

**The dramatic increase of powers to
police aboriginal people
in the Northern Territory :**

what little is gained for such a high a
price

Mary Spiers

- A disclaimer

This is story about vulnerable people living with the consequences of rushed law making and - apparently - no policy development.



An Australian Government Initiative

WARNING PRESCRIBED AREA

NO LIQUOR

It is an offence to bring, possess, consume, supply, sell or control liquor beyond this point without a liquor permit or licence.

Maximum penalty:

- \$1,100 - 1st offence
- \$2,200 - 2nd or subsequent offences
- \$74,800 and/or 18 months jail for supplying/intending to supply over 1,350ml quantity of pure alcohol in liquor to a third person



It is not an offence to directly transport unopened liquor through a Prescribed Area provided you can clearly demonstrate your destination is outside the Prescribed Area.

The Liquor Act (NT) as amended by the Northern Territory National Emergency Response Act 2007 (Commonwealth)

NO PORNOGRAPHY

It is an offence to bring, possess, supply, sell or transport certain pornographic material beyond this point.

Maximum penalty possession:

- \$5,500 for level 1 material
Includes Category 1 Restricted and Category 2 Restricted publications, X18+ film, unclassified publications that would likely be classified Category 1 Restricted or Category 2 Restricted, unclassified films that would likely be X18+ and prohibited advertisements.
- \$11,000 for level 2 material
Includes films, computer games or publications that are Refused Classification or are unclassified but would likely be Refused Classification.

Maximum penalty supply:

- \$11,000 - supply less than 5 items
- \$22,000 - and/or 2 years jail for 5 or more items.

Classification (Publications, Films and Computer Games) Act 1995 (Commonwealth)

How did we realise something had changed?

- Observations by Patrollers ...
- Confusion from Town Camp Residents ...

What did I find



Northern Territory National Emergency Response Act 2007

No. 129, 2007

**An Act to respond to the Northern Territory's national
emergency, and for related purposes**

Section 12

- (d) specifying the possible penalties for the offence.
- (2) The Commission must also cause to be published in a newspaper circulating in the district in which the relevant land is situated a notice:
 - (a) describing the relevant area; and
 - (b) stating that it is an offence to bring liquor into, to be in possession or control of liquor or to consume or sell liquor within the area; and
 - (c) specifying the possible penalties for the offence.
- (3) A failure to comply with subsection (1) or (2) does not invalidate a declaration under section 4.

12 Modification: prescribed areas

- (1) The **Liquor Act** has effect as if:
 - (a) each prescribed area had been declared by the Commission to be a general restricted area under that Act; and
 - (b) the offences against subsection 75(1) of that Act, so far as they relate to a prescribed area, were replaced by the following provisions of this section.
- (2) A person commits an offence if:
 - (a) the person:
 - (i) brings liquor into an area; or
 - (ii) has liquor in his or her possession or control within an area; or
 - (iii) consumes liquor within an area; and
 - (b) the area is a prescribed area.

Maximum penalty:

- (b) stating that it is an offence to bring liquor into, to be in possession or control of liquor or to consume or sell liquor within the area; and
 - (c) specifying the possible penalties for the offence.
- (3) A failure to comply with subsection (1) or (2) does not invalidate a declaration under section 4.

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 - (ii) has liquor in his or her possession or control within an area; or
 - (iii) consumes liquor within an area; and
 - (b) the area is a prescribed area.

Maximum penalty:

- (c) 10 penalty units for a first offence; or
 - (d) 20 penalty units for a second or subsequent offence.
- (3) It is a defence to a prosecution for an offence against subsection (2) if the

NOR`THERN TERRITORY OF AUSTRALIA

LIQUOR ACT

As in force at 15 November 2007

Division 3

Powers of entry, search and seizure for general restricted areas

94A Application

This Division applies to an offence against this Part in relation to a general restricted area (a **relevant offence**).

95 Powers of search and seizure

(1) An inspector may, **without a warrant**:

(a) do 1 or more of the following if the inspector **reasonably suspects a relevant offence has been, or is being or likely to be, committed**:

(i) enter and search **an area of land (whether or not it is the general restricted area)**;

(ii) stop, enter, search, remove and retain a vehicle, vessel or aircraft (whether or not it is in the general restricted area);

(iii) stop, detain and search a person in connection with the exercise of a power under subparagraph (i) or (ii);

(iv) search a thing in connection with the exercise of a power under subparagraph (i), (ii) or (iii); and

(b) **seize** a thing found in connection with the exercise of a power under paragraph (a)(i), (ii), (iii) or (iv) that the inspector reasonably believes to be related to a relevant offence.

