



• GETTING BACK COUNTRY • CARING FOR COUNTRY • SECURING THE FUTURE

PO Box 2145 Broome WA 6725 Ph: (08) 9194 0100 Fax: (08) 9193 6279 www.klc.org.au



Don't miss pages 4 – 7 for all the latest on the Ngarrawanji, Yurriyngem Taam and Malarngowen native title determinations!

Photo provided by National Indigenous Times

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KLC supports Traditional Owners over unauthorised land clearing

Nyikina Mangala Traditional owners have confirmed an international corporation is undertaking a land-clearing operation on Yakka Munga Station and has breached a registered Indigenous Land Use Agreement (ILUA) and destroyed important cultural sites.

On the 5th of June 2019 Traditional Owners discovered at Yakka Munga Station and confirmed that the management company Shanghai Zenith has begun clearing land to make way for what we believe are irrigation channels and to harvest water.

Aboriginal people are warned that this newsletter may contain images of deceased people.



Looking back on the KLC



1999 - 20 years ago Conservation Reserves

CALM reserves cover 4 per cent of the Kimberley. CALM has plans to turn another 6 per cent of the Kimberley land and sea country into national parks. All of it is within native title claim areas. KLC has asked CALM to negotiate a regional agreement about Aboriginal management of national parks in the Kimberley. Instead CALM wants to turn more areas of Mitchell Plateau, Mimbi Caves and Mt Hart into national parks under CALM's control.



1984 - 35 years ago Mining company attitudes

The KLC is very concerned at the inability of mining companies operating in WA to come to terms with the legitimate

aspiration of Aboriginal people to protect their sacred sites and their relationship to land. Mining companies want to deal with Aboriginal people on terms dictated by the company and not as a result of paper negotiated agreements between themselves and the appropriate groups. The practice of mining companies making token payments to communities or individuals in the form of money or vehicles is no substitute for properly negotiated agreements incorporating site protection measures, compensation for disturbance to land, and codes of conduct for miners enforced by strong legislation.

Aboriginal people have fought hard to defend our lands, waters and our rights and the KLC continues to defend the very same issues when it comes to mining.

Message from the Chairman



Marboo Ngimbi,

Well I think it is safe to say that the first six months of 2019, feel like 12 months! We've had a huge schedule of work to complete and we have seen some important outcomes already this year.

One of the highlights for me personally, was attending the three native title determinations in the East Kimberley for Ngarrawanji, Malarngowem and Yurriyangem Taam. These determinations represented the decades of struggle the Traditional Owners have been though to get their native title rights and interests recognised.

It was moving to see so many of our old people and leaders of the Kimberley Land Council, who were part of these claims, finally get what they've been fighting for – legal recognition as the Traditional Owners of their country.

Our elders took up the fight of the land council many years ago. They did it to stand up for the rights of all Aboriginal people in the Kimberley and to tell governments that Aboriginal people would no longer sit back and let things be done to them.

For me, it was very special to see these leaders and their younger generations get their native title and I sincerely congratulate all of the Traditional Owners on this achievement.

A significant moment in history occurred in May this year, with the first Aboriginal person chosen to take on the portfolio of Indigenous Affairs within the Australian Government.

Ken Wyatt, a Noongar man, was promoted to the position after the Liberal party formed Government. It is a significant appointment and means that for the first time ever an Aboriginal person is in charge of the part of government that determines much of what happens to Aboriginal people in this country.

Mr Wyatt has a big job ahead. We have called on him to prioritise key issues, such as Indigenous suicide in the Kimberley and a Voice in the Constitution. We are hopeful that Mr Wyatt's appointment will lead to positive change for Aboriginal people in the Kimberley and all across Australia.

In other news, the Kimberley Land Council will be representing Jabirr Jabirr/Ngumbarl and Bindunbur native title holders in a very significant High Court case later this year.

In June, the High Court of Australia granted leave to the Commonwealth and WA State governments to appeal the Full Federal Court decision in the Bindunbur and Jabirr Jabirr/Ngumbarl determination area.

