

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NTD33/2013
NNTT Number: DCD2015/001

Determination Name: Durrayjaba v Northern Territory of Australia

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

Determination Outcome: Native title exists in parts of the determination area

Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

Determination Date: 24/11/2015

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Top End (Default PBC/CLA) Aboriginal Corporation RNTBC
Agent Body Corporate
C/- Mr Jonathan Kneebone
GPO Box 1222
DARWIN Northern Territory 0801

COMMON LAW HOLDER(S) OF NATIVE TITLE:

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

- (a) Jiningina (Wuyaliya) Estate Group
- (b) Garambarini (Wurdaliya) Estate Group
- (c) Wearyan (Mambaliya) Estate Group
- (d) Mambu (Mambaliya) Estate Group
- (e) Mimbiri (Mambaliya) Estate Group
- (f) Fletcher Creek (Wuyaliya) 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 native title rights and interests in respect of the Determination Area, subject to the native title rights and interests of the estate group members, such people being:

- (a) members of estate groups from neighbouring estates;
- (b) spouses of the estate group members.

8. Each of the estate groups referred to in clause 7(a) hereof includes persons who are members of the group by reason of:

- (a) patrilineal descent;
- (b) his or her mother, father's mother or mother's mother being or having been a member of the group by reason of patrilineal descent;
- (c) having been adopted or incorporated into the descent relationships referred to in (a) or (b) hereof.

**MATTERS DETERMINED:
THE COURT ORDERS THAT:**

- 1. There be a determination of native title in terms of the determination set out below.
- 2. The native title is not to be held on trust.
- 3. The Top End (Default PBC/CLA) Aboriginal Corporation RNTBC be appointed as the prescribed body corporate for the purposes of s 57(2) of the Act in respect of the area the subject of the determination.
- 5. The parties have liberty to apply to establish the precise location and boundaries of the public works and adjacent land and waters identified in relation to any part or parts of the Determination Area referred to in Schedule D of this determination.

THE COURT DETERMINES THAT:

The Determination Area

- 1. The Determination Area is the land and waters described in Schedule A hereto and depicted on the map comprising Schedule B.
- 2. Native title exists in those parts of the Determination Area identified in Schedule C.
- 3. Native title does not exist in those parts of the Determination Area identified in Schedule D.
- 4. In the event of any inconsistency between a description of an area in a schedule and the depiction of that area on the map in Schedule B, the written description will prevail.

The native title holders

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

- (a) Jiningina (Wuyaliya) Estate Group

- (b) Garambarini (Wurdaliya) Estate Group
- (c) Wearyan (Mambaliya) Estate Group
- (d) Mambu (Mambaliya) Estate Group
- (e) Mimbiri (Mambaliya) Estate Group
- (f) Fletcher Creek (Wuyaliya) 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 native title rights and interests in respect of the Determination Area, subject to the native title rights and interests of the estate group members, such people being:

- (a) members of estate groups from neighbouring estates;
- (b) spouses of the estate group members.

8. Each of the estate groups referred to in clause 7(a) hereof includes persons who are members of the group by reason of:

- (a) patrilineal descent;
- (b) his or her mother, father’s mother or mother’s mother being or having been a member of the group by reason of patrilineal descent;
- (c) having been adopted or incorporated into the descent relationships referred to in (a) or (b) hereof.

The native title rights and interests

9. Subject to clauses 10, 11 and 13, the native title rights and interests of the native title holders in relation to Pastoral Lease No. 687, being an area where extinguishment of native title is to be disregarded pursuant to s 47 of the Act, are:

- (a) except in relation to flowing and subterranean waters, the right to possession, occupation, use and enjoyment of that part of the Determination Area to the exclusion of all others;
- (b) in relation to flowing and subterranean waters, the right to use those waters including the right to:
 - (i) hunt on, gather, and fish from; and
 - (ii) take and use;

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

10. The native title rights and interests are subject to and exercisable in accordance with:

- (a) the traditional laws and customs of the native title holders for personal or communal needs which are of a domestic or subsistence nature and not for any commercial or business purpose;

(b) the laws of the Northern Territory of Australia and the Commonwealth of Australia.

