



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NTD24/2010
NNTT Number: DCD2012/009

Determination Name: [Ellaga v Northern Territory of Australia](#)

Date(s) of Effect: 27/06/2012

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: 27/06/2012

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

The Top End (Default PBC/CLA) Aboriginal Corporation RNTBC was determined as the Prescribed Body Corporate for this determination on 12 March 2015.

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

COMMON LAW HOLDER(S) OF NATIVE TITLE:

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

- (a) the Badpa group;
- (b) the Murrunggun Kunakingka group;
- (c) the Guyal Bardi Bardi 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 rights and interests in respect of the Determination Area, subject to the 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:

BEING SATISFIED that a determination of native title in the terms of the Determination in respect of the proceeding would be within the power of the Court and, it appearing to the Court appropriate to do so, pursuant to s 87 of the Act and by the consent of the parties:

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. An Aboriginal corporation whose name is to be provided within 12 months, or such further time as the Court may allow, is:
 - (a) to be the prescribed body corporate for the purposes of s 57(2) of the Act;
 - (b) to perform the functions outlined in s 57(3) of the Act after becoming a registered native title body corporate.
4. There be no order as to costs.
5. The parties have liberty to apply for the following purposes:
 - (a) 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;
 - (b) to establish the precise location of the boundaries of land on which the improvements referred to in Schedule D of this determination have been constructed and any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvements; and
 - (c) to establish whether any of the improvements referred to at Schedule D of this determination have been constructed unlawfully.

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 shall prevail.

THE NATIVE TITLE HOLDERS

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

- (a) the Badpa group;
- (b) the Murrunggun Kunakingka group;
- (c) the Gyal Bardi Bardi 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 rights and interests in respect of the Determination Area, subject to the 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. The native title rights and interests of the estate group members that are possessed under their traditional laws and customs are, subject to the traditional laws and customs that govern the exercise of the native title rights and interests by the native title holders, non-exclusive rights to use and enjoy those parts of the Determination Area identified in Schedule C being:

- (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 Perpetual Pastoral Lease 1064;

(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;

(g) 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;

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

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

(j) the right to be accompanied on to those areas by persons who, though not native title holders, are:

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

These native title rights and interests do not confer on the estate group members possession, occupation, use and enjoyment of the Determination Area, to the exclusion of all others.

10. The native title rights and interests of the native title holders referred to in clause 7 hereof that are possessed under their traditional laws and customs are, subject to the traditional laws and customs that govern the exercise of the native title rights and interests by the native title holders, non-exclusive rights to use and enjoy those parts of the Determination Area identified in Schedule C being:

(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 Perpetual Pastoral Lease 1064;

(e) the right to camp on those areas;

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

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

These native title rights and interests do not confer on the native title holders referred to in clause 7 hereof possession, occupation, use and enjoyment of the Determination Area, to the exclusion of all others.

OTHER INTERESTS IN THE DETERMINATION AREA WHERE NATIVE TITLE EXISTS

11. The nature and extent of other interests in those parts of the Determination Area where native title exists are the interests, created by the Crown or otherwise, as follows:

(a) in relation to NT portion 697, the interests of Raymond William Murphy and Pamela Grace Murphy under Perpetual Pastoral Lease 1064;

(b) in relation to NT portion 2372, the interests of the Northern Territory Land Corporation under Crown Lease Perpetual 618;

(c) in relation to NT portions 4269 and part of NT portions 4271 and 5144 valid rights of usage for the passage of

travelling stock;

(d) in relation to NT portion 5146 and 4270, valid rights of use for commonage purposes;

(e) the interests of the Northern Territory Government as owner of the McArthur River Gas Pipeline and all associated infrastructure for protecting and supporting the Pipeline;

(f) the rights and interests of NT Gas Pty Ltd as the holder of Pipeline Licence No. 17 (depicted at Schedule E) granted on 10 May 1994 under the Energy Pipelines Act (NT);

(g) in relation to NT Portion 697:

(i) the rights and interests of the Northern Territory of Australia pursuant to Energy Supply Easement instrument No. 193465 dated 2 September 1987;

(ii) the rights and interests of APT Pipelines (NT) Pty Ltd as the beneficiary of the rights and interests granted to the Northern Territory of Australia pursuant to Energy Supply Easement instrument No. 193465 dated 2 September 1987;

(iii) the rights and interests of APT Pipelines (NT) Pty Limited as the holder of Pipeline Licence No. 4 (depicted at Schedule E) granted on 13 December 1985 under the Energy Pipelines Act (NT);

(h) 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 licence, access agreement or easement relating to its telecommunications facilities in the Determination Area;

(i) in relation to NT portion 697, 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, identified in ss 38(2) - (6) of the Pastoral Land Act 1992 (NT);

(j) the rights of Aboriginal persons (whether or not native title holders) by virtue of the Northern Territory Aboriginal Sacred Sites Act 1989 (NT);

(k) 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;

(l) 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.