The Court has already determined that Nimanburr, Jabirr Jabirr/Ngumbarl and Nyul Nyul people have native title rights and interests in the Middle Dampier Peninsula. Nothing in the High Court appeals will change this. What this court case is about, is the rights of native title holders to make choices about what happens to and on their land.

The appeals are likely to be heard in the High Court later this year or early next year. We will continue to provide regular updates to the native title holders affected.

Next time we will catch up is at the KLC AGM, which is scheduled for the week starting 22 September. I look forward to seeing you all there.

Anthony Watson



Ngarrawanji Native Title
Determination,
Moola Bulla Station.



Historic week of Kimberley native title determinations

The Federal Court of Australia recently travelled to the Kimberley to determine three separate native title claims in one week, bringing the total determined area of the region to 93.5 per cent.

More than 100 people gathered firstly at Moola Bulla Station, east of Halls Creek, for the determination of the Ngarrawanji native title claim.

The Federal Court then travelled further into the East Kimberley to the community of Warmun where the determinations for the Malarngowem and Yurriyangem Taam native title claims took place. The ceremony also included a special acknowledgment of the Goorring native title determination which occurred in Perth late last year.

The historic determinations recognised in total more than 34,000 square kilometres of country in the East Kimberley as native title lands – an area bigger than the European nation of Belgium.

The determinations were made by the Honorable Justice Mortimer for Ngarrawanji on Tuesday and the Honorable Justice Banks-Smith for Malarngowem and Yurriyangem Taam on Thursday.

“Today we can walk away with a clear

mind and a clear heart,” said Greg Tait, a member of the Applicant for the Ngarrawanji native title claim. “We got here and we should all be very proud of that. All the old people and the spirits will be very proud to see us and our kids here today.”

Shirley Purdie is part of the Applicant for the Yurriyangem Taam native title claim and is also part of the Malarngowem claim. She said the native title determination would be a happy day.

“We feel good, we really happy, we been waiting long time for it, we really happy we gonna gettem back for Yurriyangem Taam. Gettem native title for our country.”

Jean Malay is part of the Yurriyangem Taam and Malarngowem native title claims. She said there would be mixed feelings on the day of the determination.

“Many of our elders have passed and now that we are ready for this recognition we wish they were here with us. We will feel a little emotional, but happy as well.”





Kimberley Land Council Chief Executive Officer Nolan Hunter said the determinations are a testament to the Traditional Owners who have never given up on their fight for recognition by the Australian Government of their ongoing and unbroken connection to country.

“I sincerely congratulate the Traditional Owners,” Mr Hunter said. “Securing native title gives people authority to make decisions about what happens on their land – rights that were unjustly taken away during colonisation.”

Mr Hunter also acknowledged the difficulty of the native title process and the emotional toll it has placed on many Traditional Owners.

“The native title process forces people to disclose deeply personal and sensitive

information to prove their connection to country,” he said.

“We are seeing that the process of native title is creating trauma in people’s lives, in addition to the trauma people have already experienced from being forcibly removed from their country.

“Many of our elders do not live to see the day that their native title is determined and for those native title claims still on foot, many of our old people are no longer here to provide first hand evidence.

“Native title is an extremely important recognition of people’s rights before the law, but it comes at a cost. This cost must be recognised and we must look at how we can improve the native title process so that it is less onerous, traumatic and divisive for our people.”







KLC supports Traditional Owners over unauthorised land clearing

Nyikina Mangala Traditional owners have confirmed an international corporation is undertaking a land-clearing operation on Yakka Munga Station and has breached a registered Indigenous Land Use Agreement (ILUA) and destroyed important cultural sites.

On the 5th of June 2019 Traditional Owners discovered at Yakka Munga Station and confirmed that the management company Shanghai Zenith has begun clearing land to make way for what we believe are irrigation channels and to harvest water.

