



Federal Court of Australia
District Registry: Queensland
Division: General

No: QUD619/2017

ANN BETTS & ORS ON BEHALF OF THE WULLI WULLI PEOPLE #3
Applicant

STATE OF QUEENSLAND
Respondent

ORDER

JUDGE: JUSTICE RANGIAH

DATE OF ORDER: 06 February 2018

WHERE MADE: Brisbane

THE COURT ORDERS THAT:

Separate Proceedings

1. Pursuant to s 67 of the *Native Title Act 1993* (Cth):
 - (a) The area the subject of the claim in this proceeding be separated into different parts, to be called, respectively, “Wulli Wulli #3 Part A”, “Wulli Wulli #3 Part B”, and “Wulli Wulli #3 Part C”;
 - (b) The Wulli Wulli #3 Part A area is to consist of that part of the application area that overlaps with proceeding QUD400/2012 Gaangalu Nation People (Gaangalu Nation People Proceeding) and is labelled as “Part A” in the attached map;
 - (c) The Wulli Wulli #3 Part B area is to consist of that part of the application area that does not overlap with any other proceeding and is labelled as “Part B” in the attached map;
 - (d) The Wulli Wulli #3 Part C area is to consist of that part of the application area that overlaps with proceeding QUD91/2012 Wakka Wakka People #4 (Wakka Wakka Part B Proceeding) and is labelled as “Part C” in the attached map.

Service of material

2. Subject to Order 4, the parties serve the Applicant and connection respondents in the Gaangalu Nation People Proceeding with any material required to be filed and served under this order in relation to the Wulli Wulli #3 Part A area.



3. Subject to Order 4, the parties serve on the Applicant and connection respondents in the Wakka Wakka #4 Part B Proceeding any material required to be filed and served in relation to the Wullli Wullli #3 Part B area.
4. Any material required to be served on the State in these proceedings will be taken as having been also served on the State in the Wakka Wakka Part B Proceeding and the Gaangalu Nation People Proceeding.

Part A (Programming Orders)

5. The following orders are to apply only to Wullli Wullli People #3 Part A.
6. Any party (other than the State of Queensland) to the Gaangalu Nation People Proceeding which seeks to be joined as a respondent to this proceeding is to notify the Court, the Applicant and the State, and file and serve any supporting affidavits, by 29 March 2018.
7. The matter be set down for a case management hearing of any applications for joinder on 12 April 2018.
8. The Registrar is to write to the respondents (other than the State of Queensland) in the Gaangalu Nation People Proceeding informing them that this proceeding has been filed and that part of the area that it claims overlaps part of the claim area covered by the Gaangalu Nation People Proceeding and providing them with a copy of this Order.
9. The Wullli Wullli #3 Part A Proceeding and the Gaangalu Nation People Proceeding are referred to a Registrar of the Court for a case management conference for the purpose of mediation between the Applicant in each proceeding regarding the overlap between the claim areas.

Hearing of questions

10. Pursuant to r 30.01 of the *Federal Court Rules 2011* (Cth), the following questions (the **Separate Questions**) are to be determined separately from any other questions in Wullli Wullli People #3 Part A (including questions arising under s 225 (c), (d) and (e) of the *Native Title Act 1993* (Cth)) (the **separate hearing**):
 - (a) But for any question of extinguishment of native title, does native title exist in relation to any and, if so what, land and waters of the claim area?
 - (b) In relation to that part of the claim area where the answer to (a) above is in the affirmative:
 - i. Who are the persons, or each group of persons, holding the common or group rights comprising the native title?



- ii. What is the nature and extent of the native title rights and interests?

Connection hearing parties

11. On or before 19 April 2018, any respondent party, other than the State of Queensland (the **State**), that wishes to take an active part in the hearing of the Separate Questions is to file a notice indicating:
 - i. Whether it wishes to take an active part in the hearing as to the Separate Questions; and
 - ii. Whether it requires that it be served with all documents as to the Separate Questions filed in relation to the hearing.
12. The Applicant, the State and the respondents who give notice pursuant to Order 11 ("the **connection respondents**") be excused from serving documents as to the Separate Questions on any respondent, other than the State, which has not filed a notice in accordance with Order 11.

Connection pleadings

13. On or before 7 June 2018, the Applicant file and serve a Statement of Claim addressing the Separate Questions.
14. On or before 5 July 2018, the State file and serve a defence addressing the Separate Questions.
15. On or before 12 July 2018, any respondent party file and serve a defence addressing the Separate Questions.
16. On or before 26 July 2018, the Applicant file and serve any reply.

