

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NTD6069/2001
NNTT Number: DCD2014/010

Determination Name: Banjo Morton Apetyarr & Ors obo Alyawarr & Kaytetye People (Sandover River) v Northern Territory of Australia

Date(s) of Effect: 14/10/2014

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: 14/10/2014

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Kaytetye Alyawarr Awenyerraperte Ingkerr-wenh Aboriginal Corporation RNTBC
Agent Body Corporate
c/- 27 Stuart Highway
Alice Springs Northern Territory 0870

COMMON LAW HOLDER(S) OF NATIVE TITLE:

The native title holders are the Aharreng, Akaneng, Akweranty Anwerret, Alarilpw, Angkeperretyey, Antarrengeny, Areyn, Arlangkw, Arlpaw, Arnawenty Imangker, Atnerlelengk, Atnwengerrp, Ileyarn, Irrerlerr, Kwerrepepty, Lyentyawel Ileparranem, Ntewerrek, Pwerrk and Tyaw landholding groups.

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. Kaytetye Alyawarr Awenyerraperte Ingkerr-wenh Aboriginal Corporation is:
 - (a) to be the prescribed body corporate for the purposes of section 57(2) of the Act;
 - (b) to perform the functions outlined in section 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 Schedule C of the determination.

THE COURT DETERMINES THAT:

The determination area

1. The determination area comprises NT Portions 749, 757, 1289, 1290, 2286, 3431, 4260, 4868, 5162, 5163 and 6302 being the land and waters more particularly described in Schedule A and depicted on the map comprising Schedule B.

2. Native title exists in the determination area as follows:

(a) NT Portions 749, 757, 1289, 1290, 2286, 3431, 4260, 4868, 5162 and 5163: the native title rights and interests in paragraph 6 apply;

(b) NT Portion 6302: the native title rights and interests in paragraph 6 would apply were they not wholly ineffective due to the operation of s 238 of the Native Title Act 1993 (Cth).

3. Native title does not exist in those parts of the determination area described in Schedule C.

The native title holders

4. The determination area comprises nineteen estate areas associated with the Aharreng, Akaneng, Akweranty Anwerret, Alarilpw, Angkeperretyey, Antarrengeny, Areyn, Arlangkw, Arlpaw, Arnawenty Imangker, Atnerleleng, Atnwengerrp, Ileyarn, Irrerlerr, Kwerrkepent, Lyentyawel Ilepparanem, Ntewerrek, Pwerrk and Tyaw landholding groups.

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.

Native title rights and interests

6. In relation to NT Portions 749, 757, 1289, 1290, 2286, 3431, 4260, 4868, 5162, 5163 and 6302 the native title rights and interests of the native title holders are the rights possessed under and exercisable in accordance with their traditional laws and customs, 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, except water captured by the holders of Perpetual Pastoral Leases 1105, 1000, 1107 and 1139;
- (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,

and, subject to the rights of any person arising under the laws in force in the Northern Territory to be present on the land, the right to privacy in the exercise and enjoyment of those activities;

- (i) the right to speak for and 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.

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 referred to in paragraph 6 are for the personal or communal needs of the native title holders which are of a domestic or subsistence nature and not for any commercial or business purpose.

9. The native title rights and interests referred to in paragraph 6 hereof 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 acknowledged and traditional customs observed by the native title holders.

Other rights and interests

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

(a) the interests of the pastoral leaseholders of:

Perpetual Pastoral Lease No. 1105;

Perpetual Pastoral Lease No. 1107;

Perpetual Pastoral Lease No. 1139;

Perpetual Pastoral Lease No. 1000;

(b) NT Portion 6302 - the interest of the Dinnie Excision (Imperrenth) Aboriginal Corporation as the holder of a fee simple estate (subject to Imperrenth ILUA DI2003/012 entered on the Register of Indigenous Land Use Agreement on 14 November 2003);

(c) NT Portion 4260 - valid rights of use for the passage of travelling stock;

(d) The interests of the parties in respect to NT Portions 5162, 5163 and 4868 under the Ammaroo Indigenous Land Use Agreement.

