

Determination of native title — Timber Creek

Griffiths v Northern Territory (No 2) [2006] FCA 1155

Weinberg J, 28 August 2006

Background

Judgment in this matter was delivered in *Griffiths v Northern Territory* [2006] FCA 903 (summarised *Native Title Hot Spots Issue 21*). The parties were ordered to file material regarding the form of a determination of native title to give effect to it. A joint draft determination was subsequently filed and Justice Weinberg made the orders pursuant to s. 87 of the *Native Title Act 1993* (Cwlth).

Determination area

The court determined that native title exists in the area described as Schedule A, which consists of identified lots within the town of Timber Creek and the creek named Timber Creek (including its beds and banks) as it flows within the boundaries of the town.

Native title holders

The determination area comprises the whole or part of five estates held by the members of five estate groups. These persons are collectively referred to as ‘the estate group members’. Each of these estate groups includes Ngaliwurru and Nungali persons who are members of the relevant estate group by reason of:

- descent through his or her father’s father, mother’s father, father’s mother, mother’s mother; or
- having been adopted or incorporated into the above descent relationships.

Native title rights and interests

The native title rights and interests of the estate group members were non-exclusive rights to use and enjoy the determination area in accordance with their traditional laws and customs, being the right to:

- travel over, move about and access the area;
- hunt, fish and forage on the area and to gather and use natural resources of the area such as food, medicinal plants, wild tobacco, timber, stone and resin;
- have access to and use the natural water of the area;
- live on the land, to camp, to erect shelters and other structures;
- engage in cultural activities, conduct ceremonies, hold meetings and teach the physical and spiritual attributes of places and areas of importance;
- participate in cultural practices relating to birth and death, including burial rights;
- have access to, maintain and protect sites of significance in the area; and
- share or exchange subsistence and other traditional resources obtained on or from the area but not for any commercial purposes.

Rights held by other Aboriginal people

The determination also said that, in accordance with traditional laws and customs, 'other' Aboriginal people have rights in respect of the land and waters of an estate which is not their own, such people being:

- members of estate groups from neighbouring estates;
- spouses of the estate group members; and
- members of other estate groups with ritual authority.

Although Weinberg J refers to these other Aboriginal people as holding 'native title rights and interests', they are not defined as 'native title holders' and arguably hold contingent rights only which are narrowly defined non-exclusive rights, namely:

- rights of access to, and rights to hunt, fish and gather the natural resources on the land and waters of their neighbouring estate group members, in relation to members of estate groups from neighbouring estates;
- rights of access to, and to hunt, fish and gather the natural resources on, the land and waters of their spouse's estate, in relation to spouses of estate group members;
- rights to act, in accordance with traditional laws and customs, in relation to the maintenance and protection of sites associated with travels of an ancestral being associated with a Dreaming which passes through the estates in the determination area, in relation to members of other estate groups who hold ritual authority.

Other interests

To the extent that the exercise of rights of access by an employee, servant, agent or instrumentality of the Northern Territory, Commonwealth or other statutory authority as required in the performance of his or her statutory duties, conflicts with the exercise of the rights and interests of the native title holders, the rights and interests of the former prevail over, but do not extinguish, the native title rights. Any interest of members of the public to the access and enjoyment (subject to the laws of the Northern Territory and the Commonwealth) of the waters, beds and banks of Timber Creek within the claim area, coexist with the rights and interests of the native title holders.

Prescribed body corporate

Native title is not to be held in trust. An Aboriginal Corporation must be nominated within 12 months or such further time as the court allows, and is to be the prescribed body corporate for purposes of s. 57(2). The application is not 'finalised' until a prescribed body corporate has been determined.

Note on boundaries

During the proceedings, the claimants were granted leave to exclude the Victoria River from the ambit of their claim. The map of the determination area shown in Schedule A of the determination has not been adjusted to show that alteration and still indicates the boundary of the claim area as running through the middle of the Victoria River.