

## FEDERAL COURT OF AUSTRALIA

### Apetyarr v Northern Territory of Australia [2014] FCA 1088

Citation: Apetyarr v Northern Territory of Australia [2014] FCA 1088

Parties: **BANJO MORTON APETYARR, MARTIN SPRATT APETYARR, LINDA DOBBS APWERL, LULU TEECE APETYARR AND COLLEEN MORTON KNGWARREY ON BEHALF OF THE MEMBERS OF THE AHARRENG, AKANENG, AKWERANTY, ANWERRET, ALARILPW, ANGKEPERRETYEY, ANTARRENGENY, AREYN, ARLANGKW, ARLPAW, ARNAPWENTY IMANGKER, AATNERLELNGK, ATWENGERRP, ILLEYARM, IRRERLERR, KWERRKEPENTY, LYENTYAWELL ILLEPARANEM, NTEWERREK, PWERRK AND TYAW LANDHOLDING GROUPS v NORTHERN TERRITORY OF AUSTRALIA, AMMAROO PTY LTD, DA WEIR PTY LTD, L&S NOMINEES PTY LTD AND ROY HENRY DRIVER**

File number: NTD 6069 of 2001

Judge: **MORTIMER J**

Date of judgment: 14 October 2014

Catchwords: **NATIVE TITLE** – consent determination – consideration of role of Court and government respondent – consideration of s 87 of *Native Title Act 1993* (Cth) – resolution by agreement of claim for determination of native title

Legislation: *Native Title Act 1993* (Cth) ss 13, 61, 66, 66A, 67, 87, 94A, 223, 225

Cases cited: *Far West Coast Native Title Claim v South Australia* (No 7) [2013] FCA 1285  
*King on behalf of the Eringa Native Title Claim Group and the Eringa No 2 Native Title Claim Group v South Australia* [2011] FCA 1387  
*Lota Warriia (on behalf of the Poruma and Masig Peoples) v Queensland* (2005) 223 ALR 62; [2005] FCA 1117  
*Lovett on behalf of the Gunditjmara People v Victoria* [2007] FCA 474  
*Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422; [2002] HCA 58

*Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332; [2013] HCA 18  
*Nangkiriny v Western Australia* (2002) 117 FCR 6; [2002] FCA 660  
*Nelson v Northern Territory* (2010) 190 FCR 344; [2010] FCA 1343  
*Northern Territory v Alyawarr, Kaytetye, Warumungu, Wakaya Native Title Claim Group* (2005) 145 FCR 442; [2005] FCAFC 135  
*Starkey v South Australia* [2014] FCA 924

Date of hearing: 14 October 2014

Date of last submissions: 7 October 2014

Place: Honeymoon Bore

Division: GENERAL DIVISION

Category: Catchwords

Number of paragraphs: 67

Counsel for the Applicants: S Polden

Solicitor for the Applicants: Central Land Council

Counsel for the First Respondent: K Gatis

Solicitor for the First Respondent: Solicitor for the Northern Territory

Counsel for the Second, Third, Fourth and Fifth Respondents: No appearance

Solicitor for the Second, Third, Fourth and Fifth Respondents: Ward Keller Lawyers

**IN THE FEDERAL COURT OF AUSTRALIA  
NORTHERN TERRITORY DISTRICT REGISTRY  
GENERAL DIVISION**

**NTD 6069 of 2001**

**BETWEEN:**           **BANJO MORTON APETYARR**  
                          **First Applicant**

**MARTIN SPRATT APETYARR**  
                          **Second Applicant**

**LINDA DOBBS APWERL**  
                          **Third Applicant**

**LULU TEECE APETYARR**  
                          **Fourth Applicant**

**COLLEEN MORTON KNGWARREY**  
                          **Fifth Applicant**

**AND:**                 **NORTHERN TERRITORY OF AUSTRALIA**  
                          **First Respondent**

**AMMAROO PTY LTD**  
                          **Second Respondent**

**DA WEIR PTY LTD**  
                          **Third Respondent**

**L&S NOMINEES PTY LTD**  
                          **Fourth Respondent**

**ROY HENRY DRIVER**  
                          **Fifth Respondent**

**JUDGE:**             **MORTIMER J**

**DATE OF ORDER:**   **14 OCTOBER 2014**

**WHERE MADE:**     **HONEYMOON BORE**

**THE COURT NOTES THAT:**

- A. On 19 December 2001 the Applicant made a native title determination application (“the application”) that relates to an area of land and waters which is the subject of a proposed determination of native title (“the determination”).
- B. The Applicant, the Northern Territory of Australia and the Pastoral Respondents, (“the parties”) have reached agreement as to the terms of the determination which is to be made

in relation to the land and waters covered by the application (“the determination area”). The external boundaries of the determination area are described in Schedule A and depicted on the map at Schedule B of the determination.

- C. Pursuant to section 87(1)(a)(i) and section 87(1)(b) of the *Native Title Act 1993* (Cth) (“the Act”) the parties hereby file with this Court their agreement in writing.
- D. Pursuant to section 87 and section 94A of the Act the terms of the parties’ agreement involve the making of consent orders for a determination that native title exists in relation to the determination area as provided by the determination.
- E. The parties acknowledge that the effect of the making of the determination is that the members of the native title claim group, in accordance with the traditional laws acknowledged and the traditional customs observed by them, should be recognised as the native title holders for the determination area as provided by the determination.
- F. The parties have requested that the Court hear and determine this proceeding in accordance with their agreement.

**BEING SATISFIED** that a determination of native title in the terms set out in the determination in respect of this proceeding would be within power of the Court and, it appearing to the Court appropriate to do so, pursuant to section 87 of the Act and by the consent of the parties:

**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. Kaytetye Alyawarr Awenyerraperte Ingkerr-wenh 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. There be no order as to costs.

**THE COURT DETERMINES THAT:**

**The determination area**



1. The determination area comprises NT Portions 749, 757, 1289, 1290, 2286, 3431, 4260, 4868, 5162, 5163 and 6302 being the land and waters more particularly described in Schedule A and depicted on the map comprising Schedule B.
2. Native title exists in the determination area as follows:
  - (a) NT Portions 749, 757, 1289, 1290, 2286, 3431, 4260, 4868, 5162 and 5163: the native title rights and interests in paragraph 6 apply;
  - (b) NT Portion 6302: the native title rights and interests in paragraph 6 would apply were they not wholly ineffective due to the operation of s 238 of the *Native Title Act 1993* (Cth).
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 nineteen estate areas associated with the Aharreng, Akaneng, Akweranty Anwerret, Alarilpw, Angkeperretyey, Antarrengeny, Areyn, Arlangkw, Arlpaw, Arnawenty Imangker, Aterleleng, Atnwengerrp, Ileyarn, Irrerlerr, Kwerrkepenty, Lyentyawel Ilepparranem, Ntewerrek, Pwerrk and Tyaw landholding groups.
5. The persons who hold the common or group rights comprising the native title are the Aboriginal persons who are:
  - (a) members of one or more of the landholding groups referred to in paragraph 4 by virtue of descent (including adoption) through father's father, father's mother, mother's father and mother's mother;
  - (b) accepted as members of one or more of the landholding groups referred to in paragraph 4 by senior members of a landholding group, referred to in subparagraph (a), by virtue of the following non-descent connections to an estate:
    - (i) spiritual identification with and responsibility for an estate;
    - (ii) conception and/or birthplace affiliation with an estate;
    - (iii) long-term residence in an estate;
    - (iv) close kinship ties, including intermarriage;
    - (v) shared section/subsection and/or moiety affiliation;
    - (vi) a more distant ancestral connection to an estate, for example, mother's father's mother;
    - (vii) possession of secular knowledge of an estate;
    - (viii) possession of traditional religious knowledge, authority and responsibility for an estate;