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

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

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

(c) prescribed substances (as defined in s 3 of the *Atomic Energy (Control of Materials) Act 1946* (Cth) and/or s 5(1) of the *Atomic Energy Act 1953* (Cth)),

in the Determination Area.

Other interests in the Determination Area

12. 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 814, the interests of James Mawson, Dulcie Mawson, Ian Mawson, Linda Mawson, Daphne Mawson, Kathleen Mawson, Jocelyn Mawson, Clive Mawson and Cindy Mawson as holders of Pastoral Lease No. 687;

(b) the rights and interests of Telstra Corporation Limited:

(i) as the owner or operator of telecommunications facilities within the Determination Area;

(ii) created pursuant to the *Post and Telegraph Act 1901* (Cth), the *Telecommunications Act 1975* (Cth), the *Australian Telecommunications Corporation Act 1989* (Cth), the *Telecommunications Act 1991* (Cth) and the *Telecommunications Act 1997* (Cth), including rights:

(A) to inspect land;

(B) to install and operate telecommunications facilities; and

(C) to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities;

(iii) for its employees, agents or contractors to access its telecommunications facilities in, and in the vicinity of, the Determination Area, in the performance of their duties;

(iv) under any lease, licence, access agreement or easement relating to its telecommunications facilities in the Determination Area;

(c) 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 687 and in ss 38(2) - (6) of the *Pastoral Land Act* (NT);

(d) the rights of Aboriginal persons (whether or not native title holders) pursuant to the *Northern Territory Aboriginal Sacred Sites Act* (NT);

(e) 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;

(f) rights and interests held by reason of the force and operation of the *Water Act* (NT);

(g) existing rights of the public for access and enjoyment pursuant to s 13 *Validation (Native Title) Act* (NT) in relation to:

(i) waterways;

(ii) beds and banks of foreshores or waterways;

(iii) coastal waters;

(iv) beaches;

(v) areas that were public places at the end of 31 December 1993;

- (h) 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;
- (i) the following interests granted under the *Mineral Titles Act* (NT) and the *Petroleum Act* (NT), depicted in Schedule E:
 - (i) Exploration Licence Title No. 26539 granted on 1 August 2008;
 - (ii) Exploration Permit Title No. 176 granted on 29 June 2011;
 - (iii) Exploration Permit Title No. 174 granted on 11 December 2012;
 - (iv) Exploration Permit Title No. 190 granted on 11 December 2012.
 - (v) Exploration Licence Title No. 29837 granted on 27 August 2013;
 - (vi) Exploration Licence Title No. 29952 granted on 21 November 2013;
 - (vii) Exploration Licence Title No. 29953 granted on 14 February 2014;
 - (viii) Exploration Licence Title No. 30079 granted on 9 May 2014;
 - (ix) Exploration Licence Title No. 24082 granted on 17 October 2015;
- (j) the rights and interests of the parties under the following agreements:
 - (i) Co-existence and Exploration Deed for Exploration Permit Title No. 171 and Exploration Permit Title No. 176 between Armour Energy Limited, the Native Title Parties and the Northern Land Council dated 22 June 2011;
 - (ii) Co-existence and Exploration Deed for Exploration Permit Title No. 174 between Armour Energy Limited, the Native Title Parties and the Northern Land Council dated 19 November 2012;
 - (iii) Co-existence and Exploration Deed for Exploration Permit Title No. 190 between Armour Energy Limited, the Native Title Parties and the Northern Land Council dated 19 November 2012.