Traditional Owners Rosita Shaw and Wayne Bergmann said there has been no compliance with the consultation with Nyikina Mangala Traditional Owners or appropriate environmental impact surveys regarding the earth works on Yakka Munga Cattle Station. It makes a mockery of the process to get Native Title and the negotiation of the ILUA when the company has decided to not follow the process in the agreement.

Walalakoo Aboriginal Corporation sent a notice to Shanghai Zenith to immediately stop excavation activities and has sent a stop work order to WA State Government ministers, including Agriculture and Food Minister Alannah MacTiernan, Environment Minister Stephen Dawson, and Aboriginal Affairs Minister Ben Wyatt.

Minister MacTiernan said she shared her concern for what was going on at Yakka Munga and that the clearing appears to have occurred without any authorisation.

KLC CEO Nolan Hunter said he is concerned that cultural and environmental values have been damaged.

“The clearing that has been done is not within the definition of a pastoral purpose. The KLC negotiated the consent determination and the ILUA for Nyikina Mangala people in 2012,” Mr Hunter said.



“There was a stop work order issued – this was stopped by the Environmental Protection Act 1986, not by the requirements under the ILUA. This type of clearance is a future act under the Native Title Act 1993. A future act would have given Nyikana Mangala people the opportunity to engage, negotiate and deal with the impact. The company has bypassed this.”

“There’s now a question of whether compensation for the loss of native title rights and interests is a result of the activities.”

“The KLC strongly believes Shanghai Zenith must enter a compensation agreement with Walalakoo for the damages that have occurred.”

Nyikina Mangala Traditional Owners blockaded the site on 19 June 2019 and refused to allow contract workers onto the property.

Traditional Owners will continue the fight until a satisfactory agreement has been reached.

This activity highlights the need for the Aboriginal Heritage Act (1972) to be changed. The KLC has made a number of parliamentary submissions and still awaits the outcome.



Parliamentary submissions and consultation

One of the key priorities of the KLC is to influence the policy decisions of government. One way we do that is through parliamentary submissions and by taking part in consultation processes. Recently the KLC made submissions on the review of WA Aboriginal Heritage Act.

On 13 March 2018, Hon. Ben Wyatt MLA, Minister for Aboriginal Affairs announced a review of the Aboriginal Heritage Act [AHA] 1972, something the KLC has long been calling for.

New legislation should address a number of critical issues, first and foremost that the overriding purpose of the legislation should be the protection of Aboriginal Heritage sites for the benefit of Aboriginal people, rather than the destruction of sites based on the interests of the “community” at large.

In its submission, the KLC called for substantive reform to the Western Australian Aboriginal heritage protection scheme to ensure protection principals and processes align with Aboriginal traditional beliefs and custom, international standards, and certain elements of federal and state heritage legislation.

The unauthorised land clearing at Yakka Munga Station highlights the importance of the AHA and protecting people’s rights and Indigenous heritage areas. The KLC wants to ensure people are consulted and this recent event has raised significant concerns.

The Minister aims to have the amended legislation passed by both houses of Parliament by the end of 2020.

Reconciliation Breakfast

The Reconciliation Week Breakfast was hosted by Reconciliation WA in May.

Almost 1500 people from heads of industry and Government attended the important occasion with an emphasis on the value of reconciliation.

Minister for Indigenous Affairs Ken Wyatt was a keynote speaker at the breakfast and highlighted what can be achieved when people stand together, build real relationships and open dialogue and make decisions together.

Minister for Indigenous Australians Ken Wyatt received a standing ovation from the attendees of the Reconciliation Breakfast.

He said the government remained committed to constitutional recognition, but it would be a long and careful process.

KLC CEO Nolan Hunter gave a spirited, honest speech demonstrating what Reconciliation WA were hoping to achieve on the day – courageous leadership.

“You can’t talk about recognition without recognising the challenges. Aboriginal people have been dragged through a long process through the native title system. It’s had a major traumatic effect on people.”

“How can people be expected to tackle social issues, youth suicide and deal with socio economic issues around employment and business when people have been tied up in this system for so long.”

