

Determination of native title

Nambucca Heads Local Aboriginal Land Council v Minister for Lands [2009] FCA 624

Perram J, 10 June 2009

Issue

The issue before the court was whether to make a determination that native title did not exist in relation to an area subject to a non-claimant made by Nambucca Heads Local Aboriginal Land Council (the council) under the *Native Title Act 1993* (Cwlth) (NTA).

Background

The area concerned (lot 526) was conveyed in fee simple to the council pursuant to s. 36 of the *Aboriginal Land Rights Act (NSW)* (ALR Act). Subsection 36(9) of that Act provided the transfer was 'subject to any native title rights and interests existing in relation to the lands' and s. 40AA provided that the council:

[M]ay not sell, exchange, lease, dispose of, mortgage or otherwise deal with land vested in it subject to native title ... under section 36 (9) ... unless the land is the subject of an approved determination of native title.

In 2008, the council resolved to approve entry into a call option with the trustee of a unit trust owned equally between Indigenous Business Australia and the council for the transfer of lot 526 (and another lot). A non-claimant application was made in order to comply with s. 40AA of the ALR Act. A person who holds a 'non-native title interest in relation to the whole of the area in relation to which the determination is sought' may make a 'non-claimant application' (see ss. 61 and 253). There was 'no doubt' that the council had such an interest in lot 526—at [8] to [9].

There was nothing in the material before the court to indicate native title subsisted in lot 526. Section 86G of the NTA provides (among other things) that, if a non-claimant application is 'unopposed', the court may make an order in the terms of sought by the applicant (the council) without holding a hearing if the order is within power and it appears appropriate to do so. The application was 'unopposed' because both of the respondents (the Minister for Lands and NTSCORP Limited) notified the court in writing that they did not oppose the making of the orders sought.

Decision

Justice Perram determined that no native title exists in relation to the land subject to the application and that 'such determination is an approved determination' as required by s 40AA of the *Aboriginal Land Rights Act 1983* (NSW)—at [12] to [13].