



Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NSD168/2011
NNTT Number: NCD2017/003

Determination Name: [Yaegl People #2 v Attorney General of New South Wales](#)

Date(s) of Effect: 31/08/2017

Determination Outcome: Native title exists in the entire determination area

Register Extract (pursuant to s. 193 of the *Native Title Act 1993*)

Determination Date: 31/08/2017

Determining Body: Federal Court of Australia

ADDITIONAL INFORMATION:

Not Applicable

REGISTERED NATIVE TITLE BODY CORPORATE:

Yaegl Traditional Owners Aboriginal Corporation RNTBC
Trustee Body Corporate
94 Wharf Street
MACLEAN New South Wales 2463

Note: current contact details for the Registered Native Title Body Corporate are available from the Office of the Registrar of Indigenous Corporations www.oric.gov.au

COMMON LAW HOLDER(S) OF NATIVE TITLE:

5. Native title in the Determination Area is held by the Yaegl People who comprise all the descendants of the following apical ancestors:

- (a) Dugald Cameron (who was born in Chatsworth Island around 1870);
- (b) Jack Freeburn (who was born in Yamba around 1868);
- (c) Sailor Morris (who was born in Chatsworth Island around 1831);
- (d) Nodo Combo (who was born in Yamba around 1859); and

- (e) Rose Combo nee Yamba and also known as Rosie Yamba (who was born in Yamba around 1856);

and persons adopted or incorporated into the families of those persons and who identify as and are accepted as Yaegl People in accordance with Yaegl traditional laws and customs (and the biological descendants of any such adopted or incorporated persons).

**MATTERS DETERMINED:
THE COURT ORDERS THAT:**

1. There be a determination that native title exists in the terms set out below ("the Determination").
2. The native title as determined is to be held on trust by Yaegl Traditional Owners Aboriginal Corporation RNTBC.
3. The Yaegl Traditional Owners Aboriginal Corporation RNTBC is to:
 - (a) be the prescribed body corporate for the purposes of section 57(1) of the *Native Title Act 1993* (Cth);
 - (b) perform the functions set out in sections 56 and 57(1) of the *Native Title Act 1993* (Cth) and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth); and
 - (c) hold the rights and interests from time to time comprising the native title in trust for the common law holders.

THE COURT DETERMINES THAT:

1. Native Title exists in the Inner Extent Native Title Area described and depicted in the maps in Schedule One.
2. Native Title exists in the Outer Extent Native Title Area described and depicted in the map in Schedule Two.
3. To the extent of any inconsistency between the written description in Part A of Schedule One and the corresponding maps in Part B of Schedule One, the written description prevails.
4. To the extent of any inconsistency between the written description in Part A of Schedule Two and the corresponding map in Part B of Schedule Two, the written description prevails.

Native title holders

5. Native title in the Determination Area is held by the Yaegl People who comprise all the descendants of

the following apical ancestors:

- (a) Dugald Cameron (who was born in Chatsworth Island around 1870);
- (b) Jack Freeburn (who was born in Yamba around 1868);
- (c) Sailor Morris (who was born in Chatsworth Island around 1831);
- (d) Nodo Combo (who was born in Yamba around 1859); and
- (e) Rose Combo nee Yamba and also known as Rosie Yamba (who was born in Yamba around 1856);

and persons adopted or incorporated into the families of those persons and who identify as and are accepted as Yaegl People in accordance with Yaegl traditional laws and customs (and the biological descendants of any such adopted or incorporated persons).

Nature and extent of native title rights and interests

6. Subject to paragraphs 9 and 10 the nature and extent of the native title rights in the Inner Extent Native Title Area described and depicted in the maps in Schedule One are:

- (a) the right to access, to remain on and to traverse those areas;
- (b) the right to access resources in those areas and to take, use, share, offer and exchange resources, including traditional trade, in those areas for non-commercial purposes;
- (c) the right to maintain and to protect places, objects and areas of importance or significance under traditional laws and customs on those areas;
- (d) the right to be accompanied on those areas by persons who, though not Native Title Holders, are:
 - (i) spouses, partners or parents of Native Title Holders, together with their children and grandchildren; or
 - (ii) people required under traditional laws and customs for the performance of cultural activities, practices or ceremonies; or
 - (iii) people requested by the native title holders to assist in, observe or record cultural activities, practices or ceremonies.

Note: '*traditional trade*' as referred to in clause 6(b) of this determination does not expand the right to take and use the resources of the Inner Extent Native Title Area beyond "share and exchange".

7. Subject to paragraphs 9 and 10, the nature and extent of the native title rights in the Outer Extent Native Title Area described and depicted in the map in Schedule Two are:

- (a) the right to access, to remain on and to traverse those areas;
- (b) the right to maintain and to protect places, objects and areas of importance or significance under traditional laws and customs on those areas;

- (c) the right to be accompanied on those areas by persons who, though not Native Title Holders, are:
 - (i) spouses, partners or parents of Native Title Holders, together with their children and grandchildren; or
 - (ii) people required under traditional laws and customs for the performance of cultural activities, practices or ceremonies; or
 - (iii) people requested by the native title holders to assist in, observe or record cultural activities, practices or ceremonies.