- (ix) authority and responsibility for shared Dreaming tracks and/or places of significance connected with an estate;
- (x) seniority in traditional matters concerning the claim group and/or the estate.

### **Native title rights and interests**

6. In relation to NT Portions 749, 757, 1289, 1290, 2286, 3431, 4260, 4868, 5162, 5163 and 6302 the native title rights and interests of the native title holders are the rights possessed under and exercisable in accordance with their traditional laws and customs, including the right to conduct activities necessary to give effect to them, being:

- (a) the right to access and travel over any part of the land and waters;
- (b) the right to live on the land, and for that purpose, to camp, erect shelters and other structures;
- (c) the right to hunt, gather and fish on the land and waters;
- (d) the right to take and use the natural resources of the land and waters;
- (e) the right to access, take and use natural water on or in the land, except water captured by the holders of Perpetual Pastoral Leases 1105, 1000, 1107 and 1139;
- (f) the right to light fires for domestic purposes, but not for the clearance of vegetation;
- (g) the right to access and to maintain and protect sites and places on or in the land and waters that are important under traditional laws and customs;
- (h) the right to conduct and participate in the following activities on the land and waters:
  - (i) cultural activities;
  - (ii) ceremonies;
  - (iii) meetings;
  - (iv) cultural practices relating to birth and death including burial rites;
  - (v) teaching the physical and spiritual attributes of sites and places on the land and waters that are important under traditional laws and customs,

and, subject to the rights of any person arising under the laws in force in the Northern Territory to be present on the land, the right to privacy in the exercise and enjoyment of those activities;

- (i) the right to speak for and make decisions about the use and enjoyment of the land and waters by Aboriginal people who recognise themselves to be governed by the traditional laws and customs acknowledged by the native title holders;
- (j) the right to share or exchange natural resources obtained on or from the land and waters, including traditional items made from the natural resources;
- (k) the right to be accompanied on the land and waters 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 land and waters;
  - (ii) people who have rights in relation to the land and waters according to the traditional laws and customs acknowledged by the native title holders;
  - (iii) people required by the native title holders to assist in, observe, or record traditional activities on the areas.

7. The native title rights and interests referred to in paragraph 6 do not confer possession, occupation, use and enjoyment of the land and waters on the native title holders to the exclusion of all others.

8. The native title rights and interests referred to in paragraph 6 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.

9. The native title rights and interests referred to in paragraph 6 hereof 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**

10. The nature and extent of the other interests in the determination area are:

- (a) the interests of the pastoral leaseholders of:
  - Perpetual Pastoral Lease No. 1105;
  - Perpetual Pastoral Lease No. 1107;

Perpetual Pastoral Lease No. 1139;

Perpetual Pastoral Lease No. 1000;

(b) NT Portion 6302 – the interest of the Dinnie Excision (Imperrenth) Aboriginal Corporation as the holder of a fee simple estate (subject to Imperrenth ILUA DI2003/012 entered on the Register of Indigenous Land Use Agreement on 14 November 2003);

(c) NT Portion 4260 – valid rights of use for the passage of travelling stock;

(d) The interests of the parties in respect to NT Portions 5162, 5163 and 4868 under the Ammaroo Indigenous Land Use Agreement.

(e) the interests of the holders of the following mining and petroleum tenements granted pursuant to the *Mineral Titles Act* (or its predecessor) and the *Petroleum Act* respectively:

No	Expiry Date	Holder
EL 24726	31/03/2014	Nupower Resources Ltd
EL 25183	18/04/2013	Territory Phosphate Pty Ltd
EL 25184	18/04/2013	Territory Phosphate Pty Ltd
EL 25185	18/04/2013	Territory Phosphate Pty Ltd
EL 26196	21/07/2013	Spinifex Uranium Pty Ltd
EL 26227	18/02/2014	Nupower Resources Ltd
EL 26228	18/02/2014	Nupower Resources Ltd
EL 26915	07/04/2015	Fertoz Pty Ltd
EL 27965	24/10/2016	AMI Resources Pty Ltd
EL 27987	26/10/2016	Nupower Resources Ltd
EL 28211	16/03/2017	AFMECO Mining and Exploration Pty Ltd
EL 28402	19/06/2017	Rum Jungle Resources Ltd
EL 28403	19/06/2017	Rum Jungle Resources Ltd
EL 28648	24/10/2017	Nupower Resources Ltd
EL 28727	02/10/2017	ABM Resources NL
EL 28748	30/10/2017	ABM Resources NL
EL 28764	01/11/2017	Australia Mining & Gemstone Co Pty Ltd
EL 28978	10/04/2018	Rum Jungle Resources Ltd
EL 28979	05/03/2018	Rum Jungle Resources Ltd
EL 28980	10/04/2018	Rum Jungle Resources Ltd
EL 26227	18/02/2014	Nupower Resources Ltd
EL 28978	10/04/2018	Rum Jungle Resources Ltd
EL 28979	05/03/2018	Rum Jungle Resources Ltd
EL 28980	10/04/2018	Rum Jungle Resources Ltd



EL 29266	02/08/2018	Rum Jungle Resources Ltd
EL 29267	02/08/2018	Rum Jungle Resources Ltd
EL 29305	09/09/2018	China Australia Land Resources Pty Ltd
EL 29373	13/09/2018	Central Australian Phosphate Pty Ltd
EL 29374	13/09/2018	Central Australian Phosphate Pty Ltd
EL29773	31.07.2019	Rum Jungle Resources Ltd
EL 29826	21.08.2019	Rum Jungle Resources Ltd
EL 27965	24.10.2016	AMI Resources Pty Ltd
EP 103	20/05/2013	Texalta Australia Pty Ltd, Petrofrontier (Australia) Pty Ltd
EP 127	13/06/2013	Northern Territory Oil Limited, Baraka Petroleum Ltd, Petrofrontier (Australia) Pty Ltd
EP 128	13/06/2013	Northern Territory Oil Limited, Baraka Petroleum Ltd, Petrofrontier (Australia) Pty Ltd

