



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6002/1998
NNTT Number: QCD2004/011

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

Date(s) of Effect: 25/07/2005

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 17/12/2004

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Note: The Indigenous Land Use Agreement (QI2004/051) referred to at Order 7(b) was registered on the Register of Indigenous Land Use Agreements on 25 July 2005.

REGISTERED NATIVE TITLE BODY CORPORATE:

Djabugay Native Title Aboriginal Corporation RNTBC
Agent Body Corporate
PO Box 495
KURANDA Queensland 4881

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 persons holding the communal and group rights comprising the native title are the Djabugay People, who are the common law holders of native title. The Djabugay People are the persons who are descendants of the following apical Djabugay ancestors:

- (a) Toby Brim;
- (b) Annie Hunter, Minnie Hunter and Barney Hunter;
- (c) Tommy Hobson;
- (d) Nellie Hastie;
- (e) Jimmy Street, Kitty Street and Sambo Street;

- (f) Jimmy Hobbler and Billy Hobbler;
- (g) Paddy Newbury, Willy Newbury and Tommy Newbury;
- (h) Waikanigai;
- (i) George Kuranda Carroll;
- (j) Jinnie Kuranda;
- (k) Maggie Bowen;
- (l) Kitty Banning, Peter Banning and Tambo Banning;
- (m) Annie Courtney and Polly Courtney;
- (n) Dick Richardson;
- (o) Charlie Levers;
- (p) Joe Davidson and Annie Davidson;
- (q) Andrew Dabah; and
- (r) Bidy Coleman.

MATTERS DETERMINED:

BY CONSENT THE COURT ORDERS THAT:

1. Native title exists in relation to the land and waters within Lot 880 on Plan NPW 459 (known as the Barron Gorge National Park) excluding:
 - (a) land subject to former Lot 1 on K40115 and former Lots, 12, 13 and 14 on Plan NR 7579 (being former Allotments 1, 2, 3 and 4 of Suburban Section 1, town of Kuranda);
 - (b) land subject to former Lots 21 and 22 on Plan NR 7579 (being former Allotments 1 and 2 of Suburban Section 2, Town of Kuranda);
 - (c) land subject to part of Term Lease 0/213315 (being Lot D on CP894159, Lot E in strata on CP891025, Lot F in strata on CP891027, Lot G in strata on CP894159 and Lot H in strata on CP894157);
 - (d) airspace subject to part of Term Lease 0/213315 (being Lot E in strata on CP891025, Lot F in strata on CP891027, Lot G in strata on CP894159 and Lot H in strata on CP894157);
 - (e) land subject to former Portion 164 Parish of Cairns on NR 1735 (being former Special Leases 5607, 10719, 13255 and 15109);
 - (f) land subject to former Portion 194 Parish of Cairns on NR 1735 (being former Special Lease 6182);
 - (g) land subject to former Portion 383 Parish of Cairns on NR 3594 (being former Special Leases 17473 and 25575);
 - (h) land subject to former Lengthmens Camp Reserve 85 on NR 7609, former Lengthmens Camp Reserve 169 on C153198 and former Lengthmens Camp Reserve 171 on C157302;
 - (i) land subject to part of former Special Lease 53088 (being Lot D in strata on CP866960, Lot E in strata on CP866963 and Lot F in strata on CP866965);
 - (j) airspace subject to part of former Special Lease 53088 (being Lot D in strata on CP866960, Lot E in strata on CP866963 and Lot F in strata on CP866965);
 - (k) land subject to a public work, being the boardwalk that links the Barron Gorge train station with the Barron Gorge National Park car park off Barron Falls Road;
 - (l) land subject to a public work being part of Lot 111 on SP 129892, Lot 91 on SP 129891 and part of Lot 81 on SP 219890 being that part of the Cairns Kuranda railway corridor that traverses the Barron Gorge National Park;

(m) land or waters on which any other public work is constructed, established or situated;

(n) land 20 metres either side of the centre line of the penstock between the intake structure at the Kuranda Weir on Lot 150 on NR 4991 and the underground machine hall on Lot 752 on NR 5189 ("the penstock corridor") for the Barron Gorge Hydro-Electric Power Station; and

(o) minerals and petroleum.

and as shown on Native Title Determination Plan AP9685 attached at Schedule 1 ("Determination Area"). (See Attachment 1 - SCHEDULE 1)

2. The persons holding the communal and group rights comprising the native title are the Djabugay People, who are the common law holders of native title. The Djabugay People are the persons who are descendants of the following apical Djabugay ancestors:

