

**Parliamentary Joint Committee on Native Title
and the Aboriginal and Torres Strait Islander
Land Fund**

OPERATION OF THE NATIVE TITLE ACT

**Inquiry Into The Effectiveness Of The
National Native Title Tribunal**

Submission No:25

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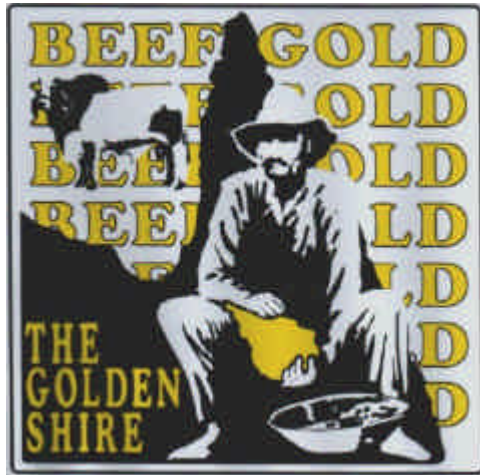
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ETHERIDGE SHIRE COUNCIL



Submission to

***Parliamentary Joint Committee on Native Title and the
Aboriginal and Torres Strait Islander Land Fund***

on

Native Title Claim Notification Processes

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1. Aim of Submission

It is Council's understanding that the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund is investigating the workings of the Native Title Tribunal and other related matter.

This submission seeks to place before the Committee Council's recent experiences with respect to the operations of the Native Title Tribunal with particular emphasis on the notification process utilised by the Tribunal.

In particular Council is of the view that:-

- a) the mechanisms used by the Tribunal to notify property owners that their property is subject to a claim and that the property owner may have the right to become a party to the claim are deficient;
- b) There is a lack of clarity as to who is responsible for determining the property owners affected by a claim; and
- c) The Tribunal's aggressive attitude towards Council when Council sought to rectify the inadequate notification processes utilised by the Tribunal needs to be modified.

2. Etheridge Shire Background

The Etheridge Shire with a size of some 39,612 square kilometres and a population of some 939 permanent residents is centred on the communities of Georgetown (300 people), Mount Surprise (65 people), Forsayth (90 people) and Einasleigh (40 people) with the balance on rural properties. Etheridge Shire has a scattered rural population on relatively large rural properties.



Europeans first explored the Etheridge Shire area in the 1840's and pastoral settlement began in the 1860's. Much of the development of the Shire can be accredited to mining when copper was first discovered in the mid 1860's. Gold rushes followed and saw the settlement of numerous towns, including Georgetown in 1870.

The Etheridge Goldfield was proclaimed in 1872 but it had fluctuating fortunes over the next 30-40 years resulting in decline in the 1920's. However, fresh interest was shown in the 1970/1980's when world prices for gold and other base metals increased dramatically. This saw a resurgence of exploration activity and Kidston Gold Mine commenced production in 1984.

Local Government commenced in the area when the Einasleigh Divisional Board was constituted in the late 1870's. This board became Einasleigh Shire Council in 1902 and later the Etheridge Shire Council in 1919.

3. Native Title Claims in Shire Area

Native Title Claims lodged and underway in the Etheridge Shire region as at the end of October 2002 are as detailed in the Tables below:-

TABLE 1 – Native Title Claims – Etheridge Shire Part A

Local Gov't Area [Sq Kms]	Claim Area over this LGA (external boundary only) [Sq Kms]	Percentage of this LGA covered by the claim	Total Area Covered by Claim (external boundary only) Sq Kms	All Qld Shires Covered by Claim	Application name
39328.2057	34.53881032	0.08	187.621	Etheridge Flinders	Kutjala Jirandali & Mbara Ngawun People
39328.2057	12.37798123	0.03	12.378	Etheridge	Gunbara Bulara #3
39328.2057	182.595369	0.46	182.595	Etheridge	Ewamian People #2
39328.2057	2.774092116	0.007	19.49	Dalrymple Etheridge	Gunbara Bulara Group
39328.2057	0.003353402	0.00008	404.762	Dalrymple Etheridge Herberton	Gunbara Bulara Group #2
39328.2057	23.06679561	0.05	609.048	Etheridge Mareeba	Wakamin People
39328.2057	28411.87899	72.24	28479.463	Dalrymple Etheridge Herberton Mareeba	Ewamian People #3
39328.2057	5673.678367	14.42	35568.386	Carpentaria Croydon Etheridge Mareeba	Tagalaka People #2

