



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): NTD39/2010  
NNTT Number: DCD2012/013

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

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

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

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

4. The land and waters of the Determination Area comprise part of one estate, which is held by the members of the Badpa estate group. These persons, together with the Aboriginal people referred to in clause 6 hereof, are collectively referred to as "the native title holders.

5. Each of the estate groups referred to in clause 4 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".

6. 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; and

(b) spouses of the estate group members.

7. Each of the estate groups referred to in clause 6(a) hereof includes persons who are members of the group by reason of:

(a) patrilineal descent;

(b) his or her mother, mother's father, 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 this proceeding would be within the power of the Court and, it appearing to the Court appropriate to do so, pursuant to section 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 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. 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; and

(b) 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 Maps 1, 1A, 2 and 2A 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.

##### THE NATIVE TITLE HOLDERS

4. The land and waters of the Determination Area comprise part of one estate, which is held by the members of the

Badpa estate group. These persons, together with the Aboriginal people referred to in clause 6 hereof, are collectively referred to as "the native title holders.

5. Each of the estate groups referred to in clause 4 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".

6. 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; and
- (b) spouses of the estate group members.

7. Each of the estate groups referred to in clause 6(a) hereof includes persons who are members of the group by reason of:

- (a) patrilineal descent;
- (b) his or her mother, mother's father, 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

8. 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;
- (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:
  - (i) people required by traditional law and custom for the performance of ceremonies or cultural activities on the areas;
  - (ii) people who have rights in relation to the areas according to the traditional laws and customs acknowledged by the estate group members;
  - (iii) people required by the estate group members to assist in, observe, or record traditional activities on the areas;
- (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.

9. The native title rights and interests of the native title holders referred to in clause 6 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;
- (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 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

10. 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 Lot 68 (Daly Waters Rodeo Reserve No. 1701):
  - (i) the interests of the Trustees of the lot pursuant to the Crown Lands Act (NT);
  - (ii) the interests of members of the public arising from rights of access to and use of Lot 68 as a recreational reserve, subject to any statutory limitations upon these rights including those under the Northern Territory Aboriginal Sacred Sites Act (NT);
- (b) The rights and interests of Telstra Corporation Limited:
  - (i) as the owner or operator of telecommunications facilities installed 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 telecommunication facilities; and
    - (c) to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunication 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; and

(iv) under any lease, license, access agreement or easement relating to its telecommunications facilities in the Determination Area;

(c) The following interests granted under the Mining Act (NT) depicted in Schedule E:

(i) Exploration Permit No. 98 granted on 8 November 2000;

(d) in relation to Lot 103(A), 106(A) and NTP4628, the interest of the Minister under the Heritage Conservation Act (NT);

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

(f) Any interest of members of the public to the access and enjoyment (subject to the laws of the Northern Territory and the Commonwealth) of Lots 68, 101 and 103 Town of Daly Waters.

(g) 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; and

(h) 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.

11. To the extent, if at all, that the exercise of the native title rights and interests referred to in clauses 8 and 9 conflicts with the exercise of the rights and interests of the persons referred to in clause 10, the rights and interests of the persons referred to in clause 10 prevail over, but do not extinguish, the native title rights referred to in clauses 8 and 9.

#### OTHER MATTERS

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

(a) minerals (as defined in section 2 of the Minerals (Acquisition) Act (NT));

(b) petroleum (as defined in section 5 of the Petroleum Act (NT));

(c) prescribed substances (as defined in section 3 of the Atomic Energy (Control of Materials) Act 1946 (Cth) and/or section 5(1) of the Atomic Energy Act 1953 (Cth)),

in the Determination Area.

13. 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.

14. 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 - DETERMINATION AREA

The outer Determination Area boundary comprises the boundary of the Town of Daly Waters constituted and defined by the proclamation in NT Government Gazette (NTGG) No. 26 on 11 June 1952 and subsequently amended by NTGG No. 33 on 22 August 1984.

The Determination Area comprises the following areas of land:

(a) lots 1, 2, 3, 4, 5, 6, 7, 8, 13, 14, 15, 16, 31, 32, 33, 34, 35, 38, 39, 40, 42, 43,44, 45, 46, 47, 48, 65, 66, 67, 68, 72, 73, 74, 75, 77, 78, 79, 80, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101 (including lots 103(A), 106(A), 107(A), 112(A) and part Northern Territory Portion 4628(A)), 102, 105, 108 and 109 within the Town of Daly Waters; and

(b) public roads within the boundary of the Town of Daly Waters as depicted on Maps 1 and 1A of Schedule B.

#### SCHEDULE B - DETERMINATION AREA

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

## SCHEDULE C - AREAS WHERE NATIVE TITLE EXISTS

The areas of land and waters in respect of which native title rights in clauses 8 and 9 apply include the following lots within the Town of Daly Waters:

