

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NTD17/2014
NNTT Number: DCD2015/008

Determination Name: Ngajapa v Northern Territory of Australia

Date(s) of Effect: 26/11/2015

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: 26/11/2015

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Top End (Default PBC/CLA) Aboriginal Corporation RNTBC
Agent Body Corporate
C/- Mr Jonathan Kneebone
GPO Box 1222
DARWIN Northern Territory 0801

COMMON LAW HOLDER(S) OF NATIVE TITLE:

5. The land and waters of the Determination Area comprise the whole or part of eleven estates, which are held respectively by the members of the following estate groups:

- (a) Kamanja (Wuyaliya) estate group
- (b) Ngurrmu / Jawuma (Rrumburriya) estate group
- (c) Pupuwina (Rrumburriya) estate group
- (d) Mangurrungurru / Wulkuwulku (Wuyaliya) estate group
- (e) Mawuli (Wuyaliya) estate group
- (f) Wurruwiji (Wurdaliya) estate group
- (g) Jirrinmini (Mambaliya) estate group

- (h) Gulpalyi (Wurdaliya) estate group
- (i) Garambarini (Wurdaliya) estate group
- (j) Gulaurruna (Rrumburriya) estate group
- (k) Warrgi (Wuyaliya) estate group.

These persons, together with the Aboriginal people referred to in clause 7 hereof, are collectively referred to as “the native title holders”.

6. Each of the estate groups referred to in clause 5 hereof includes persons who are members of the group by reason of:

- (a) patrilineal descent;
- (b) his or her mother, father’s mother or mother’s mother being or having been a member of the group by reason of patrilineal descent;
- (c) having been adopted or incorporated into the descent relationships referred to in (a) or (b) hereof.

These persons are collectively referred to as “the estate group members”.

7. In accordance with traditional laws and customs, other Aboriginal people have native title rights and interests in respect of the Determination Area, subject to the native title rights and interests of the estate group members, such people being:

- (a) members of estate groups from neighbouring estates;
- (b) spouses of the estate group members.

8. Each of the estate groups referred to in clause 7(a) hereof includes persons who are members of the group by reason of:

- (a) patrilineal descent;
- (b) his or her mother, father’s mother or mother’s mother being or having been a member of the group by reason of patrilineal descent;
- (c) having been adopted or incorporated into the descent relationships referred to in (a) or (b) hereof.

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

1. There be a determination of native title in terms of the determination set out below.
2. The native title is not to be held on trust.
3. The Top End (Default PBC/CLA) Aboriginal Corporation RNTBC be appointed as the prescribed body corporate for the purposes of s 57(2) of the Act in respect of the area the subject of the determination.
4. There be no order as to costs.
5. The parties have liberty to apply to establish the precise location and boundaries of the public works and adjacent land and waters identified in relation to any part or parts of the Determination Area referred to in Schedule D of this determination.

THE COURT DETERMINES THAT:

The Determination Area

1. The Determination Area is the land and waters described in Schedule A hereto and depicted on the map comprising Schedule B.
2. Native title exists in those parts of the Determination Area identified in Schedule C.

3. Native title does not exist in those parts of the Determination Area identified in Schedule D.
4. In the event of any inconsistency between a description of an area in a schedule and the depiction of that area on the map in Schedule B, the written description will prevail.

The native title holders

5. The land and waters of the Determination Area comprise the whole or part of eleven estates, which are held respectively by the members of the following estate groups:

- (a) Kamanja (Wuyaliya) estate group
- (b) Ngurrmu / Jawuma (Rrumburriya) estate group
- (c) Pupuwina (Rrumburriya) estate group
- (d) Mangurrungurru / Wulkuwulku (Wuyaliya) estate group
- (e) Mawuli (Wuyaliya) estate group
- (f) Wurruwiji (Wurdaliya) estate group
- (g) Jirrinmini (Mambaliya) estate group
- (h) Gulpalyi (Wurdaliya) estate group
- (i) Garambarini (Wurdaliya) estate group
- (j) Gulaurruna (Rrumburriya) estate group
- (k) Warrgi (Wuyaliya) estate group.

These persons, together with the Aboriginal people referred to in clause 7 hereof, are collectively referred to as “the native title holders”.

6. Each of the estate groups referred to in clause 5 hereof includes persons who are members of the group by reason of:

- (a) patrilineal descent;
- (b) his or her mother, father’s mother or mother’s mother being or having been a member of the group by reason of patrilineal descent;
- (c) having been adopted or incorporated into the descent relationships referred to in (a) or (b) hereof.

These persons are collectively referred to as “the estate group members”.

7. In accordance with traditional laws and customs, other Aboriginal people have native title rights and interests in respect of the Determination Area, subject to the native title rights and interests of the estate group members, such people being:

- (a) members of estate groups from neighbouring estates;
- (b) spouses of the estate group members.

