d) Mt Serle Bob's sister, wife of Quartpot Tommy;
- e) Willy Austin Snr;
- f) Nicholas Demell;
- g) Emily McKenzie, wife of Nicholas Demell ;
- h) Sydney Ryan;
- i) Mary, wife of Sydney Ryan ;
- j) the siblings Angepena Billy or Mary ;
- k) Fanny, wife of Angepena Billy; and
- l) the siblings Sara Johnson, Matilda Johnson, Fred Johnson, Natalie Johnson, Jessie Johnson or Sydney Jackson

SCHEDULE 4 - Pastoral Leases wholly or partially in the Determination Area

Pastoral Lease Name	Pastoral Lease Number	Crown Lease Number	Volume/Folio
Murnpeowie (part)	PE 2519	CL 1598/37	

SCHEDULE 5 - The Memorandum of Understanding between the Adnyamathanha People and the Dieri People

"Annexure A": The Memorandum of Understanding between Adnyamathanha native title claim group and Dieri native title claim group dated 29 July 2013 (varying Agreement dated 20 June 2006 - see "Annexure B", as redacted).

[See NNTR attachment 4: "Schedule 5 - Memorandum of Understanding"]

"Annexure B": Agreement dated 20 June 2006 between Adnyamathanha native title claim group and Dieri native title claim group, with clause 5 redacted.

[See NNTR attachment 5: "Schedule 5 - Agreement"]

SCHEDULE 6 - The terms of the Consent Determination to be made in favour of the Dieri People in the remainder of the Dieri No.2 Claim Area

REGISTER ATTACHMENTS:

1. Schedule 1 - External boundary description, 8 pages - A4, 25/02/2014
2. Schedule 1 - Map of the External boundary of the Determination Area, 2 pages - A3, 25/02/2014
3. Schedule 5 - Memorandum of Understanding, 7 pages - A4, 25/02/2014
4. Schedule 5 - Agreement, 24 pages - A4, 25/02/2014

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.