

IN THE FEDERAL COURT OF AUSTRALIA
QUEENSLAND DISTRICT REGISTRY

QG 174 of 1997

BETWEEN: ERICA DEERAL (ON BEHALF OF HERSELF AND THE GAMAAY PEOPLES), PHILLIP BARU (ON BEHALF OF HIMSELF AND THE DINGAAL PEOPLES), BERTIE GORDON (ON BEHALF OF HIMSELF AND THE NUGAL PEOPLES), HERMAN BAMBIE (ON BEHALF OF HIMSELF AND THE THUUBI PEOPLES), BRIAN COBUS (ON BEHALF OF HIMSELF AND THE NGUURRUUMUNGU PEOPLES), WAYNE COATS (ON BEHALF OF HIMSELF AND THE DHARRPA PEOPLES), PAT WALLACE (ON BEHALF OF HIMSELF AND THE BINHTHI PEOPLES), EDDIE DEEMAL (ON BEHALF OF HIMSELF AND THE THITHAARR PEOPLES), HECTOR MICHAEL (ON BEHALF OF HIMSELF AND THE THANIL PEOPLES), GEORGE ROSENDALE (ON BEHALF OF HIMSELF AND NGUYMBAARR NGUYMBAARR PEOPLES), TERRENCE JACKO (ON BEHALF OF HIMSELF AND THE NGAATHA PEOPLES), MARTIN JAMES (ON BEHALF OF HIMSELF AND THE GULAAL PEOPLES) JOINTLY, AND IN THEIR CAPACITIES AS REPRESENTATIVES OF THEIR RESPECTIVE CLANS; AND BERTIE GORDON, HERMAN BAMBIE, PAT WALLACE, EDDIE DEEMAL AND TERRENCE JACKO IN THEIR RESPECTIVE CAPACITIES JOINTLY ON BEHALF OF THE BUURNGA PEOPLES
Applicants

AND:

GORDON CHARLIE
First Respondent

STATE OF QUEENSLAND
Second Respondent

HOPEVALE ABORIGINAL COUNCIL
Third Respondent

CAPE FLATTERY SILICA MINES PTY LIMITED
Fourth Respondent

COOK SHIRE COUNCIL
Fifth Respondent

FAR NORTH QUEENSLAND ELECTRICITY CORPORATION
Sixth Respondent

TELSTRA CORPORATION LIMITED
Seventh Respondent

ROBERT WILLIAM DUNN BY HIS AGENT THE QUEENSLAND
COMMERCIAL FISHERMEN'S ORGANISATION
Eighth Respondent

AUSTRALIAN MARITIME SAFETY AUTHORITY
Ninth Respondent

CAPE YORK LAND COUNCIL ABORIGINAL CORPORATION
Tenth Respondent

JUDGE: BEAUMONT J.
DATE: 8 DECEMBER 1997
PLACE: CAIRNS

REASONS FOR JUDGMENT

BEAUMONT J:

This is an application under s 87 of the *Native Title Act* 1993 for orders determining that native title rights and interests exist in relation to land and waters near Cooktown in circumstances where the interested parties have reached agreement. The lands in question (of about 110,000 ha.) were the subject of a grant in 1986 by the Queensland Government to the Hopevale Aboriginal Council to be held upon trust for the benefit of aboriginal inhabitants. After lengthy negotiations involving mediation by the National Native Title Tribunal, agreement has been reached on the part of all concerned. Their agreement is evidenced in the comprehensive documentation now before the Court. The chronology of the relevant events is described in the annexed document.

I am satisfied that, if it is appropriate to do so, the Court has the power to make a determination of native title (see *Buck v State of New South Wales*, Lockhart J, 7 April 1997, unreported). The real question is whether it is appropriate to make such an order.

In my view, it is appropriate to make the determination of native title now sought. In so concluding, I am conscious of the need for the Court to exercise caution where a declaratory order involving property rights is sought. But I also take into account, in particular, the

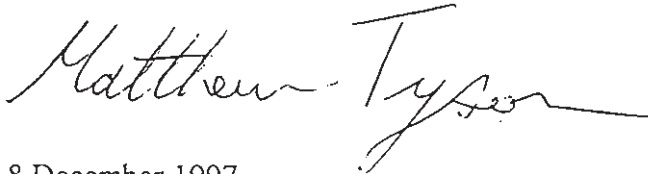
existence of the 1986 grant, the anthropological opinion mentioned in the evidence, the course of the negotiations between the interested parties and their professional representatives; and the circumstance that the matter is no longer contentious.

As was the case in the Crescent Head claim in *Buck*, above, there is no need for the Court, in proceeding under s 87, to embark upon a detailed, substantive examination of this claim. For present purposes, a more limited examination by the Court of the evidence is appropriate. I am satisfied that a determination that native title exists should now be made.

I note the matters and make orders that a determination of native title be made in the terms of the determination which I have initialled, dated today and placed with the papers.

I certify that this and the preceding two (2) pages are a true copy of the Reasons for Judgment herein of the Honourable Justice Beaumont

Associate:



Dated: 8 December 1997

Interpreter:

Mr N Pearson

Counsel for the Applicants:

Mr W Sofronoff QC

Solicitor for the Applicants:

Phillips Fox

Counsel for the First Respondent:

Mr P Poynton

Solicitor for the First Respondent:

Terry Fisher & Co

Counsel for the Second Respondent:

Mr P Smith

Solicitor for the Second Respondent:

Crown Solicitor (Queensland)

Solicitor for the Third, Fifth, Seventh and Ninth Respondents:

Mr G Clark, Phillips Fox

Solicitor for the Fourth and Eighth Respondents:

Mr P Gore, Clayton Utz

Solicitor for the Sixth Respondent: Mr O Gilkerson, MacDonnells

Solicitor for the Tenth Respondent: Ms L Goodchild, Cape York
Land Council

Date of Hearing: 8 December 1997

Date of Judgment: 8 December 1997