8. Each of the estate groups referred to in clause 7(a) hereof includes persons who are members of the group by reason of:

- (a) patrilineal descent;
- (b) his or her mother, father’s mother or mother’s mother being or having been a member of the group by reason of patrilineal descent;
- (c) having been adopted or incorporated into the descent relationships referred to in (a) or (b) hereof.

The native title rights and interests

9. The native title rights and interests of the estate group members referred to in clause 5 hereof in relation to those parts of the Determination Area identified in Schedule C, being an area where there has been partial extinguishment of native title, are the non-exclusive rights being:

- (a) the right to travel over, to move about and to have access to those areas;
- (b) the right to hunt and to fish on the land and waters of those areas;
- (c) the right to gather and to use the natural resources of those areas such as food, medicinal plants, wild tobacco, timber, stone and resin;
- (d) the right to take and to use the natural water on those areas, and for the sake of clarity and the avoidance of doubt this right does not include the right to take or use water captured by the holders of Perpetual Pastoral Lease No. 1051;
- (e) the right to live, to camp and for that purpose to erect shelters and other structures on those areas;
- (f) the right to light fires on those areas for domestic purposes, but not for the clearance of vegetation;
- (g) the right to conduct and to participate in the following activities on those areas:
 - (i) cultural activities;
 - (ii) cultural practices relating to birth and death, including burial rites;
 - (iii) ceremonies;
 - (iv) meetings;
 - (v) teaching the physical and spiritual attributes of sites and places on those areas that are of significance under their traditional laws and customs;
- (h) the right to maintain and to protect sites and places on those areas that are of significance under their traditional laws and customs;
- (i) the right to share or exchange subsistence and other traditional resources obtained on or from those areas;
- (j) the right to be accompanied on to those areas by persons who, though not native title holders, are:
 - (i) people required by traditional law and custom for the performance of ceremonies or cultural activities on the areas;
 - (ii) people who have rights in relation to the areas according to the traditional laws and customs acknowledged by the estate group members;
 - (iii) people required by the estate group members to assist in, observe, or record traditional activities on the areas;
- (k) the right to conduct activities necessary to give effect to the rights referred to in (a) to (j) hereof.

10. The native title rights and interests of the native title holders referred to in clause 7 hereof in relation to those parts of the Determination Area identified in Schedule C, being an area where there has been partial extinguishment of native title, are the non-exclusive rights being:

- (a) the right to travel over, to move about and to have access to those areas;
- (b) the right to hunt and to fish on the land and waters of those areas;
- (c) the right to gather and to use the natural resources of those areas such as food, medicinal plants, wild tobacco, timber, stone and resin;
- (d) the right to take and to use the natural water on those areas, and for the sake of clarity and the avoidance of doubt this right does not include the right to take or use water captured by the holders of Perpetual Pastoral Lease No. 1051;

- (e) the right to camp on those areas;
- (f) the right to light fires on those areas for domestic purposes, but not for the clearance of vegetation;
- (g) the right to conduct activities necessary to give effect to the rights referred to in (a) to (f) hereof.

11. The native title rights and interests do not confer on the native title holders possession, occupation, use and enjoyment of those parts of the Determination Area identified in Schedule C, to the exclusion of all others.

12. 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 for personal or communal needs which are of a domestic or subsistence nature and not for any commercial or business purpose;
- (b) the laws of the Northern Territory of Australia and the Commonwealth of Australia.

13. There are no native title rights and interests in:

- (a) minerals (as defined in s 2 of the *Minerals (Acquisition) Act* (NT));
- (b) petroleum (as defined in s 5 of the *Petroleum Act* (NT));
- (c) prescribed substances (as defined in s 3 of the *Atomic Energy (Control of Materials) Act 1946* (Cth) and/or s 5(1) of the *Atomic Energy Act 1953* (Cth)),

in the Determination Area.

Other interests in the Determination Area

14. The nature and extent of other interests in relation to the Determination Area are the interests, created by the Crown or otherwise, as follows:

- (a) the interests of Mount Isa Mines Limited under Perpetual Pastoral Lease No. 1051;
- (b) the Automatic Weather Station located within the external boundaries of the McArthur River Mine Airport on Perpetual Pastoral Lease No. 1051;
- (c) the interests of the Parks and Wildlife Commission of the Northern Territory in respect of the Caranbarini Conservation Zone comprising Administrative Parcel NT Portion 5921A pursuant to the *Territory Parks and Wildlife Conservation Act* (NT);
- (d) 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 rights:
 - (A) to inspect land;
 - (B) to install and operate telecommunications facilities; and
 - (C) to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities;
 - (iii) for its employees, agents or contractors to access its telecommunications facilities in and in the vicinity of the Determination Area in the performance of their duties;
 - (iv) under any lease, license, access agreement or easement relating to its telecommunications facilities in the Determination Area;
 - (v) as the owner and operator of the McArthur River Optical Fibre Repeater and to occupy the 10m by 10m area of land that has its centre point at 182162.500 N, 156354.000 E, and which contains the McArthur River Optical Fibre Repeater facility and associated telecommunications infrastructure;

