



## Extract from the National Native Title Register

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### Determination Information:

**Determination Reference:** Federal Court Number(s): NTD6043/2001  
NNTT Number: DCD2011/001

**Determination Name:** [Kngwarrey on behalf of the members of the Irrkwal, Irrmarn, Ntewerrek, Aharreng, Arrty/Amatyerr and Areyn Landholding Groups v Northern Territory of Australia](#)

**Date(s) of Effect:** 19/04/2012

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

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

**Determination Date:** 05/05/2011

**Determining Body:** Federal Court of Australia

#### ADDITIONAL INFORMATION:

This determination of native title was handed down by the Federal Court on 5 May 2011 but was to take effect 'immediately upon the making of a determination' of the Prescribed Body Corporate under s 57(2). The Prescribed Body Corporate was determined on 19 April 2012. Therefore, the determination became effective on that date.

#### REGISTERED NATIVE TITLE BODY CORPORATE:

Ooratippra Aboriginal Corporation RNTBC  
Agent Body Corporate  
c/- John Barber  
Alpurrurulam Community  
PMB23  
Mt Isa Queensland 4823

*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](http://www.oric.gov.au)*

#### COMMON LAW HOLDER(S) OF NATIVE TITLE:

3. The determination area comprises four estate areas associated with the Irrkwal, Irrmarn, Ntewerrek, Aharreng, Arrty/Amatyerr and Areyn landholding groups.
4. 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 3 by virtue of descent (including adoption) through father's father, mother's father, father's mother and mother's mother;

(b) accepted as members of one or more of the landholding groups referred to in paragraph 3 by senior members of a landholding group, referred to in subparagraph (a), by virtue of non-descent connections to an estate.

## **MATTERS DETERMINED:**

### THE COURT ORDERS THAT

1. There be a determination of native title in the terms set out below ('the determination'), the determination to take effect:

(a) as to paragraph 3 and 4 of the determination - immediately upon the making of these Orders; and

(b) as to the balance of the determination - immediately upon the making of a determination under section 57(2) of the Native Title Act 1993 (Cth) in accordance with orders (3) or (4).

2. Upon the determination taking effect, native title is not held in trust but is held by the common law holders of native title being the persons referred to in paragraph 3 of the determination.

3. Within twelve months of the date of this order, the Applicants in NTD6043/2001 are to file and serve a notice nominating a prescribed body corporate to:

(a) be the prescribed body corporate for the purposes of section 57(2) of the Native Title Act 1993 (Cth); and

(b) perform the functions mentioned in section 57(3) of the Native Title Act 1993 (Cth) after becoming a registered native title body corporate.

4. In the event that there is no nomination within the time specified in accordance with order (3) or such later time as this Court may order, the matter is to be listed for further directions.

5. 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;

### THE COURT DETERMINES THAT:

#### THE DETERMINATION AREA

1. The determination area comprises NT Portion 2981 and NT Portion 6303 being the land and waters more particularly described in Schedule A and depicted on the map comprising Schedule B.

2. Exclusive native title rights and interests exist in the determination area - section 47 of the Native Title Act 1993 (Cth) applies.

#### THE NATIVE TITLE HOLDERS

3. The determination area comprises four estate areas associated with the Irrkwal, Irrmarn, Ntewerrek, Aharreng, Arrty/Amatyerr and Areyn landholding groups.

4. 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 3 by virtue of descent (including adoption) through father's father, mother's father, father's mother and mother's mother;

(b) accepted as members of one or more of the landholding groups referred to in paragraph 3 by senior members of a landholding group, referred to in subparagraph (a), by virtue of non-descent connections to an estate.

#### NATIVE TITLE RIGHTS AND INTERESTS

5. The native title rights and interests confer possession, occupation, use and enjoyment of the land and waters on the native title holders to the exclusion of all others.

6. The native title rights and interests are held subject to and exercisable in accordance with the traditional laws and customs of the native title holders.

#### Other interests

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

(a) NT Portion 2981 - the interest of Ooratippra Aboriginal Corporation under Perpetual Pastoral Lease No. 921;

