



Extract from Schedule of Native Title Applications

Application Reference: Federal Court number: QUD227/2022
NNTT number: QC2022/001

Application Name: Lui Ned David & Ors on behalf of the Torres Strait Regional Seas Claim (Part C) and State of Queensland

Application Type: Claimant

Application filed with: National Native Title Tribunal

Date application filed: 01/07/2022

Current stage(s): Notification Complete, Part Determination

Registration information: Please refer to the Register of Native Title Claims/National Native Title Register (as appropriate) for registered details of this application.

Registration decision status: Not Accepted for registration

Registration history: -

Date claim / part of claim determined: 30/11/2022

Applicants: Lui Ned David, Kabay Tamu, Frank Faud, Ted Mosby, Iona Manas, David Bosun, Alick Tipoti, Troy Laza, Kapua Gutchen, Brian Williams, Sabu Wailu, John Zaro

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Additional Information

On 30 November 2022, the Federal Court determined that native title exists in parts of the application area - see David on behalf of the Torres Strait Regional Seas Claim v State of Queensland [2022] FCA 1430. That determination was registered on the National Native Title Register on 5 December 2022. A map and technical description showing the area of the application that remains to be determined, as interpreted by the National Native Title Tribunal, are attached for information only. These attachments do not form part of the application. On 14 September 2023, the Federal Court ordered by consent that the determination made on 30 November 2022 be varied. Please refer to the NNTR extract - QCD2022/013 for further details.

Persons claiming to hold native title:

13. The native title claim group (the **sea claim group**) comprises members of the island communities listed in **Attachment A**, each of whom is a Torres Strait Islander.

14. The members of the sea claim group are the biological and socially recognised members of their respective island communities.

14A. The membership of the island communities comprising the sea claim group was determined by Finn J in Orders 4(1)(a) to (i) and Schedule 5, clauses 2(a) to (i) of the Part A determination.

15. Generally, the members of the sea claim group, the ancestors and deceased descendants of the ancestors are shown in the genealogies.

16. Because of the nature and extent of adoptions within the sea claim group it is impracticable to identify and show in the genealogies all relevant biological and adoptive connections of each member of the sea claim group.

17. The genealogies show many but not all socially relevant connections between the persons shown in the genealogies.

Native title rights and interests claimed:

24. The rights claimed as native title or native title rights and interests in relation to the application area (**claimed rights and interests**) are set out at [26].

25. [Intentionally left blank].

26. The claimed rights and interests for areas below the highwater mark are the rights to:

- (a) to access, to remain in and to use the area;
- (b) to access resources and to take for any purpose resources in the area;
- (c) to maintain places and/or areas of importance, or significance, to the members of the sea claim group under their traditional laws and customs on the area and protect those places and/or areas from harm;
- (d) be accompanied on to the area by those persons who, though not members of the sea claim group, are:
 - (i) spouses of members of the sea claim group;
 - (ii) people who are members of the immediate family of a spouse of a member of the sea claim group; or
 - (iii) people reasonably required by the members of the sea claim group under traditional law and custom for the performance of ceremonies or cultural activities on the area.

26A. The claimed rights and interests for areas above the high water mark are the rights to:

Where exclusive native title can be recognised:

- (a) other than in relation to Water, the right to possession, occupation, use and enjoyment of the area to the exclusion of all others; and
- (b) in relation to Water, the non-exclusive right to take the Water of the area for personal, domestic and non-commercial communal purposes.

