

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NTD6013/2000
NNTT Number: DCD2014/008

Determination Name: Bernard Pontiarri Japalyi and Ida Malyika Nampiyin on behalf of the Jiyilijurrung and Yilyilimawu Gurindji People who are members of four Estate Groups associated with the Karu (Children), Yiparrartu (Emu), Warrpawurru (Flying-Fox) and Nyirri (Cicada) Dreamings respectively v Northern Territory of Australia

Date(s) of Effect: 7/05/2014

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: 07/05/2014

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Gurindji Aboriginal Corporation RNTBC
Agent Body Corporate
CMB Kalkarindji
Kalkarindji Northern Territory 0852

COMMON LAW HOLDER(S) OF NATIVE TITLE:

4. The determination area comprises four estates areas associated with the Karu (Children), Yiparrartu (Emu), Warrpawurru (Flying-fox) and Nyirri (Cicada) estate groups.
5. The persons who hold the common or group rights comprising the native title are the Aboriginal persons who are members of one or more of the estate groups by reason of descent (including adoption) through father's father, mother's father, father's mother or mother's mother.

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. Gurindji Aboriginal Corporation is:

- (a) to be the prescribed body corporate for the purposes of section 57(2) of the Act;
 - (b) to perform the functions outlined in section 57(3) of the Act after becoming a registered native title body corporate.
4. The parties have liberty to apply to establish the precise location and boundaries of any public works and adjacent land and waters identified or otherwise referred to in Schedule C of the determination.
5. The proceedings in application number NTD 6013 of 2000 be otherwise dismissed.

THE COURT DETERMINES THAT:

The determination area

- 1. The determination area is the land and waters in the Town of Kalkarindji described in Schedule A and depicted on the map comprising Schedule B.
- 2. Exclusive native title rights and interests exist in the determination area - section 47B applies.
- 3. Native title does not exist in those parts of the determination area described in Schedule C.

The native title holders

- 4. The determination area comprises four estates areas associated with the Karu (Children), Yiparrartu (Emu), Warrpawurru (Flying-fox) and Nyirri (Cicada) estate groups.
- 5. The persons who hold the common or group rights comprising the native title are the Aboriginal persons who are members of one or more of the estate groups by reason of descent (including adoption) through father's father, mother's father, father's mother or mother's mother.

Native title rights and interests

- 6. The native title rights and interests confer possession, occupation, use and enjoyment of the land and waters on the native title holders to the exclusion of all others, provided however, that the rights and interests in the waters of the Victoria River are non-exclusive.
- 7. The native title rights and interests are subject to and exercisable in accordance with:
 - (a) the valid laws of the Northern Territory of Australia and the Commonwealth of Australia;
 - (b) the traditional laws acknowledged and traditional customs observed by the native title holders.

Other rights and interests

- 8. The nature and extent of the other interests in the determination area are:
 - (a) the interests of the parties under the Kalkarindji Indigenous Land Use Agreement executed on 7 May 2014;
 - (b) 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 under Schedule 3 to the *Telecommunications Act 1997* (Cth), including rights:
 - A. to inspect land;
 - B. to install and operate telecommunication facilities; and
 - C. to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunication facilities; and
 - (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; and

- (iv) under any lease, licence or easement relating to its telecommunications facilities in the determination area;
- (c) the rights of Aboriginal persons (whether or not native title holders) by virtue of the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT);
- (d) rights of access by an employee, servant, agent or instrumentality of the Northern Territory, Commonwealth or other statutory authority as required in the performance of his or her statutory duties;
- (e) the interests of persons to whom valid or validated rights and interests have been:
 - (i) granted by the Crown pursuant to statute or otherwise in the exercise of its executive power; or
 - (ii) conferred by statute.

Relationship between rights and interests

9. To the extent that the continued existence, enjoyment or exercise of the native title rights and interests referred to in paragraph 6 is inconsistent with the existence, enjoyment or exercise of the other rights and interests referred to in paragraph 8, the other rights and interests and the doing of any activity required or permitted to be done by or under the other interests, prevail over, but do not extinguish, the native title rights and interests.

Other matters

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

- (a) minerals (as defined in s 2 of the *Minerals (Acquisition) Act 1953* (NT));
- (b) petroleum (as defined in s 5 of the *Petroleum Act 1984* (NT));
- (c) prescribed substances (as defined in s 5 of the *Atomic Energy Act 1953* (Cth) and s 3 of the *Atomic Energy (Control of Materials) Act 1946* (Cth)).

11. Unless the contrary intention appears, a word or expression used in the Act has the same meaning in this determination as it has in the Act.

SCHEDULE A

1. The determination area comprises Lot 121 within the Town of Kalkarindji, excluding Administrative Lots 126(A), 127(A) and 129(A).

Note:

- (i) The boundary of Lot 121 extends to the centreline of the Victoria River. The determination area includes so much of the bed and banks of the river as are within Lot 121;
- (ii) Lots 126(A) and 127(A) are part of Lot 121 and are subject to the Kalkarindji ILUA DI2008/002 which was entered on the Register of Indigenous Land Use Agreements on 3 November 2008. Lot 129(A) is a public work being the Town of Kalkarindji sewerage ponds.

2. The following areas within the Town of Kalkarindji are not included in the determination area:

- (a) Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 62, 67, 68, 69, 71, 72, 73, 74, 76, 77, 78, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 113, 114, 115, 116, 117, 118, 119, 120, 122, 123, 124, 125, 126(A), 127(A), 129(A) and 130;
- (b) any additional areas listed in Schedule C.

SCHEDULE B - Map of Determination Area

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

SCHEDULE C - Areas where native title does not exist

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

Public works

1. Those parts of the determination area being covered by public works as defined in section 253 of *Native Title Act 1993* (Cth) ("the Act") that were constructed or established before 23 December 1996 or commenced to be constructed or established on or before that date (including land and waters within the meaning of section 251D of the Act) including:

- (a) public roads, namely, rural public roads (50m either side of the centre line), rural arterial roads and national highways;
- (b) gravel and fill pits established to maintain the roads referred to in (a) above;
- (c) government bores and associated works;
- (d) transmission water pipes (adjacent area 5m either side of the centre line);
- (e) distribution water pipes measuring 150mm diameter or less (adjacent area of 1.5m either side of the centre line) and/or greater than 150mm diameter (adjacent area 5m either side of the centre line);
- (f) sewer pipes measuring 150mm diameter or less (adjacent area 1.5m either side of the centre line) and/or greater than 150mm (adjacent area 5m either side of the centre line);
- (g) bores, sewer pump stations, and overhead power lines.

2. In addition to the areas referred to in paragraph 1 above native title has been wholly extinguished over the areas covered by the following public works (including land and waters within the meaning of section 251D of the Act):

- (a) Lot 121 – Dagaragu access road, Janama Street, Libanangu Street, Japalyi Street, Whitlam Street and Kalkarindji internal road;
- (b) Lot 121 – the Buntine Highway;
- (c) Lot 121 – river level gauges.

REGISTER ATTACHMENTS:

1. Schedule B - Map of Determination Area, 1 page - A4, 07/05/2014

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.