



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NTD1/2018
NNTT Number: DCD2020/007

Determination Name: [Henderson on behalf of the Bamayu \(Wurwanawanji–Yarrayarra\), Bamayu \(Titirku\), Marlinja, Ngapa Jangirulu, Walanypirri and Wilyuku Groups \(Powell Creek Pastoral Lease Proceeding\)](#)

Date(s) of Effect: 28/10/2020

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: 28/10/2020

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
GPO Box 1222
DARWIN Northern Territory 0801

Note: current contact details for the Registered Native Title Body Corporate are available from the Office of the Registrar of Indigenous Corporations www.oric.gov.au

COMMON LAW HOLDER(S) OF NATIVE TITLE:

The native title holders

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

- (a) the Bamayu (Wurwanawanji-Yarrayarra) estate group;
- (b) the Bamayu (Titirku) estate group;
- (c) the Marlinja estate group;

- (d) the Ngapa Jangirulu estate group;
- (e) the Walanypirri estate group; and
- (f) the Wilyuku estate group.

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

6. Each of the estate groups referred to in clause 5 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; or
- (c) having been adopted or incorporated into the descent relationships referred to in (a) or (b) above.

These persons are collectively referred to as the "**estate group members**".

7. In accordance with the traditional laws acknowledged and the traditional customs observed by the estate group members, 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; and
- (b) spouses of the estate group members.

8. Each of the estate groups referred to in clause 7(a) 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; or
- (c) having been adopted or incorporated into the descent relationships referred to in (a) or (b) above.

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. There be liberty to apply to establish the precise location and boundaries of 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 being:
 - (a) The areas of land and waters to which s 47A of the *Native Title Act 1993* (Cth) applies, and more particularly described in item 1 of Schedule C (the "**Schedule C1 areas**"); and
 - (b) The remaining areas of land and waters, being the areas more particularly described in item 2 of Schedule C (the "**Schedule C2 areas**").
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 six estates which are held respectively by the members of the following estate groups:

- (a) the Bamayu (Wurwanawanji-Yarrayarra) estate group;
- (b) the Bamayu (Titiriku) estate group;
- (c) the Marlinja estate group;
- (d) the Ngapa Jangirulu estate group;
- (e) the Walanypirri estate group; and
- (f) the Wilyuku estate group.

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

6. Each of the estate groups referred to in clause 5 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; or
- (c) having been adopted or incorporated into the descent relationships referred to in (a) or (b) above.

These persons are collectively referred to as the "**estate group members**".

7. In accordance with the traditional laws acknowledged and the traditional customs observed by the estate group members, 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; and
- (b) spouses of the estate group members.

8. Each of the estate groups referred to in clause 7(a) 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; or
- (c) having been adopted or incorporated into the descent relationships referred to in (a) or (b) above.

The native title rights and interests

9. Subject to clauses 13, 14 and 17 the native title rights and interests of the estate group members referred to in clause 5 in relation to the Schedule C1 areas, being areas where prior extinguishment of native title is to be disregarded pursuant to s 47A of the Act, are the rights of possession, occupation, use and enjoyment to the exclusion of all others, including the right to access and take for any purpose the resources of those areas.

10. Subject to clauses 12, 13, 14 and 18, the native title rights and interests of the estate group members referred to in clause 5 in relation to the Schedule C2 areas, being an area where there has been partial extinguishment of native title are the rights:

- (a) to access, remain on and use the areas;
- (b) to access and to take for any purpose the resources of the areas; and
- (c) to protect places, areas and things of traditional significance.

11. Subject to clauses 12, 13, 14, 17 and 18, the native title rights and interests of the persons referred to in clause 7

above in relation to the Schedule C1 areas and Schedule C2 areas are the rights:

- (a) to access, remain on and use the areas; and
- (b) to access the resources of the areas.

12. The native title rights and interests identified in clauses 10 and 11 above do not confer on the native title holders:

- (a) possession, occupation, use and enjoyment of those parts of the Determination Area identified in Schedule C to the exclusion of all others;
- (b) any right to control the access to and use of those parts of the land and waters of the areas or their resources;
- (c) any right to access or take:
 - (i) water captured by the holders of Perpetual Pastoral Lease No. 948; or
 - (ii) resources that are the private or personal property of another, including but not limited to:
 - A. infrastructure or fixtures;
 - B. chattels, equipment, machinery or supplies;
 - C. animals, including stock within the meaning of the *Pastoral Land Act 1992* (NT) and the progeny of any such animal, that are the private or personal property of another; and
 - D. plants, crops and grasses that are the private or personal property of another.

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; and
- (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 1953* (NT));
- (b) petroleum (as defined in s 5 of the *Petroleum Act 1984* (NT)); or
- (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.