TABLE 2 - Native Title Claims – Etheridge Shire Part B

Application name	Tribunal no.	Federal Court no.	In Notified	RNTC mediation	RNTC status	Applicant rep	NNTT Case Manager	NNTT Members	Date application filed
Kutjala Jirandali & Mbara Ngawun People	QC02/22	Q6020/02	No	No	Registered	Central Queensland Land Council	Marianne Jago		13-May-02
Gunbara Bulara #3	QC01/41	Q6039/01	Yes	Yes	Registered	North Queensland Land Council	Louise Casson		09-Nov-01
Ewamian People #2	QC99/13	Q6009/99	Yes	Yes	Registered	Central Queensland Land Council	Paul Durante	G Clark	18-Mar-99
Gunbara Bulara Group	QC01/27	Q6025/01	Yes	Yes	Registered	Central Queensland Land Council	Louise Casson	G Fletcher	10-Aug-01
Gunbara Bulara Group #2	QC01/36	Q6034/01	Yes	Yes	Registered	Central Queensland Land Council	Louise Casson		01-Oct-01
Wakamin People	QC97/40	QG6148/98	Yes	No	Registered	Terry Fisher & Co	Gary Lui	R Wade	24-Sep-97
Ewamian People #3	QC01/16	Q6018/01	Yes	Yes	Registered	North Queensland Land Council	Paul Durante	G Clark	30-Apr-01
Tagalaka People #2	QC01/22	Q6020/01	Yes	No	Registered	North Queensland Land Council	Paul Durante	G Clark	29-Jun-01

4. The Gulf Savannah Region

Etheridge Shire is part of the Gulf Savannah Region. This region includes the local Government areas of Burke, Mornington, Carpentaria, Croydon and Etheridge and the Aboriginal Community Councils of Doomadgee and Kowanyama. This region has a number of differing claimant groups on differing areas.



5. Concerns with the process

At the outset it should be noted that Council has no issue with the native title claimants.

Council's concerns are with:

- a) the mechanisms used by the Native Title Tribunal to notify property owners that their property is subject to a claim and that the property owner may have the right to become a party to the claim; and
- b) the lack of clarity as to who is responsible for determining the property owners affected by a claim.
- c) The Tribunal's aggressive attitude towards Council when Council sought to rectify the inadequate notification processes utilised by the Tribunal.

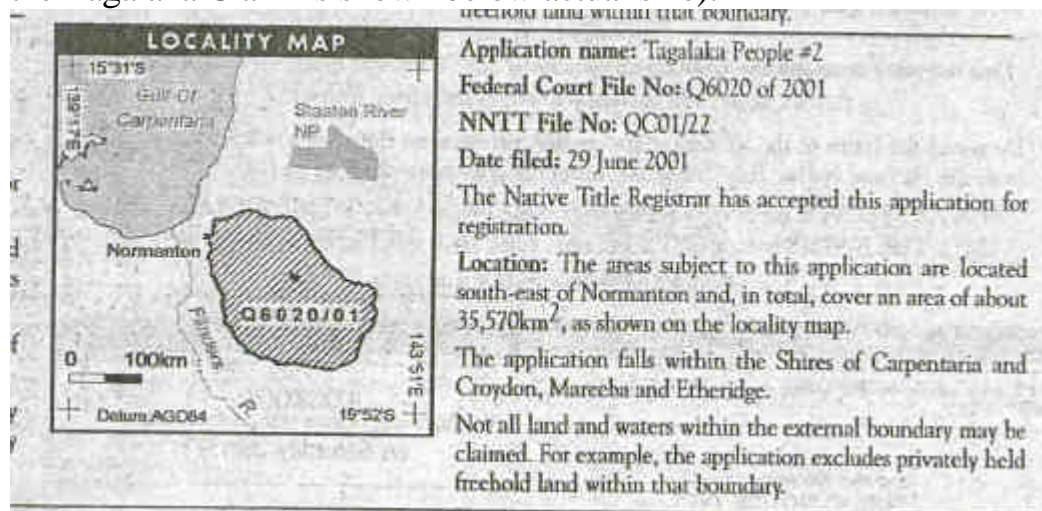
a. Inadequate Notification Mechanisms

It is clear that the Native Title Act allows the National Native Title Tribunal to utilise several methods for notification including advertising in local and regional papers, radio interviews and by directly contacting landholders affected by the claim though this has not been the way that this part of the process has been advised to property owners both verbally and in publications from the National Native Title Tribunal.

