

Determination of native title

Eden Local Aboriginal Land Council v NTSCORP Limited [2010] FCA 746

Jacobson J, 15 July 2010

Issue

The issue before the Federal Court was whether to make a determination under the *Native Title Act 1993* (Cwlth) (NTA) on a non-claimant application that native title did not exist in relation to a block of land in Bega Valley Shire, New South Wales.

Background

The application was, subject to one exception, identical to that in *Eden Local Aboriginal Land Council v NTSCORP Limited* [2010] FCA 745, summarised in *Native Title Hot Spots* [Issue 33](#). The difference was that, if this application was approved, the Eden Local Aboriginal Land Council (Eden LALC) proposed to subdivide and possibly sell all or part of the land concerned. Negotiations between Eden LALC and the Bega Valley Shire Council regarding subdivision had not yet culminated in a final proposal. However, in the court's view, this was no impediment to making the orders sought—at [6].

The application was governed by the provisions of the *Aboriginal Land Rights Act 1983* (NSW) (ALR Act). The Eden LALC could not deal with the land except in accordance with an approval given by the New South Wales Aboriginal Land Council (NSWALC) under s. 42G of the ALR Act. The making of the orders sought satisfied the prerequisite for a determination by NSWALC and would be sufficient for NSWALC to deal with the land once the final form of the proposal for subdivision and sale was finalised. There had been no previous determination that native title existed in relation to the area.

Decision

Justice Jacobson made an order that native title does not exist in relation to the area concerned—at [8].