



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6017/1998
NNTT Number: QCD1999/001

Determination Name: [Saibai People v State of Queensland and Others](#)

Date(s) of Effect: 12/02/1999

Determination Outcome: Native title exists in the entire determination area

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

Determination Date: 12/02/1999

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Saibai Mura Buway (Torres Strait Islanders) Corporation RNTBC
Trustee Body Corporate
Main Road, Lot 27
SAIBAI 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 Saibai people.

MATTERS DETERMINED:

The Court orders, declares and determines that:

1. Native title exists in relation to the determination area, that is, the land and inland waters of Saibai Island, Mawalmay Thoera Island, Thawpay Kawamag Island and Kuykuthal Kawamag Island on the landward side of the high water mark, but not including the following:

(a) Lot 31 on Plan TS324 being the Telstra Tower and surrounding land;

- (b) The petrol bowsers and tanks situated north of the Telstra Tower;
- (c) Part of Lot 3 on Plan TS157 being the Old Canteen Building;
- (d) Part of Lot 3 on Plan TS157 being the Old Guest House;
- (e) Lot 49 on Plan TS282 described as SL 43/38561 to The Corporation of the Synod of the Diocese of Carpentaria for Church Purposes;
- (f) Lot 50 on Plan TS282 being the Church Residence;
- (g) Lot 30 on Plan PLD 553 sheet 5 being the Council Hall;
- (h) Lot 4 on Plan TS164 being Crown Reserve for State School R.259;
- (i) Part of Lot 22 on Plan PLD 553 sheet 5 being the Old Council Chambers;
- (j) Part of Lot 22 on Plan PLD 553 sheet 5 being the New Council Chambers;
- (k) Lot 16 on Plan TS326 being the Shop;
- (l) Part of Lot 15 on Plan TS326 being the Old Health Centre;
- (m) Part of Lot 15 on Plan TS326 being the Sister's Residence;
- (n) Lot 17 on Plan TS326 being the Health Centre;
- (o) The land west of the Teachers' Residences on which the Far North Queensland Electricity Corporation Limited 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 that installation;
- (p) Lots 63 and 64 on Plan TS328 being the Teachers' Residences;
- (q) Lot 5 on Plan TS165 being Crown Reserve for State School R.260;
- (r) The area set aside for Council Uses (Water Supply Area and Water Tower) situated east of the Teachers' Residences;
- (s) The dam situated south south-east of the Landing Ground for Aircraft;
- (t) Lot 2 on Plan TS327 being Crown Reserve for Landing Ground for Aircraft R.334; and
- (u) The roads.

2. The persons holding the communal and group rights comprising the native title ("the common law holders") are the Saibai 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 and subject to their traditional laws and customs and in accordance with Order 6, in particular to:

- (a) live on the determination area;
- (b) conserve the natural resources of the determination area for the benefit of the common law holders;
- (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;
 - (iii) decide who are the native title holders, provided that such persons must each be a "Torres Strait Islander" 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;

(d) conserve, use and enjoy the natural resources of the determination area for social, cultural, economic, religious, spiritual, customary and traditional purposes; and

(e) make decisions about and to control the access to, and the use and enjoyment of, the determination area and its natural resources.

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

(a) The powers of the Saibai 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 Saibai 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 Saibai Island Council and persons under the Deed of Grant in Trust granted on 17 October 1985 under the Land Act 1962 (Qld) to the Saibai Island Council;

(c) the interests of the Far North Queensland Electricity Corporation Limited as an electricity entity exercising statutory powers and as owner and operator of electricity generation, transmission and distribution facilities and associated infrastructure situated on Saibai Island including but not limited to:

(i) the right to enter upon the determination area at any reasonable time in order to access, use, maintain and repair those facilities and infrastructure; and

(ii) its interests under a Deed of Agreement dated 10 February 1999 entered into between the Saibai Mura Buway (Torres Strait Islanders) Corporation, the Far North Queensland Electricity Corporation Limited and other parties;

(d) the interests of the Telstra Corporation Limited as an entity exercising statutory powers and as owner and operator of telecommunication facilities including above and below ground cabling, a radio transmitter and associated infrastructure situated on Saibai Island including but not limited to:

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

(ii) its interests under a Deed of Agreement dated 10 February 1999 entered into between Telstra Corporation Limited, representatives of the Saibailgal (Saibai people), the Saibai Mura Buway (Torres Strait Islanders) Corporation and other parties;

(e) the rights of indigenous inhabitants of Papua New Guinea to enter, live upon and/or use the determination area in accordance with and subject to prior permission under the traditional laws and customs of the common law holders;

(f) the rights of indigenous inhabitants of Dauan 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. The relationship between the native title rights and interests and the other interests in relation to the determination area 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.

6. Subject to and in accordance with the traditional laws and customs of the common law holders and subject to the interests referred to in Order 4 and the force and operation of laws of the Commonwealth and of the State of Queensland, 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, petroleum, gases, fauna 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) "fauna has the meaning given to it in the Fauna Conservation Act 1974 (Qld);

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

(d) "minerals" has the same meaning as "mineral" in the Mineral Resources Act 1989 (Qld);

(e) "petroleum" has the meaning given to it in the Petroleum Act 1923 (Qld).

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

REGISTER ATTACHMENTS:

1. Attachment A - Federal Court Reasons for Judgement - Justice Drummond , 1 page - A4, 12/02/1999

2. Attachment B - Map of Determination area - Determination in relation to land only , 1 page - A4, 12/02/1999

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.