



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NTD6012/2000; NTD6008/2000; NTD6016/1999
NNTT Number: DCD2006/002

Determination Name: [Griffiths v Northern Territory of Australia \(No 2\)](#)

Date(s) of Effect: 28/08/2006

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 28/08/2006

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 28 August 2006, the Federal Court of Australia made a determination that native title exists in parts of the application area. See [Griffiths v Northern Territory of Australia \(No 2\) \[2006\] FCA 1155](#). Order 3 of the determination provides that the native title holders have 12 months from the determination date to nominate a Prescribed Body Corporate.

The Determination was varied on appeal on 22 November 2007 by the Full Court of the Federal Court of Australia. See [Griffiths v Northern Territory of Australia \[2007\] FCAFC 178](#). The Full Court omitted and substituted paragraphs [5]-[9] of the Determination, and these variations are reflected in this Register Extract.

On 28 April 2008, the Court made further orders which stated the following:

1. **Gunarmu Aboriginal Corporation** (ICN: 4765), being a body duly incorporated on 26 June 2007 under the *Aboriginal Councils and Associations Act 1976 (Cth)*, is to:

- (a) be the prescribed body corporate for the purposes of s57(2) of the *Native Title Act 1993 (Cth)*.
- (b) perform the functions mentioned in s57(3) of the *Native Title Act 1993 (Cth)*; and

2. Gunarmu Aboriginal Corporation does not hold the native title in trust.

On 20 April 2016, the Court made further orders to vary the determination of native title. These variations are reflected in this Register Extract.

On 26 April 2016, further orders were made which stated the following:

1. The Top End (Default PBC/CLA) Aboriginal Corporation replace the Gunarmu Aboriginal Corporation RNTBC (Gunarmu RNTBC) as the agent prescribed body corporate for the purposes of s 57(2) of the *Native Title Act 1993 (Cth)*.

2. The Applicant serve a copy of this order on Gunarmu RNTBC by serving the order on Mr Ralph Lewis, Myatt Community, Timber Creek, being the registered contact person for Gunarmu RNTBC, and file an affidavit of that service.

3. Order 1 takes effect from 14 days after the date of service on Gunarmu RNTBC pursuant to Order 2, unless Gunarmu RNTBC makes an application to vacate Order 1 before the expiration of the period specified in this Order 3.

REGISTERED NATIVE TITLE BODY CORPORATE:

Top End (Default PBC/CLA) Aboriginal Corporation RNTBC
Agent Body Corporate
45 Mitchell Street
DARWIN Northern Territory 0801

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

ORIGINAL REGISTERED NATIVE TITLE BODY CORPORATE(S):

Gunarmu Aboriginal Corporation

Note: details of the Corporation name change can be found on the Office of the Registrar of Indigenous Corporations website www.oric.gov.au

COMMON LAW HOLDER(S) OF NATIVE TITLE:

The native title holders (s 225(a))

3. The determination area comprises the whole or part of five estates, which are held respectively by the members of the following five estate groups:

- (a) the Makalamayi estate group;
- (b) the Wunjaiyi estate group;
- (c) the Yanturi estate group;
- (d) the Wantawul estate group;
- (e) the Maiyalaniwung estate group;

These persons are collectively referred to as 'the estate group members'.

4. Each of the estate groups referred to in clause 3 hereof includes Ngaliwurru and Nungali persons who are members of the relevant estate group by reason of:

- (a) descent through his or her:
 - (i) father's father;
 - (ii) mother's father;
 - (iii) father's mother;
 - (iv) mother's mother; or
- (b) having been adopted or incorporated into the descent relationships referred to in (a) hereof.

[Paragraph 5 varied by order of the Full Court on 22 November 2007]

5. The native title holders are:

- (a) the persons referred to in paragraph 4 who are members of the relevant estate group; and
- (b) other Aboriginal persons who, in accordance with traditional laws and customs, have rights in respect of the land and waters of the relevant estate group, being:

- (i) members of estate groups from neighbouring estates;
- (ii) spouses of estate group members; and
- (iii) members of other estate groups with ritual authority.

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 in trust.
3. An Aboriginal Corporation whose name is to be provided within 12 months, or such further time as a Judge of the Court may allow, is to:
 - (a) be the prescribed body corporate for purposes of s 57(2) of the *Native Title Act 1993* (Cth) ("the Act");
 - (b) perform the functions outlined in s 57(3) of the Act after becoming a registered native title body corporate.
4. Until such time as there is a registered native title body corporate in relation to the determination area, any notices required under the *Act* or otherwise to be served on the common law holders may be served upon the Northern Land Council, and such service shall be deemed to be sufficient.