(2) In addition, an inspector may, without a warrant:

(a) do 1 or more of the following **on a random basis** for the detection of a relevant offence that has been, or is being or likely to be, committed:

(i) stop, enter, search, remove and retain a **vehicle (whether or not it is in the general restricted area)**;

(ii) stop, detain and search a **person** (whether or not in connection with the exercise of a power under subparagraph (i));

(iii) search a **thing** in connection with the exercise of a power under subparagraph (i) or (ii); and

(b) **seize** a thing in connection with the exercise of a power under paragraph

94A

Application

general

Powers to enter a house & land:

95

Powers

- (1) An inspector may, **without a warrant**:
 - (a) do 1 or more of the following if the inspector **reasonably suspects a relevant offence has been, or is being or likely to be, committed**:
 - (i) enter and search **an area of land (whether or not it is the general restricted area)**;
 - (ii) stop, enter, search, remove and retain a vehicle, vessel or aircraft (whether or not it is in the general restricted area);
 - (iii) stop, detain and search a person in connection with the exercise of a power under subparagraph (i) or (ii);
 - (iv) search a thing in connection with the exercise of a power under subparagraph (i), (ii) or (iii); and

- (b) **seize** a thing in connection with the exercise of a power under

Under s74 LA General Restricted Areas include private premises; see also interpretation of 'premises' which incl area of land

(2) In addition, an inspector may, without a warrant,

(whether or not it is in the general restricted area);

- (iii) stop, detain and search a person in connection with the exercise of a power under subparagraph (i) or (ii);
- (iv) search a thing in connection with the exercise of a power under subparagraph (i), (ii) or (iii); and

Random search powers:

a power under
believes to be

(2) In addition, an inspector may, without a warrant:

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 - (ii) stop, detain and search a **person** (whether or not in connection with the exercise of a power under subparagraph (i));
 - (iii) search a **thing** in connection with the exercise of a power under subparagraph (i) or (ii); and
- (b) **seize** a thing in connection with the exercise of a power under paragraph (a)(i), (ii) or (iii) that the inspector reasonably believes to be related to a relevant offence.

- Also under s18 NTERA,
 - In prescribed areas only,

Police have power to enter a private home to take a seriously intoxicated person into protective custody

(extending the power under the NT's Police Administration Act.)

In short:

Police can enter a house within a prescribed area if

- Police reasonably suspect there is alcohol inside or
- there is really drunk person in the house

Inside or outside a prescribed area,

if police are carrying out searches for the purpose of stopping alcohol going into prescribed areas:

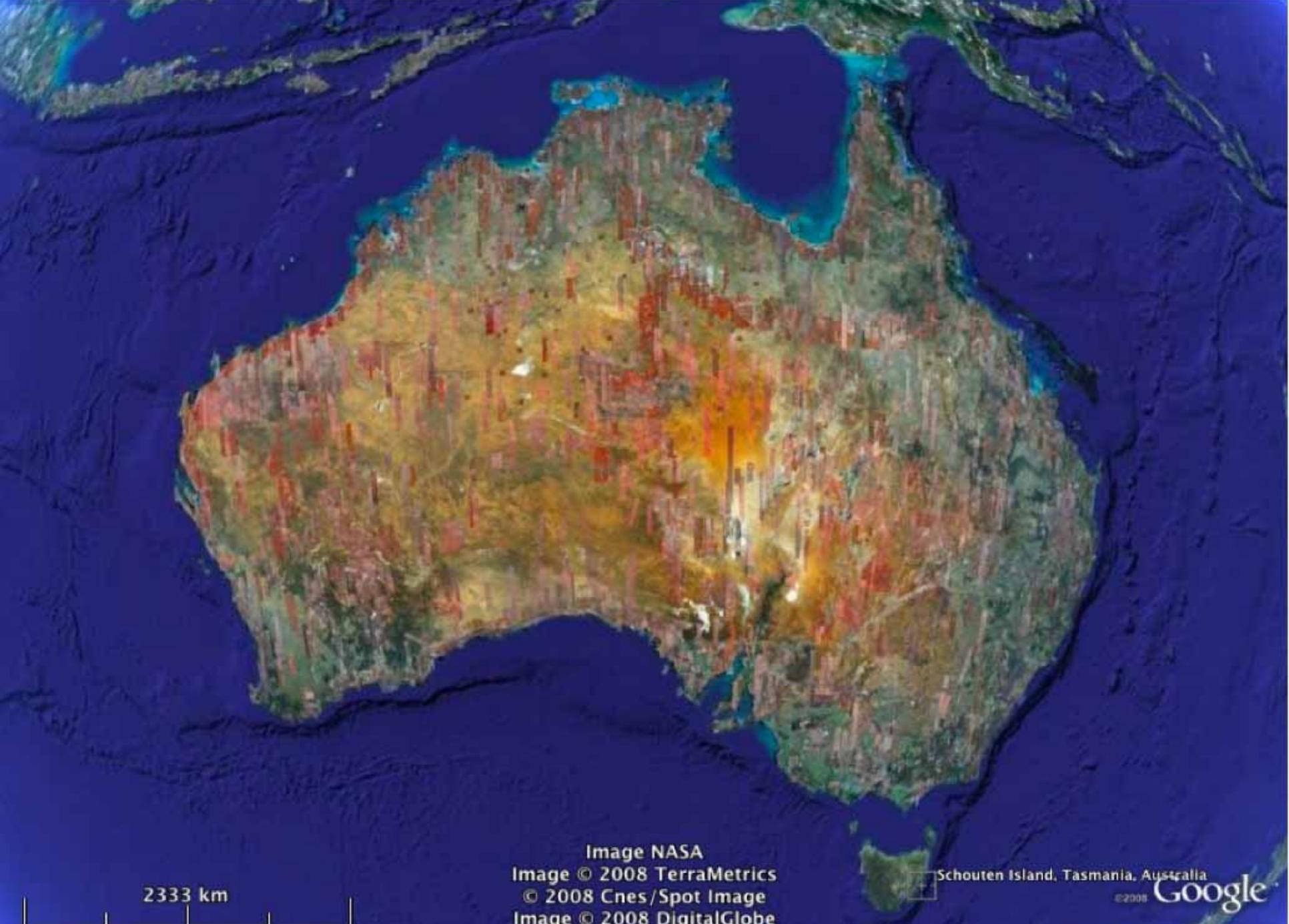
- Police can **randomly stop & search** people, cars, bags, etc.