When public meetings were held in Georgetown a number of years ago a clear impression was given by case managers for the region that the process of notification entailed each property owner with tenure rights being notified that may have land affected by any claim being directly notified by the Tribunal of the claim and their rights to become a party to the claim in the notification phase.

Verbal explanations were given at the public meeting at the time that the relevant state body (in this case the Queensland Department of Natural Resources at the time) was experiencing delays in determining the tenures affected by claims and this would delay the notification processes. What was not stated at the time was that the Registrar could bypass this stage and proceed to notification without directly notifying potentially affected property owners.

Council experienced the situation where the Ewamian # 2 claim was notified by way of direct notification to all property owners potentially affected and subsequent claims were notified by an advertisement without direct notification. This created confusion and mistrust in the community. These subsequent claims were also advertised with maps which made it extremely difficult to determine if a property was affected by the claim as in the Tagalaka Claim advertisement in the Cairns Post on Wednesday the 23rd of January, 2002 (The portion of which relating to the Tagalaka Claim is shown below actual size).



These advertisements are virtually ineffective in reaching affected property owners in the region for the following reasons:-

- a) They do not allow a reader to determine if their property is affected by the claim as the are of to small a scale to be allow such a judgement to be made;
- b) They are presumed to be getting to the affected property owners however a weekday Cairns Post (This advertisement was in the Wednesday 23rd January edition) has got little to no circulation in the Etheridge Shire area;
- c) Very few property owners in remote rural areas, such as Etheridge Shire some 400kms west of Cairns, get daily newspapers delivered as such deliveries are not available;
- d) There was no prior liaison by the Tribunal with the local government to determine effective communication strategies to affected property owners;
- e) Seeking to inform property owners by way of an advertisement on a weekday in a regional newspaper during the wet season is akin to 'whistling in the wind' in its effectiveness;
- f) Property owners had been previously verbally advised at a public meeting that affected property owners would be directly notified during the notification stage.

It is difficult to see how the advertising procedure utilised by the Registrar complies with the requirement under its own procedures whereby it is required to "...take such steps to give notice of the application as are reasonably likely to bring to the attention of all persons whose interests may be affected by a determination in relation to the application." (Native Title Tribunal Procedures for applications for Native Title Determination and Compensation (Third Revised Issue: 30 April 1996))

The Tribunals own literature clearly intimates a more comprehensive approach to advising potentially affected property owners of a claim and their rights to become a party to it.

It's publication "Short Guide to native title" advised under Notification as follows:-

Notification

Every application to be mediated is advertised in national, State/Territory, local and some indigenous newspapers. The Native Title Registrar also informs people and organisations with an interest in the area including:

- State/Territory and local governments
- lease holders
- mineral tenement holders
- other relevant organisations.


This information process is called 'notification'.

People who wish to participate in the proceedings may apply to the Federal Court.

The Federal Court assesses all applications and decides whether to refer them to the Tribunal for mediation.

What happens during mediation?

During mediation all parties meet to discuss the native title application. The aim is to reach an agreement that respects everyone's rights and interests in the area.



Mediation meeting in the hearing shed at Belele station in the Western Australian Murchison region

It would be fair to say that to inform people is to ensure that people actually obtain the information about which they are to be informed.

That the use of inform in this publication is used with "also" after advising of the use of advertisements would indicate very clearly that the Tribunal's advised intent was to inform by some other manner additional to the use of newspapers.

A further publication by the Tribunal entitled Native Title Questions and Answers states that “Any person or organisation with a right, power or privilege over or in connection with land or waters included in an accepted native title application is entitled to register as a party to the application within two months of the date they **received a notice** to register as a party.” **[Emphasis added]**

Can other people have a say about native title applications?