AND THE COURT DECLARES THAT:

6. In respect of land and waters referred to in paragraph 1 of the Determination, the application is not "finalised" within the meaning of s 190(4)(e) of the Act until a prescribed body corporate has been determined, in accordance with s 57(2) of the *Native Title Act*, to perform the functions mentioned in s 57(3) of the Act.

THE COURT DETERMINES THAT:

Existence of native title (s 225)

1. Native title exists in the areas of land and waters described in the schedule A ("the determination area").
2. The land and waters described in Schedule B are the subject of a previous exclusive possession act under s 23B of the Act, such acts being expressly excluded from the area covered by the native title determination application, and thus are not claimed in the application and are not part of the determination area.

The native title holders (s 225(a))

3. The determination area comprises the whole or part of five estates, which are held respectively by the members of the following five estate groups:

- (a) the Makalamayi estate group;
- (b) the Wunjaiyi estate group;
- (c) the Yanturi estate group;
- (d) the Wantawul estate group;
- (e) the Maiyalaniwung estate group;

These persons are collectively referred to as 'the estate group members'.

4. Each of the estate groups referred to in clause 3 hereof includes Ngaliwurru and Nungali persons who are members of the relevant estate group by reason of:

- (a) descent through his or her:
 - (i) father's father;
 - (ii) mother's father;

(iii) father's mother;

(iv) mother's mother; or

(b) having been adopted or incorporated into the descent relationships referred to in (a) hereof.

[Paragraphs [5]-[9] varied by order of the Full Court on 22 November 2007]

5. The native title holders are:

(a) the persons referred to in paragraph 4 who are members of the relevant estate group; and

(b) other Aboriginal persons who, in accordance with traditional laws and customs, have rights in respect of the land and waters of the relevant estate group, being:

(i) members of estate groups from neighbouring estates;

(ii) spouses of estate group members; and

(iii) members of other estate groups with ritual authority.

The native title rights and interests (s 225(b) and 225(e))

6. The native title rights and interests in relation to that part of the determination area described in paragraph (a) of Schedule A are rights in accordance with traditional laws and customs to the possession, occupation, use and enjoyment of that part of the determination area to the exclusion of all others.

7. The native title rights and interests in relation to that part of the determination area described in paragraph (b) of Schedule A are the following non-exclusive rights in accordance with traditional laws and customs:

(a) the right to travel over, move about and to have access to the determination area;

(b) the right to hunt, fish and forage on the determination area;

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

(d) the right to have access to and use the natural water of the determination area;

(e) the right to live on the land, to camp, to erect shelters and other structures;

(f) the right to:

(i) engage in cultural activities;

(ii) conduct ceremonies;

(iii) hold meetings;

(iv) teach the physical and spiritual attributes of places and areas of importance on or in the land and waters; and

(v) participate in cultural practices relating to birth and death, including burial rights.

(g) the right to have access to, maintain and protect sites of significance on the determination area;

(h) the right to share or exchange subsistence and other traditional resources obtained on or from the land or waters (but not for any commercial purposes).

8. The paragraphs designated (d) and (e) in Schedule A of the Determination be redesignated (a) and (b) respectively.

9. The native title rights and interests in relation to that part of the determination area described in paragraph (b) of Schedule A, do not confer rights to the possession, occupation, use and enjoyment of that part of the determination area to the exclusion of all others.

10. 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.

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

(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))

Other interests (s225(c))

[Paragraphs [12]-[13] varied by order of the Court on 20 April 2016]

12. The nature and extent of other interests in relation to the determination area are the interests, created or recognised by the Crown, statute or common law, as follows:

(a) 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;

(b) any interest of members of the public to the access and enjoyment (subject to the laws of the Northern Territory and the Commonwealth) of:

(i) the waters of Timber Creek;

(ii) beds and banks of Timber Creek; and

(c) the interests of the Conservation Land Corporation under Special Purposes Lease 494 in relation to Lot 16.

13. To clarify any doubt:

(a) to the extent, if at all, that the exercise of the native title rights and interests referred to herein conflicts with the exercise of the rights and interests of the persons referred to in clause 12(a), the rights and interests of the persons referred to in clause 12(a) prevail over, but do not extinguish, the native title rights;

(b) the native title rights and interests referred to herein coexist with the rights and interests of the persons referred to in clause 12(b); and

(c) the non-extinguishment principle applies to the grant of Special Purposes Lease 494.

Definitions and interpretation:

14. In the Determination, unless the contrary intention appears 'land' and 'waters' respectively have the same meanings as in the Act.

REGISTER ATTACHMENTS:

1. Schedule A - Determination Area, 2 pages - A4, 20/04/2016

2. Schedule B - Areas excluded from the determination pursuant to s 23B of the Act, 1 page - A4, 20/04/2016

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.