(m) the following interests granted under the Mining Act (NT), depicted in Schedule E:

(i) Exploration Licence Title No. 25838 granted on 21 September 2007;

(ii) Exploration Licence Title No. 27877 granted on 27 July 2010;

(iii) Exploration Licence Title No. 27878 granted on 15 September 2010;

(iv) Exploration Licence Title No. 27879 granted on 3 August 2010;

(v) Exploration Permit Title No. 117 granted on 14 March 2006.

12. To the extent, if at all, that the exercise of the native title rights and interests referred to in clauses 9 and 10 conflicts with the exercise of the rights and interests of the persons referred to in clause 11, the rights and interests of the persons referred to in clause 11 prevail over, but do not extinguish, the native title rights referred to in clauses 9 and 10.

OTHER MATTERS

13. 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.

14. 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.

15. The native title rights and interests 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.

SCHEDULE A - DESCRIPTION OF DETERMINATION AREA

The Determination Area comprises the following areas of land:

1. NT portion 697, being land the subject of Perpetual Pastoral Lease 1064;
2. NT portion 2916, being land the subject of the grant of an estate in fee simple to the Power and Water Corporation;
3. NT portion 2372, being land the subject of Crown Lease Perpetual 618;
4. NT portions 1430, 1431, 4214 and 4215, being land the subject of grants of estates in fee simple to Telstra Corporation Limited;
5. NT portions 399 and 1405, being land the subject of Reserve No.1789 reserved for the purpose of civil aviation;
6. NT portion 3466, being land the subject of the grant of an estate in fee simple to Peter James Ahern and Lois Ahern;
7. NT portions 4269, and part of NT portions 4271 and 5144, being land comprising part of the Birdum stock route;
8. NT portions 5146 and 4270, being land the subject of Stock Reserve No. 1033 reserved for the purpose of commonage.

SCHEDULE B - MAP OF DETERMINATION AREA

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

SCHEDULE C - AREAS WHERE NATIVE TITLE EXISTS

The areas of land and waters in respect of which the native title rights and interests in clauses 9 and 10 apply are:

1. NT portion 697, being land the subject of Perpetual Pastoral Lease 1064, except those parts thereof referred to in Schedule D;
2. NT portion 2372, being land the subject of Crown Lease Perpetual 618, except those parts thereof referred to in Schedule D;
3. NT portion 4269, and part of NT portions 4271 and 5144, being land comprising part of the Birdum stock route, except those parts thereof referred to in Schedule D;
4. NT portion 5146 and 4270, being land the subject of Stock Reserve No. 1033 reserved for the purpose of commonage, 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. NT portions 1430, 1431, 4214 and 4215, being land the subject of freehold estate granted to Telstra Corporation Limited;
2. NT portions 399 and 1405, being land the subject of Reserve No. 1789 reserved for the purpose of civil aviation;
3. NT portion 3466, being land the subject of freehold estate granted to Peter James Ahern and Lois Ahern;
4. NT portion 2916, being land the subject of freehold grant to the Power and Water Corporation;
5. Those parts of the Determination Area covered by public works (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) public roads, whether rural roads, arterial roads or national highways and associated infrastructure;
 - (b) community and pastoral access roads which are not otherwise public roads;
 - (c) gravel pits adjacent to the roads referred to at paragraphs (a) and (b) hereof used to maintain those roads;
 - (d) access roads or tracks to the public works referred to in this clause;
 - (e) Government bores and associated infrastructure including bores used for the establishment, operation or maintenance of public and other roads;
 - (f) river and rain gauges;
 - (g) transmission and distribution water pipes and associated infrastructure;
 - (h) sewer pipes, sewer pump stations and associated infrastructure;
 - (i) electricity transmission lines, towers, poles and associated infrastructure; including NT portion 2916;
 - (j) bores, squatters tanks, constructed stock watering points and associated infrastructure within stock routes and stock reserves;
 - (k) the police complex on NT portion 2372; and
 - (l) the McArthur River Gas Pipeline and associated infrastructure 15 metres either side of the centreline of the pipeline including but not limited to all loading terminals, works and buildings, all fittings, pumps, tanks, metering stations, cathodic protection units, appurtenances and appliances;
 - (m) In relation to NT portion 697, those parts of the Determination Area covered by pastoral improvements including but not limited to:
 - (a) a homestead, house, sheds and buildings including:
 - (i) Creek Camp Outstation;
 - (ii) Kalala homestead;
 - (iii) 1 x store;
 - (iv) 1 x meat house;
 - (v) 1 x social area;
 - (vi) 2 x Panai fabricated demountables;
 - (vii) 1 x one bedroom demountable;
 - (viii) 2 x two bedroom demountable;
 - (ix) toilet and bathroom shed;
 - (x) car shed;

