



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NTD6027/1998
NNTT Number: DCD2016/005

Determination Name: [Margarula on behalf of the Mirarr People v Northern Territory of Australia](#)

Date(s) of Effect: 24/08/2016, 9/11/2018

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: 24/08/2016

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

On 24 August 2016 the Federal Court of Australia made the following orders:

1. The native title rights of the Mirarr People over the area the subject of this application, broadly comprising the area of the Jabiru Township –

(a) have been extinguished to the extent that they are over areas which are the subject of subleases granted by the Jabiru Town Development Authority to non-Crown entities (as identified in the reasons for judgment);

(b) have been suppressed by reason of s 238 of the *Native Title Act 1993* (Cth) to the extent that they are over areas which are the subject of subleases granted by the Jabiru Town Development Authority to Crown entities (as identified in the reasons for judgment); and

(c) to the extent that they have been so suppressed have been extinguished by the extensive public works carried on within the claim area by 23 December 1996 save to the extent that the areas over which such suppression exists comprise:

(i) the underground water line to the Kakadu National Park headquarters;

(ii) Lot 2321;

(iii) The Magela Creek sewage pipeline;

(iv) Lot 2371 save for the area of 7 hectares adjacent to the Manaburduma Jabiru Town Camp.

2. In relation to the area fixed as adjacent “land” in relation to Jabiru Drive (Lots 968, 1427, 2015, 2025 and 2032), and Arnhem Highway (Lots 2306, 2318 and 2319), the Applicant is given leave to apply within 12 months of the date of these orders to have all or any part of those Lots removed from or reduced within the adjacent area as determined.

See [Margarula v Northern Territory of Australia \[2016\] FCA 1018](#).

On 31 August 2017, the Court made further orders which stated the following:

1. The time fixed by Order 2 made on 24 August 2016, within which the Applicant was given leave to apply to have all or any part of the area fixed as adjacent "land" in relation to Jabiru Drive (Lots 968, 1427, 2015, 2025 and 2032), and Arnhem Highway (Lots 2306, 2318 and 2319) removed from or reduced within the adjacent area as determined, be extended to within 18 months of the date of those orders.

On 9 November 2018, the Court made further orders which stated the following:

1. The orders made on 24 August 2016, as varied on 31 August 2017, are vacated.

4. An Aboriginal corporation whose name is to be provided within 12 months, or such further time as the Court may allow, is to:

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

(b) perform the functions outlined in s 57(3) of the Act after becoming a registered native title body corporate.

See [Margarula on behalf of the Mirarr People v Northern Territory of Australia \[2018\] FCA 1670](#).

On 28 June 2019, further orders were made which stated the following:

1. The Top End (Default PBC/CLA) Aboriginal Corporation RNTBC (ICN:7848) is:

(a) to be the prescribed body corporate for the purposes of s57(2) of the *Native Title Act 1993* (Cth) (the NT Act); and

(b) to perform the functions outlined in s 57(3) of the NT Act after becoming a registered native title body corporate.

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:

The native title holders (s 225(a))

3. The persons holding the rights comprising the native title are those Aboriginal people:

(a) who are members of the estate groups:

(i) Mirarr Gundjehmi;

(ii) Mirarr Urningangk;

(iii) Mirarr Mengerrdji;

by virtue of descent through his or her father or father's father or by virtue of adoption into one of the groups;

(b) whose mother or mother's mother is or was a member of the groups referred to in paragraph (a);

(c) who are spouses of the persons referred to in paragraph (a);

(d) who have connections to the area by virtue of:

(i) being a member of a group (other than the groups referred to in paragraph (a)(ii) and (iii)), which group has an estate neighbouring the traditional estate of the Mirarr Gundjehmi;

- (ii) being spouses of the person referred to in paragraph (d)(i);
- (iii) related spiritual affiliations or ritual authority in relation to the area.

