



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6248/1998
NNTT Number: QCD2000/002

Determination Name: [Dauan People v State of Queensland](#)

Date(s) of Effect: 06/07/2000

Determination Outcome: Native title exists in the entire determination area

Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

Determination Date: 06/07/2000

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Dauanalgalaw (Torres Strait Islanders) Corporation RNTBC
Trustee Body Corporate
C/- Dauan Island Council
Dauan Island
via Thursday Island QLD 4875

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 Dauanalgalaw (the Dauan people).

MATTERS DETERMINED:

THE COURT ORDERS BY CONSENT THAT:

1. Native title exists in relation to the determination area as shown on the map annexed to this Order and marked "Annexure A", ie, the land and inland waters of Dauan Island being Lot 9 on Plan TS 169 on the landward side of the high water mark but not including the following areas as shown on the map annexed to this Order and marked "Annexure B":

- (a) Lot 10 on Plan TS 170 being Crown Reserve for State School R254;
- (b) Lot 11 on Plan TS 170 being Crown Reserve for State School (Residential) R255;
- (c) Lot 12 on Plan TS 169 being Crown Reserve for State School R256;
- (d) The land east of the Council office on which the Telstra mast and equipment shelter are situated, including any adjacent land the use of which is or was necessary for, or incidental to, the construction, establishment or operation of the installation;
- (e) The land on which Ergon Energy Corporation power station is situated including any adjacent land the use of which is or was necessary for, or incidental to, the construction, establishment or operation of the installation being Lease P in SP127307; and
- (f) The Roads as more particularly shown on the map annexed to this Order.

2. The persons holding the communal and group rights comprising the native title ("the common law holders") are the Dauanalga (the Dauan people).

3. The nature and extent of the native title rights and interests in relation to the determination area are the rights and interests of the common law holders to possess, occupy, use and enjoy the determination area in accordance with Order 6 but always subject to and in accordance with their traditional laws and customs and in particular to:

- (a) live on the determination area;
- (b) conserve, manage, use and enjoy the natural resources of the determination area for the benefit of the common law holders including for social, cultural, economic, religious, spiritual, customary and traditional purposes;
- (c) maintain, use and manage the determination area for the benefit of the common law holders, that is to:
 - (i) maintain and protect sites of significance to the common law holders and other Aboriginal people, Papuans and Torres Strait Islanders on the determination area;
 - (ii) inherit, dispose of or give native title rights and interests in the determination area to others, being members of the common law holders pursuant to their traditional laws and customs;
 - (iii) decide who are the native title holders provided that such persons must be Torres Strait Islanders within the meaning of that term in the Native Title Act 1993 (Cth);
 - (iv) regulate among, and resolve disputes between, the common law holders in relation to the rights of possession, occupation, use and enjoyment of the determination area;
 - (v) conduct social, religious, cultural and economic activities on the determination area; and
 - (d) make decisions about and to control the access to, and the use and enjoyment of, the determination area and its natural resources being animal, plant, fish and bird life found on or in the determination area from time to time and all water, clays and soils found on or below the surface of the determination area and all other matter comprising the determination area excluding minerals and petroleum, and any other natural resources provided that these exclusions shall operate only to the extent to which native title has been extinguished or affected pursuant to laws of the Commonwealth and of the State of Queensland.

4. The nature and extent of any other interests in relation to the determination area are:

- (a) the powers of the Dauan Island Council under the Community Services (Torres Strait) Act 1984 (Qld) to discharge the functions of local government of the area of the Deed of Grant in Trust granted on 17 October 1985 under the Land Act 1962 (Qld) to the Dauan Island Council and exercise the powers of good rule and government thereof in accordance with the customs and practices of the inhabitants of that area;
- (b) the interests of the Dauan Island Council and persons under the Deed of Grant in Trust granted on 17 October 1985 under the Land Act 1962 (Qld) to Dauan Island Council;
- (c) the interests of Ergon Energy Corporation Limited as an entity exercising statutory powers and as owner and operator of electricity generation, transmission and distribution facilities on Dauan Island, including:
 - (i) the right to enter upon the determination area in accordance with the law; and
 - (ii) its interests under a Deed of Agreement dated 28 June 2000 between it and representatives of the common law holders.

(d) the interests of Telstra Corporation Limited as an entity exercising statutory powers and as owner and operator of telecommunication facilities on Dauan Island, including:

(i) the right to enter upon the determination area in accordance with the law; and

(ii) its interests under a Deed of Agreement dated 27 June 2000 between it and representatives of the common law holders.

(e) the interests of indigenous Papua New Guinea persons in having access to the determination area for traditional purposes;

(f) the rights of indigenous inhabitants of Saibai Island and Boigu Island to enter, live upon and/or use the determination area in accordance with the traditional laws and customs of the common law holders;

(g) the interests recognised under the "Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters" as in force at the date of this determination; and

(h) other interests that may be held by reason of the force and operation of laws of the Commonwealth and of the State of Queensland.

5. (i) The relationship between the native title rights and interests in Order 3 and the other interests in relation to the determination area in Order 4 is as follows:

The native title rights and interests described in Order 3 are exercisable concurrently with the other interests described in Order 4, but in those circumstances where they cannot be so exercised, the entitlements of the holders of the other interests may regulate control, curtail, restrict, suspend or postpone the exercise of those native title rights and interests.

(ii) The native title rights and interests of the Dauanalgalaw are subject to extinguishment by either:

(a) the lawful powers of the Commonwealth and the State of Queensland; or

(b) lawful grants or creation of interests pursuant to the laws of the Commonwealth and the State of Queensland.

6. Subject to and in accordance with the traditional laws and customs of the common law holders and the effect and operation of the laws of the Commonwealth and of the State of Queensland and, to the extent that the interests referred to in Order 4 prevent or limit it, the native title rights and interests confer possession, occupation, use and enjoyment of the determination area to the exclusion of all others.

7. The words and expressions used in this Order have the same meanings as they have in the Native Title Act 1993 (Cth) except for the following defined words and expressions:

(a) "natural resources" means animal, plant, fish and bird life found on or in the determination area from time to time and all water, clays and soils found on or below the surface of the determination area and all other matter comprising the determination area excluding minerals and petroleum, and any other natural resources provided that these exclusions shall operate only to the extent to which native title has been extinguished or affected pursuant to laws of the Commonwealth and of the State of Queensland;

(b) "minerals" has the meaning given to it in the Mineral Resources Act 1989 (Qld);

(c) "petroleum" has the meaning given to it in the Petroleum Act 1923 (Qld); and

(d) "high water mark" has the meaning given to it in the Land Act 1994 (Qld)

BY CONSENT IT IS FURTHER AGREED THAT:

8. The native title is to be held in trust by the Dauanalgalaw (Torres Strait Islanders) Corporation.

REGISTER ATTACHMENTS:

1. Attachment A - Map of Determination Area , 1 page - A4, 06/07/2000

2. Attachment B - Map of area excluded from Determination Area , 1 page - A4, 06/07/2000

3. Attachment C - Federal Court Reasons for Judgement , 3 pages - A4, 06/07/2000

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.