And

- They can lawfully seize any alcohol found

Let's look at this another way

- Where did this law come from?
- And what does it mean in practice in, eg, Alice Springs?



2333 km

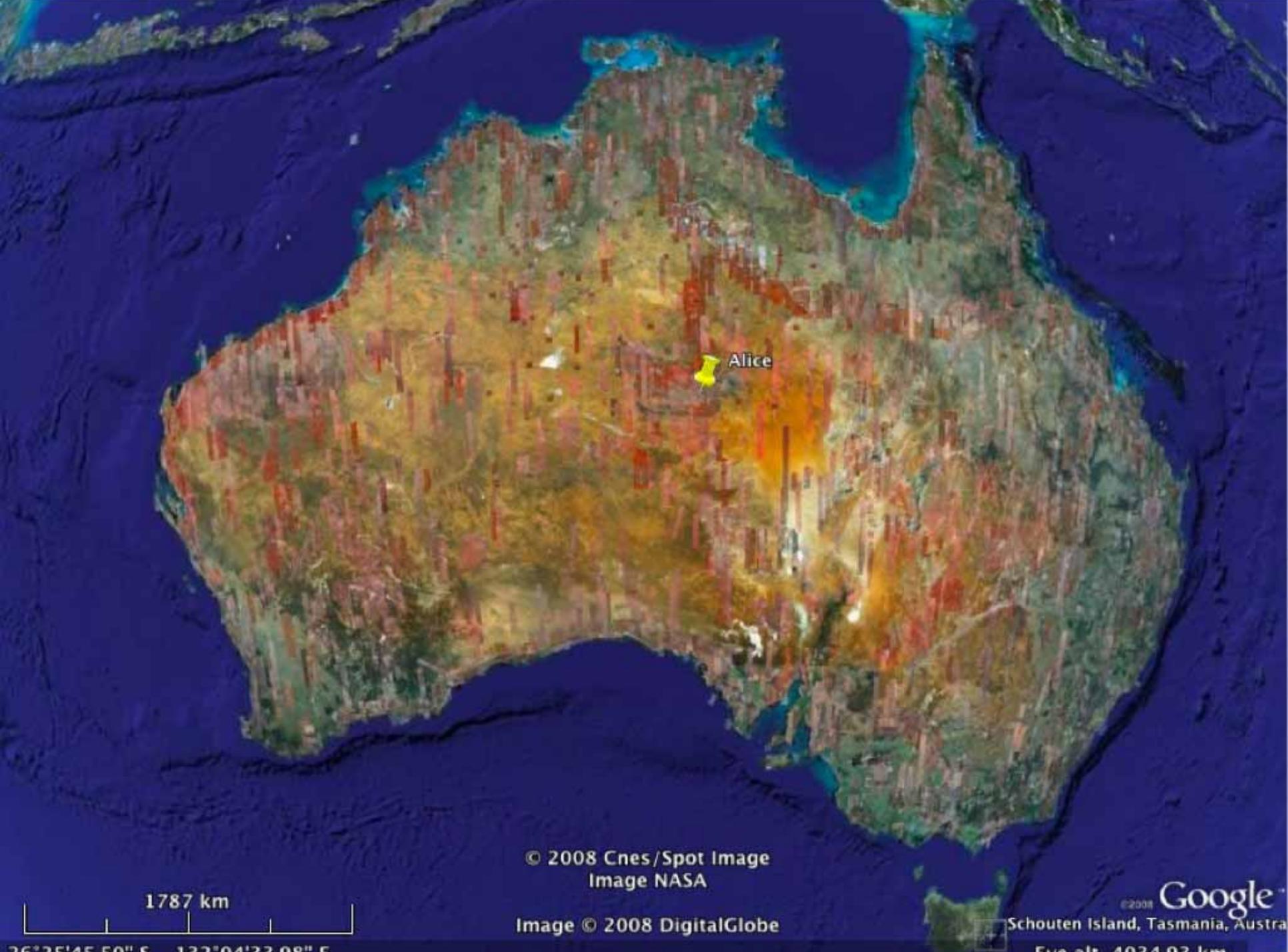
Image NASA
Image © 2008 TerraMetrics
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Image © 2008 DigitalGlobe