- (b) NT Portion 2981 - the interest of Richard Cadzow, Anne Cadzow and Steven Cadzow under a sub-lease of the whole of the land comprised in Perpetual Pastoral Lease No. 921;
- (c) NT Portion 6303 - the interest of Irretety Aboriginal Corporation as the holder of a fee simple estate in the land;
- (d) the interest of Mincor Zinc Pty Ltd in EL25089 and EL25091 granted under the Mining Act (NT);
- (e) the interest of Acacia Minerals Pty Ltd in SEL 27526, EL27568, EL27626, EL27714, EL27715, EL27716, EL27717, EL27718, EL27719, and EL27720 granted under the Mining Act (NT);
- (f) the interest of Territory Phosphate Pty Ltd in EL25185 granted under the Mining Act (NT);
- (g) the interest of Natural Resources Exploration Pty Ltd in EL27840 granted under the Mining Act (NT);
- (h) the interest of Petrofrontier (Australia) Pty Ltd and Teralta Australia Pty Ltd in EP103 granted under the Petroleum Act (NT);
- (i) the interest of Northern Territory Oil Limited, Baraka Petroleum Limited and Petrofrontier (Australia) Pty Ltd in EP128 granted under the Petroleum Act (NT);
- (j) 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 the right;
    - A. to inspect land for the purpose of determining whether the land is suitable for its purposes;
    - B. to install and operate telecommunication facilities;
    - C. to alter, remove, replace, maintain, repair and ensure the proper functioning of its existing and any new telecommunication facilities; and
    - D. for its employees, agents or contractors to access the Determination Area for the purpose of exercising the rights in (i), (ii) and (iii) above in respect of telecommunication facilities in and in the vicinity of the Determination Area; and under any licences or access agreements relating to its telecommunications facilities in the Determination Area.
- (k) in relation to NT Portion 2981 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 sections 38(2) to (6) of the Pastoral Land Act 1992 (NT);
- (l) the rights of Aboriginal persons (whether or not native title holders) by virtue of the Northern Territory Aboriginal Sacred Sites Act 1989 (NT);
- (m) 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;
- (n) 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 THE RIGHTS AND INTERESTS

8. In relation to NT Portion 2981 the relationship between the native title rights and interests referred to in paragraph 5 and the interest of the Ooratippra Aboriginal Corporation is that the non-extinguishment applies. The grant of Perpetual Pastoral Lease No. 921 is:

(a) partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests as follows:

(i) to the extent that the rights and interests confer possession, occupation, use and enjoyment of the land and waters to the exclusion of all others;

(ii) the native title continues to exist in its entirety, but the rights and interests have no effect in relation to the lease to that extent;

(iii) if the lease or its effects are wholly removed or otherwise wholly cease to operate the native title rights and interests again have full effect;

(b) not inconsistent with the continued existence, enjoyment or exercise of the non-exclusive native title rights and interests set out in paragraph 9 hereof.

9. The native title rights and interests that are not inconsistent with the interest of the Ooratippra Aboriginal Corporation under Perpetual Pastoral Lease No. 921 are the rights possessed under and exercisable in accordance with the traditional laws and customs of the native title holders, 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;

(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,

including the power to regulate the presence of others at any of these activities on the land and waters, other than persons exercising a right conferred by or arising under a law of the Northern Territory or the Commonwealth in relation to the use of the land and waters;

(i) 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;

(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.

10. In relation to NT Portion 6303 the relationship between the native title rights and interests referred to in paragraph 5 and the interest of the Irretety 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 grants 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.

11. In relation to NT Portion 2981 to the extent, if at all, that the exercise of the native title rights and interests referred to in paragraph 5 is inconsistent with the exercise of the other rights and interests referred to in paragraph 7, the other rights and interests prevail over, but do not extinguish, the native title rights and interests.

#### OTHER MATTERS

12. The native title rights and interests are subject to and exercisable in accordance with the valid laws of the Northern Territory of Australia and the Commonwealth of Australia.

13. 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 (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)).

14. In this determination the term:

(a) "natural resources" means:

(i) animals, 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.

#### SCHEDULE A

1. The determination area comprises the following areas of land:

(a) NT Portion 2981 comprising an area of 4,292 square kilometres held under Perpetual Pastoral Lease No. 921;

(b) NT Portion 6303 comprising an area of 8 square kilometres, 10 hectares held for an estate in fee simple by the Irretety Aboriginal Corporation.

2. The following areas within the external boundaries of NT Portion 2981 are excluded from the determination area:

(a) NT Portion 3889;

(b) NT Portion 3890; and

(c) the Sandover Highway (100 metres wide).

#### SCHEDULE B - DETERMINATION AREA MAP

(see NNTR Attachment 1- "Schedule B - Determination Area Map")

#### 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

Those parts of the determination area being the areas on which any public work as defined in section 253 of Native Title Act 1993 (Cth) is situated, including the land and waters defined in section 251D of the Act, and including:

(a) public roads and bores (presently the responsibility of the Department of Lands and Planning) including any gravel and fill pits that are part of the adjacent land referred to section 251D of the Act;

(b) transmission water pipes, distribution water pipes, sewer pipes, bores, sewer pump stations, overhead power lines (presently the responsibility of Power and Water Corporation)

The areas described in (a) and (b) comprise the land on which the public works were constructed prior to the date of this determination.

**REGISTER ATTACHMENTS:**

1. Attachment 1 - Schedule B Map of Native Title Determination Area, 1 page - A4, 05/05/2011

*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.*