(e) the interests of the holders of the following mining and petroleum tenements granted pursuant to the *Mineral Titles Act* (or its predecessor) and the *Petroleum Act* respectively:

No	Expiry Date	Holder
EL 24726	31/03/2014	Nupower Resources Ltd
EL 25183	18/04/2013	Territory Phosphate Pty Ltd
EL 25184	18/04/2013	Territory Phosphate Pty Ltd
EL 25185	18/04/2013	Territory Phosphate Pty Ltd
EL 26196	21/07/2013	Spinifex Uranium Pty Ltd
EL 26227	18/02/2014	Nupower Resources Ltd
EL 26228	18/02/2014	Nupower Resources Ltd
EL 26915	07/04/2015	Fertoz Pty Ltd
EL 27965	24/10/2016	AMI Resources Pty Ltd
EL 27987	26/10/2016	Nupower Resources Ltd
EL 28211	16/03/2017	AFMECO Mining and Exploration Pty Ltd
EL 28402	19/06/2017	Rum Jungle Resources Ltd
EL 28403	19/06/2017	Rum Jungle Resources Ltd
EL 28648	24/10/2017	Nupower Resources Ltd
EL 28727	02/10/2017	ABM Resources NL
EL 28748	30/10/2017	ABM Resources NL
EL 28764	01/11/2017	Australia Mining & Gemstone Co Pty Ltd
EL 28978	10/04/2018	Rum Jungle Resources Ltd
EL 28979	05/03/2018	Rum Jungle Resources Ltd
EL 28980	10/04/2018	Rum Jungle Resources Ltd
EL 26227	18/02/2014	Nupower Resources Ltd

EL 28978	10/04/2018	Rum Jungle Resources Ltd
EL 28979	05/03/2018	Rum Jungle Resources Ltd
EL 28980	10/04/2018	Rum Jungle Resources Ltd
EL 29266	02/08/2018	Rum Jungle Resources Ltd
EL 29267	02/08/2018	Rum Jungle Resources Ltd
EL 29305	09/09/2018	China Australia Land Resources Pty Ltd
EL 29373	13/09/2018	Central Australian Phosphate Pty Ltd
EL 29374	13/09/2018	Central Australian Phosphate Pty Ltd
EL29773	31.07.2019	Rum Jungle Resources Ltd
EL 29826	21.08.2019	Rum Jungle Resources Ltd
EL 27965	24.10.2016	AMI Resources Pty Ltd
EP 103	20/05/2013	Texalta Australia Pty Ltd, Petrofrontier (Australia) Pty Ltd
EP 127 (Australia) Pty Ltd	13/06/2013	Northern Territory Oil Limited, Baraka Petroleum Ltd, Petrofrontier
EP 128 (Australia) Pty Ltd	13/06/2013	Northern Territory Oil Limited, Baraka Petroleum Ltd, Petrofrontier

- (f) 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 rights:
- A. to inspect land;
- B. to install and operate telecommunication facilities; and
- C. to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunication facilities; and
- (iii) for its employees, agents or contractors to access its telecommunication 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.
- (g) in relation to NT Portions 749, 757, 1289, 1290, 2286, 3431, 5162 and 5163 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 section 38(2) to (6) of the *Pastoral Land Act 1992* (N.T.);
- (h) the rights of Aboriginal persons (whether or not native title holders) by virtue of the *Northern Territory Aboriginal Sacred Sites Act 1989* (N.T.);
- (i) 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;
- (j) 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

11. To the extent that the continued existence, enjoyment or exercise of the native title rights and interests referred to in paragraph 6 in relation to NT Portions 749, 757, 1289, 1290, 2286, 3431, 4260, 4868, 5162 and 5163 is inconsistent with the existence, enjoyment or exercise of the other rights and interests referred to in paragraph 10, 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.

12. In relation to NT Portion 6302 the relationship between the native title rights and interests referred to in paragraph 6 and the interest of the Dinnie Excision (Imperrenth) 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 grant 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.

Other matters

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

- (a) minerals (as defined in s 2 of the *Minerals Acquisition Act 1953* (N.T.));
- (b) petroleum (as defined in s 5 of the *Petroleum Act* (N.T.));
- (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 *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.

15. 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:

- (a) NT Portion 1290 comprising an area of 1,041 square kilometres held under Perpetual Pastoral Lease No. 1105;
- (b) NT Portion 749 comprising an area of 1,960 square kilometres held under Perpetual Pastoral Lease No. 1105;
- (c) NT Portion 1289 comprising an area of 1,257 square kilometres held under Perpetual Pastoral Lease No. 1107;
- (d) NT Portion 757 comprising an area of 3,033 square kilometres held under Perpetual Pastoral Lease No. 1107;

- (e) NT Portion 2286 comprising an area of 5,595 square kilometres held under Perpetual Pastoral Lease No. 1139;
- (f) NT Portion 3431 comprising an area of 5,406 square kilometres 31 hectares held under Perpetual Pastoral Lease No. 1000;
- (g) NT Portion 6302 comprising an area of 30 square kilometres 55 hectares held for an estate in fee simple by the Imperrenth Aboriginal Corporation;
- (h) NT Portion 4260 comprising an area of 57 square kilometres being part of the Sandover Stock Route;
- (i) NT Portion 4868 comprising an area of 30 square kilometres 14 hectares being vacant Crown land to be incorporated into Perpetual Pastoral Lease No. 1105;
- (j). NT Portion 5162 comprising an area of 56 square kilometres being vacant Crown land to be incorporated into Perpetual Pastoral Lease No. 1105;
- (k) NT Portion 5163 comprising an area of 81 square kilometres being vacant Crown land to be incorporated into Perpetual Pastoral Lease No. 1105.