- (e) the rights of Aboriginal persons (whether or not native title holders) pursuant to the reservation in favour of Aboriginal peoples contained in Perpetual Pastoral Lease No. 1051 and ss 38(2) - (6) of the *Pastoral Land Act* (NT);
- (f) the rights of Aboriginal persons (whether or not native title holders) pursuant to the *Northern Territory Aboriginal Sacred Sites Act* (NT);
- (g) rights of access by an employee, servant, agent or instrumentality of the Northern Territory or Commonwealth, or other statutory authority as required in the performance of statutory duties;
- (h) the interests of persons to whom valid and validated rights and interests have been:
 - (i) granted by the Crown pursuant to statute or otherwise in the exercise of executive power; or
 - (ii) otherwise conferred by statute;
- (i) the following interests granted under the *Mineral Titles Act* (NT) and the *Petroleum Act* (NT), depicted in Schedule E:
 - (i) Exploration Licence Title No. 26833 granted on 9 June 2009;
 - (ii) Exploration Licence Title No. 28659 granted on 27 October 2011;
 - (iii) Exploration Licence Title No. 25313 granted on 28 May 2007;
 - (iv) Exploration Licence Title No. 26831 granted on 9 June 2009;
 - (v) Exploration Licence Title No. 30156 granted on 9 June 2009;
 - (vi) Exploration Licence Title No. 28508 granted on 20 July 2011;
 - (vii) Exploration Licence Title No. 28656 granted on 27 October 2011;
 - (viii) Exploration Licence Title No. 28657 granted on 27 October 2011;
 - (ix) Exploration Licence Title No. 30080 granted on 9 May 2014;
 - (x) Exploration Licence Title No. 26406 granted on 18 June 2008;
 - (xi) Exploration Licence Title No. 28528 granted on 7 December 2012;
 - (xii) Exploration Licence Title No. 30302 granted on 9 June 2009;
 - (xiii) Exploration Licence Title No. 30736 granted on 21 August 2015;
 - (xiv) Exploration Licence Title No. 30077 granted on 9 May 2014;
 - (xv) Exploration Licence Title No. 27711 granted on 9 July 2010;
 - (xvi) Exploration Licence Title No. 30085 granted on 11 April 2014;
 - (xvii) Exploration Licence Title No. 27750 granted on 20 September 2010;
 - (xviii) Exploration Licence Title No. 30775 granted on 21 August 2015;
 - (xix) Exploration Licence Title No. 30774 granted on 21 August 2015;
 - (xx) Exploration Licence Title No. 30076 granted on 9 May 2014;
 - (xxi) Exploration Licence Title No. 29487 granted on 7 December 2012;
 - (xxii) Exploration Licence Title No. 26397 granted on 26 March 2008;
 - (xxiii) Exploration Licence Title No. 30776 granted on 21 August 2015;
 - (xxiv) Exploration Licence Title No. 30737 granted on 21 August 2015;

