

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NTD30/2011
NNTT Number: DCD2013/020

Determination Name: Tonson v Northern Territory of Australia

Date(s) of Effect: 31/10/2013

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: 31/10/2013

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

3. An Aboriginal corporation whose name is to be provided within 12 months, or such further time as the Court may allow, is:
- (a) to be the prescribed body corporate for the purposes of s 57(2) of the Act;
 - (b) to perform the functions outlined in s 57(3) of the Act after becoming a registered native title body corporate.

Until there is a prescribed body corporate for this determination the claim will remain active, and there is an address for service on this claim.

5. The parties have liberty to apply for the following purposes:
- (a) 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;
 - (b) to establish the precise location of the boundaries of land on which the pastoral improvements referred to in Schedule D of this determination have been constructed and any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvements; and
 - (c) to establish whether any of the pastoral improvements referred to at Schedule D of this determination have been constructed unlawfully.

REGISTERED NATIVE TITLE BODY CORPORATE:

No Prescribed Body Corporate has been registered for the area.

COMMON LAW HOLDER(S) OF NATIVE TITLE:

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

- (a) the Burdal Jilajaja estate group;
- (b) the Burdal Mingkanyi estate group;
- (c) the Guyal Manaburru estate group;
- (d) the Mambaliya Binda estate group;
- (e) the Mambaliya Nankuya 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 rights and interests in respect of the Determination Area, subject to the 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.

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

- (a) the Burdal Jilajaja estate group;
- (b) the Burdal Mingkanyi estate group;
- (c) the Guyal Manaburru estate group;
- (d) the Mambaliya Binda estate group;
- (e) the Mambaliya Nankuya 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 rights and interests in respect of the Determination Area, subject to the 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 that are possessed under their traditional laws and customs are, subject to the traditional laws and customs that govern the exercise of the native title rights and interests by the native title holders, non-exclusive rights to use and enjoy those parts of the Determination Area identified in Schedule C 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, except water captured by the holders of Perpetual Pastoral Lease No. 1046;
- (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.

These native title rights and interests do not confer on the estate group members possession, occupation, use and enjoyment of the Determination Area, to the exclusion of all others.

10. The native title rights and interests of the native title holders referred to in clause 7 hereof that are possessed under their traditional laws and customs are, subject to the traditional laws and customs that govern the exercise of the native title rights and interests by the native title holders, non-exclusive rights to use and enjoy those parts of the Determination Area identified in Schedule C 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, except water captured by the holders of Perpetual Pastoral Lease No. 1046;
- (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.

These native title rights and interests do not confer on the native title holders referred to in clause 7 hereof possession, occupation, use and enjoyment of the Determination Area, to the exclusion of all others.

Other interests in the Determination Area

11. 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 1201, the interests of the Carwoola Pastoral co Pty Limited under Perpetual Pastoral Lease No. 1046;
- (b) in relation to part of NT portion 1202, 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;
 - (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 performance of their duties; and
 - (iv) under any lease, licence, access agreement or easement relating to its telecommunications facilities in the Determination Area;
- (d) in relation to NT portion 1202, the rights of Aboriginal persons (whether or not native title holders) pursuant to the reservation in favour of Aboriginal peoples contained in the pastoral lease, identified in ss 38(2) - (6) of the *Pastoral Land Act 1992* (NT);
- (e) the rights of Aboriginal persons (whether or not native title holders) by virtue of the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT);
- (f) 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;
- (g) 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.
- (h) the following interests granted under the *Mineral Titles Act* (NT), depicted in Schedule E:
 - (i) Exploration Licence Title No. 28847 granted on 20 February 2012;
 - (ii) Exploration Licence Title No. 29287 granted on 10 September 2012; and
 - (iii) Exploration Permit Title No. 161 granted on 21 May 2012.
- 12. 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 11, the rights and interests of the persons referred to in clause 11 prevail over, but do not extinguish, the native title rights referred to in clauses 9 and 10.

Other matters

- 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.

14. The native title rights and interests are subject to and exercisable in accordance with the valid laws of the Northern Territory of Australia and the Commonwealth of Australia.
15. The native title rights and interests are for the personal or communal needs of the native title holders which are of a domestic or subsistence nature and not for any commercial or business purpose.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

Schedule A - Description of Determination Area

The Determination Area comprises the following areas of land:

1. NT portion 1202, being land the subject of Perpetual Pastoral Lease 1046;
2. That part of NT portion 1202, being land comprising part of the Newcastle Waters to Northern Territory and South Australian border 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 in clauses 9 and 10 apply are:

1. NT portion 1202, being land the subject of Perpetual Pastoral Lease 1046 except those parts thereof referred to in Schedule D;
2. That part of NT portion 1202, being land comprising part of the Newcastle Waters to Northern Territory and South Australian border 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 (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.
2. In relation to NT portion 1202, those parts of the Determination Area covered by pastoral improvements including but not limited to:

- (a) a homestead, house, sheds and buildings;
- (b) bores;
- (c) turkey nests;
- (d) squatters tanks;
- (e) constructed dams and/or other constructed stock watering points;
- (f) stockyards and trapyards; and
- (g) homestead and highway airstrips.

The areas described by 2(a) - (g) comprise land on which the improvements have been constructed prior to the date of this determination, and any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvements.

Schedule E - Map of interests granted under the *Mineral Titles Act* (NT)

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

REGISTER ATTACHMENTS:

1. Schedule B - Map of Determination Area, 1 page - A4, 31/10/2013
2. Schedule E - Map of interests granted under the Mineral Titles Act (NT), 2 pages - A4, 31/10/2013

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.