Schouten Island, Tasmania, Australia

©2008 Google

26°30'21.14" S 133°35'25.42" E

Eve alt 4519.53 km

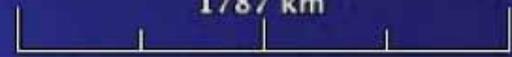


Alice

© 2008 Cnes/Spot Image
Image NASA

Image © 2008 DigitalGlobe

1787 km

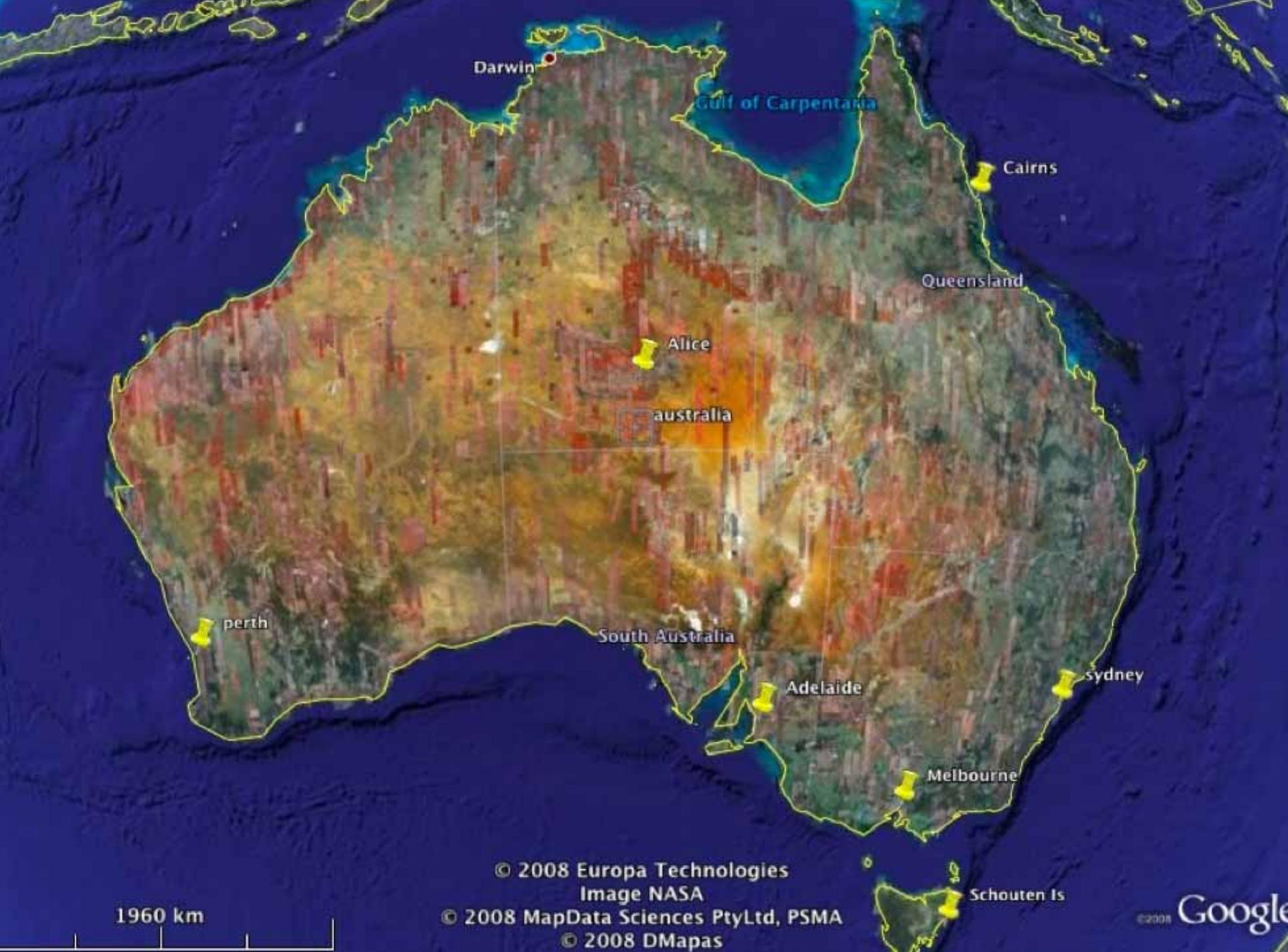


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Schouten Island, Tasmania, Australia