Relationship between native title rights and interests and other interests in the Determination Area

13. The relationship in the Determination Area between native title rights and interests and the other rights and interests described in clause 12 (“other rights and interests”) is that:

- (a) the enjoyment and exercise of the native title rights and interests described in clause 9(a) are partly inconsistent with Pastoral Lease No. 687 such that the native title rights and interests described in clause 9(a) continue to exist in their entirety but have no effect in relation to Pastoral Lease No. 687;
- (b) if Pastoral Lease No. 687 or its effects are wholly removed or otherwise wholly cease to operate over any part of NT Portion 814, the native title rights described in clause 9(a) again have full effect to that extent;
- (c) to the extent, if at all, that the exercise of the native title rights and interests referred to in clauses 9, 14, and 15 conflicts with the exercise of the rights and interests of the persons referred to in clause 12, the rights and interests of the persons referred to in clause 12 prevail over, but do not extinguish, the native title rights and interests referred to in clauses 9, 14 and 15.

14. The native title rights and interests of the estate group members referred to in clause 5 hereof that are not inconsistent with Pastoral Lease No. 687 are:

- (a) the right to travel over, to move about and to have access to those areas;
- (b) the right to hunt and to fish on the land and waters of those areas;
- (c) the right to gather and to use the natural resources of those areas such as food, medicinal plants, wild tobacco, timber, stone and resin;
- (d) the right to take and to use the natural water on those areas, and for the sake of clarity and the avoidance of doubt this right does not include the right to take or use water captured by the holders of Pastoral Lease No.

687;

(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;

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;

(g) the right to maintain and to protect sites and places on those areas that are of significance under their traditional laws and customs;

(h) the right to share or exchange subsistence and other traditional resources obtained on or from those areas;

(i) 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;

(j) the right to conduct activities necessary to give effect to the rights referred to in (a) to (j) hereof.

15. The native title rights and interests of the native title holders referred to in clause 7 hereof that are not inconsistent with Pastoral Lease No. 687 are:

(a) the right to travel over, to move about and to have access to those areas;

(b) the right to hunt and to fish on the land and waters of those areas;

(c) the right to gather and to use the natural resources of those areas such as food, medicinal plants, wild tobacco, timber, stone and resin;

(d) the right to take and to use the natural water on those areas and for the sake of clarity and the avoidance of doubt this right does not include the right to take or use water captured by the holders of Pastoral Lease No. 687;

(e) the right to camp on those areas;

the right to light fires on those areas for domestic purposes, but not for the clearance of vegetation;

(f) the right to conduct activities necessary to give effect to the rights referred to in (a) to (f) hereof.

Schedule A

Description of Determination Area

The Determination Area comprises the following areas of land:

1. NT Portion 814, being land the subject of Pastoral Lease No. 687.

Schedule B

Map of Determination Area

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

Schedule C

Areas where native title exists

The area of land and waters in respect of which the native title rights and interests exist include:

1. NT Portion 814, being land the subject of Pastoral Lease No. 687 except those parts thereof referred to in Schedule D.

Schedule D

Areas where native title does not exist

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

1. Those parts of the Determination Area covered by public works as defined in s 253 of the Act (including adjacent land or waters as defined in s 251D of the Act) which were constructed, established or situated prior to 23 December 1996 or commenced to be constructed or established on or before that date, including but not limited to:
 - (a) the McArthur River gas pipeline and associated infrastructure;
 - (b) public roads, whether rural roads, arterial roads or national highways;
 - (c) community and pastoral access roads which are not otherwise public roads;
 - (d) gravel pits adjacent to the roads referred to at paragraphs (a) and (b) hereof used to maintain those roads;
 - (e) access roads or tracks to the public works referred to in this clause;
 - (f) Government bores and associated infrastructure including bores used for the establishment, operation or maintenance of public and other roads;
 - (g) river and rain gauges;
 - (h) transmission and distribution water pipes and associated infrastructure;
 - (i) sewer pipes, sewer pump stations and associated infrastructure; and
 - (j) electricity transmission lines, towers, poles and associated infrastructure.

Schedule E

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

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

REGISTER ATTACHMENTS:

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

Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.