

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NTD30/2013
NNTT Number: DCD2015/006

Determination Name: McDinny v Northern Territory of Australia

Date(s) of Effect: 24/11/2015

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: 24/11/2015

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 ten estates, which are held respectively by the members of the following estate groups:

- (a) Wupunjawa-Marrinybul (Mambaliya);
- (b) Rruwangkala-Wardawardala (Mambaliya);
- (c) Kalajangku (Mambaliya);
- (d) Wearyan River (Mambaliya);
- (e) Poison Creek (Wurdaliya);
- (f) Fletcher Creek (Wuyaliya);
- (g) Maruwanmala (Wuyaliya);

- (h) Wilyurru-Rabunthu (Wuyaliya);
- (i) Manankurra-Nungkayarrinya (Rrumburriya); and
- (j) Liwirndindila-Kalalaginda (Wurdaliya).

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.
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 ten estates, which are held respectively by the members of the following estate groups:

- (a) Wupunjawa-Marrinybul (Mambaliya);
- (b) Rruwangkala-Wardawardala (Mambaliya);
- (c) Kalajanku (Mambaliya);
- (d) Wearyan River (Mambaliya);
- (e) Poison Creek (Wurdaliya);
- (f) Fletcher Creek (Wuyaliya);
- (g) Maruwanmala (Wuyaliya);
- (h) Wilyurru-Rabunthu (Wuyaliya);
- (i) Manankurra-Nungkayarrinya (Rrumburriya); and
- (j) Liwirndindila-Kalalaginda (Wurdaliya).

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. Subject to clauses 12, 13 and 16, the native title rights and interests of the native title holders in relation to Pastoral Lease No. 685, being an area where extinguishment of native title is to be disregarded pursuant to s 47 of the Act, are:

- (a) except in relation to flowing and subterranean waters, the right to possession, occupation, use and enjoyment of that part of the Determination Area to the exclusion of all others;

- (b) in relation to flowing and subterranean waters, the right to use those waters including the right to:
 - (i) hunt on, gather, and fish from; and
 - (ii) take and use;

the flowing and subterranean waters in accordance with their traditional laws and customs for personal and communal needs of the native title holders which are of a domestic or subsistence nature and not for any commercial or business purpose.

10. Subject to clauses 12, 13, 14 and 16, the native title rights and interests of the estate group members referred to in clause 5 hereof in relation to part of NT Portion 4263 that is bounded by NT Portion 812, 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 Pastoral Lease No. 685;
- (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.

11. Subject to clauses 12, 13, 14 and 16, the native title rights and interests of the native title holders referred to in clause 7 hereof in relation to part of NT Portion 4263 that is bounded by NT Portion 812, being an area where there has been partial extinguishment of native title, are the non-exclusive rights to use and enjoy those areas 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 Pastoral Lease No. 685;
- (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.

12. The native title rights and interests referred to in clauses 10 and 11 do not confer on the native title holders possession, occupation, use and enjoyment of part of NT Portion 4263 that is bounded by NT Portion 812 to the exclusion of all others.

13. 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.

14. 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

15. 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) in relation to NT Portion 812, the interests of Stephen Colester Anderson, Robert Luis Anderson, Bill Gordon Anderson, Alex Anderson (Jnr), Alfred Anderson, Peter Anderson, Lindy Anderson and Logan Anderson as holders of Pastoral Lease No. 685;
- (b) in relation to part NT Portion 4263, valid rights of use for the passage of travelling stock;
- (c) 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, licence, access agreement or easement relating to its telecommunications facilities in the Determination Area;
- (d) the rights of Aboriginal persons (whether or not native title holders) pursuant to the reservation in favour of Aboriginal peoples contained in Pastoral Lease No. 685 and ss 38(2) - (6) of the *Pastoral Land Act* (NT);
- (e) the rights of Aboriginal persons (whether or not native title holders) pursuant to the Northern Territory *Aboriginal Sacred Sites Act* (NT);
- (f) rights and interests held by reason of the force and operation of the *Water Act* (NT);
- (g) existing rights of the public for access and enjoyment pursuant to s13 *Validation (Native Title) Act* (NT) in relation to:
 - (i) waterways;
 - (ii) beds and banks of foreshores or waterways;
 - (iii) coastal waters;
 - (iv) beaches;
 - (v) areas that were public places at the end of 31 December 1993;
 - (h) 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;
 - (i) 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;
 - (j) the following interests granted under the *Mineral Titles Act* (NT) and the *Petroleum Act* (NT), depicted in Schedule E:
 - (i) Exploration Licence Title No. 26539 granted on 1 August 2008;
 - (ii) Exploration Licence Title No. 26556 granted on 1 September 2008;
 - (iii) Exploration Licence Title No. 26557 granted on 1 September 2008;
 - (iv) Exploration Permit Title No. 174 granted on 11 December 2012;
 - (v) Exploration Permit Title No. 176 granted on 29 June 2011;
 - (vi) Exploration Permit Title No. 190 granted on 11 December 2012;
 - (k) 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. 174 between Armour Energy Limited, the Native Title Parties and the Northern Land Council dated 19 November 2012;
 - (iii) 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

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

- (a) the enjoyment and exercise of the native title rights and interests described in clause 9(a) are partly inconsistent with Pastoral Lease No. 685 such that the native title rights and interests described in clause 9(a)

continue to exist in their entirety but have no effect in relation to Pastoral Lease No. 685;

(b) if Pastoral Lease No. 685 or its effects are wholly removed or otherwise wholly cease to operate over any part of NT Portion 812, the native title rights described in cl 9(a) 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, 10 and 11 conflicts with the exercise of the rights and interests of the persons referred to in clause 15 prevail over, but do not extinguish, the native title rights and interests referred to in clauses 9, 10 and 11.

17. The native title rights and interests that are not inconsistent with Pastoral Lease No. 685 are:

(a) in relation to the estate group members referred to in clause 5 hereof, the non-exclusive native title rights and interests listed in clause 10;

(b) in relation to the native title holders referred to in clause 7 hereof, the non-exclusive native title rights and interests listed in clause 11.

Schedule A

Description of Determination Area

The Determination Area comprises the following areas of land:

1. NT Portion 812, being land the subject of Pastoral Lease No. 685;
2. That part of NT Portion 4263 that is bounded by NT Portion 812, being land comprising part of the Gulf Stock Route.

Schedule B

Map of Determination Area

[See NNTR attachment 1: "Schedule B - 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 exist include:

1. NT Portion 812, being land the subject of Pastoral Lease No. 685 except those parts thereof referred to in Schedule D;
2. That part of NT Portion 4263 that is bounded by NT Portion 812, being land comprising part of the Gulf Stock Route 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;
- (i) bores, squatters tanks, constructed stock watering points and associated infrastructure within stock routes; and
- (j) electricity transmission lines, towers, poles and associated infrastructure.

Schedule E

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

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

REGISTER ATTACHMENTS:

1. Schedule B - Map of Determination Area, 1 page - A4, 24/11/2015
2. Schedule E - Map of interests granted under the Mineral Titles Act (NT) and the Petroleum Act (NT), 1 page - A4, 24/11/2015

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.