- (f) 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 Acts 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;
  - (iv) under any lease, licence, access agreement or easement relating to its telecommunications facilities in the determination area.
- (g) in relation to NT Portions 749, 757, 1289, 1290, 2286, 3431, 5162 and 5163 the rights of Aboriginal persons (whether or not native title holders) pursuant to the reservation in favour of Aboriginal people contained in pastoral leases set out in section 38(2) to (6) of the *Pastoral Land Act 1992* (N.T.);
- (h) the rights of Aboriginal persons (whether or not native title holders) by virtue of the *Northern Territory Aboriginal Sacred Sites Act 1989* (N.T.);

- (i) 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;
- (j) 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**

11. To the extent that the continued existence, enjoyment or exercise of the native title rights and interests referred to in paragraph 6 in relation to NT Portions 749, 757, 1289, 1290, 2286, 3431, 4260, 4868, 5162 and 5163 is inconsistent with the existence, enjoyment or exercise of the other rights and interests referred to in paragraph 10, 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.

12. In relation to NT Portion 6302 the relationship between the native title rights and interests referred to in paragraph 6 and the interest of the Dinnie Excision (Imperrenth) Aboriginal Corporation as the holder of a fee simple estate in the land is set out in the Irretety ILUA which was entered on the Register of Indigenous Land Use Agreements on 14 November 2003. The non-extinguishment principle applies:

- (a) the grant of the estate in fee simple is wholly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests;
- (b) the native title continues to exist, but has no effect in relation to the grant;
- (c) if the grant or its effects are wholly removed or otherwise wholly cease to operate the native title rights and interests again have full effect;
- (d) if the grant or its effects are removed to an extent or otherwise cease to operate only to an extent the native title rights and interests again have effect to that extent.

### **Other matters**

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

- (a) minerals (as defined in s 2 of the *Minerals Acquisition Act 1953* (N.T.));
- (b) petroleum (as defined in s 5 of the *Petroleum Act* (N.T.));
- (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)).

14. In this determination the term:

- (a) “natural resources” means:

- (i) animals *ferae naturae*, birds, fish and plants, including timber, wax, resin and gum; and
  - (ii) surface soils, clays, stone, rocks and ochre,  
but does not include minerals, petroleum and prescribed substances;
- (b) “natural waters” includes springs and rockholes.

15. 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 the following areas of land:
  - (a) NT Portion 1290 comprising an area of 1,041 square kilometres held under Perpetual Pastoral Lease No. 1105;
  - (b) NT Portion 749 comprising an area of 1,960 square kilometres held under Perpetual Pastoral Lease No. 1105;
  - (c) NT Portion 1289 comprising an area of 1,257 square kilometres held under Perpetual Pastoral Lease No. 1107;
  - (d) NT Portion 757 comprising an area of 3,033 square kilometres held under Perpetual Pastoral Lease No. 1107;
  - (e) NT Portion 2286 comprising an area of 5,595 square kilometres held under Perpetual Pastoral Lease No. 1139;
  - (f) NT Portion 3431 comprising an area of 5,406 square kilometres 31 hectares held under Perpetual Pastoral Lease No. 1000;
  - (g) NT Portion 6302 comprising an area of 30 square kilometres 55 hectares held for an estate in fee simple by the Imperrenth Aboriginal Corporation;
  - (h) NT Portion 4260 comprising an area of 57 square kilometres being part of the Sandover Stock Route;
  - (i) NT Portion 4868 comprising an area of 30 square kilometres 14 hectares being vacant Crown land to be incorporated into Perpetual Pastoral Lease No. 1105;
  - (j). NT Portion 5162 comprising an area of 56 square kilometres being vacant Crown land to be incorporated into Perpetual Pastoral Lease No. 1105;
  - (k) NT Portion 5163 comprising an area of 81 square kilometres being vacant Crown land to be incorporated into Perpetual Pastoral Lease No. 1105.
  
2. The following areas within the external boundaries of the determination area are not included in the determination area:
  - (a) NT Portion 1600;
  - (b) NT Portion 2000;
  - (c) NT Portion 3802;