- (xxv) Exploration Licence Title No. 29021 granted on 3 August 2012;
- (xxvi) Exploration Licence Title No. 24401 granted on 3 June 2005;
- (xxvii) Exploration Licence Title No. 30494 granted on 8 April 2015;
- (xxviii) Exploration Licence Title No. 25467 granted on 15 August 2007;
- (xxix) Exploration Licence Title No. 10316 granted on 22 July 2002;
- (xxx) Exploration Licence Title No. 27541 granted on 24 March 2010;
- (xxxi) Exploration Licence Title No. 28006 granted on 2 November 2010;
- (xxxii) Exploration Licence Title No. 28951 granted on 7 March 2012;
- (xxxiii) Exploration Licence Title No. 28952 granted on 7 March 2012;
- (xxxiv) Exploration Licence Title No. 28007 granted on 2 November 2010;
- (xxxv) Exploration Licence Title No. 30042 granted on 14 October 2013;
- (xxxvi) Exploration Licence Title No. 29951 granted on 21 November 2013;
- (xxxvii) Exploration Licence Title No. 29290 granted on 10 September 2012;
- (xxxviii) Exploration Licence Title No. 29955 granted on 21 November 2013;
- (xxxix) Exploration Licence Title No. 26944 granted on 30 April 2009;
- (xl) Exploration Licence Title No. 10189 granted on 23 July 2002;
- (xli) Exploration Licence Title No. 30752 granted on 21 August 2015;
- (xlii) Exploration Licence Title No. 29837 granted on 27 August 2013;
- (xliii) Exploration Licence Title No. 29952 granted on 21 November 2013;
- (xliv) Exploration Licence Title No. 29953 granted on 14 February 2014;
- (xlv) Exploration Licence Title No. 30751 granted on 21 August 2015;
- (xlvi) Exploration Licence Title No. 30750 granted on 21 August 2015;
- (xlvii) Exploration Permit Title No. 184 granted on 21 August 2013;
- (xlviii) Exploration Permit Title No. 171 granted on 29 June 2011;
- (xlix) Exploration Permit Title No. 190 granted on 11 December 2012;
- (l) Exploration Permit Title No. 176 granted on 29 June 2011;
- (j) the rights and interests of Mount Isa Mines Limited under Mineral Lease Numbers 1121 to 1126 inclusive granted under s 4A of the *McArthur River Project Agreement Ratification Act* (NT) to which the non-extinguishment principle applies pursuant to s 46 of the Act;
- (k) the rights and interests of the parties under the McArthur River Project Agreement between the Northern Territory of Australia and Mt Isa Mines Limited dated 25 November 1992 and included as Schedule 1 to the *McArthur River Project Agreement Ratification Act* (NT);
- (l) the rights and interests of the parties under the following agreements:
 - (i) Co-existence and Exploration Deed for Exploration Permit Title No. 171 and Exploration Permit Title No. 176 between Armour Energy Limited, the Native Title Parties and the Northern Land Council dated 22 June 2011;
 - (ii) Co-existence and Exploration Deed for Exploration Permit Title No. 190 between Armour Energy Limited, the Native Title Parties and the Northern Land Council dated 19 November 2012.

Relationship between native title rights and interests and other interests in the Determination Area

15. The relationship in the Determination Area between native title rights and interests and the other rights and interests described in clause 14 (“other rights and interests”) is that:

- (a) the enjoyment and exercise of the native title rights and interests described in clauses 9 and 10 are partly inconsistent with the interests described in clauses 14(b) and 14(j) such that the native title rights and interests described in clauses 9 and 10 continue to exist in their entirety but have no effect in relation to the interests described in clauses 14(b) and 14(j) to the extent of any inconsistency;
- (b) if the interests described in clauses 14(b) and 14(j) or their effects are wholly removed or otherwise wholly cease to operate over any part of NT Portion 4319, the native title rights described in clauses 9 and 10 again have full effect to that extent;
- (c) to the extent, if at all, that the exercise of the native title rights and interests referred to in clauses 9 and 10 conflicts with the exercise of the rights and interests of the persons referred to in clause 14, the rights and interests of the persons referred to in clause 14 prevail over, but do not extinguish, the native title rights and interests referred to in clauses 9 and 10.

Schedule A

Description of Determination Area

The Determination Area comprises the following areas of land:

1. NT Portion 4319, being land the subject of Perpetual Pastoral Lease No. 1051.

Schedule B

Map of Determination Area

[See NNTR attachment 1: “Map of Determination Area”]

Schedule C

Areas where native title exists

The areas of land and waters in respect of which the native title rights and interests in clauses 9 and 10 apply are:

1. NT Portion 4319, being land the subject of Perpetual Pastoral Lease No. 1051 except those parts thereof referred to in Schedule D.

Schedule D

Areas where native title does not exist

Native title rights and interests have been wholly extinguished in the following areas of land and waters:

1. Those parts of the Determination Area covered by public works as defined in s 253 of the Act (including adjacent land or waters as defined in s 251D of the Act) which were constructed, established or situated prior to 23 December 1996 or commenced to be constructed or established on or before that date, including but not limited to:

- (a) public roads, whether rural roads, arterial roads or national highways;
- (b) community and pastoral access roads which are not otherwise public roads;
- (c) gravel pits adjacent to the roads referred to at paragraphs (a) and (b) hereof used to maintain those roads;
- (d) access roads or tracks to the public works referred to in this clause;
- (e) Government bores and associated infrastructure including bores used for the establishment, operation or maintenance of public and other roads;

- (f) river and rain gauges;
- (g) transmission and distribution water pipes and associated infrastructure;
- (h) sewer pipes, sewer pump stations and associated infrastructure; and
- (i) electricity transmission lines, towers, poles and associated infrastructure.

Schedule E

Map of interests granted under the *Mining Titles Act* (NT) and the *Petroleum Act* (NT)

[See NNTR attachment 2: "Map of interests granted under the *Mining Titles Act* (NT) and the *Petroleum Act* (NT)]

REGISTER ATTACHMENTS:

1. Schedule B - Map of Determination Area, 1 page - A4, 26/11/2015
2. Schedule E - Map of interests granted under the Mining Titles Act (NT) and the Petroleum Act (NT), 1 page - A4, 26/11/2015

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.