2. The following areas within the external boundaries of the determination area are not included in the determination area:

- (a) NT Portion 1600;
- (b) NT Portion 2000;
- (c) NT Portion 3802;
- (d) NT Portion 3834;
- (e) NT Portion 3903;
- (f) NT Portion 3904;
- (g) NT Portion 3905;
- (h) NT Portion 4479;
- (i) NT Portion 4761;
- (j) NT Portion 5018;
- (k) The following roads constructed by or on behalf of the Northern Territory as public roads:
 - (i) a road 100 metres wide from the boundary of NT Portion 705 (Angarapa ALT) to the boundary of NT Portion 1289 (Derry Downs Station) and from there to the boundary of NT Portion 2981 (Ooratippra Station) (Sandover Highway);
 - (ii) a road 100 metres wide from the Sandover Highway on NT Portion 749 to Elkedra Station Homestead on NT Portion 3431 (Elkedra Access Road);
 - (iii) a road 100 metres wide from the boundary of NT Portion 3375 (Neutral Junction Station) to the boundary of NT Portion 4386 (Erterlapenty ALT);
 - (iv) a road 100 metres wide from the Elkedra Access Road on NT Portion 1290 to the boundary of NT Portion 3431 (Elkedra Station) and from there to the junction with the Murray Downs/Kurundi Road;
 - (v) a road 100 metres from the boundary of NT Portion 3802 (Atnwengerrpe ALT) to the boundary of NT Portion 705 (Angarapa ALT);
 - (vi) a road 100 metres wide from the boundary of NT Portion 717 (Old Macdonald Downs Station) to the boundary of NT Portion 481 (Arapunya Station);
 - (vii) a road 100 metres wide from the boundary of NT Portion 599 (Warrabri ALT) to the junction with the Murray Downs Road on NT Portion 2286;

(viii) a road 100 metres wide from the boundary of NT Portion 3375 (Neutral Junction Station) to the boundary of NT Portion 1736 (Alyawarra ALT);

(ix) a road 100 metres wide from the boundary of NT Portion 1736 (Alyawarra ALT) to the junction with the Murray Downs Road on NT Portion 2286.

(x) a road 100 metres wide from the Murray Downs Road to the Murray Downs Station Homestead on NT Portion 2286;

(xi) a road 100 metres wide (Murray Downs/Elkedra Road) which runs parallel to the boundary between NT Portion 4479 and NT Portion 6302.

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 being covered by public works as defined in section 253 of *Native Title Act 1993* ('NTA') 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 NTA) including:

(a) public roads, including rural public roads (50m either side of the centre line), rural arterial roads and national highways;

(b) gravel and fill pits established to maintain the roads referred to in (a) above;

(c) government bores and associated works;

(d) transmission water pipes (adjacent area 5m either side of the centre line);

(e) distribution water pipes measuring 150mm diameter or less (adjacent area of 1.5m either side of the centre line) and greater than 150mm diameter (adjacent area 5m either side of the centre line);

(f) sewer pipes measuring 150mm diameter or less (adjacent area 1.5m either side of the centre line) and greater than 1500mm (adjacent area 5m either side of the centre line);

(g) bores, sewer pump stations, and overhead power lines.

2. In addition to the areas referred to in paragraph 2 above native title has been wholly extinguished in the areas covered by the following public works (including land and waters within the meaning of section 251D of the NTA):

(a) NT Portion 4868 - Bore No. 11 comprising bore, pump, comet mill/windmill, 1,000m³ turkey nest and 4 length trough;

(b) NT Portion 5162 - Bore No.1 comprising bore, pump, troughing and 25,000 gallon tank;

(c) NT Portion 5163 - Bore No. 8 comprising bore, pump, pipes, turkey nest tank of 1,200m³ capacity, comet mill/windmill, 4 length trough, crush, concrete loading ramp and yards;

(d) NT portion 5163 - Bore No. 9 comprising bore, pump, comet mill (concreted), loading ramp (concrete), yard and 1,000m³ turkey nest.

REGISTER ATTACHMENTS:

1. Schedule B - Map of Determination Area, 2 pages - A4, 14/10/2014

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.