(a) Toby Brim;

(b) Annie Hunter, Minnie Hunter and Barney Hunter;

(c) Tommy Hobson;

(d) Nellie Hastie;

(e) Jimmy Street, Kitty Street and Sambo Street;

(f) Jimmy Hobbler and Billy Hobbler;

(g) Paddy Newbury, Willy Newbury and Tommy Newbury;

(h) Waikanigai;

(i) George Kuranda Carroll;

(j) Jinnie Kuranda;

(k) Maggie Bowen;

(l) Kitty Banning, Peter Banning and Tambo Banning;

(m) Annie Courtney and Polly Courtney;

(n) Dick Richardson;

(o) Charlie Levers;

(p) Joe Davidson and Annie Davidson;

(q) Andrew Dabah; and

(r) Bidy Coleman.

3. Subject to paragraphs 4, 5, and 6 the nature and extent of the native title rights and interests in relation to the Determination Area are the non-exclusive rights of the Djabugay People to use and enjoy the land and waters being to:

(a) be physically present on the Determination Area;

(b) camp on the Determination Area;

(c) hunt, fish and gather on, and take the natural resources of, the Determination Area for the purpose of satisfying their personal, domestic, social, cultural, religious, spiritual, ceremonial, and communal needs for non-commercial purposes;

(d) maintain and protect by lawful means places within the Determination Area of importance to the Djabugay People;

(e) perform social, cultural, religious, spiritual or ceremonial activities on the Determination Area and invite others to participate in those activities;

(f) make decisions about the use and enjoyment of the Determination Area by Aboriginal people who are governed by the traditional laws acknowledged and traditional customs observed by the Djabugay People.

4. The native title rights and interests in relation to the Determination Area do not confer possession, occupation, use and enjoyment of the Determination Area on the Djabugay People to the exclusion of all others.
5. Notwithstanding anything in paragraph 3, the native title rights and interests in relation to the Determination Area do not extend to a right to control access to or a right to control the use of the Determination Area.
6. The native title rights and interests in relation to the Determination Area are:
- (a) subject to and exercisable in accordance with:
 - (i) the laws of the Commonwealth and the State of Queensland; and
 - (ii) the traditional laws acknowledged and traditional customs observed by the Djabugay People; and
 - (b) subject to the Nature Conservation Act 1992 (Qld) and the operation of s24JA of the Native Title Act 1993 (Cth) such that some existing native title rights might be extinguished in the future.
7. The nature and extent of any other interests in relation to the Determination Area are:
- (a) the interests of the State of Queensland pursuant to the Nature Conservation Act 1992 (Qld) and subordinate legislation relating to the use and management of the Barron Gorge National Park;
 - (b) the interests of the State of Queensland and the Djabugay People under a deed of agreement dated 10 December 2004.
 - (c) the interests of permittees or licensees pursuant to the Nature Conservation Act 1992 (Qld) and subordinate legislation relating to the use and management of Barron Gorge National Park;
 - (d) the interests of the Wet Tropics Management Authority pursuant to the Wet Tropics World Heritage Protection and Management Act 1993 (Qld), the Wet Tropics Management Plan 1998 (Qld) and other subordinate legislation;
 - (e) the interests of permittees under the Wet Tropics World Heritage Protection and Management Act 1993 (Qld) and Wet Tropics Management Plan 1998 (Qld);
 - (f) the rights, interests, powers and functions of the Cairns City Council as a local government in relation to land subject to Lot 880 on Plan NPW459 including rights under a Deed of Agreement pursuant to section 35 of the Nature Conservation Act 1992 between the Environmental Protection Agency and the Cairns City Council dated 2 October 2001 to construct, use, access and maintain approved facilities within the Determination Area;
 - (g) the rights, interests, powers and functions of Mareeba Shire Council as a local government in relation to land subject to Lot 880 on Plan NPW459;
 - (h) the interests of Queensland Electricity Transmission Corporation Limited, trading as Powerlink Queensland, (ACN 078 849 233) as an electricity entity exercising statutory functions, powers or rights and as owner and operator of electricity transmission facilities, and associated infrastructure situated upon the Determination Area, including but not limited to the right to enter upon the Determination Area at any reasonable time in order to access, use, maintain, repair, replace, upgrade or otherwise deal with those facilities and infrastructure in accordance with the law;
 - (i) the rights and interests of Stanwell Corporation Limited as an entity generating electricity pursuant to the Electricity Act 1994 (Qld) and to divert and use the waters of the Barron River (including the construction and maintenance of associated infrastructure) for the purposes of generating electricity pursuant to the Water Act 2000 (Qld);
 - (j) the interests of Ergon Energy Corporation Limited as owner and operator of electricity distribution infrastructure and as an electricity entity under the Electricity Act 1994 (Qld);
 - (k) the interests of the registered proprietors of the lots described below and any persons authorised by them to have access over the Determination Area to and from the areas described as:
 - (i) Lot 41 on Plan 7579;
 - (ii) Lot 42 on Plan 7579;
 - (iii) Lot 43 on Plan 7579;
 - (l) the interests of Skyrail Pty Ltd (ABN 82 010 880 458):
 - (i) under an approval dated 21 February 2000 issued pursuant to section 71 of the Nature Conservation Regulation 1994 (Qld);

