



Federal Court of Australia

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Peter Hillig in his capacity as administrator of Worimi Local Aboriginal Land Council v Minister for Lands for the State of New South Wales [2005] FCA 1713 (28 November 2005)

Last Updated: 28 November 2005

FEDERAL COURT OF AUSTRALIA

Peter Hillig in his capacity as administrator of Worimi Local Aboriginal Land Council v Minister for Lands for the State of New South Wales [2005] FCA 1713

NATIVE TITLE – non-claimant application – unopposed – no native title exists in relation to the land

Native Title Act 1993 (Cth) ss 13(1)(a), 61, 81, 223, 225
[Aboriginal Land Rights Act 1983](#) (NSW) ss 36, 40, 40AA

Application for Determination of Native Title made by the Metropolitan Local Aboriginal Land Council
[\[1998\] FCA 402](#)

Deniliquin Local Aboriginal Land Council [\[2001\] FCA 609](#)
Kennedy v Queensland (2002) 190 ALR 707

PETER HILLIG IN HIS CAPACITY AS ADMINISTRATOR OF THE WORIMI LOCAL ABORIGINAL LAND COUNCIL v MINISTER FOR LANDS & ANOR

NSD 396 OF 2005

**BENNETT J
SYDNEY
28 NOVEMBER 2005**

**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY**

NSD 396 OF 2005

**BETWEEN: PETER HILLIG IN HIS CAPACITY AS ADMINISTRATOR OF
THE WORIMI LOCAL ABORIGINAL LAND COUNCIL
APPLICANT**

**AND: MINISTER FOR LANDS FOR THE STATE OF NEW SOUTH
WALES AS THE STATE MINISTER UNDER THE *NATIVE
TITLE ACT 1993 (CTH)*
FIRST RESPONDENT**

**NEW SOUTH WALES NATIVE TITLE SERVICES LTD
SECOND RESPONDENT**

**JUDGE: BENNETT J
DATE OF ORDER: 28 NOVEMBER 2005
WHERE MADE: SYDNEY**

THE COURT ORDERS THAT:

1. No native title exists in relation to New South Wales Department of Lands Certificate of Title folio identifiers 216 and 218 of Deposited Plan 1044608, located in the Local Government Area of Port Stephens, Parish of Tomaree, County of Gloucester, State of New South Wales.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

**IN THE FEDERAL COURT OF AUSTRALIA
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JUDGE: BENNETT J
DATE: 28 NOVEMBER 2005
PLACE: SYDNEY

REASONS FOR JUDGMENT

1 This application concerns the land comprised in NSW Department of Lands Certificate of Title folio identifiers 216 and 218 of Deposited Plan 1044608 ('the land'). The land is in the local government area of Port Stephens, New South Wales. There has been no determination to date that native title exists in relation to the land.

2 The transfer of the land to the Worimi Local Aboriginal Land Council was subject to [s36\(9\)](#) of the *Aboriginal Land Rights Act 1983* (NSW) ('the NSW Act'). [Section 36\(9\)](#) provides that any transfer to an Aboriginal Land Council is subject to any native title rights and interests existing in relation to the lands.

3 The Worimi Local Aboriginal Land Council is subject to restrictions contained in [ss40](#) and [40AA](#) of the NSW Act. The provisions prevent the Worimi Local Aboriginal Land Council from dealing with the land vested in it if the land is subject to native title rights under [s36\(9\)](#) or [s36\(9A\)](#) unless the land is the subject of an approved determination of native title under the *Native Title Act 1993* (Cth) ('the [Native Title Act](#)'). For example, a determination pursuant to [s61\(1\)](#). [Section 36\(9A\)](#) deals with lands under the *Western Lands Act 1901* (NSW), which is presently not relevant.