“The long, drawn out and expensive human toll of native title is not acceptable. Legislation needs to change, as does the system.”

Mr Hunter’s speech aimed to provide valuable learnings to guests and empower them with take away key messaging of reconciliation and apply it to their own context – how prolonged suffering and the onus of proof of identity and adversity affects a sense of belonging.





Minister wants referendum on Indigenous Constitutional Recognition within three years

Minister Ken Wyatt has pledged to find a consensus way forward on constitutional recognition. The KLC is hopeful that the Minister will support a referendum within three years.

In a National Press Club address, Minister for Indigenous Australians Ken Wyatt pledged to “bring forward a consensus option” during the current term of Parliament.

He said “the Morrison Government is committed” to Indigenous constitutional change.

Minister Wyatt, the first Indigenous person to hold the portfolio, said he will work with his opposition counterpart, Wiradjuri woman Linda Burney, parliamentary colleagues from all sides and the community to find “the right set of words” to present to Australia.

But finding the right phrasing is not the only challenge facing Wyatt and Burney. Of the 44 referendums held in Australia since 1901, just eight have been successful.

KLC welcomes this announcement and KLC Chairman Anthony Watson says “We are pleased that the Government has committed to a co-design process for a future referendum.”

“It’s still early days however we will be keeping a close eye on the proposed model and how the Government plans to roll out a process that engages with Aboriginal people in a similar style to the referendum dialogues.”

“The KLC supports the Uluru Statement from the Heart and supports a constitutional amendment establishing an Indigenous voice to Parliament.”



Rangers lead fight to save desert animals

Indigenous rangers from across Australia have gathered on the edge of the ancient Lake Paruku (Lake Gregory) as they lead the charge to save some of Australia's most endangered wildlife and landscapes.

The rangers were part of a 200-strong contingent of Indigenous land managers, scientists and conservationists who made their way along the Tanami track to the remote Species of the Desert Festival hosted by the Kimberley's Paruku Rangers, the community of Mulan and Tjurabalan native title holders.

Located between the Great Sandy and Tanami Deserts, the three-day Festival is part of a new push to protect the Australian desert, one of the few great natural places remaining on Earth and home to many Australian endangered species.

The Paruku Rangers are the Indigenous ranger group responsible for recording not one, but two images of the endangered Night Parrot.

Paruku Ranger Coordinator Jamie Brown has been looking after the land as a Traditional Owner and Indigenous ranger for many years.

"We are happy to have so many of our countrymen come here to talk and share knowledge about looking after the land," Jamie said.

"We know our country and how to look after it, so it's good to have all the scientists and conservation people here to learn from us, so we can all look after this country and endangered species together."

Australia's desert area represents the world's largest connected network of protected areas. The area spans over 35 per cent of Australia (2.7 million square km), and is of immense cultural value to its Traditional Owners who have a history of occupation spanning more than 50,000 years.

Kimberley Land Council Deputy CEO Tyrone Garstone said the Festival is a celebration of Indigenous land management throughout the ages.



“Our people have been looking after country for tens of thousands of years, all the way back to the dreamtime,” Mr Garstone said.

“Indigenous people’s connection to and knowledge of the land, combined with today’s science and technology, is the best chance Australia has of looking after these vast and special landscapes.

“Continued investment in Indigenous rangers, Indigenous Protected Areas and collaborations like the Indigenous Desert Alliance is vital, so these places can be protected well into the future.”







Alliance of WA Rep Bodies



The Alliance of Western Australian Representative Bodies has been working together since 2006, engaging with all levels of government on native title and other key issues affecting Aboriginal people in Western Australia. The Alliance is united in their commitment to work constructively with the State Government to enable Aboriginal people to pursue their social, cultural and economic aspirations. The recognition of native title rights and support for the long-term sustainability of PBCs is integral to this agenda.