Any person or organisation with a right, power or privilege over or in connection with land or waters included in an accepted native title application is entitled to register as a party to the application within two months of the date they received a notice to register as a party. Parties who wish to have a say in the application must write to the Native Title Registrar to register their interest before notification closes.

This entitles parties to take part in mediation of a native title agreement and ensure their interests are represented in the outcome.

Any person or organisation with a sufficient interest in a native title application can apply to Registrar to take part in mediation by writing to the Tribunal at GPO Box 9973 in any capital city or by sending a fax to the Tribunal on (08) 9268 7299, stating brief details of their interest. Parties can use registration forms provided by the Tribunal.

Registrations of interest must be lodged with the Tribunal before the expiry of a two-month public notification period advertised by the Tribunal.

Statements of interests should include the right, power or privilege held over the land or waters contained in the native title application and include, if possible, a photocopy of any relevant document relating to the interest (eg. a lease, licence or permit).

The interests of recreational users of land and waters (eg. hikers, campers, anglers, etc) can usually be represented by local government authorities or by Commonwealth, State or Territory Governments. However, recreational users may qualify for party status if a native title application has the potential to restrict access rights for people accustomed to using the area subject to the application. The Tribunal will examine each application for party status on its merits.

People considered by the Tribunal to have insufficient grounds to be a party to a native title application can appeal to the Federal Court against the Tribunal's ruling.

b. Lack of Clarity on responsibility for determining affected title holders

Council initially accepted that the Native Title Tribunal passed a claim that had been accepted to the relevant state land tenure body with a view to obtaining from that body a list of names and addresses and tenures of affected property owners so that direct notification could then be made to those people by the Tribunal.

In fact, early verbal advices from case officers the tribunal was that it was the obtaining of this information which was holding up accepted claims going to the notification stage.

Advice received from the Queensland Minister for Natural Resources and Minister for Mines, the Hon Stephen Robertson MP, to the Local Government Association of Queensland dated 22nd October 2002 casts doubts on this.

The Minister states in his advice that "...the responsibility for the notification of a native title claim lies with the National Native Title Tribunal." and goes on to say "...my Department produces a map of the claim area based on the information provided in the application and attempts to assess which landholders might be affected. The landholder information when completed is provided, on request, to the Tribunal."

Note that the Minister does not guarantee to provide information on the landholders affected nor does he automatically provide the information to the tribunal.

In at least two very large claims in the Etheridge area (Ewamian #3 and Tagalaka People #2) the landholder information appears to not have been provided. Ewamian #3 spans the full area of Etheridge Shire (some 39,612 square kilometres) and there was much confusion as to what properties were affected as evidenced by facsimile from Council to solicitors contacting Council on this matter:-

Fax to solicitors February 2002

I refer to your letter dated 12 February regarding the above.

I note your request for advice if there are any maps available for viewing by the public of the claim area.

Please note that Council has no responsibility with respect to the Native Title Claims process. Council receives its advice from the Native Title Tribunal and has received advices of varying degrees of complexity with regard to the a number of claims from the Ewamian people. These advices do not include maps which clearly indicate whether or not particular properties are affected by the relevant claims.

In order to ascertain if there are any maps available for viewing by the public I would suggest that you forward your queries direct to the Native Title Tribunal.

c. Tribunal's aggressive attitude to Council

In order to notify possibly property owners possibly affected by the Ewamian #3 and Tagalaka People # 2 claims Council sent a copy of the advertisements and notices it had received along with contact details and appropriate registration as a party to the claim forms to all property owners in its region that appeared to have land located within the claim areas as advertised. The text of the letters were as follows:-

Council letter to property owners January & February 2002

Etheridge Shire has recently confirmed that the Registrar of the Native Title Tribunal has exercised a discretion available under the Native Title Legislation which allows the Tribunal to not directly notify each property owner whose land may be affected by the above claim.

Attached is a partially completed Form 5 under the Native Title Act. You will need to complete sections 3 and 4, 6 (only if you are using a legal representative) or 7 (if you are attending the hearings yourself), 8, 9, 10 and 11.