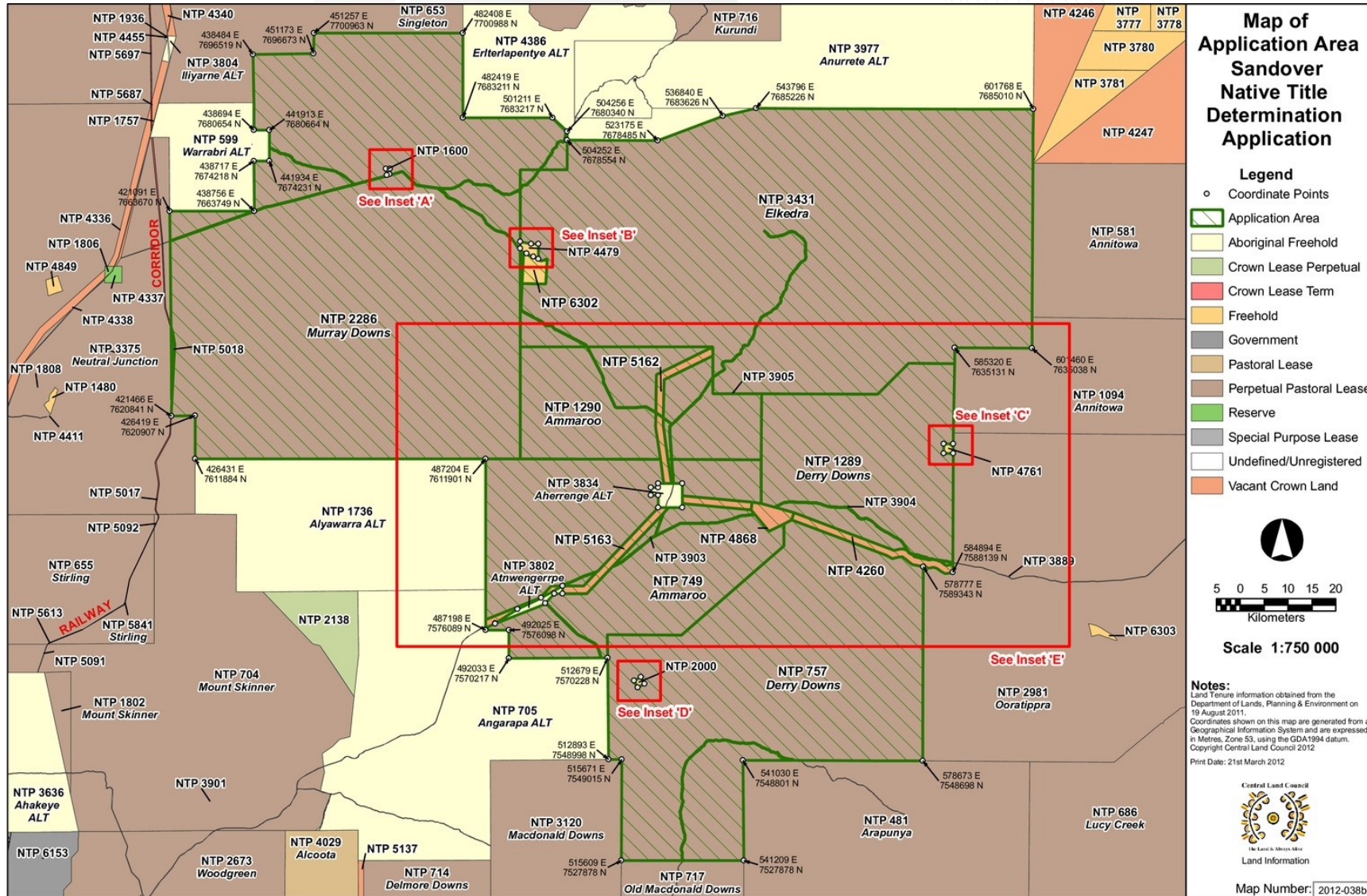


- (d) NT Portion 3834;
- (e) NT Portion 3903;
- (f) NT Portion 3904;
- (g) NT Portion 3905;
- (h) NT Portion 4479;
- (i) NT Portion 4761;
- (j) NT Portion 5018;
- (k) The following roads constructed by or on behalf of the Northern Territory as public roads:
  - (i) a road 100 metres wide from the boundary of NT Portion 705 (Angarapa ALT) to the boundary of NT Portion 1289 (Derry Downs Station) and from there to the boundary of NT Portion 2981 (Ooratippra Station) (Sandover Highway);
  - (ii) a road 100 metres wide from the Sandover Highway on NT Portion 749 to Elkedra Station Homestead on NT Portion 3431 (Elkedra Access Road);
  - (iii) a road 100 metres wide from the boundary of NT Portion 3375 (Neutral Junction Station) to the boundary of NT Portion 4386 (Erterlapenty ALT);
  - (iv) a road 100 metres wide from the Elkedra Access Road on NT Portion 1290 to the boundary of NT Portion 3431 (Elkedra Station) and from there to the junction with the Murray Downs/Kurundi Road;
  - (v) a road 100 metres from the boundary of NT Portion 3802 (Atnwengerrpe ALT) to the boundary of NT Portion 705 (Angarapa ALT);
  - (vi) a road 100 metres wide from the boundary of NT Portion 717 (Old Macdonald Downs Station) to the boundary of NT Portion 481 (Arapunya Station);
  - (vii) a road 100 metres wide from the boundary of NT Portion 599 (Warrabri ALT) to the junction with the Murray Downs Road on NT Portion 2286;
  - (viii) a road 100 metres wide from the boundary of NT Portion 3375 (Neutral Junction Station) to the boundary of NT Portion 1736 (Alyawarra ALT);
  - (ix) a road 100 metres wide from the boundary of NT Portion 1736 (Alyawarra

ALT) to the junction with the Murray Downs Road on NT Portion 2286.

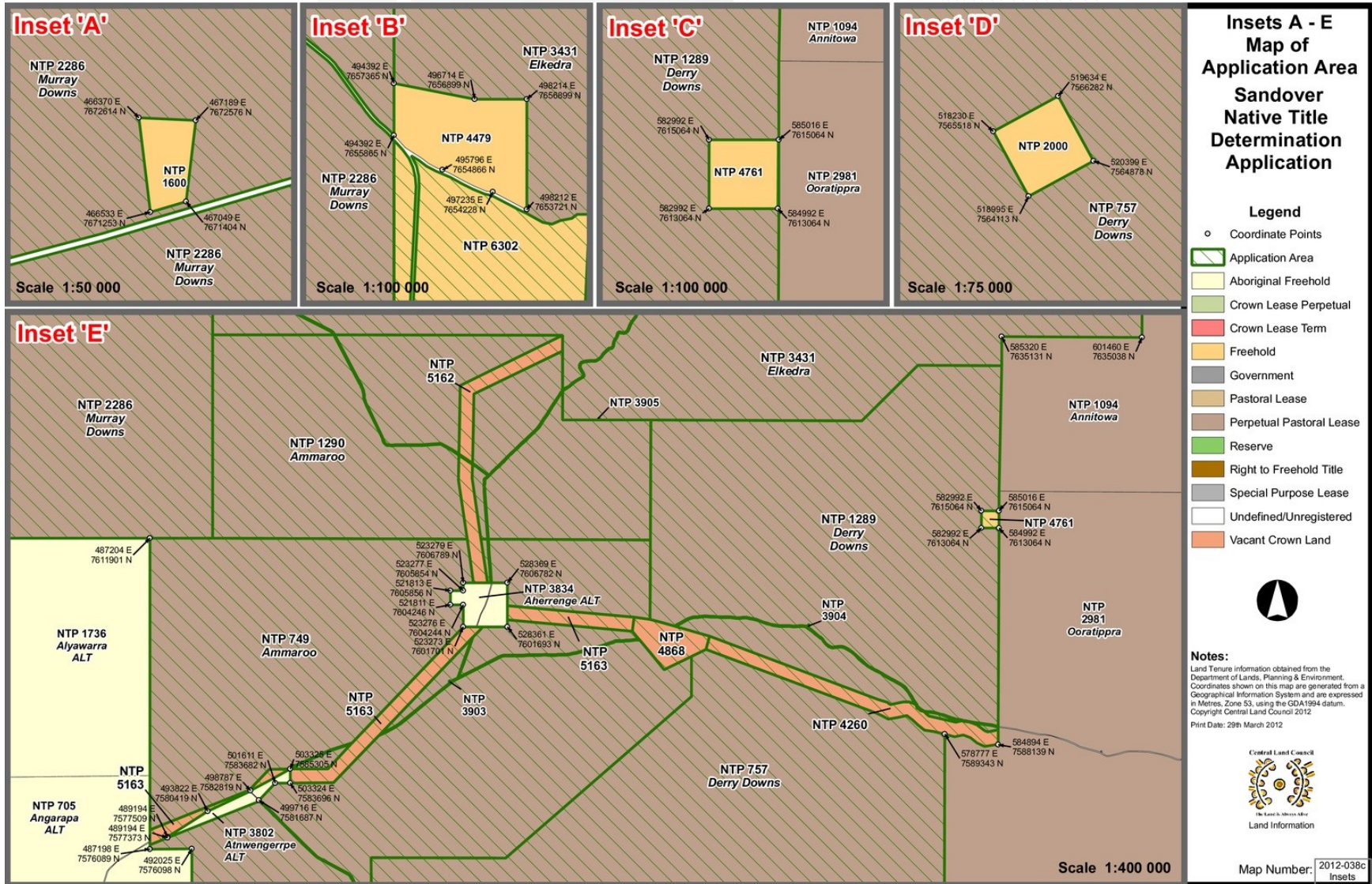
- (x) a road 100 metres wide from the Murray Downs Road to the Murray Downs Station Homestead on NT Portion 2286;
- (xi) a road 100 metres wide (Murray Downs/Elkedra Road) which runs parallel to the boundary between NT Portion 4479 and NT Portion 6302.

