



Djabugay determination — background information 17 December 2004

Introduction

The Djabugay People's consent determination that native title exists in the Barron Gorge National Park is the first to be made over a national park in Queensland without litigation. The park is situated near Cairns in Far North Queensland and covers about 2,800 hectares.

It is important to note that the recognition of native title over the Barron Gorge National Park does not mean other people cannot access or use it. The interests of the general public and others have been recognised and protected in the determination. If the native title rights and interests are at odds with other interests, then the native title rights and interests must give way. That is, the other interests have priority.

Area claimed

The Djabugay People made their application for a determination of native title on 26 May 1994. Their main objective was to have their native title rights and interests in the Barron Gorge National Park recognised.

Some areas within the Barron Gorge National Park are not covered by the determination and therefore no native title rights and interests are recognised over those areas. The areas include:

- areas that were, in the past, covered by a freehold grant or an exclusive lease
- leases and cable way for the Skyrail, and
- areas where there are public works, such as the boardwalk that links the Barron Gorge train station with the car park off Barron Falls Road, the Cairns Kuranda railway corridor and other works associated with the Barron Gorge Hydro-Electric Power Station.

Today's determination



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Today's consent determination recognises that, under their traditional laws and customs, the Djabugay People have non-exclusive native title rights and interests in Barron Gorge National Park. The determination also states that there are no native title rights to minerals or petroleum in the Barron Gorge National Park.

The determination will come into effect once an indigenous land use agreement (ILUA), between the Djabugay People, the State of Queensland and the Djabugay Native Title Aboriginal Corporation has been registered on the Register of Indigenous Land Use Agreements held by the National Native Title Tribunal. It will be known as the Barron Gorge National Park Indigenous Land Use Agreement (Area Agreement).

Before making the determination, the Federal Court noted that:

- The Djabugay People, the State of Queensland and the Cairns City Council (the parties) reached agreement on the terms of the determination of native title
- The parties acknowledged that:
 - the Djabugay People have a long-standing strong connection to the land in the Barron Gorge National Park
 - the effect of the determination is that the Djabugay People, in accordance with their traditional laws and customs, have a right to be acknowledged as the native title holders for the Barron Gorge National Park
 - the traditional laws and customs of the Djabugay People include the authority to resolve disputes between Aboriginal people concerning the exercise of native title rights and interests in relation to the Barron Gorge National Park.

Other interest holders

In addition to the Djabugay native title claimants, other interest holders in Barron Gorge National Park include:

- the State of Queensland
- the Wet Tropics Management Authority
- Skyrail Pty Ltd
- the Cairns City Council and Mareeba Shire Council
- Powerlink, Ergon Energy Corporation, Stanwell Corporation, and
- the public who can access the Barron Gorge National Park for recreation purposes.

These 'other interests' can be exercised even though the Djabugay People have native title. They prevail over the native title rights and interests, and if the native title rights and interests are at odds with other interests, then the native title rights and interests must give way.

Mediation process

The Djabugay people's native title claim was lodged on 26 May 1996 and has been in mediation by the Tribunal since September 1994.

Throughout the negotiation of this native title claim, the Djabugay People have continually expressed their willingness to only exercise their rights in a manner compatible with the continued sustainable management of Barron Gorge National Park.

Rights recognised

The native title rights and interests of the Djabugay People are rights to:

- be physically present on the Barron Gorge National Park
- camp on the Barron Gorge National Park (note: camping does not include the right to permanently reside or build permanent structures or fixtures)
- hunt, fish and gather on, and take the natural resources of, the Barron Gorge National Park for the purpose of satisfying their personal, domestic, social, cultural, religious, spiritual, ceremonial and communal needs for non-commercial purposes
- maintain and protect by lawful means places within the Barron Gorge National Park of importance to the Djabugay People
- perform social, cultural, religious, spiritual or ceremonial activities in the Barron Gorge National Park and invite others to participate in these activities, and
- make decisions about the use and enjoyment of the Barron Gorge National Park by Aboriginal people who are governed by the traditional laws acknowledged and traditional customs observed by the Djabugay People.

The Environmental Protection Agency is currently working with the Djabugay People to develop a management plan for the park.

The agreement relating to this determination

The determination is dependent on the registration of the ILUA on the Register of Indigenous Land Use Agreements. The ILUA is a voluntary agreement made between the Djabugay People, the State of Queensland and the Djabugay Native Title Aboriginal Corporation.

The ILUA is binding on all native title holders of the area covered by the agreement, whether or not they are parties to

the agreement.

The parties to this ILUA have reached an agreement about the exercise of native title rights and interests in the Barron Gorge National Park to ensure good management of the park. The area to which the ILUA applies is the same as for the determination.

The ILUA says that Djabugay People will:

- carry out any hunting in the Barron Gorge National Park in a manner consistent with the public enjoyment of the park and with the management principles of National Parks
- not use firearms in the Barron Gorge National Park, except as expressly authorised by Queensland Parks and Wildlife Service
- not take or interfere with rare, endangered or vulnerable species in the Barron Gorge National Park
- not, without the further agreement of Queensland Parks and Wildlife Service, camp in the Barron Gorge National Park for periods of longer than four weeks at a time.

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