(ii) under Wet Tropics Permit No. 01030 commencing 18 August 2001 granted under the Wet Tropics Management Plan 1998 (Qld);

(m) the interests of the chief executive or an accredited person under s 163 of the Transport Infrastructure Act 1994 to enter the Barron Gorge National Park for the purpose of carrying out railway works;

(n) the interests of members of the public to access the Barron Gorge National Park for recreation purposes in accordance with the Nature Conservation Act 1992 (Qld); and

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

8. The relationship between the native title rights and interests described in paragraph 3 and the other interests described in paragraph 7 ("the other interests") is that:

(a) the other interests continue to have effect, and the rights conferred by or held under the other interests may be exercised notwithstanding the existence of the native title rights and interests; and

(b) the other interests and any activity that is required or permitted by or under, and done in accordance with, the other interests prevail over the native title rights and interests and any exercise of the native title rights and interests.

9. If a word or expression is not defined in this order, but is defined in the Native Title Act 1993 (Cth), then it has the meaning given to it in the Native Title Act 1993 (Cth). In addition to the other words and expressions defined in this order:

(a) "accredited person" has the meaning given to it in the Transport Infrastructure Act 1994 (Qld);

(b) "approved facilities" means works in the form of a submerged water intake tower in Lake Placid, a pump station on the north bank of the Barron River, a vehicle bridge from Barron Gorge Road to the water intake tower, and water mains under the Barron Gorge Road for the extraction of water from Lake Placid;

(c) "camp" does not include the right to permanently reside or build permanent structures or fixtures;

(d) "laws of the Commonwealth and the State of Queensland" means the common law and the laws of the Commonwealth of Australia and the State of Queensland, and includes regulations, statutory instruments, local planning instruments and local laws;

(e) "local government" has the meaning given to it in the Local Government Act 1993 (Qld);

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

(g) "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;

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

(i) "railway works" has the meaning given to it in the Transport Infrastructure Act 1994 (Qld);

(j) "water" means water as defined in the Water Act 2000 (Qld) and tidal water as defined in the Land Act 1994 (Qld); and

(k) "waters", to remove any doubt, has the same meaning given to it in the Native Title Act 1993 (Cth).

10. A reference to:

(a) land or waters on which a public work is constructed, established or situated; or

(b) land subject to a public work;

includes a reference to any adjacent land or waters the use of which is or was necessary for, or incidental to, the construction, establishment or operation of the work.

11. The native title is not to be held in trust.

12. The Djabugay Native Title Aboriginal Corporation is to:

(a) be the prescribed body corporate for the purposes of section 57(2) of the Native Title Act 1993 (Cth); and

(b) perform the functions mentioned in section 57(3) of the Native Title Act 1993 (Cth) after becoming a registered

native title body corporate.

13. Until such time as there is a registered native title body corporate in relation to the Determination Area any notices required under the Native Title Act 1993 (Cth) or otherwise to be served on the Djabugay People may be served upon the Djabugay Native Title Aboriginal Corporation, and such service shall be deemed to be sufficient.

14. Paragraphs 1-8 will take effect on the registration of the agreement referred to in paragraph 7(b) on the Register of Indigenous Land Use Agreements.

15. In the event that the agreement referred to in paragraph 7(b) is not registered on the Register of Indigenous Land Use Agreements within eight (8) months of the date of this order or such later time as the Court may order, the matter is to be listed for further directions.

REGISTER ATTACHMENTS:

1. SCHEDULE 1 - NATIVE TITLE DETERMINATION PLAN AP9685, 6 pages - A4, 17/12/2004

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.