General qualifications on native title rights and interests

8. Native title does not exist in:

- (a) Minerals as defined in the *Mining Act 1992* (NSW) and the *Mining Regulation 2010* (NSW); and
- (b) Petroleum as defined in the *Petroleum (Onshore) Act 1991* (NSW) and the *Petroleum (Submerged Lands) Act 1982* (NSW).

9. The native title rights and interests described in paragraphs 6 and 7 do not confer:

- (a) possession, occupation, use and enjoyment to the exclusion of all others;
- (b) any right to control access to, or use of, the Determination Area.

10. The native title rights and interests in the Determination Area are subject to and exercisable in accordance with:

- (a) the laws of the State of New South Wales and of the Commonwealth;
- (b) the traditional laws acknowledged and traditional customs observed by the Yaegl People; and
- (c) the terms of any Indigenous Land Use Agreement, which may be registered by the National Native Title Tribunal in respect of any part of the Determination Area made after the making of this Determination.

The nature and extent of any Other interests

11. The Other Interests in the Determination Area are the interests described in Schedule Three.

Relationship between native title rights and Other Interests

12. Subject to paragraph 13, and except as otherwise provided by law, the relationship between the native

title rights and interests in the Determination Area and the Other Interests is that:

- (a) the Other Interests continue to have effect;
- (b) the Other Interests co-exist with the native title rights and interests;
- (c) the Native Title Holders do not have the right to control access to or the use of the land or waters by the holders of the Other Interests, and do not have any right to control access to and use of tidal waters; and
- (d) to the extent of any inconsistency, the Other Interests and any activity that is required or permitted by or under the exercise of a right conferred or held under the Other Interests, while they are in existence, prevail over but do not extinguish the native title rights and interests and any exercise of those native title rights and interests.

13. The relationship between:

- (a) the native title rights and interests in the land or waters which are transferred to an Aboriginal Land Council under the *Aboriginal Land Rights Act 1983* (NSW) after the date of the Determination as a result of a claim lodged under that Act on or after 28 November 1994; and
- (b) the Other Interests described in paragraph 1 of Schedule Three;

is that:

- (i) pursuant to section 36(9) of the *Aboriginal Land Rights Act 1983* (NSW), the Other Interests referred to in this paragraph shall be subject to any native title rights and interests existing in relation to the land or waters immediately before the transfer; and
- (ii) the land or waters may only be dealt with by the Aboriginal Land Council in accordance with the *Aboriginal Land Rights Act 1983* (NSW) and the *Native Title Act 1993* (Cth).

Definitions

14. In this Determination, unless the contrary intention appears:

'Application Area' means the land or waters subject to native title determination application NSD168 of 2011.

'Determination Area' means the Inner Extent Native Title Area and the Outer Extent Native Title Area as described and depicted in the maps in Schedules One and Two.

'Inner Extent Native Title Area' means the land and waters described and depicted in blue outline in the maps in Schedule One.

'land' has the same meaning as in the *Native Title Act 1993* (Cth).

'laws of the State of New South Wales and of the Commonwealth' include statutes, regulations and other subordinate legislation and the common law.

'native title rights and interests' means the rights and interests described in paragraphs 6 and 7.

'Native Title Holders' means the persons described in paragraph 5.

'Outer Extent Native Title Area' means the land and waters described and depicted in red hatching in the map in Schedule Two.

'Yaegl People' has the same meaning as Native Title Holders.

'Yaegl Traditional Owners Aboriginal Corporation' means Yaegl Traditional Owners Aboriginal Corporation RNTBC ICN 8254 incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

'Other Interests' means the interests described in Schedule Three.

'waters' has the same meaning as in the *Native Title Act 1993* (Cth).

15. If a word or expression is not defined in these orders or this Determination, but is defined in the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* (NSW), then it has the meaning given to it in the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* (NSW), whichever is relevant.

SCHEDULE ONE - INNER EXTENT NATIVE TITLE AREA

PART A. Description of the Inner Extent Native Title Area

1. The Inner Extent Native Title Area comprises all the land and waters described in paragraph 2 below and depicted in blue outline on the maps in Part B of Schedule One.

2. All the land and waters, including the tidal waters, commencing at the intersection of the Mean High Water Mark of the South Pacific Ocean and the southern bank of Wooli River and extending generally northerly, generally north westerly and again generally northerly along that Mean High Water Mark, crossing the mouths of any waterways between the seaward extremities of each of the opposite banks of each such waterway to a point on the north eastern boundary of Wooded Bluff (Shark Bay) at Longitude 153.362980^o East; then due east to a point on a 200 metre buffer east from the Mean Low Water Mark; then generally southerly along a 200 metre buffer east of the Mean Low Water to Latitude 29.887037^o South; then westerly back to the commencement point, and includes, to the extent they fall within the external boundary of the Application Area, the following Part IDs/Part Lots and DPs:

