

**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:33

Received 15 April 2003

Mr John O'Gorman

Director

Northern Directorate

**NSW National Parks and Wildlife
Service**

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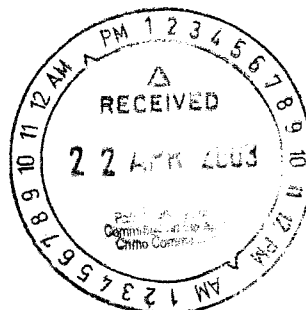
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FAXED
15-4-03



Maureen Weeks
Committee Secretary
Parliamentary Joint Committee on Native Title and the Aboriginal Torres Strait
Islander Land Fund
Parliament House
CANBERRA ACT 2600

Dear Ms Weeks

Public Hearing on the Effectiveness of the National Native Title Tribunal

Thank you for your invitation to attend the Committee's hearing at Byron Bay on 16 April 2003. As discussed, I will be unable to attend this hearing, however I have attached a written submission in response to your request for submissions to the Committee's inquiry into the Effectiveness of the National Native Title Tribunal under s206(d) of the *Native Title Act 1993*.

If there is any aspect of this you wish to clarify, please contact me on (02) 6659 8210.

John O'Gorman
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DEVELOPMENT OF THE ARAKWAL INDIGENOUS LAND USE AGREEMENT

- In 1995, the Byron Bay Arakwal people("the Applicants") made an application for determination of native title NC95/01 in respect of certain lands and coastal waters in the Byron Bay region. At about the same time the Government made a commitment to establish 24 new National Parks, including a park in the Cape Byron area.
- Some of the land in the native title claim was included in the Government's proposed National Parks areas. To address the interest of the applicants and other local interests the then Minister for the Environment, the Hon. Pamela Allan MP convened the Cape Byron Community Consultative Committee to report to her on options for future management of the area between Cape Byron and Broken Head.
- As a result of the Committee's recommendations and subsequent negotiations, the Applicants entered into a section 21 agreement under the Native Title Act 1993 (Cth) (CNTA) (prior to its amendment in 1998), to authorise the creation of the Cape Byron State Recreation Area, and the grant of certain Crown land at Paterson Street, Byron Bay not subject to the claim, to the Tweed Byron Local Aboriginal Land Council (TBLALC) for a proposed Aboriginal interpretive centre. The Land Council was to hold the land in trust for the Byron Bay Arakwal people. The land has since been transferred to the Arakwal Aboriginal Corporation.
- The Cape Byron State Recreation Area Agreement was made without prejudice to the existence or non-existence of the Applicant's native title rights and interests in the land claimed, and did not signify any acknowledgment of native title in the land by the State.
- In late 1997, the Byron Bay Arakwal people provided the Minister for Land and Water Conservation (LWC) with evidence in support of their traditional and customary connection with the claim area of NC95/01 and a much broader area of lands. On the basis of advice from Counsel and the Crown Solicitor's Office, the State has been prepared to accept that the evidence satisfies the Government's guidelines for the settlement of native title claims subject to an appropriate agreement being entered into addressing such issues as the rights and interests and compensation for past and future acts. However, no evidence has been provided at this stage to support the Byron Bay Arakwal people's claim to a traditional connection to coastal waters within the claim area.
- Accordingly, the Minister for LWC indicated the willingness of the State to negotiate the resolution of the claim for native title in the lands already under claim and in respect of such larger area as was supported by credible evidence (on the condition that this larger area was made the subject of a native title claim), by a two stage process of negotiations.

- The two stage approach was adopted to enable the Applicants (who are elderly) to obtain some benefits arising out of the negotiated agreement at an earlier date than would have otherwise been the case and to realise the Government's wish to create the National Park and provide for its future management. The staged approach would also enable the State to undertake the comprehensive land status searching required and for the Applicants to be involved in negotiations with third parties affected in relation to the balance of lands claimed.
- The first round of negotiations resulted in the partial settlement of NC95/01 through an Indigenous Land Use Agreement (ILUA) the terms of which provided for the Applicants to authorise the creation of the Arakwal National Park and the undertaking of various legislative, executive and administrative acts in respect of or incidental to the management of the National Park. In consideration of this, the Minister for LWC and the Minister for the Environment on behalf of the State of NSW agreed to transfer certain land at Iron Bark Avenue, Byron Bay, and provide certain benefits to the Applicants and the Byron Bay Arakwal people, including the grant of a residential tenancy agreement and opportunities for employment and participation in the management of the National Park.
- The National Native Title Tribunal was involved throughout this negotiation process, including active membership of the Cape Byron Community Consultative Committee. The Service appreciated the way in which they undertook their role as a mediator in assisting the resolution of the many and varied issues that arose. Their skills were particularly useful in resolving the formal objection raised to the registration of the ILUA by the Ngyabal(Njangbal) People of the Lower Richmond.
- The successful registration of the ILUA was marked by a public ceremony held at Cape Byron lighthouse on 28 October 2001, and attended by the Premier, the Hon. Robert Carr MP. The Premier praised the agreement as a model for the future settlement of native title claims in NSW, and acknowledged the State's commitment to continue negotiations with the Byron Bay Arakwal people with a view to achieving a complete settlement of the group's native title claims. The former Native Title Tribunal member was MC for the ILUA ceremony.
- Since then, Arakwal National Park Management committee has been established with representatives from the Byron Bay Arakwal people, NPWS and Byron Shire Council. It meets regularly to advise the NPWS on the management of the Park, considering such issues as:
 - Employment and training (Byron Bay Arakwal people are employed as rangers and trainee rangers);
 - Weed and pest management (Byron Bay Arakwal people have been involved in the development of fire, pest and communication plans for the Arakwal National Park);
 - Recovery plans; and
 - Aboriginal Heritage Study.

- The Arakwal elders have subsequently lodged a second claim - NC01/08, which along with NC95/01, is asserted to represent the extent of their traditional lands.

- The aim of the second stage is to conclude an ILUA which will provide for:
 - The final settlement of the native title applications lodged by the Byron Bay Arakwal people
 - The future management of land and waters in which native title continues to exist
 - The doing of future acts in respect of land and waters in which native title exists;
 - and settlement of other related matters.