



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): QUD6027/1998
NNTT Number: QCD2001/005

Determination Name: [Mr Billy Wasaga and Others on behalf of the Kaurareg People v State of Queensland & Ors](#)

Date(s) of Effect: 23/05/2001

Determination Outcome: Native title exists in parts of the determination area

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

Determination Date: 23/05/2001

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Kaurareg Native Title Aboriginal Corporation (RNTBC)
Agent Body Corporate
PO BOX 411
THURSDAY ISLAND Queensland 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 native title is held by the Kaurareg People who are the descendants of the Kaurareg People who were the traditional owners of the Determination Area prior to the assertion of British sovereignty as common law holders.

MATTERS DETERMINED:

General Location: Damaralag (Dumuralug Islet), Yeta (Port Lihou Island), Mipa (Turtle Island or Pipa) and Tarilag (Packe Island) Torres Straits

On 4th May 2001 the Federal Court of Australia made orders under order 78, rule 5(3) of the Federal Court Rules, for the purposes of the expedient, convenient and effective management of the proceedings, that the proceedings be divided into two parts:

a) Part A, which will comprise that part of the application area on the landward side of the "Highwater mark" (as defined by schedule 6 of the Land Act 1994 (QLD)); and

b) Part B, which will comprise that part of the application area on the seaward side of the "Highwater mark" (as defined by schedule 6 of the Land Act 1994 (QLD)), "the inter-tidal zone".

Part A was determined by the Federal Court of Australia on 23rd May 2001 and details of the determination are provided below.

THE COURT NOTES THAT:

A. The Applicants have brought Native Title Determination Application No. QC96/10 ("the Application") which relates to an area which includes the Determination Area.

B. The Applicants and the Respondents have reached agreement as to the terms of a determination of native title to be made in relation to the Determination Area.

C. The parties have agreed to make application to the Federal Court of Australia for a Consent Order for a determination that native title exists in relation to the Determination Area.

D. The parties have requested pursuant to O 10 r 3(1) of the Federal Court Rules that the Court hear and determine that part of the proceeding that relates to the Determination Area at this hearing today.

E. No nomination pursuant to s 56(2) of the Native Title Act 1993 (Cth) ("the Native Title Act") in relation to the holding of native title in trust has been made.

F. The parties have requested that the Court pursuant to s 56(2)(c) of the Native Title Act make a determination that the Native Title Rights and Interests are held by the Native Title Holders.

G. Mr Billy Wasaga as the registered Native Title Claimant is seeking to incorporate pursuant to the Aboriginal Councils and Associations Act 1976 (Cth) an Aboriginal Association to be the prescribed body corporate and perform the functions mentioned in s 57(3) of the Native Title Act.

Being satisfied that a determination in the terms sought by those parties would be within the power of the Court and, it appearing to the Court appropriate to do so and by the consent of the parties:

THE COURT ORDERS, DECLARES AND DETERMINES BY CONSENT THAT:

Existence of Native Title

1. Native title exists in relation to the Determination Area, except those parts described in Order 2.

2. Native Title Rights and Interests have been wholly extinguished in the following parts of the Determination Area:

(i) the area between the landward side of the High-Water Mark and adjoining boundary of lot 30 on TS46; and

(ii) the land and waters on which any public work, which is valid for native title purposes, is constructed, established or situated including any adjacent land or waters the use of which is or was necessary for, or incidental to, the construction, establishment or operation of the public work.

The Native Title Holders

3. The native title is held by the Kaurareg People who are the descendants of the Kaurareg People who were the traditional owners of the Determination Area prior to the assertion of British sovereignty as common law holders.

The Nature and Extent of the Native Title Rights and Interests

4. The nature and extent of the Native Title Rights and Interests in relation to the Determination Area, excluding areas in Order 2, is set out in Orders 5 to 8.

5. The Native Title Rights and Interests confer, subject to Orders 7 and 8, possession, occupation, use and enjoyment of the Determination Area on the Native Title Holders to the exclusion of all others, except those having rights and interests identified in Order 9.

6. The Native Title Rights and Interests, which are derived from and exercisable by reason of the existence of native title, include the following rights, duties and obligations to:

(a) live on and build structures on the Determination Area;

- (b) maintain and manage the Determination Area for the benefit of the Native Title Holders, including to:
- (i) conserve and safeguard the Natural Resources of the Determination Area;
 - (ii) make decisions and impose conditions about the use and enjoyment of the Determination Area and its Natural Resources by the Native Title Holders;
 - (iii) make decisions and impose conditions about access rights to the Determination Area by Native Title Holders;
- (c) use and enjoy the Determination Area and the Natural Resources of the Determination Area for social, cultural, economic, religious, spiritual, traditional and customary purposes, including to:
- (i) hunt, fish and gather;
 - (ii) exercise and carry out economic activities on the Determination Area including to grow, produce and harvest; and
 - (iii) engage in trade in relation to the Natural Resources of the Determination Area;
- (d) exercise cultural, spiritual, religious, traditional and customary rights and discharge such responsibilities on the Determination Area including to:
- (i) preserve sites on the Determination Area of significance to the Native Title Holders;
 - (ii) decide on, carry out and pass on the culture, traditions and customs of the Native Title Holders which apply to the Determination Area;
 - (iii) conduct and maintain cultural, spiritual and religious practices and institutions through ceremonies and proper and appropriate maintenance and use of the Determination Area;
 - (iv) inherit, dispose of, or give Native Title Rights and Interests in the Determination Area to other Native Title Holders;
 - (v) resolve disputes between the Native Title Holders in relation to the Determination Area; and
 - (vi) conduct burials on the Determination Area.