Connection material - Applicant

17. On or before 2 August 2018, the Applicant must file a list of all the proposed witnesses (both expert and non-expert) upon whose evidence the Applicant will rely upon for the Separate Questions and if any of the material to be relied upon is previously filed in the proceeding the date of filing of that material.
18. On or before 16 August 2018, the Applicant must file:
 - (a) a signed statement of evidence or affidavit for any witness (other than expert witnesses) to be relied upon for which an affidavit has not previously been filed;
 - (b) a detailed outline of the evidence proposed to be led from a witness (other than expert witnesses) orally; and



- (c) a copy of each photograph or other document (appropriately captioned or described) which it proposes to tender or refer to in the evidence of any witness.

19. On or before 30 August 2018, the Applicant must file any additional expert evidence for the Separate Questions on which the Applicant seeks to rely.

Connection material – State and any connection respondent

20. On or before 13 September 2018, the State and any connection respondent file a list of the proposed witnesses (both expert and non-expert) upon whose evidence that party will rely for the Separate Questions and if previously filed in the proceeding the date of filing of that material.

21. On or before 27 September 2018, the State and any connection respondent, file:

- (a) a signed statement of evidence or an affidavit of evidence for any witness (other than expert witnesses) to be relied upon for which an affidavit has not previously been filed;
- (b) a detailed outline of the evidence proposed to be led from a witness (other than expert witnesses) orally; and
- (c) a copy of each photograph or other document (appropriately captioned or described) which it proposes to tender to refer in the evidence of any witnesses.

22. On or before 18 October 2018, the State and any connection respondent file any additional expert evidence to be relied upon for the Separate Questions on which that party seeks to rely.

23. On or before 1 November 2018, the expert witnesses for those parties who have filed expert evidence, are to attend a conference(s) before a Registrar of the Court for the purpose of narrowing or removing any differences in their relevant opinions, and the experts in like disciplines shall produce for the use of the parties and the Court a document(s) identifying with respect to matters and issues within their expertise:

- (a) the matters and issues about which their opinions are in agreement;
- (b) the matters and issues about which their opinions differ; and
- (c) where their opinions differ the reasons for their difference.

24. On or before 15 November 2018, each of the parties is to file any further reports from expert witnesses addressing the identified areas of difference set out in the document produced as a consequence of Order 23 above.



Objections to Evidence

25. On or before 1 November 2018, any party who does not consent to the whole of an affidavit or document filed in accordance with Orders 18 and 21 of these orders being admitted into evidence shall file a notice identifying:
 - (a) those parts of any affidavit or statement of evidence which that party objects to being admitted into evidence, together with the basis for such objection; and
 - (b) those parts of any affidavit or statement of evidence which that party contends should be given as oral evidence from the witness, during examination in chief; and
 - (c) those photographs or documents or parts thereof the tender of which is objected to, stating the basis for such objection.
26. On or before 6 December 2018, each of the parties is to file a notice identifying any parts of any expert report to which it intends to object with a brief statement identifying in each case the reasons for the objection. The parties will use best efforts to resolve any objections which are filed prior to the commencement of the separate hearing.

Trial

27. The parties must give written notice of any witness not required to attend the separate hearing for the purpose of giving oral evidence or for cross-examination at least 21 days prior to the commencement of the hearing of the Separate Questions.
28. The matter be referred generally to a Registrar to conduct one or more case management conferences, as may be necessary, to assist the parties as the Registrar sees fit.
29. In the event of any party failing to comply with these orders, the matter may be listed by the Deputy Registrar, on short notice and any party may make an application for the defaulting party to be dismissed as a party to these proceedings.
30. The matter be listed for review, including as to compliance with these orders, and the making of any further orders necessary on a date to be fixed.
31. The proceeding of the Separate Questions be listed for hearing on a date to be fixed.

Part B and C

32. Pursuant to s 53A(1)(c) of the Federal Court of Australia Act 1976 (Cth) (FCAA) and rule 28.02(1)(a) of the Federal Court Rules 2011 (FCR) the disputes between the Wulli Wulli #3 Applicant, the Wakka Wakka #4 Applicant and the Collins Respondents



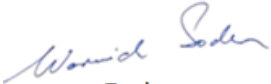
(Indigenous Parties) in the Wulli Wulli #3 Part C proceeding be referred to the Hon John Mansfield AM QC and Mr Kim McCaul as suitable persons (the suitable persons) for the resolution of the disputes by way of an Alternative Dispute Resolution (ADR) Process to be agreed by the Indigenous Parties and the suitable persons.