Non-exhaustive List of Activities

15. Without limiting the native title rights and interests described in clauses 9, 10 and 11 in any way, and without purporting to exhaustively describe the activities which those rights authorise or permit, the rights and interests referred to in clause 10 in relation to the Schedule C2 areas enable the estate group members referred to in clause 5 to:

- (a) travel over, move about and access those areas;
- (b) hunt and fish on the land and waters of those areas;
- (c) gather and to use the natural resources of those areas such as food, medicinal plants, wild tobacco, timber, stone and resin;
- (d) take and to use the natural water on those areas, but this right does not include the right to take or use water captured by the holders of Perpetual Pastoral Lease/Pastoral Lease No. 948;
- (e) live and camp on the areas, and to erect shelters and other structures on those areas;
- (f) light fires for domestic purposes;
- (g) conduct and 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 traditional significance;
- (h) maintain and protect sites and places on those areas that are of traditional significance;
- (i) be accompanied onto 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 those areas;
 - (ii) people who have rights in relation to the areas according to the traditional laws and customs acknowledged by the estate group members; and
 - (iii) people required by the estate group members to assist in, observe, or record traditional activities on the areas.

Other interests in the Determination Area

16. 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 2094, the rights and interests of the holder of Perpetual Pastoral Lease No. 948;
- (b) In relation to NT Portion 3721, the interest of the Jangirurlu Aboriginal Corporation as the holder of a fee simple estate;
- (c) In relation to NT Portion 6154, the interest of the Pamayu Aboriginal Corporation as holder of a fee simple estate (subject to the Powell Creek CLA ILUA No. DI2004/003 entered on the Register of Indigenous Land Use Agreements on 28 June 2004);
- (d) The rights and interests of APT Pipelines (NT) Pty Ltd under:
 - (i) Sublease of part Perpetual Pastoral lease No. 948 (Dealing number 862924 registered 12 January 2016); and
 - (ii) Energy Supply Easement over part Pastoral Lease No. 948 (dealing number 698099 registered 23 April 2009).
- (e) Covenant in gross in favour of the Parks and Wildlife Commission of the Northern Territory (dealing number 699271);
- (f) The access easements registered on 3 January 2006 pursuant to section 14A of the *AustralAsia Railway (Special Provisions) Act* (NT) pursuant to dealing numbers 598491, 598492, 600259, 600260, and 600261 respectively;
- (g) Energy Supply Easement in favour of the Northern Territory of Australia (dealing number 197464 registered on 17 December 1987);
- (h) The rights of the Minister pursuant to the *Heritage Act* (NT) 2011 over the Powell Creek Telegraph Station (proposed NT Portion 5988) as a declared heritage place;
- (i) the rights of Aboriginal persons (whether or not native title holders) pursuant to the reservation in favour of Aboriginal peoples in Perpetual Pastoral Lease No. 948 made by s 38 of the *Pastoral Land Act 1992* (NT);
- (j) the rights of Aboriginal persons (whether or not native title holders) pursuant to the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT);
- (k) 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;
- (l) the rights to water lawfully captured by the holders of other interests;
- (m) the rights and 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;

(n) the rights and interests of the holders of the following titles granted under the *Mineral Titles Act 2010* (NT) the *Petroleum Act 1984* (NT) and the *Energy Pipelines Act 1981* (NT) as depicted in Schedule E:

- (i) Exploration Licence No. 32156 granted on 4 February 2020;
- (ii) Exploration Licence No. 32157 granted on 4 February 2020;
- (iii) Exploration Licence No. 32158 granted on 4 February 2020;
- (iv) Exploration Permit No. 169 granted on 4 April 2013; and
- (v) Onshore Pipeline Licence No.4 granted on 13 December 1985.

Relationship between the native title and other interests

17. The relationship between the native title rights and interests referred to in clauses 9 and 11 and the estates in fee simple over NT Portions 3721 and 6154 referred to in sub-clauses 16 (b) and (c) is that:

(a) 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 estate in fee simple;

(c) if the estate in fee simple or its effects are wholly removed or otherwise wholly cease to operate the native title rights and interests again have full effect; and

(d) if the estate in fee simple 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.

18. The other rights and interests referred to in clause 16(a) and (d)-(n), and the doing of an activity in giving effect to them or of an activity required or permitted by them, prevail over but do not extinguish the native title rights and interests referred to in clauses 9 to 11, and the existence and exercise of the native title rights and interests do not prevent the carrying on of any such activity.

Definitions

19. In this Determination, unless the contrary intention appears:

"the **Act**" means the *Native Title Act 1993* (Cth);

"**land**" and "**waters**" respectively have the same meanings as in the Act;

"**resources**" for the purposes of clauses 9 to 11 of this Determination does not include minerals, petroleum and prescribed substances;

"the **Commonwealth**" means the Commonwealth of Australia; and

"the **Northern Territory**" means the Northern Territory of Australia.

REGISTER ATTACHMENTS:

1. DCD2020_007 Schedule A - Description of Determination Area, 1 page - A4, 28/10/2020
2. DCD2020_007 Schedule B - Map of Determination Area, 2 pages - A4, 28/10/2020
3. DCD2020_007 Schedule C - Areas where native title exists, 1 page - A4, 28/10/2020
4. DCD2020_007 Schedule D - Areas where native title does not exist, 1 page - A4, 28/10/2020
5. DCD2020_007 Schedule E - Map of interests granted under the Mineral Titles Act (NT) and the Petroleum Act (NT), 2 pages - A4, 28/10/2020

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.