MATTERS DETERMINED:

THE COURT ORDERS THAT:

1. The orders made on 24 August 2016, as varied on 31 August 2017, are vacated.
2. There be a determination of native title in terms of the determination set out below.
3. The native title is not to be held on trust.
4. An Aboriginal corporation whose name is to be provided within 12 months, or such further time as the Court may allow, is to:
 - (a) be the prescribed body corporate for the purposes of s 57(2) of the *Native Title Act 1993* (Cth) (the **Act**); and
 - (b) perform the functions outlined in s 57(3) of the Act after becoming a registered native title body corporate.
6. The parties have liberty to apply to establish the precise location and boundaries of the public works and adjacent land in relation to the items noted in the fifth column of Schedule D2 and of the works and facilities referred to in Schedule C items 2 and 3.

THE COURT DETERMINES THAT:

The Determination Area

1. The external boundaries of the Determination Area are described in Schedule A and depicted on Map 1 in Schedule B.
2. Native title:
 - (a) exists in the parts of the Determination Area referred to in Schedule C (the **Native Title Area**);
 - (b) does not exist in the parts of the Determination Area referred to in Schedule D (the **Extinguished Area**).

The native title holders (s 225(a))

3. The persons holding the rights comprising the native title are those Aboriginal people:
 - (a) who are members of the estate groups:
 - (i) Mirarr Gundjeihmi;
 - (ii) Mirarr Urningangk;
 - (iii) Mirarr Mengerrdji;by virtue of descent through his or her father or father's father or by virtue of adoption into one of the groups;
 - (b) whose mother or mother's mother is or was a member of the groups referred to in paragraph (a);
 - (c) who are spouses of the persons referred to in paragraph (a);
 - (d) who have connections to the area by virtue of:
 - (i) being a member of a group (other than the groups referred to in paragraph (a)(ii) and (iii)), which group has an estate neighbouring the traditional estate of the Mirarr Gundjeihmi;
 - (ii) being spouses of the person referred to in paragraph (d)(i);
 - (iii) related spiritual affiliations or ritual authority in relation to the area.

The nature and extent of the native title (s 225(b))

4. The native title in relation to the Native Title Area comprises:

- (a) the right to travel over, to move about and to have access to the area;
 - (b) the right to hunt and to fish on the land and waters of the area for personal, domestic or non-commercial exchange or communal consumption for purposes allowed by and under the traditional laws and customs of the native title holders;
 - (c) the right to gather and to use the natural resources of the area such as food, medicinal plants, wild tobacco, timber, stone and resin for personal, domestic or non-commercial exchange or communal consumption for purposes allowed by and under the traditional laws and customs of the native title holders;
 - (d) the right to take and to use the natural water on the area;
 - (e) the right to live, to camp and for that purpose to erect shelters and other structures on the area;
 - (f) the right to light fires on the area for domestic purposes, but not for the clearance of vegetation;
 - (g) the right to conduct and to participate in the following activities on the area:
 - (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 the area that are of significance under the traditional laws and customs of the native title holders;
 - (h) the right to maintain and to protect sites and places on the area that are of significance under the traditional laws and customs of the native title holders;
 - (i) the right to share or exchange subsistence and other traditional resources obtained on or from the area for personal, domestic or non-commercial exchange or communal consumption for purposes allowed by and under the traditional laws and customs of the native title holders;
 - (j) the right to be accompanied on to the area 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 area;
 - (ii) people who have rights in relation to the area 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 area.
5. The native title rights referred to at [4] do not confer;

- (a) possession, occupation, use and enjoyment of the Native Title Area on the native title holders to the exclusion of all others; or
- (b) any right to control access to, or use of, the Native Title Area or its resources.