Compensation discussions

A recent Alliance meeting, hosted by the South West Land and Sea Council [SWLASC] in Perth in June, provided an opportunity to meet with Hon. Ben Wyatt MLA, Minister for Aboriginal Affairs to discuss a number of key issues. The Alliance posed a number of questions to the Minister, including what the State Governments

position is on Compensation claims following the Timber Creek compensation case, which KLC CEO Nolan Hunter previously labelled 'a landmark decision'.

The KLC raised concerns to the Minister that pursuing future compensation claims through a litigated process could come at an even greater emotional and personal cost for native title holders who have already been forced to go through the adversarial and litigious native title court process to have their rights in country recognised.

The Alliance called for a commitment from the State Government that compensation claims will be resolved by agreement and not through litigation.

The government and native title representative bodies together have a responsibility to do everything possible to avoid further trauma to TO's by forcing them through lengthy, traumatic legal processes.

Celebrating NAIDOC 2019

Kimberley Land Council was involved in National NAIDOC Week in Broome in July. This year's National NAIDOC theme is Voice, Treaty, Truth - Let's work together for a shared future. This theme acknowledges that Aboriginal and Torres Strait Islander peoples have always wanted an enhanced role in decision-making in Australia's democracy.

KLC staff and executive participated in this short walk which brought together Indigenous and non-Indigenous people, local schools and organisations to show their support of reconciliation in Australia.



PBC's should be empowered to make decisions and our role is to make sure the Government takes into account peoples Native Title interests in a way that people want.

Hon. Stephen Dawson, Minister for Environment also attended the meeting and provided an opportunity for the Alliance to discuss the Government's plan to create five million hectares of new national and marine parks and reserves across Western Australia within the next 5 years.

The creation of new parks and reserves will be subject to endorsement from traditional owners and the finalisation of Indigenous Land Use Agreements. The Alliance questioned the Minister on issues around ensuring TO's are well resourced to develop their own plans for country prior to entering into any kind of Joint Management negotiations.

The KLC has recently been engaged by the WA Government to facilitate negotiations with Traditional owner groups in the Buccaneer Archipelago for a Marine Park, as well as with Yurriyangem Taam in negotiations with the State regarding a National Park. More information on these projects on page 19.

KLC will be hosting the next WA Alliance meeting later this year.

NAIDOC MARCH BROOME 2019



Heritage protection agreement gold standard

The KLC has been working hard to update its 'gold standard' Heritage Protection Agreement for Kimberley Traditional Owners.

The Heritage Protection Agreement is critically important to making sure that Kimberley Traditional Owners have their valuable cultural heritage protected when third parties want to access their country and do work on it.

The key parts of the 'gold standard' Heritage Protection Agreement include:

Traditional Owner approval: To give Traditional Owners approval for all proposed activities on country;

No means No: To give Traditional Owners a legal right to protect sites of significance from destruction;

Community Benefits: To help build relationships between Traditional Owners and proponents through training, employment and economic opportunities;

Information provision: To make sure Traditional Owners are provided with all of the information about what happens on their country;

Environmental rehabilitation: To make sure that anybody who is allowed to do something on country keeps country clean and leaves it the way it was when they first went there.

Proponent pays: To make sure that Traditional Owners are not out of pocket for works that other people want to do on their country.

The 'gold standard' Heritage Protection Agreement has been in place in the Kimberley for a number of years now and the KLC has just recently finished a review process to update the agreement for future use so that it works better for Traditional Owners in the Kimberley and continues to protect their heritage to the highest standard.



Hon Ken Wyatt AM, MP -
Parliament of Australia

Ken Wyatt takes on Indigenous affairs ministry

The KLC would like to congratulate Ken Wyatt, who has become the first Aboriginal person to take on the position of Minister for Indigenous Australians and to sit in Cabinet.



KLC Chairman
Anthony Watson

The Kimberley Land Council supports this appointment and we are pleased to see an Aboriginal person at last elevated to this role.

Mr Wyatt has a big job ahead. There are many issues facing our people. Indigenous suicide must be stopped and should be a national priority. We must continue to see progress on constitutional reform and a Voice to Parliament.