Eye alt: 1024.03 km

26°25'45.50" S 133°04'33.08" E



Darwin

Gulf of Carpentaria

Cairns

Queensland

Alice

australia

perth

South Australia

Adelaide

Melbourne

sydney

Schouten Is

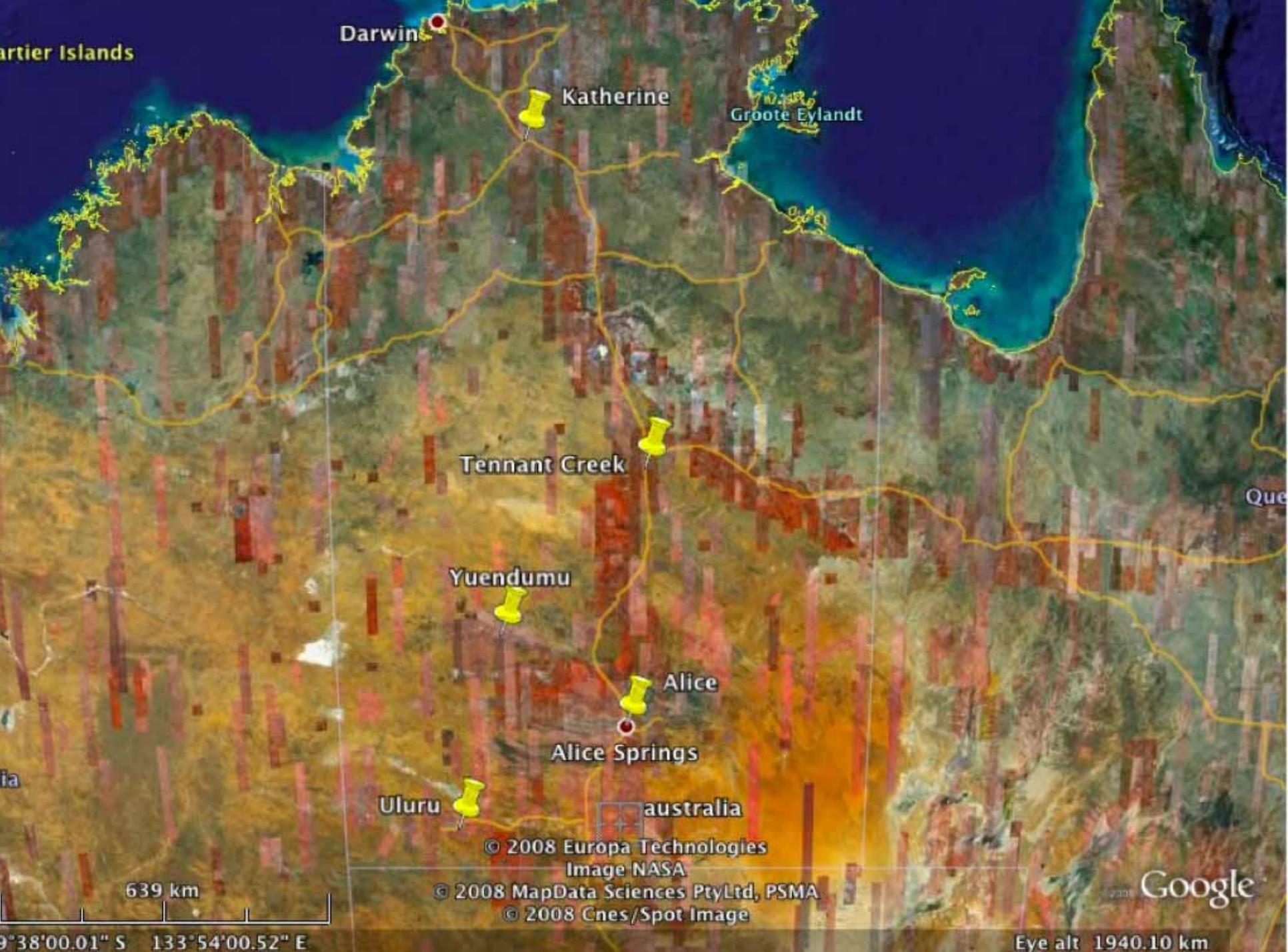
1960 km

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© 2008 DMapas

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Darwin

Katherine

Grooté Eylandt

Tennant Creek

Yuendumu

Alice

Alice Springs

Uluru

australia

© 2008 Europa Technologies
Image NASA

© 2008 MapData Sciences PtyLtd, PSMA

© 2008 Cnes/Spot Image

Google

639 km

9°38'00.01" S 133°54'00.52" E

Eye alt 1940.10 km



Timor Sea

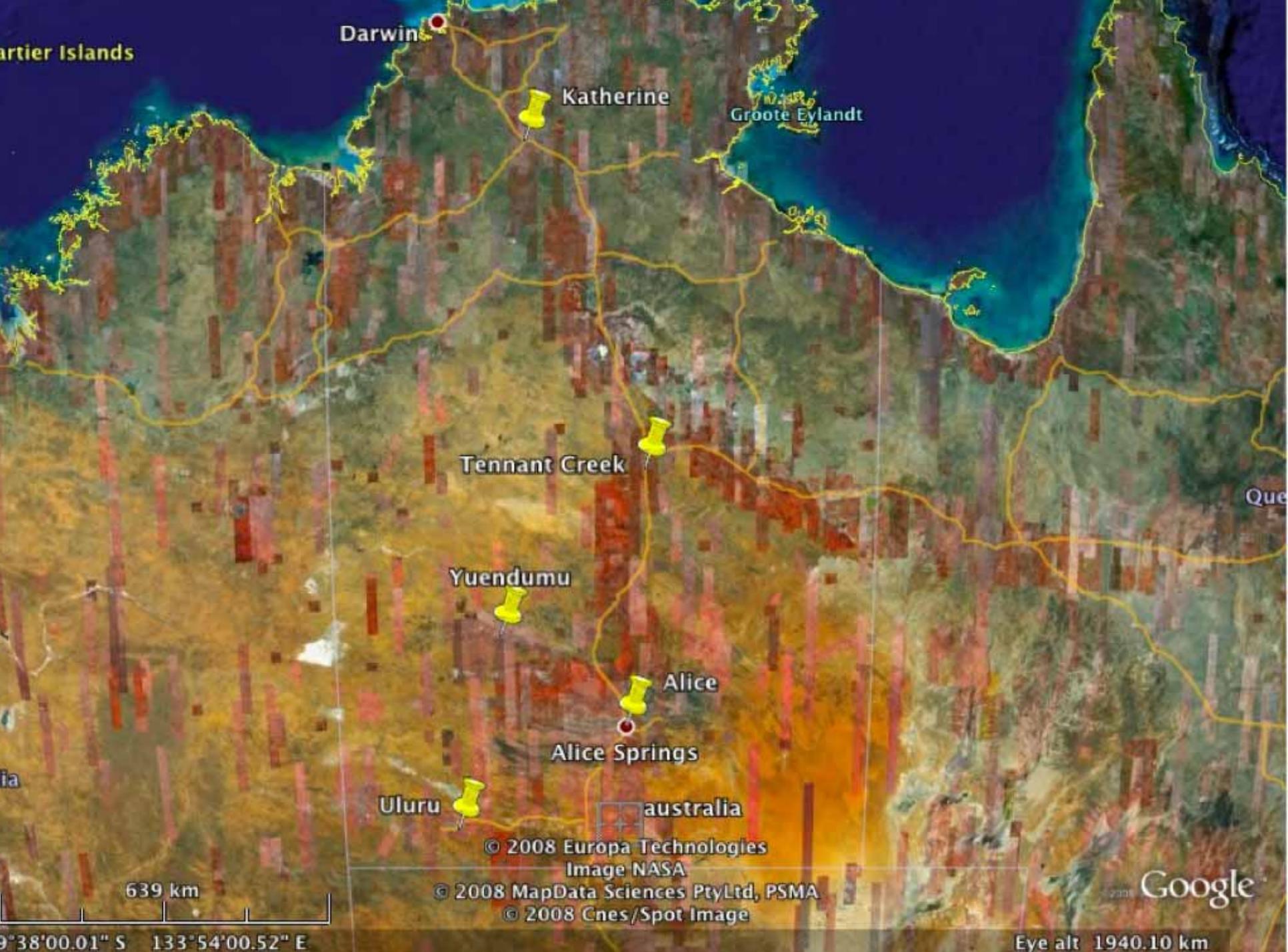
more and Cartier Islands

Western Australia

758 km

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© 2008 Europa Technologies

Google