Other interests (s 225(c))

6. The other interests in relation to the Native Title Area are:

- (a) the interests of the Director of National Parks:
 - (i) under the proclamation of Kakadu National Park published in the Gazette on 5 April 1979 pursuant to s 7(2) of *National Parks and Wildlife Conservation Act 1975* (Cth) (the **NPWC Act**) continued in force by the *Environmental Reform (Consequential Provisions) Act 1999* (Cth) as if declared a Commonwealth reserve under s 344 the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) (the **EPBC Act**);
 - (ii) under Part 15 Division 4 of the EPBC Act in relation to the management of the Commonwealth reserve known as Kakadu National Park;

- (ii) as lessor under the Township Lease dated 29 June 1981 and granted pursuant to s 9(2A) of the NPWC Act;
- (b) the interests of the Jabiru Town Development Authority as lessee under the Township Lease dated 29 June 1981 and granted pursuant to s 9(2A) of the NPWC Act and continued as a usage right under s 359 of the EPBC Act;
- (c) the respective interests of Energy Resources of Australia Ltd, the Jabiru Town Development Authority, the Northern Territory and the Commonwealth in relation to the infrastructure and other works that are the subject of the trust provided for in the agreement between the Jabiru Town Development Authority and Energy Resources Australia Ltd entered into on or about 23 August 1985;
- (d) the interests of the owners or operators of the works referred to in Schedule C item 2(i)–(iii);
- (e) the interests of the holders of the sub-leases granted by the Jabiru Town Development Authority referred to in Schedule C1;
- (f) the interests of Telstra Corporation Limited in respect of the facilities referred to in Schedule C2:
 - (i) as the owner or operator of the telecommunications facilities and as the holder of a carrier licence under the *Telecommunications Act 1997* (Cth);
 - (ii) 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).
- (g) the rights of employees, agents or contractors of Telstra Corporation Limited to enter the area in the performance of their duties to enable access to its telecommunication facilities;
- (h) the rights of Aboriginal persons (whether or not native title holders) in relation to:
 - (i) the traditional use of Commonwealth reserves under s 359A of the EPBC Act;
 - (ii) the protection of sacred sites under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT);
- (i) rights of access by an employee, servant, agent or instrumentality of the Northern Territory or Commonwealth, or other statutory authority, as required and permitted in the performance of statutory duties;
- (j) valid or validated rights and interests granted pursuant to, or held by force or operation of, laws of the Northern Territory or the Commonwealth.

Relationship between the native title rights and the other interests (s 225(d))

7. Except as otherwise provided by law, the relationship between the native title rights and the other interests is that:

- (a) the other interests are not inconsistent with the continued existence of the native title rights;
- (b) to the extent the other interests are inconsistent with the continued enjoyment or exercise of the native title rights, the native title rights continue to exist in their entirety, but the native title rights have no effect in relation to the other interests to the extent of the inconsistency during the currency of the other interests;
- (c) the existence, enjoyment and exercise of the native title rights do not prevent the doing of any activity required or permitted to be done by or under the other interests, and the other interests and the doing of the required or permitted activity prevail over the native title rights and any enjoyment or exercise of the native title rights, but do not extinguish them.

Other matters

8. There are no native title rights or 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) or s 5(1) of the *Atomic Energy Act 1953* (Cth);
- in the Native Title Area.

9. The native title rights are subject to and exercisable in accordance with:

- (a) the traditional laws and customs of the native title holders;
- (b) the laws of the Northern Territory and the Commonwealth.

REGISTER ATTACHMENTS:

1. Schedule B - Maps, 4 pages - A4, 09/11/2018
2. Schedule D1 - Sub-leases that are previous exclusive possession acts, 9 pages - A4, 09/11/2018
3. Schedule D2 - Public Works that are previous exclusive possession acts, 6 pages - A4, 09/11/2018
4. Schedule A - External Boundaries of Determination Area: Clause 1, 1 page - A4, 09/11/2018
5. Schedule C - The Native Title Area: Clause 2(a), 1 page - A4, 09/11/2018
6. Schedule C1 - Sub-leases in the Native Title Area: Clause 6(e), 1 page - A4, 09/11/2018
7. Schedule C2 - Telecommunication facilities in the Native Title Area: Clause 6(f), 1 page - A4, 09/11/2018
8. Schedule D - The Extinguished Area: Clause 2(b), 1 page - A4, 09/11/2018

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.