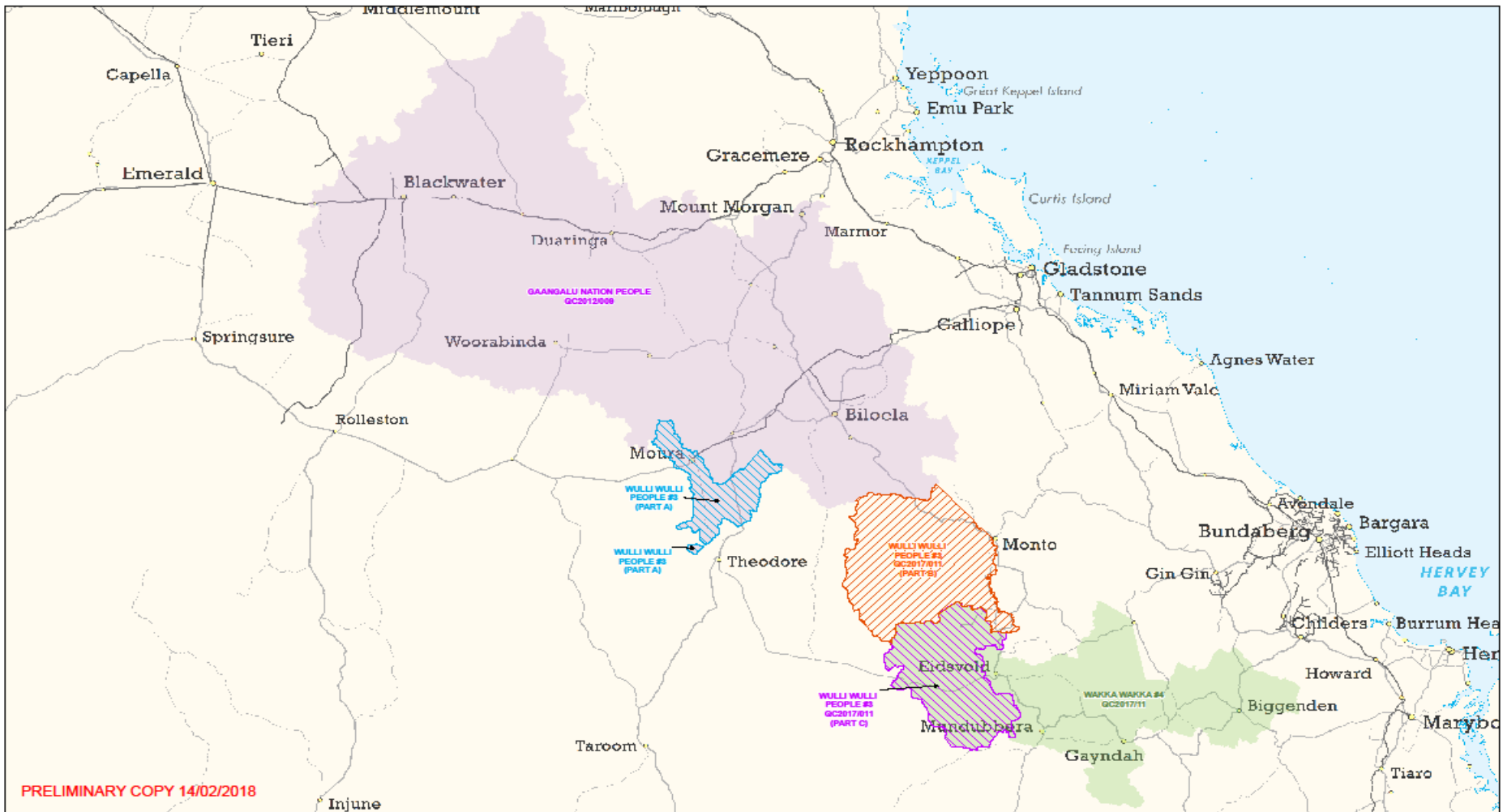
33. Pursuant to rule 28.02 of the FCR Part B and Part C of the Wulli Wulli #3 proceeding be adjourned for case management conference on a date to be fixed by the Registrar.
34. Pursuant to rule 28.33 of the FCR the suitable persons will, by 29 June 2018, report to the Court and provide copies of the report to the parties in the Wulli Wulli #3 Part C proceeding.

Part A, Part B and Part C

35. There be liberty to apply on 3 days' notice

Date that entry is stamped:


Registrar



PRELIMINARY COPY 14/02/2018

Legend

- Wullu Wullu #3 (Part A)
- Wullu Wullu #3 (Part B)
- Wullu Wullu #3 (Part C)
- QC2017/11 Wakka Wakka #4
- QC2012/09 Gaangalu Nation

Overlapping Claim Map
QC2017/11 Wullu Wullu #3
Map Projection: WGS 1984 Web Mercator Auxiliary Sphere

1:1,550,000
Kilometres

LOCALITY MAP

Compilation: Land Tenure information obtained from the Digital Cadastre Data Base (Jan 2016), Department of Natural Resources, Mines & Energy, Brisbane. The Land Registry in the Department of Natural Resources, Mines & Energy should be consulted for verification of tenures.

Feature names shown on this map have been obtained from available information. It is possible that errors and omissions may exist. While every care is taken to ensure the accuracy of this data, the Department of Natural Resources, Mines & Energy, and/or contributors to this publication, makes no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including without limitation, liability in negligence) for all injuries, expenses, losses, damages (including indirect or consequential damage) and costs which might be incurred as a result of the data being inaccurate or incomplete in any way or for any reason.

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