### Schedule B - Map of Determination Area





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### 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* ('NTA') 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 NTA) including:
  - (a) public roads, including 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 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 greater than 1500mm (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 2 above native title has been wholly extinguished in the areas covered by the following public works (including land and waters within the meaning of section 251D of the NTA):
  - (a) NT Portion 4868 – Bore No. 11 comprising bore, pump, comet mill/windmill, 1,000m<sup>3</sup> turkey nest and 4 length trough;

- (b) NT Portion 5162 – Bore No.1 comprising bore, pump, troughing and 25,000 gallon tank;
- (c) NT Portion 5163 – Bore No. 8 comprising bore, pump, pipes, turkey nest tank of 1,200m<sup>3</sup> capacity, comet mill/windmill, 4 length trough, crush, concrete loading ramp and yards;
- (d) NT portion 5163 – Bore No. 9 comprising bore, pump, comet mill (concreted), loading ramp (concrete), yard and 1,000m<sup>3</sup> turkey nest.

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

**IN THE FEDERAL COURT OF AUSTRALIA  
NORTHERN TERRITORY DISTRICT REGISTRY  
GENERAL DIVISION**

**NTD 6069 of 2001**

**BETWEEN: BANJO MORTON APETYARR  
FIRST APPLICANT**

**MARTIN SPRATT APETYARR  
SECOND APPLICANT**

**LINDA DOBBS APWERL  
THIRD APPLICANT**

**LULU TEECE APETYARR  
FOURTH APPLICANT**

**COLLEEN MORTON KNGWARREY  
FIFTH APPLICANT**

**AND: NORTHERN TERRITORY OF AUSTRALIA  
FIRST RESPONDENT**

**AMMAROO PTY LTD  
SECOND RESPONDENT**

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THIRD RESPONDENT**

**L&S NOMINEES PTY LTD  
FOURTH RESPONDENT**

**ROY HENRY DRIVER  
FIFTH RESPONDENT**

**JUDGE: MORTIMER J**

**DATE: 14 OCTOBER 2014**

**PLACE: HONEYMOON BORE**

**REASONS FOR JUDGMENT**

**INTRODUCTION**

1 This is an application for a determination of native title in favour of the Alyawarr and Kaytetye people in respect of areas of land and waters located in the Sandover region of the Northern Territory.

2 The area is covered by a number of pastoral leases known as Ammaroo, Derry Downs, Elkedra, and Murray Downs Stations. The claim area is set out in Schedule A of the Further Amended Application and depicted on a map in Attachment A to the Further Amended Application. The claim group comprises people who identify as members of one or more of the 19 landholding groups on whose behalf the applicant has brought this proceeding. The country covered by the application is dry and remote. In the north a prominent feature is the spinifex slopes, and the ground is rocky, but with creeks running down from the Davenport Ranges. To the west the country is drier, and to the south there is another water system — the Bundey River, which is a significant geographical feature. As well as the Sandover River, which is one of the main features running through the application area, there are numerous creek beds, many of which are associated with Dreamings for the claimant group.

3 The applicant and the respondents have reached an agreement for the making of consent orders for a determination of native title over the application area pursuant to s 87 of the *Native Title Act 1993* (Cth) (“the NTA”).

4 The applicant and the Northern Territory provided the Court with a short statement of joint agreed facts and a joint submission in support of the application, together with a minute of proposed orders signed by all current parties to the proceeding.

5 The Court has considered the submissions of the applicant and the Northern Territory that the requirements of ss 223 and 225 of the NTA are satisfied, and why it is appropriate and within the power of the Court to make the orders sought. As appears below, the Court is satisfied of those matters. The Court’s orders will recognise that the Alyawarr and Kaytetye people have and have always had traditional rights and interests in the determination area.

#### **BACKGROUND TO THE APPLICATION AND DETERMINATION**

6 This part of my reasons is taken principally from the statement of agreed facts filed by the applicant and the Northern Territory.

7 This application was filed with the Court on 19 December 2001. The claim area comprises:

- (a) Ammaroo Station (NT Portions 749 and 1290) (Perpetual Pastoral Lease (PPL) 1105);



- (b) three separate parcels of Crown land within the boundary of Ammaroo, namely, NT Portions 5162, 5163, and 4868;
- (c) Derry Downs Station (NT Portion 1289 and 757) (PPL 1107);
- (d) Murray Downs Station (NT Portion 2286) (PPL 1139);
- (e) Elkedra Station (NT Portion 3431) (PPL 1000);
- (f) Dinnie Excision (Imperrenth) Community Living Area (NT Portion 6302); and
- (g) part of the Sandover Stock Route (NT Portion 4260).

8 Notice of the application was given by the Native Title Registrar in accordance with s  
66 of the NTA. The notification period ended on 31 July 2002.

9 There were amendments made to the application in April 2012 and again in  
September 2012, but since the amendments did not result in any change to the land or waters  
covered by the claim, the Registrar was not required to give notice of the amended  
applications pursuant to s 66A: see s 66A(1)(b).

10 A report by Craig Elliott and Dr Natalie Kwok entitled Sandover Native Title  
Application Anthropology Report and dated 22 March 2011 was provided to the Northern  
Territory, which undertook its own consideration of that report.

11 The Elliott and Kwok report is almost 300 pages long. Field research for the report  
commenced in 2007. It is a comprehensive analysis of the landholding groups within the  
claim area (including the senior claimants and relevant genealogies), the history of  
occupation of the claim area and an analysis of the continuity of connection with the claim  
area, a description of the laws and customs relevant to rights and interests in the claim area, a  
description of post-first European contact history and a section on earlier land claims in the  
region of the claim area. The report includes a map of important sites, estates and Dreaming  
tracks in the claim area.

12 The Elliott and Kwok report was considered by a legal officer for the Northern  
Territory. Although the Northern Territory does not have a published policy document  
relating to consent determinations, I am satisfied the Northern Territory has properly  
considered the Elliott and Kwok report and agrees that the native title claim group described  
in Schedule A of the Further Amended Application is comprised of persons who hold non-

exclusive native title rights and interests in the determination area within the meaning of s 223(1) of the NTA.

13 The applicant and Northern Territory worked through the necessary tenure analyses and considered issues raised by public works and pastoral improvements within the claim area, until agreement was ultimately reached. The resources, time, care and dedication which must attend these analyses should not be underestimated. They are integral to the successful conclusion of a determination under s 87.

