

Native title determined in Tennant Creek

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On 3 September 2007 Justice Mansfield handed down the first consent determination in the Northern Territory and the first one in Australia in relation to land within a town boundary. The determination recognises the Patta Warumungu as the native title holders of about 25 hectares of land in Tennant Creek. This is the first determination over a town area without a lengthy trial. The consent determination was reached after three years of negotiations between the claimant group and the Central Land Council, the Northern Territory Government, the Tennant Creek Town Council and various mining companies.

The determination recognises that the Patta Warumungu people have the following non exclusive rights and interests:¹

- the right to live on the land and travel or access the determination area;
- the right to hunt, gather and take natural resources such as animals plants, natural waters, surface soil but excluding minerals, petroleum and other prescribed substances under the Minerals (Acquisition) Act (NT), Petroleum Act (NT), Atomic Energy (Control of Materials) Act 1946 (Cth);
- the right to maintain and protect areas of importance within the determination area;
- the right to engage in cultural activities, conduct ceremonies, hold meetings and within the determination area;
- the right to make decisions about the use and enjoyment of the determination area by 'Aboriginal people who recognise themselves as governed by Aboriginal traditional laws and

customs and who acknowledge the traditional laws and customs of the native title holders; and

- the right to share or exchange natural resources that have been obtained from the determination area.

In reaching his decision, Mansfield J relied on affidavits provided by the claimants and anthropological connection material. He quoted evidence provided to the Court, Traditional Owner Evelyn Nappangarti stated that:

Today, I still hold all the rights in Patta country and I am still exercising them. With the other ladies, we still get all the bushtucker from around town: bush honey, bush banana, conkaberries and goanna all over town within the application area. It is harder for me now but I am still going out sometimes. We also collect Spinifex wax in the application area and ochre from near Mary-Ann Dam, just outside the application area.

We are doing ceremony every year at Tingkarli, within the application area. I am helping with the ceremony for young ones and teaching all the kids about that business. My children, as kurtungurlu [custodian], must help out with that ceremony. I am always singing there and at Nyinkka Nyunyu with Kathleen Fitz. We are still holding sorry camp within the town at Tingkarli and Mulga camps.

Justice Mansfield also made extensive comment on the anthropological evidence that was presented. He found that according to the report of anthropologist Susan Donaldson, the 'Patta Warumungu people on land within the claim area have continued in the same way before sovereignty'.² In particular, Mansfield J cited the report where it states:

...the earliest extant records of the Aboriginal occupants of the application area provide indirect evidence that a society – early identified as Warumungu – existed before sovereignty, that is, prior to 1824. Evidence of land use and

¹ *Patta Warumungu People v Northern Territory of Australia* [2007] FCA 1386, [5].

² *Patta Warumungu People v Northern Territory of Australia* [2007] FCA 1386, [14].

occupation practises employed just a generation after sovereignty coupled with details of stable societal characteristics, religious practices and use of a developed language recorded just to [sic] generations after sovereignty, lead the author to conclude that [practices] such as these were also exercised by the claimant's ancestors before sovereignty.³

Accordingly, Mansfield J was satisfied that the connection report set 'out in detail the laws and customs of the Patta Warumungu people, including their Dreaming, ceremonial life, social organisation, and system of land tenure, acquisition of rights, punishment and permission to enter country'.⁴

Based on the evidence provided by the claimants and anthropological material, Mansfield J concluded that the requirements of s 223 of the Native Title Act 1993 (Cth) NTA had been satisfied and that the rights and interests in the determination area were in 'appropriately specific terms'.⁵

In reaching his decision, Mansfield J noted that the 'present outcome reflects... active engagement in this matter on the part of both the native title claim group and the Northern Territory'. He also commented that 'in some respects, the outcomes which are negotiated may include outcomes beyond the declaration of the existence of native title rights and interests'.⁶ The Patta Aboriginal Corporation has been nominated as the Prescribed Body Corporate for the determination area.

In conjunction with the determination, the Northern Territory Government has also signed an Indigenous Land Use Agreement (ILUA) with the traditional owners. Under the ILUA, the government will provide \$450 000 as a part of a compensation package in exchange for the extinguishment of native title over central areas of the town required for development. Some of the money

received as compensation from the determination will be allocated to an educational trust other funds will be used for the operations of the PBC.



Justice Mansfield presenting the determination papers to Jeremy Dawson (Jurpurula), one of the native title claimants.



To celebrate the determination and signing of the ILUA there was cake. Chief Minister Clare Martin and traditional owners Kathleen Fitz and Evelyn Father do the honours

³ *Patta Warumunga People v Northern Territory of Australia* [2007] FCA 1386, [15].

⁴ *Patta Warumunga People v Northern Territory of Australia* [2007] FCA 1386, [15]-[16].

⁵ *Patta Warumunga People v Northern Territory of Australia* [2007] FCA 1386, [18]-[20].

⁶ *Patta Warumunga People v Northern Territory of Australia* [2007] FCA 1386, [23]-[24].