Darwin

Katherine

Grooté Eylandt

Tennant Creek

Yuendumu

Alice

Alice Springs

Uluru

australia

639 km

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Image NASA

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Google

9°38'00.01" S 133°54'00.52" E

Eye alt 1940.10 km



Yuendumu Yuendumu NT, Australia

Image © 2008 DigitalGlobe
© 2008 MapData Sciences PtyLtd, PSMA

© 2008 Google



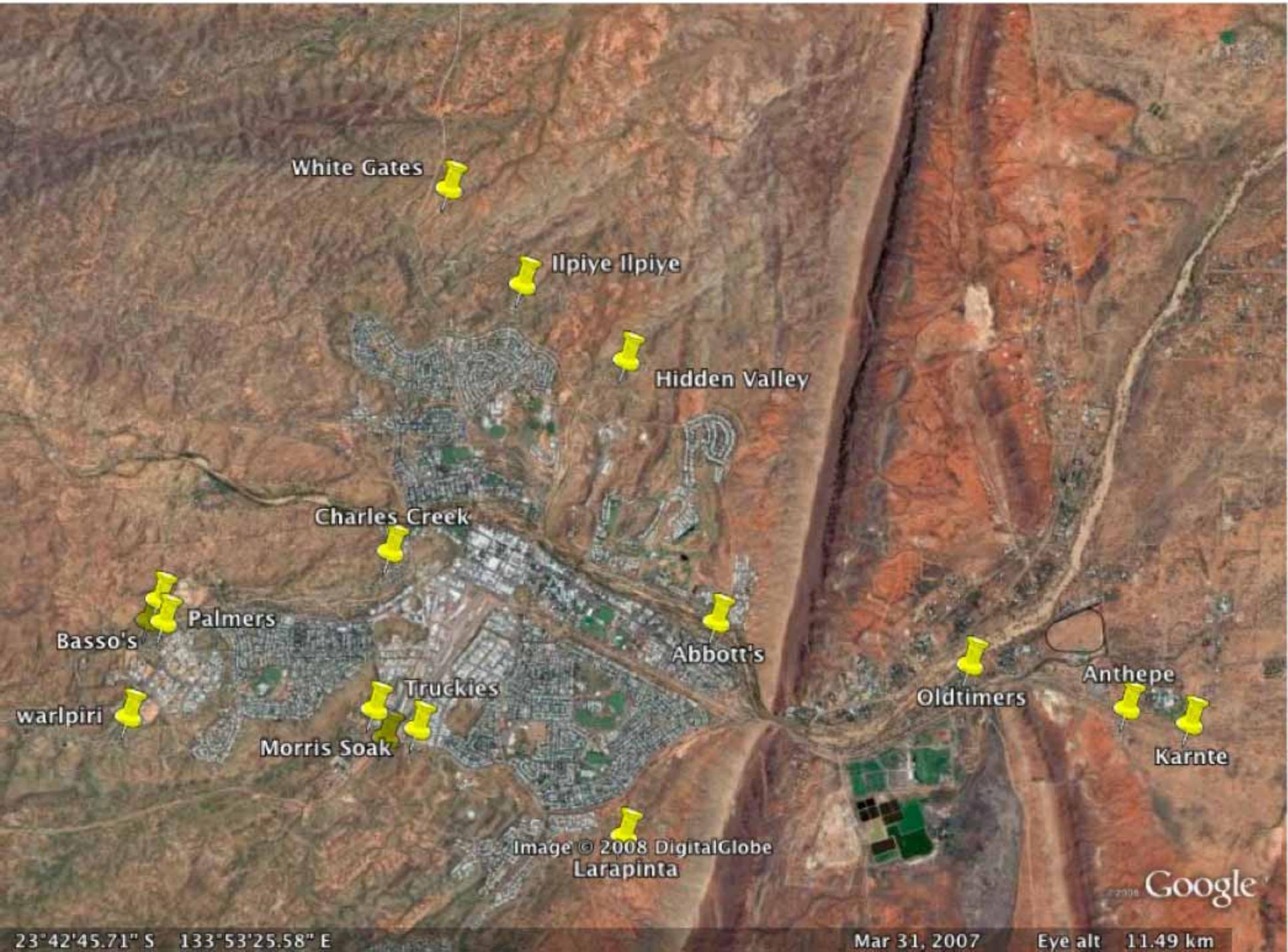
Image © 2008 DigitalGlobe

Google

23°42'27.33" S 133°52'05.27" E

Mar 31, 2007

Eye alt 11.79 km



White Gates

Ilpiye Ilpiye

Hidden Valley

Charles Creek

Palmers

Basso's

warlpiri

Morris Soak

Truckies

Abbott's

Oldtimers

Anthepe

Karnte

Image © 2008 DigitalGlobe
Larapinta

Google

23°42'45.71" S 133°53'25.58" E

Mar 31, 2007

Eye alt 11.49 km



Image © 2008 DigitalGlobe

2008 Google

3216 m

23°42'47.40" S 133°52'17.73" E

Mar 31, 2007

Eye alt: 11.19 km



Image © 2008 DigitalGlobe

Google

23°43'00.82" S 133°52'26.99" E

Mar 31, 2007

Eye alt 824 m



Image © 2008 DigitalGlobe

Google

23°42'51.32" S 133°52'27.27" E

Mar 31, 2007

Eye alt 950 m



Image © 2008 DigitalGlobe

Google

23°42'56.15" S 133°52'24.00" E

Mar 31, 2007

Eye alt 430 m

Seizure

- Police can “seize a thing in connection with the exercise of a *{random search}* power [...] that [s/he] reasonably believes to be related to a relevant offence”
 - no receipt
 - no explanation re how to apply to get alcohol back
 - no requirement an offence be laid
 - No requirement to warn an offence to obstruct
 - No requirement to identify self or station
- Anyone sober with ID & over 18 can still buy alcohol