1. Lot 1;
2. Part Lot 31 except those parts thereof referred to in Schedule D;
3. Part Lot 32 except those parts thereof referred to in Schedule D;
4. Part Lot 65 except those parts thereof referred to in Schedule D;
5. Lot 66;
6. Part Lot 67 except those parts thereof referred to in Schedule D;
7. Part Lot 68 except those parts thereof referred to in Schedule D;
8. Part Lot 80 except those parts thereof referred to in Schedule D;
9. Part Lot 83 except those parts thereof referred to in Schedule D;
10. Part Lot 84 except those parts thereof referred to in Schedule D;
11. Part Lot 85 except those parts thereof referred to in Schedule D;
12. Part Lot 88 except those parts thereof referred to in Schedule D;
13. Part Lot 89 except those parts thereof referred to in Schedule D;
14. Part Lot 90 except those parts thereof referred to in Schedule D;
15. Part Lot 91 except those parts thereof referred to in Schedule D;
16. Part Lot 92 except those parts thereof referred to in Schedule D;
17. Part Lot 93 except those parts thereof referred to in Schedule D;
18. Part Lot 94; except those parts thereof referred to in Schedule D
19. Part Lot 95 except those parts thereof referred to in Schedule D;
20. Part Lot 98 except those parts thereof referred to in Schedule D;
21. Part Lot 99 including the Rubbish Dump Access Road traversing Lot 99 and excluding those parts thereof referred to in Schedule D;
22. Lot 100;
23. Part Lot 101 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. Lot 2;
2. Lot 3;
3. Lot 4;
4. Lot 5;
5. Lot 6;
6. Lot 7;
7. Lot 8;

8. Lot 13;
9. Lot 14;
10. Lot 15;
11. Lot 16;
12. Lot 21;
13. Lot 24;
14. Part Lots 31 and 32 as depicted on Maps 2 and 2A of Schedule B;
15. Lot 33;
16. Lot 34;
17. Lot 35;
18. Lot 38;
19. Lot 39;
20. Lot 40;
21. Lot 42;
22. Lot 43;
23. Lot 44;
24. Lot 45;
25. Lot 46;
26. Lot 47;
27. Lot 48;
28. Part Lot 67 as depicted on Maps 2 and 2A of Schedule B;
29. Part Lot 68 as depicted on Maps 1 and 1A of Schedule B;
30. Lot 72;
31. Lot 73;
32. Lot 74;
33. Lot 75;
34. Lot 77;
35. Lot 78;
36. Lot 79;
37. Part Lots 80, 83, 84, 85, 88, 89, 90, 91, 92, 93, 94, and 95 as depicted on Maps 2 and 2A of Schedule B;
38. Lot 82;
39. Lot 86;
40. Lot 87;
41. Lot 96;

42. Lot 97;

43. Part Lot 98;

44. Part Lot 99;

45. Part Lot 101 comprising:

(a) Lot 103(A), Lot 106(A), Lot 107(A), Lot 112(A);

(b) That part of NTP4628 within the external boundary of the Town of Daly Waters;

(c) 22kv overhead power lines and adjacent land or waters of 10m either side of the centreline traversing NTP4628 north to south adjacent to the "Daly Waters Access Road B";

(d) access road from Lot 106(A) to the "Daly Waters Access Road B" comprising 10 metres either side of the centreline;

(e) access road from Lot 107(A) to the "Daly Waters Access Road B" comprising 10 metres either side of the centreline;

(f) 100mm distribution water main pipeline from Lot 107(A) to Lot 112(A) comprising 5 metres either side of the centreline; and

(g) access road from Lot 112(A) to the "Daly Waters Access Road B" comprising 10 metres either side of the centreline

(h) as depicted on Map 1 in Schedule B.

46. Lot 102;

47. Lot 105;

48. Lot 108;

49. Lot 109;

50. The following roads including the specified adjacent land or waters as defined in section 251D of the Act:

(a) "Daly Waters Access Road A" and "Daly Waters Access Road B" and road reserve comprising 50 metres either side of the centreline including those parts of Lots 67, 98, 99 and 101 depicted on Map 1 in Schedule B which are coloured as "Extinguished (Road by agreement)";

(b) Daly Terrace (approximately 30.18 metres) depicted on Map 2 and 2A in Schedule B and on Survey Plan OP1002;

(c) Stuart Street (approximately 20.12 metres) depicted on Map 2 and 2A in Schedule B and on Survey Plan OP1002;

(d) Birdum Street (approximately 20.12 metres) depicted on Map 2 in Schedule B and on Survey Plan OP1002;

(e) King Street (approximately 20.12 metres) depicted on Map 2 and 2A in Schedule B and on Survey Plan OP1002;

(f) Forrest Street (approximately 20.12 metres) depicted on Map 2 and 2A in Schedule B and on Survey Plan OP1002; and

(g) Nutwood Street (approximately 20.12 metres) as depicted on Map 2 and 2A in Schedule B and on Survey Plan OP1002.

51. The land or waters comprising parts of lots upon, across or through which the following electricity, telecommunications, water or other infrastructure lies (including the specified adjacent land or waters as defined in section 251D of the Act), including:

(a) 22kv overhead powerlines and adjacent land or waters of 10m either side of the centerline;

(b) 415kv reticulation lines connecting to the 22kv overhead powerlines and adjacent land or waters of 10m either side of the centerline; and

(c) 100mm distribution, reticulation and water mains and adjacent land or waters of 1.5 metres either side of the

centerline;

52. Those parts of the Determination Area not identified in paragraphs 50 and 51 of this Schedule covered by public works including adjacent land or waters as defined in section 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 paragraph 50 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; and
- (i) electricity transmission lines, towers, poles and associated infrastructure.

#### SCHEDULE E - MAP OF MINING AND PETROLEUM INTERESTS WITHIN THE DETERMINATION AREA

(see NNTR Attachment 2: "Schedule E - Map of mining and petroleum interests within the Determination Area")

#### **REGISTER ATTACHMENTS:**

1. Attachment 1 Schedule B - Determination Area, 4 pages - A4, 27/06/2012
2. Attachment 2 Schedule E - Map of mining and petroleum interests within the Determination Area, 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.*