7. The Native Title Rights and Interests and the native title are always subject to and exercisable only in accordance with the:

- (a) laws of the State of Queensland and the Commonwealth;
- (b) traditional laws acknowledged and traditional customs observed by the Native Title Holders; and
- (c) planning scheme and local laws of the Torres Shire Council.

8. Notwithstanding anything in this determination, the Native Title Rights and Interests do not confer on the Native Title Holders rights of ownership in respect of flowing water.

The Nature and Extent of any other Interests in relation to the Determination Area

9. The nature and extent of any other interests in relation to the Determination Area are:

- (a) the interests of the Torres Shire Council under its Local Government jurisdiction and functions and as an entity exercising statutory powers, including:
 - (i) its legal and equitable interests under any reserves, permits and other estates or interests; and
 - (ii) its interests under an Indigenous Land Use Agreement between it, representatives of the Native Title Holders and the State of Queensland;
- (b) the interests of the State of Queensland, the Torres Shire Council and members of the public in respect of Designated Roads;
- (c) the interests of Telstra Corporation Limited as an entity exercising statutory powers and as owner of telecommunications facilities in the Determination Area including:
 - (i) the right to enter upon the Determination Area in accordance with the law; and
 - (ii) its interests under an Indigenous Land Use Agreement between it and representatives of the Native Title Holders;
- (d) the interests of the State of Queensland under an Indigenous Land Use Agreement between it, representatives of

the Native Title Holders and the Torres Shire Council;

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

Relationship Between the Native Title and Other Interests in the Determination Area

10. The relationship between the Native Title Rights and Interests described in Order 6 and the other rights and interests described in Order 9 ("the other rights and interests") is that:

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

(b) the other rights and interests, and an activity done in exercise of the rights conferred by or held under the other rights and interests, prevail over the Native Title Rights and Interests and any exercise of those Native Title Rights and Interests.

Definitions

11. The words and expressions used in this Determination have the same meanings as they have in the Native Title Act except the following defined words and expressions:

(a) "Descendants" includes Torres Strait Islanders and Aboriginal Peoples who are recognised as Kaurareg People under traditional law and custom;

(b) "Designated Roads" means the areas on Port Lihou Island shown as road opened on plan RA4239;

(c) "Determination Area" means the area on the landward side of the High-Water Mark that is described as follows:

(i) lot 26 on USL36671;

(ii) lot 10 on TS838261;

(iii) lot 11 on USL36671;

(iv) lots 12, 14, 16, 18 and 21 on USL36671;

(v) lots 7 and 8 on TS23;

(vi) Designated Roads;

but excluding:

(vii) Minerals and Petroleum;

(d) "High-Water Mark" has the meaning given to it in schedule 6 of the Land Act 1994 (Qld);

(e) "Law" includes statutory law, common law and equity;

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

(g) "Native Title Holders" means the Kaurareg People;

(h) "Native Title Rights and Interests" means those rights and interests described in Orders 5 to 8;

(i) "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 but does not include Minerals or Petroleum;

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

AND THE COURT FURTHER ORDERS THAT:

How the Native Title is Held

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

The Native Title Body Corporate

13. A representative of the Native Title Holders is to nominate in writing, given to the Federal Court, within six (6)

months a prescribed body corporate to:

- (a) be the prescribed body corporate for the purposes of s 57(2) of the Native Title Act; and
- (b) perform the functions mentioned in s 57(3) of the Native Title Act after becoming a registered native title body corporate.

14. Until such time as there is a registered native title body corporate in relation to the Determination Area, any notices to be served on the Native Title Holders, the native title claim group or the registered native title claimant (under the Native Title Act or otherwise), may be served upon the Cape York Land Council Aboriginal Corporation as agent for the Applicants and the Torres Strait Regional Authority, the representative Aboriginal/Torres Strait Islander body for the Determination Area, and such service will be deemed to be sufficient.

15. There be liberty to apply in respect of Order 13.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

REGISTER ATTACHMENTS:

1. Attachment A, Native Title Determination Plan AP7246, 1 page - A4, 23/05/2001
2. Attachment B, DNRM (Department of Natural Resources and Mines) map showing proceedings of QG6027 of 1998, 1 page - A4, 23/05/2001
3. Attachment C, Federal Court of Australia - Reasons for Judgement, 5 pages - A4, 23/05/2001

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.