Where non-exclusive native title rights and interests can be recognised:

The non-exclusive rights to:

- (a) access, be present on, move about on and travel over the area;
- (b) live and camp on the area and for those purposes to erect shelters and other structures on the area;
- (c) hunt, fish and gather on the land and waters of the area;
- (d) take the Natural Resources from the land and waters of the area;
- (e) take the Water of the area for personal, domestic and non-commercial communal purposes;
- (f) be buried and to bury members of the sea claim group within the area;
- (g) maintain places and/or areas of importance, or significance, to the members of the sea claim group under their traditional laws and customs on the area and protect those places and/or areas from harm;
- (h) teach on the area the physical and spiritual attributes of the area and the traditional laws and customs of the members of the sea claim group to other members of the sea claim group or persons otherwise entitled to access the area;
- (i) hold meetings on the area;

- (j) conduct ceremonies on the area;
- (k) light controlled and contained fires on the area; and
- (l) be accompanied on to the area by those persons who, though not members of the sea claim group, are:
 - (i) spouses of members of the sea claim group;
 - (ii) people who are members of the immediate family of a spouse of a member of the sea claim group; or
 - (iii) people reasonably required by the members of the sea claim group under traditional law and custom for the performance of ceremonies or cultural activities on the area.

Area covered by the native title and who holds the rights

27. Each of the claimed rights and interests exist for areas below the high water mark and for areas above the high water mark in relation to the whole of the application area.

28. Members of the sea claim group:

- (a) hold the claimed rights and interests for their respective communal, group and individual entitlements in relation to the application area in accordance with the traditional laws acknowledged and traditional customs observed by them;
- (b) do not all hold all the claimed rights equally in all areas; and
- (c) do not each hold rights in all areas.

Activities currently carried on

29. Activities in exercise of the native title rights referred to in **Schedule E** are all such activities as are contemplated by those rights and interests and include the activities identified in **Schedule G**.

Application Area: **State/Territory:** Queensland
Brief Location: Torres Strait Islands
Primary RATSIB Area: Cape York Region
Approximate size: 1186.5353 sq km
(Note: There may be areas within the external boundary of the application that are not claimed.)
Does Area Include Sea: Yes

Area covered by the claim (as detailed in the application):

18. The external geographical boundaries of the area covered by this application are described in **Attachment B**.

19. The external geographical boundaries of the area covered by this application are delineated and marked on the map at **Attachment C**.

20. In the event of any inconsistency between the description and the delineation of the boundaries in **Attachment B** and **Attachment C**, the description in **Attachment B** shall prevail, but subject to the exclusions from that description of the area referred to in [21] below.

Areas within those boundaries that are not covered by the application

21. Areas within the external geographic boundaries that are not covered by the application are the following areas, if any, except where any extinguishment by the acts mentioned is required by ss 47A and 47B of the *Native Title Act 1993* to be disregarded:

- (aa) any part of the application area that is the subject of the Part B application;
- (a) any area that, when this application is made, is subject to any of the following kinds of acts as they are defined in either the *Native Title Act 1993*, as amended (where the act in question is attributable to the Commonwealth), or *Native Title (Queensland) Act 1993*, as amended, (where the act in question is attributable to the State of Queensland):
 - (i) Category A past acts;
 - (ii) Category A intermediate period acts;
 - (iii) Category B past acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests;
 - (iv) Category B intermediate period acts that are wholly inconsistent with the continued existence, enjoyment or exercise of any native title rights or interests;
- (b) any area in relation to which a previous exclusive possession act under section 20 or 21 of the *Native Title (Queensland) Act 1993* was done and that act is attributable to the State of Queensland;
- (c) any area in relation to which a previous exclusive possession act as defined by section 23B (including section 23B(7)) of the *Native Title Act 1993* was done in relation to the area and the act was attributable to the

Commonwealth;

(d) any area where native title rights and interests have otherwise been wholly extinguished; and

(e) specifically, any area where there has been:

(i) an unqualified grant of an estate in fee simple;

(ii) a public work as defined in section 253 of the *Native Title Act 1993*.

Attachments:

1. QC2022/001 The Native Title Claim Group, attachment A of the application, 1 page - A4, 01/07/2022
2. QC2022/001 External Boundaries, attachment B of the application, 1 page - A4, 01/07/2022
3. QC2022/001 External Boundaries (Map), attachment C of the application, 1 page - A4, 01/07/2022
4. QC2022_001 Description of Undetermined Area, 2 pages - A3, 30/11/2022
5. QC2022_001 Map of Undetermined Area, 1 page - A3, 30/11/2022

End of Extract