- (xi) work shop;
- (xii) 1 x station kitchen panel fabricated dining area;
- (xiii) 1 x five bedroom demountable;
- (xiv) cooks quarters;
- (xv) 1 x four bedroom men's quarters;
- (xvi) 1 x two bedroom demountable panel fabricated;
- (xvii) 1 x three bedroom house;
- (xviii) car shed;
- (xix) workshop; and
- (xx) 1 x panel fabricated two bedroom demountable;
- (b) bores including:
 - (i) 'A' bore;
 - (ii) 'B' bore;
 - (iii) 'C' bore;
 - (iv) 'D' bore;
 - (v) 4/02 bore;
 - (vi) 4/93 bore;
 - (vii) 5 Mile bore;
 - (viii) 72/1 GC bore;
 - (ix) Amanda's bore;
 - (x) Army No. 618 bore;
 - (xi) Army No. 620 bore;
 - (xii) Blakes bore;
 - (xiii) Bluebush bore;
 - (xiv) Bulwaddy bore;
 - (xv) Bzowy's bore;
 - (xvi) Cheyannes bore;
 - (xvii) Creek bore;
 - (xviii) Desert bore;
 - (xix) Dingo bore;
 - (xx) Dunmarra bore;
 - (xxi) Enoranora bore;
 - (xxii) Fat boys bore;
 - (xxiii) Frank's bore;
 - (xxiv) Freshwater bore;

(xxv) Gorie bore;
(xxvi) Graces bore;
(xxvii) Griffith bore;
(xxviii) Highway Inn bore;
(xxix) Homestead Yards bore;
(xxx) Hughes bore;
(xxxi) Ironwood bore;
(xxxii) JJ's bore;
(xxxiii) Joel's bore;
(xxxiv) Kalala bore;
(xxxv) Kalala Station bore;
(xxxvi) KKK's bore;
(xxxvii) Konkerinker bore;
(xxxviii) Leichardt bore;
(xxxix) Louise's bore;
(xl) Maggies bore;
(xli) McManus bore;
(xlii) Midge's bore;
(xliii) Mills bore;
(xliv) Monkeroo bore;
(xlv) Moorak bore;
(xlvi) Mudburra bore;
(xlvii) Murphy's bore;
(xlviii) No 1/100 bore;
(xlix) No. 3 bore;
(l) No. 3 Carpenteria Highway bore;
(li) No. 4 Stock Route bore;
(lii) No. 5 bore;
(liii) Pipeline bore;
(liv) Road bore;
(lv) Ruminie's bore;
(lvi) Safari bore;
(lvii) Sandy bore;
(lviii) Sproaty's bore;

- (lix) Stewart bore;
- (lx) Strangways bore;
- (lxi) Tootell's Bore (x2);
- (lxii) Top bore;
- (lxiii) Top bore No. 2;
- (lxiv) Tori's bore; and
- (lxv) Western bore;
- (c) homestead and highway airstrips including:
 - (i) Kalala airstrip at main homestead; and
 - (ii) Daly waters airstrip;
- (d) turkey nests including those located at the following bores:
 - (i) Blake bore;
 - (ii) Cheyanne's bore;
 - (iii) Fat Boys Bore;
 - (iv) JJ's Bore;
 - (v) Joel's Bore;
 - (vi) KKK's Bore;
 - (vii) Midgee Bore;
 - (viii) Mills Bore;
 - (ix) Ruminie Bore;
 - (x) Sproatys Bore; and
 - (xi) Tori's Bore;
- (e) squatters' tanks including those located at the following bores:
 - (i) Frank Bore; and
 - (ii) Huges Bore;
- (f) constructed dams or other constructed stock watering points including those located at the following bores:
 - (i) Amandas Bore;
 - (ii) Bzowys Bore;
 - (iii) Dunmarra Bore;
 - (iv) Fat Boys Bore;
 - (v) Maggies Bore; and
 - (vi) Tootell's Bore (x2);
- (g) stockyards including Main Cattle yards at Kalala House Paddock; and
- (h) trapyards including:
 - (i) 'B' Bore;

- (ii) 5 Mile Paddock;
- (iii) Adder Paddock;
- (iv) Bluebush Bore;
- (v) Desert Paddock;
- (vi) Dingo Paddock;
- (vii) Griffiths Bore;
- (viii) Ironwood Paddock;
- (xix) Kokerkinker Bore;
- (x) Lancewood Bore;
- (xi) Leichardt Paddock;
- (xii) Monkaroo Paddock;
- (xiii) Mudburra Paddock;
- (xiv) Safari Bore;
- (xv) Sandy's Paddock;
- (xvi) Stewart Paddock;
- (xvii) Strangeways Bore;
- (xviii) Top Bore; and
- (xix) Western Paddock.

The areas described by 6 (a) - (h) comprise land on which the improvements have been constructed prior to the date of this determination, and any adjacent land or waters the exclusive use of which is necessary for the enjoyment of the improvements.

SCHEDULE E - MAP OF INTERESTS GRANTED UNDER THE MINING ACT (NT) AND THE ENERGY PIPELINES ACT (NT)

(see NNTR Attachment 2: "Schedule E - Map of interests granted under the Mining Act (NT) and the Energy Pipelines Act (NT)")

REGISTER ATTACHMENTS:

1. Attachment 1 Schedule B - Map of Determination Area, 1 page - A4, 27/06/2012
2. Attachment 2 Schedule E - Map of interests granted under the Mining Act (NT) and the Energy Pipelines Act (NT), 1 page - A4, 27/06/2012

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.