#### RELEVANT LEGISLATIVE PROVISIONS AND APPLICABLE PRINCIPLES

14 The orders sought must comply with s 94A of the NTA, which requires that details of the matters mentioned in s 225 of the NTA be set out.

15 Section 225 defines a determination of native title as:

A determination ... whether or not native title exists in relation to a particular area (the *determination area*) of land or waters and, if it does exist, a determination of:

- (a) who the persons, or each group of persons, holding the common or group rights comprising the native title are; and
- (b) the nature and extent of the native title rights and interests in relation to the determination area; and
- (c) the nature and extent of any other interests in relation to the determination area; and
- (d) the relationship between the rights and interests in paragraphs (b) and (c) (taking into account the effect of this Act); and
- (e) to the extent that the land or waters in the determination area are not covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease — whether the native title rights and interests confer possession, occupation, use and enjoyment of that land or waters on the native title holders to the exclusion of all others.

16 Section 223 of the NTA defines native title as:

- (1) ... the communal, group or individual rights and interests of Aboriginal peoples ... in relation to land or waters, where:
  - (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples ...; and
  - (b) the Aboriginal peoples ..., by those laws and customs, have a connection with the land or waters; and
  - (c) the rights and interests are recognised by the common law of Australia.

17 I respectfully adopt the summary by Mansfield J in *Far West Coast Native Title Claim v South Australia (No 7)* [2013] FCA 1285 at [38], where his Honour summarised the

relevant principles, by reference to previous decisions in this Court and the High Court in *Members of the Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422; [2002] HCA 58:

A threshold requirement is that the evidence show that there is a recognisable group or society that presently recognises and observes traditional laws and customs in the Determination Area. In defining that group or society, the following must also be addressed:

- (1) that they are a society united in and by their acknowledgement and observance of a body of accepted laws and customs;
- (2) that the present day body of accepted laws and customs of the society, in essence, is the same body of laws and customs acknowledged and observed by the ancestors or members of the society adapted to modern circumstances; and
- (3) that the acknowledgement and observance of those laws and customs has continued substantially uninterrupted by each generation since sovereignty and that the society has continued to exist throughout that period as a body united in and by its acknowledgment and observance of those laws and customs.

18 As his Honour then noted at [39], the claimants must possess rights and interests under the traditional laws acknowledged and the traditional customs observed by them. Those laws and customs must give them a connection to the land which is the subject of the claim.

19 In contrast to contested applications, the process which the Court is able to adopt in relation to a determination proposed by the consent of all affected parties does not require the Court to be satisfied, on the balance of probabilities in reliance on admissible evidence, of all matters comprehended by s 223, approached in the way described in the authorities and by Mansfield J in the *Far West Coast Native Title Claim* case.

20 Section 87 of the NTA authorises a different process. The Court must still be satisfied the orders proposed are appropriate, but the manner in which it reaches that state of satisfaction, and the material upon which it may rely, are different.

21 The preconditions for an order to be made in the current proceeding by consent under s 87 are:

- The period specified in the notice given under s 66 of the Act has passed (s 87(1));
- Agreement has been reached between the parties on the terms of an order of the Court in relation to the whole proceeding (s 87(1)(a)(i));
- The terms of the agreement are in writing, signed by or on behalf of the parties and have been filed with the Court (s 87(1)(b)); and

- The proposed order is within the Court's power (s 87(1)(c)).

22 Where those preconditions are met then, if the Court is satisfied it is appropriate to do so, the Court may make an order in the terms sought by the parties without holding a hearing (s 87(2)).

23 It has been observed by North J (see *Lovett on behalf of the Gunditjmara People v Victoria* [2007] FCA 474 at [37]), in a passage which has been regularly endorsed by other justices of this Court, that in making orders pursuant to s 87, the Court

is not required to examine whether the agreement is grounded on a factual basis which would satisfy the Court at a hearing of the application. The primary consideration of the Court is to determine whether there is an agreement and whether it was freely entered into on an informed basis: *Nangkiriny v State of Western Australia* (2002) 117 FCR 6; [2002] FCA 660; *Ward v State of Western Australia* [2006] FCA 1848. Insofar as this latter consideration applies to a State party, it will require the Court to be satisfied that the State party has taken steps to satisfy itself that there is a credible basis for an application: *Munn v Queensland* (2001) 115 FCR 109; [2001] FCA 1229.

24 Thus, for a consent determination under s 87 there may be some additional matters to which the Court has regard in order to reach the conclusion under s 87(2) that it is appropriate to make the order sought. The power is discretionary, confined only by the scope, subject matter and purpose of the Act (*Lota Warriia (on behalf of the Poruma and Masig Peoples) v Queensland* (2005) 223 ALR 62; [2005] FCA 1117 at [7] per Black CJ; and see generally *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332; [2013] HCA 18 at [23] per French CJ).

25 The Court's reliance on the parties' own processes for negotiating and concluding an agreement, rather than reliance on its own thorough examination of all the evidence measured against the civil standard of proof and in the context of full submissions, means that the Court must be satisfied it is appropriate to rely on not only the outcome to which the parties have agreed, but the process by which that agreement has been reached.

26 The fairness of those processes — demonstrated through the presence of legal representation, involvement of the Court and appropriate consultation with affected parties — will be important. As other judges have pointed out (see, eg, *King on behalf of the Eringa Native Title Claim Group and the Eringa No 2 Native Title Claim Group v South Australia* [2011] FCA 1387 at [21], [31] per Keane CJ), in exercising power under s 87 the Court relies



on the government respondent in particular to have subjected the claims in the application to scrutiny through a process which reflects the requirements in ss 225 and 223(1) of the NTA.

27 The need for the relevant state or territory to act in the interests of all members of the community it represents in turn requires the Court to be satisfied the relevant state or territory has assessed the cogency of the applicant's evidence for itself, and has considered whether its consent to a determination of native title is in the interests of the community it represents. This does not mean, however, that the state or territory needs to conduct a trial in substitution for a trial by the Court: see the observations by Reeves J in *Nelson v Northern Territory* (2010) 190 FCR 344; [2010] FCA 1343 at [12]-[13].

28 A determination of native title, whether pursuant to s 87 or not, is a determination which creates, to the extent of its terms, rights and interests enforceable against all people. There can only be one determination of native title over a given piece of land. The singularity and nature of the interests created means that, although the Court will not embark upon its own enquiry into the merits of the applicant's claim, it must be satisfied the agreement is not only made fairly and freely (as to this aspect see *Nangkiriny v Western Australia* (2002) 117 FCR 6; [2002] FCA 660 at [14] per North J), with appropriate consideration by the state or territory of the wider interests at stake, but also that there is in the material before it a rational and probative basis to find that the orders reflect the requirements of the NTA. This may mean the Court examines at least some of the underlying material supporting the application and which formed the principal basis for the state or territory's consideration of the claim and agreement to it: see, eg, the consideration by Allsop CJ in *Starkey v South Australia* [2014] FCA 924 at [28]-[72].