KLC Chairman Anthony Watson urges the Minister and the wider Australian public to take action on key Indigenous issues, particularly constitutional reform.

"People know it's time to change, people know what's right and that they are supporting a principle of justice and equality," he said.

We look forward to working with Ken Wyatt and the incoming government to address Indigenous issues nationwide, but in particular those facing our members here in the Kimberley.

Meanwhile, Ken Wyatt, who was the keynote speaker at the Reconciliation WA event, called on Australia to embrace reconciliation through relationships based on mutual respect, mutual resolve and mutual responsibility.

State Projects



The Western Australian Government has engaged KLC to support Kimberley Traditional Owners in their involvement in three key government projects that commenced in July.

Buccaneer Archipelago

The State Government made an election commitment to the creation of a marine park over the Buccaneer Archipelago. The native title holders for the Buccaneer Archipelago are Mayala, Bardi Jawi, and Dambimangari Traditional Owners. The State Government has asked those Traditional Owners to meet and discuss the development of a jointly managed marine park. Traditional Owners have agreed to take part in these negotiations. The KLC will provide legal and healthy country land management advice to Mayala and Bardi Jawi native title holders, and project support to Dambimangari traditional owners.

Traditional Owner representatives from the three groups met with the State for the first time in early July to commence negotiations. This project will be ongoing for the next 18 months and will include the negotiation of joint management agreements, Indigenous Land Use Agreements, and a marine park management plan. These negotiations may lead to authorisation meetings of native title holders in the second half of 2020 where native title holder will decide whether or not to agree to the joint management agreements and Indigenous Land Use Agreements. The timeframe for in-principle agreement on a draft management plan will be May 2020, when the draft management plan will be notified for public comment.

Fitzroy National Park

The State Government made an election commitment to the creation of a national park over parts of the Fitzroy River. The State Government is negotiating separately with

Traditional Owners along the sections of the Fitzroy River covered by the proposed national park. The KLC is representing Yurriyangem Taam native title holders in their negotiations with the State Government. Negotiations will commence in early August 2019 and will include planning on cultural, environmental, economic and social values and negotiations of a joint management agreement and Indigenous Land Use Agreement. The Traditional Owner representative team was nominated at a Yurriyangem Taam claim group meeting held in March this year. Yurriyangem Taam native title holders will also be working on the development of a prescribed body corporate over the next 12-18 months.

Dampier Peninsula Project

The KLC is facilitating a 12-month project to support engagement between Traditional Owners and communities on the Dampier Peninsula and the State Government around impacts and opportunities from the sealing of Broome to Cape Leveque Road. This project will provide support including for the Dampier Peninsula Working Group (DPWG) which was established in 2017 with representatives from community councils. The DPWG is growing and includes representatives from community councils and native title groups through their PBCs. The project will support the DPWG to engage with the State Government to identify strategies to protect the unique environmental and cultural heritage values of the Dampier Peninsula and mitigate negative impacts on native title rights and interest and communities. This project has recently commenced and the DPWG will be meeting in July 2019. The project will also support DPWG members and the State in providing information to the broader community and to identify where broader community and native title engagement is required.

Kimberley TOs head to the High Court

Last month the High Court of Australia granted leave to the Commonwealth and WA State governments to appeal the Full Federal Court decision in *Manado on behalf of the Bindunbur Native Title Claim Group v State of Western Australia* [2018] FCAFC 238.

These appeals are in relation to native title in the Bindunbur and Jabirr Jabirr/Ngumbarl determination area. The Court has already determined that Nimanburr, Jabirr Jabirr/Ngumbarl and Nyul Nyul people have native title rights and interests in the Middle Dampier Peninsula. Nothing in the High Court appeals will change this. Rather, the appeals relate to whether the native title determinations should recognise public rights of access to specific areas in the determinations.

