



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: NTD26/2018
NNTT number: DR2018/001

Application Name: Alherramp Ilewerr Mamp Arangkey Tywerl Aboriginal Corporation RNTBC and Northern Territory of Australia (Napperby# 2 Pastoral Lease)

Application Type: Revised Native Title Determination

Application filed with: Federal Court of Australia

Date application filed: 16/07/2018

Current status: Full Approved Determination - 19/08/2020

Applicants: Alherramp Ilewerr Mamp Arangkey Tywerl Aboriginal Corporation RNTBC (ICN: 7894)

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Additional Information

Not applicable

Grounds for Varying/Revoking Determination:

1. Schedule C of the approved native title determination describes the areas of land and waters where native does not exist and includes those parts of the determination area on which enumerated pastoral improvements were constructed prior to the date of the determination and any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvements (**pastoral improvements clause**).

2. The inclusion of the pastoral improvements clause in the determination was attributable to the decision of the Full Court of the Federal Court in *De Rose v South Australia (No 2)* (2005) 145 FCR 290, 331-333 [149]-[157] in which the Full Court held that the grant in a pastoral lease of a right to construct improvements on the land, when exercised, was inconsistent with and extinguished native title rights and interests in the land on which the improvements were constructed and in any adjacent land reasonably necessary for or incidental to the operation or

enjoyment of the improvements. In relation to the Northern Territory the decision in *De Rose (No 2)* was applied in *King v Northern Territory of Australia* [2006] FCA 944 at [148]-[170], esp. [148]-[149]. The pastoral improvements clause has been included in subsequent determinations of native title by consent in the Northern Territory.

3. In *Western Australia v Brown* (2014) 306 ALR 168; [2014] HCA 8 at [23], [59]-[62] the High Court held that this aspect of the decision of the Full Court of the Federal Court in *De Rose (No 2)* was incorrectly decided:

[60] ... The decision proceeded from a misunderstanding of what was decided in *Ward*. It assumed, wrongly, that the principles applied in *Ward* permit the deferral of consideration of extinguishment until the manner of exercise of the allegedly inconsistent and extinguishing rights is known. So to proceed would be to return to and adopt the argument about practical inconsistency advanced but rejected in *Wik*.

...
[62] The decision in *De Rose (No 2)* assumed, again wrongly, that the permitted construction of an improvement on land held under a "lease" which did not give a right of exclusive possession necessarily affected the *existence* of native title rights and interests rather than the manner of their exercise. That is, the decision treated extinguishment as determined by the manner of exercise of the allegedly inconsistent right rather than, as it must be, by the nature and content of the two rights which are said to be inconsistent.

3. Accordingly, it is appropriate to vary Schedule C of the approved determination of native title to remove the clause headed "Pastoral Improvements".

Application Area: **State/Territory:** Northern Territory
Brief Location: North of Laramba, Northern Territory
Primary RATSIB Area: Southern Northern Territory
Approximate size: 5430.5140 sq km
(Note: There may be areas within the external boundary of the application that are not claimed.)
Does Area Include Sea: No

Area covered by the claim (as detailed in the application):

- (a) The area covered by the application comprises the following areas of land:
- (a) NT Portion 747 comprising an area of 3,146 square kilometres held under Perpetual Pastoral Lease No. 1178;
 - (b) NT Portion 748 comprising an area of 2,278 square kilometres held under Perpetual Pastoral Lease No. 1177;
 - (c) That part of NT Portion 5165 (which comprises an area of 91 square kilometres and is part of the North-West Stock Route) not contained within the Tanami Road.
- (b) The following areas within the external boundaries of the determination area are not included in the determination area:
- (a) NT Portion 3882 comprising an area 149.3 hectares located within the boundaries of NT Portion 747 held for an estate in fee simple by Kumanji Pty Ltd (ACN 098 097 002) as trustee for the Counterfeit Superannuation Fund.
 - (b) NT Portion 3971 comprising an area of 5,620 square metres located within the boundaries NT Portion 3882 held for an estate in fee simple by Telstra Corporation Limited (ACN 051 775 556) of GPO Box 1966, Adelaide SA 5001.
 - (c) NT Portion 4069 comprising an area 508 hectares located within the boundaries of NT Portion 748 held for an estate in fee simple by Laramba Community Incorporated as an Aboriginal Community Living Area.
 - (d) A road 100 metres wide which traverses the northeastern corner of NT Portion 747 from the boundary with Aileron Station (NT Portion 703) in the east to the Laramba Community (NT Portion 4069) located within the boundaries of NT Portion 748.
 - (e) A road 100 metres wide (Tanami Road) which traverses NT Portion 747 from the boundary with Narwietooma Station (NT Portion 727) in the south to the boundary with the Ngalurrju Aboriginal Land Trust (NT Portion 3271) in the northwestern corner.

Attachments: 1. Administrative Interests - Attachment A of the application, 17 pages - A4, 16/07/2018

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