## CONSIDERATION

### The section 87 preconditions

29 I accept that the preconditions to the making of an order under s 87 have been met in the current proceeding. The period specified in the notice given under s 66 of the NTA ended on 9 July 2013. The documents before the Court provide evidence of an agreement by all parties as to the terms of a determination of native title. The basis for that agreement is set out in the agreed statement of facts filed by the applicant and the Northern Territory, and the minute of proposed orders filed by the parties sets out the terms of the agreement.

30 The proposed orders are within the power of the Court to make. There is no dispute that the application was a valid one under s 61 of the NTA, and it has been acted on and treated as such by all parties. An aspect of its validity is that there is currently no determination of native title over the area which is the subject of this claim, consistently with the requirement in s 13(1)(a) of the NTA. The proposed order is compliant with s 94A of the NTA.

**Discretionary considerations: general**

31 I am satisfied it is appropriate to make an order for the determination of native title in the form sought by the parties. First, there are no overlapping proceedings, or claims, which could have involved the application of s 67 of the NTA.

32 The parties have had the benefit of legal representation and advice, the applicant having been represented by the Central Land Council.

33 The agreed facts establish that issues concerning tenure and extinguishment in relation to the claim area have been investigated by the Northern Territory, and the applicant has been given opportunities to comment on the results of those investigations, and to negotiate with the Northern Territory to the point where the parties were able to reach an agreement as to the parts of the determination area in which native title does and does not exist. The nature and extent of government constructed infrastructure and public works has been identified, and the extent to which this infrastructure and works extinguishes native title has been agreed and incorporated into the proposed determination in Schedule C.

34 It is clear that the Northern Territory has been fully engaged in the conclusion of a consent determination, after an appropriately careful investigation process. I accept that the Northern Territory gives its consent to this determination having considered the interests of the whole of the community it represents and having concluded the determination of native title is justifiable in accordance with the NTA.

**Discretionary considerations: section 223(1)**

35 In this Court, various approaches are taken in published reasons for s 87 determinations. Some reasons involve detailed references to material facts supporting the determination that native title exists over an application area, others less so. An additional and important function of the Court's reasons for judgment, which should not in my respectful opinion be overlooked, is to explain to the wider community the basis on which

those whom the Court recognises as native title holders have the requisite connection with the claim area.

36 Conscious of the matters to which I have referred at [23] to [28] above, in exercising the discretion conferred by s 87 I propose to refer to some material to indicate why I am satisfied there is a probative basis for the parties' agreement.

37 The joint agreed facts did not deal with the application of s 223(1) to this claim. Therefore, I have considered the Elliott and Kwok report. I note that Mr Elliott was also the responsible anthropologist on the Alyawarr, Kaytetye, Warumungu, Wakaya group claim which became the subject of single judge and Full Court decisions in this Court: see *Northern Territory v Alyawarr, Kaytetye, Warumungu, Wakaya Native Title Claim Group* (2005) 145 FCR 442; [2005] FCAFC 135. For the limited purpose I have expressed above, I have also had regard in general terms to affidavits of members of the claim group made in 2011 and 2012 on behalf of the applicant.

### **Society**

38 The Elliott and Kwok report concluded that historical, ethnographic and linguistic evidence indicated that country within the application area was and is identified with the Alyawarr and Kaytetye languages. The authors were very clear in their opinion that Alyawarr and Kaytetye people have always been identified with the region covered by the application in this proceeding.

39 While acknowledging that the groups who occupied the claim area were not "an isolated social universe" and extended beyond the geographical limitations of the application area, the Elliott and Kwok report nevertheless identified a large number of connections between members of the groups, ranging across the economic, religious and ancestral kinship connections. There was, the authors found, a shared system of acknowledged and observed laws and customs concerning land including the claim area, including traditional law about land tenure.

40 The report lists 19 "estate and landholding groups" within the claim area. The authors use the term "estate group" to denote a body of people, joined both by descent and non-descent relationships, who are affiliated with a particular "country" within the claim area. Underlying the affiliation is knowledge of and connection to particular Dreamings on the country. Boundaries are broadly and approximately delineated between estate groups by

“handover sites”, usually water sources, although the authors emphasise it would be wrong to see the boundaries between estate groups as rigid.

41 The estate or landholding groups are: Aharreng, Akaneng, Akweranty Anwerret, Alarilpw, Angkeperretyey, Antarrengeny, Areyn, Arlangkw, Arlpaw, Arnawenty Imangker, Atnerleleng, Atwengerrp, Ileyarn, Irrerlerr, Kwerkepenty, Lyentyawel Ileparranem, Ntewerrek, Pwerrk and Tyaw.

42 These groups correspond to the landholding groups identified in the application and the proposed consent determination orders. The Elliott and Kwok report describes in detail the country with which each group is affiliated, their Dreamings, their sites, apical ancestors and the descendants amongst the senior members of the claim group.

### ***Membership***

43 Group membership (and within the claim group, estate or landholding membership) extends beyond biological descent. It includes adoption in accordance with traditional law and custom, which many of the informants describe in the material as being “grown up” by a person or within a family. Elliott and Kwok also identified several bases outside descent or adoption through which people may be considered part of the landholding group: birthplace or conception affiliation, long-term residence and historical associations (usually over generations), possession of cultural or ritual knowledge or cultural or ritual responsibilities in the area, and succession processes.

### ***Connection with land at sovereignty***

44 Archaeological research for the Alyawarr claim (see [37] above) recorded physical evidence of human occupation ranging from several thousand years ago to just before European contact. Elliott and Kwok describe the significant archaeological, anthropological and ethnographic research undertaken for the previous Alyawarr claim which included material concerning the application area. The presence and acceptance of such a body of material has no doubt aided the acceptance of the present claim by the Northern Territory.

45 The explorer John McDouall Stuart appears to have been the first European to enter the application area, in 1860. Both he and subsequent explorers noted signs of human occupation — fire, carved trees, dug waterholes, and objects such as spears and grinding stones. An extensive network of walking tracks was evident across the area, connecting watercourses, permanent waterholes and camp locations.



46 The Elkedra and Frew River Stations were the first pastoral stations established in the application area, in the late 1880s. The area saw terrible conflict between the Alywarr and pastoralists over the establishment of the stations, with devastating effects on the indigenous populations, both in terms of loss of life and the consequent flight of some indigenous people from the area moving east and north-east.

47 Despite such events, there is a clear and obvious basis for acceptance that ancestors of the claim group had direct connections at sovereignty with the application area through birth, residence and the practice and observance of traditional laws and customs.

***Traditional laws and customs and connection to land***

48 For Alywarr and Kaytetye people the land is, Elliott and Kwok observe, “a physical, metaphysical and humanised manifestation”. The Alywarr and Kaytetye people believe ancestral beings originally owned and inhabited the land. In many cases those ancestral beings metamorphosed into what are now features of the landscape. Thus, what is handed down as “Law” is not the product of “ordinary” human beings. The origin of the “Law” emphasises why, as Elliott and Kwok observe, it is seen by members of the claimant group as sacrosanct, inviolable and ongoing.