4 [Section 61](#) of the [Native Title Act](#) specifies that applications, including '*native title determination applications*', may be made to the Federal Court by 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. [Section 223](#) defines native title. [Section 225](#) provides that a determination of native title '*is a determination whether or not native title exists in relation to a particular area.. of land or waters*'.

5 A native title determination may be a 'claimant application' or a 'non-claimant application'. A claimant application is a '*native title determination that a native title claim group has authorised to be made*' (s253). A non-claimant application is defined to mean '*a native title determination application that is not a claimant application*' (s253).

6 The applicant is the administrator of the Worimi Local Aboriginal Land Council. By a non-claimant application pursuant to [s61\(1\)](#) in Part 3 of the [Native Title Act](#) he seeks a determination that native title does not exist in relation to the land.

7 [Section 66\(3\)](#) of the [Native Title Act](#) requires the Native Title Registrar ('the Registrar') to give notice

containing details of a non-claimant application to certain persons or bodies and to notify the public.

8 The evidence before the Court consists of documentary material including an affidavit sworn by Ms Karen Dean sworn on 18 August 2005 and Mr Peter Hillig sworn on 10 August 2005. The affidavit of Ms Dean provides relevant information concerning the Registrar's fulfilment of the obligations set out in [s66](#). The relevant search of the National Native Title Tribunal Register made on 10 August 2005 disclosed no claimant native title application over the land. The Registrar advertised the application in three newspapers in April 2005. On 28 April 2005 the New South Wales Native Title Services Ltd notified as a representative body and was later joined as the second respondent to the application.

9 The period specified in the notice under [s66](#) expired on 3 August 2005. To date, no native title claimant has sought to appear or notified an interest.

10 I am satisfied that the required notice has been given.

11 [Section 86G](#) of the [Native Title Act](#) empowers the Court to make certain orders in what the heading to the section describes as 'unopposed applications.' [Section 86G](#) provides as follows;

'(1) If at any stage of a proceeding in relation to an application under [section 61](#), but after the end of the period specified in the notice given under [section 66](#):

(a) the application is unopposed; and

(b) the Federal Court is satisfied that an order in, or consistent with, the terms sought by the applicant is within the power of the Court;

the Court may, if it appears appropriate to do so, make such an order without holding a hearing or, if a hearing has started, without completing the hearing.

*(2) For the purpose of this section, an application is **unopposed** if the only party is the applicant or if each other party notifies the Federal Court in writing that he or she does not oppose an order in, or consistent with, the terms sought by the applicant.'*

12 The respondents to the application are the Minister for Lands and the New South Wales Native Title Services Ltd. The solicitors for each party have notified the court in writing that the application is unopposed. The respondents have signed the proposed Short Minutes of Order.

13 I am satisfied that the Court has power to make the order sought by the applicant. The Court has jurisdiction to hear and determine applications that relate to native title (s81). An application may be made to the Court under Part 3 of the [Native Title Act](#) for determination of native title in relation to an area for which there is no 'approved determination of native title' (that is, no prior determination) (s13 (1)(a)). A determination of native title includes a determination that native title does not exist in relation to a particular area (s225). The applicant as a holder of a non-native title interest in relation to the land may apply for a native title determination (s61(1)).

14 I note that orders of the kind sought by the applicant have been previously made by the Court; *Deniliquin Local Aboriginal Land Council* [2001] FCA 609, *Kennedy v Queensland* (2002) 190 ALR 707, *Application for Determination of Native Title made by the Metropolitan Local Aboriginal Land Council* [1998] FCA 402.

15 I am satisfied that the application should be allowed and an order be made that no native claim exists

over the land.

I certify that the preceding fifteen (15) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Bennett J.

Associate:

Dated: 28 November 2005

Counsel for the Applicant: M. Wright

Solicitor for the Applicant: Watson Mangioni

Solicitor for the First Respondent: D. Stewart, I V Knight

Solicitor for the Second Respondent: D. Barnes

Date of Hearing: 10 November 2005

Date of Judgment: 28 November 2005