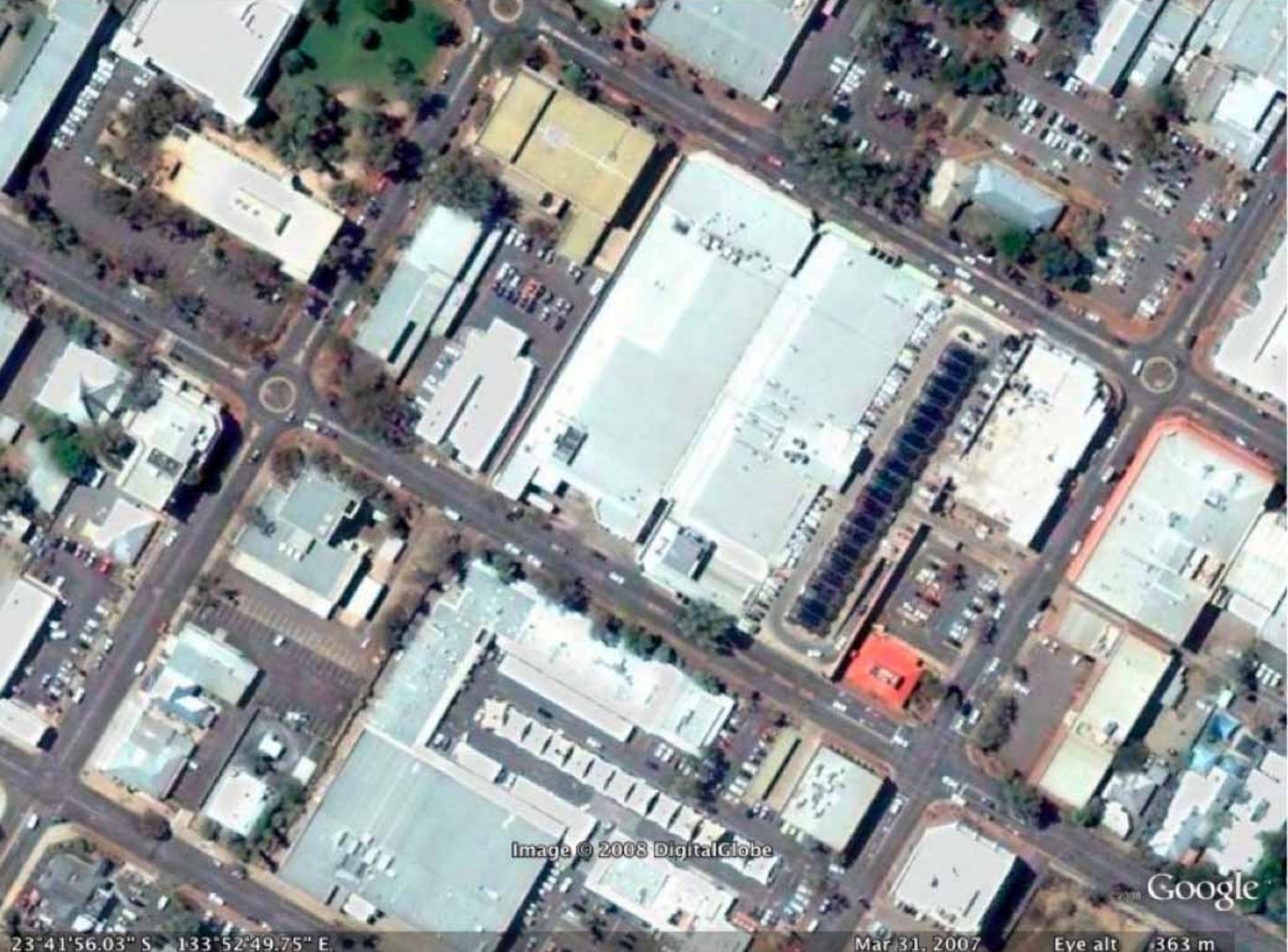


Image © 2008 DigitalGlobe

Google

23°41'56.03" S 133°52'49.75" E

Mar 31, 2007

Eye alt 363 m

Comparing town & the bush

	Alice Springs	Yuendumu
• liquor outlets	105	0
• take away licences	27	0 (closest is ~270km)
• Population	23892	~800
• Popn living in prescribed area	~2500-3000	~800
• Chose to become 'dry'?	No*	Yes

- In 2 previous years started a process of becoming dry town & several town camps had chosen to become 'dry'

Consequences of the Law:

(There is no data - only anecdotal)

Who do the police in fact “randomly” search?
- random... or targeted?

What happens when you give police a power which encourages them to target indigenous people?

What does this law do in a community that already struggles with race relations?

Consequences of the Law:

(cont'd)

- What about the children (the original reason for this law's introduction)?
- Has it stopped the drinking?
 - Drinkers find other places to drink:
 - The hills, the highways, or hide
 - Alternatively: they realise the police can't catch them all the time
 - Drinking as a form of resistance?

The prohibition of alcohol?

- Turn off the tap?
- Turn down the tap?
- Leave the tap running but don't let some people drink from it?

Concerns :

- Safeguards?
 - Identify self?
 - Explain power? Explain how to complain?
 - Requirement to inquire whether person going to prescribed area?
 - Record keeping? ... Issuing receipts?
 - Geographical limitation?
 - Same gender searching? - yes!

Concerns :

there are no anti-corruption strategies in place &
lawful police action is viewed skeptically
by the community

Concerns :

The law is very broad & police don't have resources to give it full effect , and

community members are unhappy about inconsistent application of the law:

- there are complaints about police entry to homes, and the same people complains that police do not stop taxi's bring passengers with grog

A final remark

- The Race Discrimination Act
 - NTERA says: this law will be taken to be a special measure
 - ... If this is special measure that benefits indigenous people then it can bear the scrutiny of review
 - Lawyers seems frozen about challenging NTERA -
 - ...I'd suggest that there is a basis for running a challenge that takes the principles in the *Tas Dams Case* one step further.