49 Naming practices within the claim group reflect connections with different parts of the land, and the Dreamings from those parts. Elliott and Kwok relate in detail the Dreamings held by the claimant group — whether localised, or Dreamings which “travel” across the Alywarr and Kaytetye region and beyond, but which in their localised segment supply the spiritual identity for those who occupy the country within the application area.

50 The term “*arrngertelengk*” is described by Elliott and Kwok as a critical one to Alywarr and Kaytetye people of this area, and is said to denote power from the Dreaming, emerging in ceremonies, songs, painted, engraved and string designs, restricted religious knowledge, sacred names and sacred objects of a restricted nature.

51 Despite the recognition of other forms of group membership, descent relationships primarily give rights to perform ceremonies and make decisions about country (including access). Even long-term residence outside the application area will not cause people to lose these rights. Ceremonial instruction and transmission of knowledge is described in detail by Elliott and Kwok.



52 A significant component of this is *Awely*, the local name for, as Elliot and Kwok describe it, “the genre of women’s ceremonial beliefs and practices concerned with relationships to land.” They continue:

*Awely* involves ritualised body painting, singing, dancing and ceremonial object preparation.... The lyrical, choreographic and iconic content of [the songs and dances] reflects country specific associations. Those with traditional interests in a particular stretch of country hold ownership rights over the performance of its *Awely* and are the key players when performance occurs....

53 Elliott and Kwok identify six principal customary interests and entitlements in land enjoyed by the Alyawarr and Kaytetye people in relation to the claim area. They are: rights to access, travel, live on, camp and erect shelters on the land; rights to hunt and gather; rights to use natural resources of the land including waters; rights to access, maintain and protect significant or sacred sites; rights to conduct cultural activities and teach other group members about the land and waters; and rights to speak for and make decisions about country, and regulate who is recognised as group members.

54 The material in the Elliott and Kwok report, gathered over four years from a very substantial list of informants who directly related and demonstrated the content of these rights and how they were exercised both historically and in a contemporary way, amply supports these conclusions.

55 I am satisfied these rights are consistent with the rights and interests as identified in the orders and determination in this proceeding.

#### ***Continuity of traditional laws and customs and connection to land***

56 The Elliott and Kwok report, and the affidavits made on behalf of the applicant, provide an ample basis for a conclusion about the continuing connection of the Alyawarr and Kaytetye people to the land within the application area. Despite the displacement and intrusion caused by European occupation, this material is capable of demonstrating the Alyawarr and Kaytetye people have maintained and indeed nurtured through successive generations their traditional laws and customs associated with the claim area.

#### **Conclusion on whether section 223(1) is satisfied on the material**

57 The material provided by the applicant identifies the native title claim group in a way which meets the requirements of the NTA. The relevant society consists of the Aharreng, Akaneng, Akweranty Anwerret, Alarilpw, Angkeperretyey, Antarrengeny, Areyn, Arlangkw,

Arlpaw, Arnawenty Imangker, Atnerleleng, Atnwengerrp, Ileyarn, Irrerlerr, Kwerrkepent, Lyentyawel Ileparranem, Ntewerrek, Pwerrk and Tyaw landholding groups.

58 I am satisfied those landholding groups are united in and by their acknowledgement and observance of a body of accepted laws and customs, as I have set out in summary form at [48] to [54] above. The material provided by the applicant demonstrates what is accepted in the present day as the laws and customs of these landholding groups is, in essence and with adaptations reflecting contemporary circumstances, the same body of laws and customs acknowledged and observed by the ancestors of these groups.

59 There is ample material that the acknowledgement and observance of those laws and customs in connection with the land of the claim area has continued substantially uninterrupted by each generation since sovereignty. I am satisfied that the society constituted by the Aharreng, Akaneng, Akweranty Anwerret, Alarilpw, Angkeperretyey, Antarrengeny, Areyn, Arlangkw, Arlpaw, Arnawenty Imangker, Atnerleleng, Atnwengerrp, Ileyarn, Irrerlerr, Kwerrkepent, Lyentyawel Ileparranem, Ntewerrek, Pwerrk and Tyaw landholding groups has continued to exist. The members of those landholding groups continue to adhere to their traditional laws and customs and, through those, to demonstrate their connections to country on the application area.

### **Conclusion on the contents of the proposed determination**

60 I am satisfied that the proposed determination, in the form filed, complies with the requirements in s 225 of the NTA. The proposed minute of orders and the proposed determination is signed on behalf of the applicant and all current respondents to the application.

61 The determination area is agreed, and set out specifically in paragraphs 1 and 2 of the determination, read with Schedules A and B.

62 Paragraph 4 identifies the persons, by the 19 landholding groups consistently with the material set out above, who hold the native title. Paragraph 5 identifies how membership of a landholding group is determined, through both descent and non-descent connections to one (or more) of the 19 estates.

63 Paragraph 6 specifies the nature and extent of the native title rights and interests in relation to the determination area. The areas excluded, and the areas over which native title does not exist, are clearly identified in the schedules to the determination. I am satisfied there

has been sufficient time, and effort, applied to identifying all those with interests, or potential interests, in the determination area. The joint submissions record that the Northern Territory as respondent obtained searches of land tenure and mining and other relevant interests to determine the extent of “other interests” within the proposed determination area and provided copies of those searches to all parties.

64 By far the largest portion of the determination area is covered by non-exclusive pastoral leases, and the determination makes explicit the fact that none of the native title rights and interests are of a kind which entitle the native title holders to exclude all others. Further, paragraphs 11 to 13 make express provision for other aspects of the extent of the native title rights and interests by establishing a hierarchy of interests (paragraph 11), by reference to and reliance upon related agreements between relevant parties (paragraph 12) and by express exclusion of certain kinds of interests from native title rights (paragraph 13).

65 Paragraph 3 of the determination and Schedule C specify the parts of the determination area over which native title does not exist and has been wholly extinguished.

66 These are all matters on which I am satisfied the parties have reached considered agreement, having been properly represented and advised.

67 The orders and the determination in the form sought are appropriate and should be made. In doing so, the Court recognises in a final and enduring way the native title rights and interests in the determination area of those people who are members of the Aharreng, Akaneng, Akweranty Anwerret, Alarilpw, Angkeperretyey, Antarrengeny, Areyn, Arlangkw, Arlpaw, Arnawenty Imangker, Atnerlelengk, Antwengerrp, Ileyarn, Irrerlerr, Kwerkepenty, Lyentyawel Ileparranem, Ntewerrek, Pwerrk and Tyaw landholding groups.

I certify that the preceding sixty-seven (67) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Mortimer.

Associate:

Dated: 14 October 2014