



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NTD60/2017
NNTT Number: DCD2020/005

Determination Name: [Foster on behalf of the Jalajirra, Kunapa and Pirtangu Groups v Northern Territory of Australia \(Banka Banka East Pastoral Lease Proceeding\)](#)

Date(s) of Effect: 28/10/2020

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: 28/10/2020

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

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

The land and waters of the Determination Area comprise the whole or part of 3 estates, which are held respectively by the members of the following estate groups:

- (a) the Jalajirra estate group;
- (b) the Kunapa estate group; and
- (c) the Pirtangu estate group.

These persons, together with the Aboriginal people referred to in clause 7, are collectively referred to as the "**native title holders**".

6. Each of the estate groups referred to in clause 5 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; or

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

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

7. In accordance with the traditional laws acknowledged and the traditional customs observed by the estate group members, other Aboriginal people have native title rights and interests in respect of the Determination Area, subject to the native title 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.

8. Each of the estate groups referred to in clause 7(a) 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; or

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

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. The Top End (Default PBC/CLA) Aboriginal Corporation RNTBC be appointed as the prescribed body corporate for the purposes of s 57(2) of the Act in respect of the area the subject of the Determination.

5. There be liberty to apply to establish the precise location and boundaries of 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.

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 will prevail.

The native title holders

5. The land and waters of the Determination Area comprise the whole or part of 3 estates, which are held respectively by the members of the following estate groups:

(a) the Jalajirpa estate group;

- (b) the Kunapa estate group; and
- (c) the Pirrtangu estate group.

These persons, together with the Aboriginal people referred to in clause 7, are collectively referred to as the "**native title holders**".

6. Each of the estate groups referred to in clause 5 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; or
- (c) having been adopted or incorporated into the descent relationships referred to in (a) or (b) above.

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

7. In accordance with the traditional laws acknowledged and the traditional customs observed by the estate group members, other Aboriginal people have native title rights and interests in respect of the Determination Area, subject to the native title 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.

8. Each of the estate groups referred to in clause 7(a) 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; or
- (c) having been adopted or incorporated into the descent relationships referred to in (a) or (b) above.

The native title rights and interests

9. The native title rights and interests of the estate group members referred to in clause 5 in relation to those parts of the Determination Area identified in Schedule C, being an area where there has been partial extinguishment of native title, are the rights:

- (a) to access, remain on and use the areas;
- (b) to access and to take for any purpose the resources of the areas; and
- (c) to protect places, areas and things of traditional significance.

10. The native title rights and interests of the persons referred to in clause 7 above in relation to those parts of the Determination Area identified in Schedule C, being an area where there has been partial extinguishment of native title, are the rights:

- (a) to access, remain on and use the areas; and
- (b) to access the resources of the areas.

11. The native title rights and interests do not confer on the native title holders:

- (a) possession, occupation, use and enjoyment of those parts of the Determination Area identified in Schedule C to the exclusion of all others;
- (b) any right to control the access to and use of those parts of the land and waters of the areas or their resources;
- (c) any right to access or take:
 - (i) water captured by the holders of Perpetual Pastoral Lease No. 1204; or
 - (ii) resources that are the private or personal property of another, including but not limited to:

A. infrastructure or fixtures;

B. chattels, equipment, machinery or supplies;

C. animals, including stock within the meaning of the *Pastoral Land Act 1992* (NT) and the progeny of any such animal, that are the private or personal property of another; and

D. plants, crops and grasses that are the private or personal property of another.

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

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

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

- (a) minerals (as defined in s 2 of the *Minerals (Acquisition) Act 1953* (NT));
- (b) petroleum (as defined in s 5 of the *Petroleum Act 1984* (NT)); or
- (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.

Non-exhaustive List of Activities

14. Without limiting the native title rights and interests described in clauses 9 and 10 in any way, and without purporting to exhaustively describe the activities which those rights authorise or permit, the rights and interests referred to in clause 9 enable the estate group members referred to in clause 5 to:

- (a) travel over, move about and access those areas;
- (b) hunt and fish on the land and waters of those areas;
- (c) gather and to use the natural resources of those areas such as food, medicinal plants, wild tobacco, timber, stone and resin;
- (d) take and to use the natural water on those areas, but this right does not include the right to take or use water captured by the holders of Perpetual Pastoral Lease No. 1204;
- (e) live and camp on the areas, and to erect shelters and other structures on those areas;
- (f) light fires for domestic purposes;
- (g) conduct and 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 traditional significance;
 - (h) maintain and protect sites and places on those areas that are of traditional significance;
 - (i) be accompanied onto 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 those areas;
 - (ii) people who have rights in relation to the areas according to the traditional laws and customs acknowledged by the estate group members; and
 - (iii) people required by the estate group members to assist in, observe, or record traditional activities on the areas.

Other interests in the Determination Area

15. The nature and extent of other interests in relation to the Determination Area are the interests, created by the Crown or otherwise, as follows:

- (a) in relation to NT portion 7049, the rights and interests of the holder of Perpetual Pastoral Lease No. 1204;
- (b) the rights of Aboriginal persons (whether or not native title holders) pursuant to the reservation in favour of Aboriginal peoples in Perpetual Pastoral Lease No. 1204 made by s 38 of the *Pastoral Land Act 1992* (NT);
- (c) the rights of Aboriginal persons (whether or not native title holders) pursuant to the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT);
- (d) 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;
- (e) the rights to water lawfully captured by the holders of other interests;
- (f) the rights and 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;
- (g) the rights and interests of the holders of the following titles granted under the *Mineral Titles Act 2010* (NT) and the *Petroleum Act 1984* (NT), depicted in Schedule E:
 - (i) Exploration Permit Title No. 169 granted on 4 April 2013; and
 - (ii) Exploration Licence Title No. 31665 granted on 3 August 2017.

Relationship between the native title and other interests

16. The other rights and interests referred to in clause 15, and the doing of an activity in giving effect to them or of an activity required or permitted by them, prevail over but do not extinguish the native title rights and interests referred to in clauses 9 and 10, and the existence and exercise of the native title rights and interests do not prevent the carrying on of any such activity.

Definitions

17. In this Determination, unless the contrary intention appears:

"the **Act**" means the *Native Title Act 1993* (Cth);

"**land**" and "**waters**" respectively have the same meanings as in the Act;

"**resources**" for the purposes of clauses 9 and 10 of this Determination does not include minerals, petroleum and prescribed substances;

"the **Commonwealth**" means the Commonwealth of Australia; and

"the **Northern Territory**" means the Northern Territory of Australia.

REGISTER ATTACHMENTS:

1. DCD2020_005 Schedule A - Description of Determination Area, 1 page - A4, 28/10/2020
2. DCD2020_005 Schedule B - Map of Determination Area, 2 pages - A4, 28/10/2020
3. DCD2020_005 Schedule C - Areas where native title exists, 1 page - A4, 28/10/2020
4. DCD2020_005 Schedule D - Areas where native title does not exist, 1 page - A4, 28/10/2020
5. DCD2020_005 Schedule E - Map of interests granted under the Mineral Titles Act (NT) and the Petroleum Act (NT), 2 pages - A4, 28/10/2020

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.