Fundamentally, this court case is about the rights of native title holders to make choices about what happens to and on their land. Since native title was first recognised by the High Court more than 25 years ago, the legal system of Australia has been testing different elements of the law. This has provided certainty on legal questions around native title, and this case will do the same.

The appeals are likely to be heard in the High Court in November or December this year over 2 days.

What has happened so far?

In May 2018 the Federal Court of Australia made a determination of native title in the Bindunbur and Jabirr Jabirr/Ngumbarl

native title claims (*Manado on behalf of the Bindunbur Native Title Claim Group v State of Western Australia* [2018] FCAFC 238).

These determinations recognised native title rights across the middle Dampier Peninsula for the Jabirr Jabirr/Ngumbarl, Nimanburr and Nyul Nyul people. The determinations were celebrated on country at Beagle Bay in May 2018.

Following the determinations, a number of appeals were lodged with the Federal Court of Australia.

The Goolarabooloo people appealed on the grounds that they had native title rights and interests in the Jabirr Jabirr/Ngumbarl determination area that should have been recognised.

The Bindunbur and Jabirr Jabirr/Ngumbarl claim groups appealed to say that the determination should recognise their exclusive possession over beaches and waterways where there was no existing right of public access.

In December 2018, the Full Federal Court of Australia made a decision in relation to these appeals.

The Goolarabooloo appeal was dismissed and the Goolarabooloo people have not sought to appeal this decision again.

The remaining appeals, by the Bindunbur and Jabirr Jabirr/Ngumbarl native title holders, were upheld. The Court held that no evidence had been presented that pre-existing rights of public access existed across

areas of unallocated Crown land within the determination, including beaches, waterways and riverbanks where exclusive possession applied.

Following this decision, the State of Western Australia and Commonwealth of Australia sought special leave to appeal in the High Court, and on June 21, 2019, special leave was granted. It is expected that the case will be heard in the High Court later this year or early next year.

The Kimberley Land Council is acting for the Jabirr Jabirr/Ngumbarl and Bindunbur native title groups in the matter.

Who are the native title holders?

The native title holders are the Jabirr Jabirr/Ngumbarl, Nyul Nyul and Nimanburr people. All groups speak and make decisions for different areas of country within the Bindunbur and Jabirr Jabirr/Ngumbarl native title areas.

What area of land and water does the decision apply to?

The issues raised by the State and Commonwealth as part of the High Court appeal, and addressed by the decision of the Full Federal Court of Australia, relate primarily to public access in areas landward of the mean high water mark within the native title determinations.

In the Bindunbur native title area, this relates to areas of coast adjacent to the Aboriginal reserves in the vicinity of Beagle Bay in the middle-Dampier Peninsula.



November 2010 - Jabirr Jabirr Traditional Owners at James Price Point

In the Jabirr Jabirr/Ngumbarl native title area, this relates to the coastline adjacent to the Manari Road, between Willie Creek and Coulomb Point Nature Reserve.

Exclusive native title is not recognised in the ocean or the intertidal zone, but does apply to beaches and the banks of rivers within the determination areas.

What is exclusive possession native title?

Exclusive possession native title is the strongest form of native title recognition possible in the Australian legal system. It is the native title equivalent of freehold title and involves the right to speak for and make decisions about country.

The High Court has previously said that exclusive possession native title is a legal entitlement for native title holders to permit or refuse access “for any reason or no reason at all”.

How does exclusive possession native title apply to beaches, waterways, marshes and riverbanks in other native title determinations in the Kimberley or elsewhere?

Native title determinations must include a list of all the other interests held by people other than the native title holders in the determination area, for

example pastoral leases, roads, reserves, etc. These interests are usually listed in a schedule to the determination called an “Other Interests” schedule. If there are any rights of the public (“public access rights”) in particular types of areas in the determination these are also listed in the “Other Interests” schedule.

In December 2018, the Full Federal Court of Australia held that there was no evidence that rights of public access existed across areas of unallocated Crown land where exclusive possession native title was determined in the Bindunbur and Jabirr Jabirr/Ngumbarl native title determinations. As a result, the right of the public as a “public right” to access these areas was removed from the “Other Interests” schedule.