If you wish to become a party to the claim (this entitles you to take part in negotiations to settle the claim) you will need to complete the Form 5 and lodge it with the Federal Court.

If you wish to become a party to the claim and not pay any fees for lodgement of the form you must complete and lodge this form on or before the 7th of May 2002.

There are no cost involved in lodgement and you are not required to have legal representation to be a party to the claim. The choice for legal representation is solely yours.

A free telephone call to the Native Title Tribunal on 1800 640 501 will provide you with the information you require for lodgement.

As a result of this direct notification carried out by Council advice was received from Council's solicitors attending a hearing on the Ewamian # 3 Claim as follows:-

"The Deputy Registrar specifically requested that we pass the following comments onto Council.

The Federal Court had become aware that the Etheridge Shire Council had conducted a mail out of all land holders within its local government area enclosing a Form 5 Notice of Intention to Become a Party. The Federal Court indicated that it was not impressed with the course of action taken by Council and that it regarded the actions of the Council as interference with the native title process and that the Council's actions verged on an abuse of process. The large number of applications for party status had required the Federal Court to employ an additional staff member and divert existing staff to resolve the party related issues. The Federal Court indicated that if it became aware of Council continuing with this practice it would consider taking action against Council"

Council was not impressed with this threat and wrote to all Queensland Senators and its relevant State and Federal Members of Parliament and the Legislative Assembly as follows:-

Council letter to Senators etc on threat from Deputy Registrar of Native Title Tribunal – May 2002

RE: Threat received from the Deputy Registrar of the Federal Court

Council is a party to a number of native title claims over parts of its shire area and is also seeking to become a party to a number more.

As part of the process of the Federal Court seeking to determine parties to various native title claims made the Native Title Tribunal was in the practice of advising property owners affected by any native title claim by direct mail of the claim and the right of such property owners to lodge a Form 5 Notice of Intention to Become a Party to seek to become a party to such claim within the notification period.

As the Native Title Tribunal relies on the Queensland Governments Department of Natural Resources and Mines to obtain the names and addresses of affected property owners and has been unable to obtain that advice for a number of claims over significant areas of the shire, the Registrar of that Tribunal has had to exercise a discretion under the Native Title Act to not directly notify affected property owners but to utilise an advertisement in newspapers in the region.

In remote rural shires such as Etheridge Shire the mechanism of advertising a blanket claim over an area without directly identifying affected properties is considered by Council to be unsatisfactory. Council knows from prior experience in the region that many property owners would never see the advertisement as newspapers are not generally available in these area and, even if they saw a newspaper and the advertisement therein, would be unable to ascertain from the advertisement if their property was affected by a claim.

To protect the right of property owners within the region to become a party to claims Etheridge Shire Council has sent a copy of the claim process and a Form 5 Notice of Intention to Become a Party form and contact details to each property owner in the shire. The form was sent to each property owner as Council also was also not provided with a clear list of properties affected by the claims.

Council recently received written advice from its attendant solicitor at a recent hearing of the Federal Court held in Cairns to the following affect:

“The Deputy Registrar specifically requested that we pass the following comments onto Council.

The Federal Court had become aware that the Etheridge Shire Council had conducted a mail out of all land holders within its local government area enclosing a Form 5 Notice of Intention to Become a Party. The Federal Court indicated that it was not impressed with the course of action taken by Council and that it regarded the actions of the Council as interference with the native title process and that the Council’s actions verged on an abuse of process. The large number of applications for party status had required the Federal Court to employ an additional staff member and divert existing staff to resolve the party related issues. The Federal Court indicated that if it became aware of Council continuing with this practice it would consider taking action against Council”

Council considered this advice at a recent meeting from which I am directed to advise you of the above comments on Council's actions. These actions were carried out by Council to inform its ratepayers of their possible right to be a party to the native title claims over the area. Council is concerned at the threat from the Federal Court and has no wish to incur legal costs to determine the veracity or otherwise of this threat.

I am further directed to ask that you seek the rectification of the Courts attitude to this issue and the amelioration of the threat of the Court to take action against Council where Council is seeking to carry out the task of informing its ratepayers.

I await your response in due course.

The sentiments contained in this letter remain Councils' sentiments to this day.