



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NTD20/2007
NNTT Number: DCD2017/002

Determination Name: [Penangk on behalf of the members of the Kwaty and Tywerl Landholding Groups v Northern Territory of Australia](#)

Date(s) of Effect: 5/04/2017

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: 05/04/2017

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Please note, there appears to be typographical errors contained in the Matters Determined section. It appears that references to Schedules may not be correct, and should read as follows:

1. The Determination Area comprises part of NT Portion 703 and part of NT Portion 725 being the land and waters more particularly described in Sch **A** and depicted on the map comprising Attachment A to Sch **B**.
3. Native title does not exist in those parts of the Determination Area described in Sch **C**.

REGISTERED NATIVE TITLE BODY CORPORATE:

Kwaty Aboriginal Corporation RNTBC
Agent Body Corporate
C/- Central Land Council
27 Stuart Highway
Alice Springs Northern Territory 0870

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:

4. The Determination Area comprises two estate areas associated with the Kwaty and Tywerl landholding groups (the landholding groups) respectively.

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.
- (c) recognised as members of the Kwaty landholding group in accordance with traditional succession processes;
- (d) those persons with a connection to the Kwaty estate on the basis of their possession of religious knowledge of the *Anthep* (Dancing Women) Dreaming and/or the *Atyelp* (Western Quoll or Native Cat) Dreaming and associated Men's Law.

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. Kwaty Aboriginal Corporation (ICN: 8416) 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.
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 Sch C of the Determination.

DETERMINATION:

The Determination Area

1. The Determination Area comprises part of NT Portion 703 and part of NT Portion 725 being the land and waters more particularly described in Sch B and depicted on the map comprising Attachment A to Sch C.
2. Native title exists in the Determination Area.
3. Native title does not exist in those parts of the Determination Area described in Sch B.

The native title holders

4. The Determination Area comprises two estate areas associated with the Kwaty and Tywerl landholding groups (the **landholding groups**) respectively.
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.

(c) recognised as members of the Kwaty landholding group in accordance with traditional succession processes;

(d) those persons with a connection to the Kwaty estate on the basis of their possession of religious knowledge of the *Anthep* (Dancing Women) Dreaming and/or the *Atyelp* (Western Quoll or Native Cat) Dreaming and associated Men's Law.

Native title rights and interests

6. The native title rights and interests of the native title holders are the non-exclusive native title rights and interests possessed under and exercisable in accordance with the traditional laws acknowledged and traditional customs observed, 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 Lease No. 1030 and 1097 respectively;
- (f) the right to light fires for domestic purposes, but not for the clearance of vegetation;
- (g) the right to share or exchange natural resources obtained on or from the land and waters, including traditional items made from the natural resources;
- (h) 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;
- (i) 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; and
 - (v) teaching the physical and spiritual attributes of sites and places on the land and waters that are important under traditional laws and customs;
- (j) the right to 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 provided that the right does not extend to making any decision that purports to control the access of such persons to the determination area;
- (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.
- (l) the right to conduct activities necessary to give effect to the rights referred to in (a) to (k) hereof.

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 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 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.

Other rights and interests

9. The nature and extent of the other interests in the Determination Area are:

(a) NT Portion 703:

- (i) the interest of Aileron Pastoral Holdings Pty Ltd (ACN 605 457 421) under Perpetual Pastoral Lease No 1097;
- (ii) the rights and interests of APT Pipelines (NT) Pty Ltd as the beneficiary of the rights and interests under Energy Supply Easement Dealing No. 189875 granted to the Northern Territory of Australia;
- (iii) the rights and interests of APT Pipelines (NT) Pty Ltd as the beneficiary of the rights and interests under Access Easement Dealing No. 600280 granted to the Northern Territory of Australia;
- (iv) the rights and interests of APT Pipelines (NT) Pty Ltd as the beneficiary of the rights and interests under Access Easement Dealing No. 598372 granted to the Northern Territory of Australia;
- (v) the interests of APT Pipelines (NT) Pty Ltd in Sublease Dealing No. 819590.

(b) NT Portion 725:

- (i) the interest of Australian Green Properties Pty Ltd (ACN 125 718 667) under Perpetual Pastoral Lease No. 1030;
- (ii) the rights and interests of APT Pipelines (NT) Pty Ltd as the beneficiary of the rights and interests under Energy Supply Easement Dealing No 189878 granted to the Northern Territory of Australia;
- (iii) the interests of Centralian Pastoral Pty Ltd (ACN 616 484 621)) as trustee for the Centralian Pastoral

Trust in Access Easement Dealing No. 256131;

(iv) the interests of TTG Nominees Pty Ltd (ACN 163 811 345) as trustee for the TTG Unit Trust in Access Easement Dealing No. 256127.

(c) the interests of the holders of the following mining titles granted pursuant to the *Mineral Titles Act* (or its predecessor):

No.	Expiry Date	Holder
EL 28498	11/08/2017	Arafura Resources Limited
EL 28473	4/10/2017	Arafura Resources Limited

(d) in relation to NT Portions 703 and 725 the rights of Aboriginal persons (whether or not native title holders) pursuant to the reservation in favour of Aboriginal people contained in pastoral leases identified in section 38(2) to (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, Commonwealth or other statutory authority as required in the performance of his or her statutory duties;

(g) 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

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

Other matters

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

(a) minerals (as defined in s 2 of the *Minerals Acquisition Act 1953* (NT));

(b) petroleum (as defined in s 5 of the *Petroleum Act 1984* (NT));

(c) prescribed substances (as defined in s 5 of the *Atomic Energy Act 1953* (Cth) and s 3 of the *Atomic Energy (Control of Materials) Act 1946* (Cth)).

12. 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.

13. 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 and waters:

(a) that part of NT Portion 703 comprising an area of 82 square kilometres 43 hectares 9,253 square metres held under Perpetual Pastoral Lease No. 1097 not included in proceeding NTD08/2014 (Aileron Pastoral Lease).

(b) that part of NT Portion 725 comprising an area of 128 square kilometres 72 hectares 6,903 square metres held under Perpetual Pastoral Lease No. 1030 not included in proceeding NTD44/2016 (Pine Hill West).

Schedule B - Map of Determination Area

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

Schedule C - Areas where native title does not exist

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

Public works

1. Those parts of the Determination Area covered by public works as defined in section 253 of the *Act* that were constructed or established before 23 December 1996 or commenced to be constructed or established on or before that date (including land and waters within the meaning of section 251D of the *Act*), including:

- (a) public roads, namely, rural public roads (50m either side of the centre line), rural arterial roads and national highways and associated road infrastructure;
- (b) community, pastoral access and other roads (including access roads and tracks to public works referred to in this clause) which are not otherwise public roads;
- (c) gravel and fill pits established to maintain the roads referred to in (a) and (b) above;
- (d) government bores and associated works;
- (e) river and rain gauges;
- (f) transmission water pipes (adjacent area 5 metres either side of the centreline);
- (g) distribution water pipes measuring 150mm diameter or less (adjacent area of 1.5 metres either side of the centreline) and greater than 150mm diameter (adjacent area 5 metres either side of the centreline);
- (h) sewer pipes measuring 150mm diameter or less (adjacent area 1.5 metres either side of the centreline) and greater than 150mm diameter (adjacent area 5 metres either side of the centreline);
- (i) bores, sewer pump stations and overhead power lines.

REGISTER ATTACHMENTS:

1. Schedule B - Map of Determination Area, 1 page - A4, 05/04/2017

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.