What does this decision mean for access to these areas?

Native title has existed across the Kimberley for almost 20 years. In that time Traditional Owners and the wider community have worked together to find ways of managing access that respects the interests of native title holders.

The Jabirr Jabirr/Ngumbarl and Bindunbur native title holders have been considering the Full Federal Court decision and what it means in relation to access and management of their native title

determination areas. The native title holders will now await the decision of the High Court in relation to the appeal of these matters.

Exclusive possession is the native title equivalent of freehold title, and it means that legally, permission is required from the native title holders before anyone can access or use that land. This includes for purposes, such as camping, beach fishing, boat launching or other activities that require access to exclusive possession native title land.

Visiting exclusive possession native title land

There are many ways that Traditional Owners manage access to and enjoyment of exclusive possession native title land. This can be achieved through the implementation of visitor access permits and the establishment of Indigenous ranger groups to help manage access to areas for the community at large.

What does this decision mean for other native title determinations in Australia?

This decision is likely to apply to most parts of the Australian coastline where exclusive possession native title has been recognised, particularly in remote areas where there is not any State land tenure in place.



KLC joins United Nations Delegation

KLC Deputy CEO Tyronne Garstone has returned from New York after attending this year's United Nations Permanent Forum on Indigenous Issues.

Ty was part of a delegation of National Native Title Council representatives who travelled to the UN to be a part of discussions focusing on the conference's main theme: Traditional Knowledge: generation, transmission and protection.

Traditional knowledge is critical for Traditional Owners looking after country

and protecting significant heritage sites. A key priority for Traditional Owners is to protect their knowledge for future generations.

Ty joined Indigenous delegates across Australia who had travelled to New York to ensure that Indigenous issues could be heard by a global audience and to learn from the experiences of other Indigenous peoples from all around the world.





Kimberley rangers in Botswana

Kimberley rangers Nathan Green (Nyikina Mangala), Braedan Taylor (Karajarri) and Robin Dann (Wunggurr) have returned from an incredible trip to Botswana to teach the Indigenous fire management techniques of northern Australia to communities in southern Africa.

The Kimberley rangers were joined by Arafura Swamp rangers Otto Campion and Peter Djigir, as well as the KLC's Ewan Noakes and Ari Gorring.

During the trip the rangers presented at a fire forum held by the Botswana Government and visited remote communities, featuring savanna landscapes similar to that of northern Australia.

Speaking to ABC Kimberley, Wunggurr ranger Robin Dann, said people were blown away by the Australian rangers' skills.

"I feel really good knowing that I passed on something," he said.

"When they were trying to put out a fire, they'd be running around, lots of people and fire trucks, not much leadership and not much knowledge of fire, and it ended up a real big hot fire.

"But for us, we used the wind, and ours was less intense, less heat, hardly any smoke.

"We're different cultures, but for both of us, fire is so important, and once upon a time the fire regime in Australia was the best in the world I reckon."

The trip was part of the International Savanna Fire Management Initiative (ISFMI). The Kimberley Land Council is a lead project partner in the initiative, which was announced at COP 23 (Conference of the Parties) in Bonn, Germany IN 2017.

The project is the result of national and international recognition of the knowledge of Australia's first nations, particularly those from the Kimberley, in reducing carbon emissions through right-way fire.

With Federal Government funding of \$3.87 million over four years, the project will help deliver savanna carbon abatement methodology suitable to the Botswana landscape. For more information about the ISFMI check out the Firing up for Climate Change booklet on the KLC website.



AGM SAVE THE DATE

23RD - 27TH SEPTEMBER 2019

Stay tuned to our Facebook page
and website for more details.



The Kimberley Land Council welcomes donations to support our activities – donations of \$2 or more are tax deductible. The Kimberley Land Council acknowledges the financial support provided by the Commonwealth of Australia and the Government of Western Australia.