State ID	Lot Plan / CADID Identifier
ID 353	Lot 7049 DP1106980
ID 354	Lot 7018 DP1108437
ID 355	Lot 7017 DP1108436
ID 411	Lot 7026 DP1114851
ID 482	Lot 7031 DP1128361
ID 494	Lot 7302 DP1140380
ID 497	Lot 7303 DP1143443
ID 13522	Unidentified CADID 104436443
ID 13524	Unidentified CADID 104061042
ID 13427	Unidentified CADID 163060516
ID 13525	Unidentified CADID 104283360
ID 13526	Unidentified CADID 163060515
ID 583	Unidentified CADID 104061055
ID 586	Unidentified CADID 104435828
ID 587	Unidentified CADID 104061056

PART B. Map of the Inner Extent Native Title Area

[See NNTR attachment 1: "Schedule One Part B - Map of the Inner Extent Native Title Area"]

SCHEDULE TWO - OUTER EXTENT NATIVE TITLE AREA

PART A. Description of the Outer Extent Native Title Area

1. The Outer Extent Native Title Area comprises all the land and waters described in paragraph 2 below and depicted in red hatching on the map in Part B of Schedule Two.

2. All the land and waters, including the tidal waters, commencing at a point at the intersection of a 200 metre buffer east from the Mean Low Water Mark and the northern boundary of a 350 metre buffer of the dirrangun line, being a line joining the following coordinate points:

Longitude East Latitude South

153.372580 29.429538
153.375933 29.429187
153.377821 29.426114

then generally north easterly, generally southerly and generally westerly and generally north westerly along the boundary of that 350m buffer to its intersection with again the 200 metre buffer east of the Mean Low Water Mark; then again generally easterly and generally northerly along that 200 metre buffer back to the commencement point.

PART B. Map of the Outer Extent Native Title Area

[See NNTR attachment 2: "Schedule Two Part B - Map of the Outer Extent Native Title Area"]

SCHEDULE THREE - OTHER INTERESTS

Other Interests in the Determination Area

The Other Interests, as they exist at the date of this Determination, are as follows:

1. Aboriginal Land Council interests

The rights and interests of Birrigan Gargle Local Aboriginal Land Council pursuant to undetermined Aboriginal land claims made under section 36 of the *Aboriginal Land Rights Act 1983* (NSW) in respect of certain lands within the Determination Area, including the right to have each such claim determined according to law and, subject only to a determination that the land is claimable Crown land as defined in s 36(1) of *Aboriginal Land Rights Act 1983* (NSW), the right to the transfer of an estate in fee simple pursuant to the *Aboriginal Land Rights Act 1983* (NSW).

2. Reserves

- (a) The rights of State, Local Government and other organisations or persons who have the care, control and management of any reserves within the Determination Area; and
- (b) the rights of persons entitled to access and use reserves within the Determination Area for the purposes for which they are reserved, subject to any statutory limitations upon those rights.

3. Mining and Petroleum Interests

- (a) The rights of the holders of any mining interests.
- (b) The rights of holders of any petroleum interests.

4. Water Interests

The rights of any holder as at the date of this determination of any licences or permissive occupancies granted under the *Water Act 1912* (NSW) and the *Water Management Act 2000* (NSW).

5. Fishing Interests

The rights of the holders from time to time of leases, licences and permits granted or issued under the *Fisheries Management Act 1994* (NSW) and associated regulations.

6. National Park Interests

(a) The rights of the holders from time to time of leases, licences and permits granted or issued under the *National Parks and Wildlife Act 1974* (NSW) and associated Regulations.

(b) Other rights and interests under the care, management and control of the NSW Office of Environment and Heritage.

7. Electricity and Energy Supply Interests

(a) The rights and interests of an electricity or energy supply authority within the meaning of the *Electricity (Consumer Safety) Act 1995* (NSW) and the *Energy Services Corporations Act 1995* (NSW) to exercise functions, powers or rights in accordance with the laws of the State of New South Wales or of the Commonwealth and as owner and operator of facilities for the transmission of electricity and other forms of energy and associated infrastructure situated on the Determination Area including but not limited to the right to enter the Determination Area in order to access, use, maintain, repair, replace, upgrade or otherwise deal with existing facilities and infrastructure.

(b) The rights and interests of:

(i) a network operator within the meaning of the *Electricity Supply Act 1995* (NSW); and

(ii) for the purposes of any privatisation transaction, any lessor or lessee of a transmission system or person who owns or is authorised to control or operate a transmission system, to exercise functions, powers or rights in accordance with the laws of the State of New South Wales or of the Commonwealth as operator of facilities for the transmission of electricity and other forms of energy and associated infrastructure situated on the Determination Area including but not limited to the right to enter the Determination Area in order to access, use, maintain, repair, replace, upgrade or otherwise deal with existing facilities and infrastructure.

8. Local Government Interests

The rights and interests of Clarence Valley Council as a council constituted under the *Local Government Act 1993* (NSW).

9. Commonwealth interests

The rights and interests of the Commonwealth.

10. Other interests generally

(a) Rights and interests, including licences and permits, granted by the Crown in right of the State of New South Wales, the Clarence Valley Council or of the Commonwealth pursuant to statute or under regulations made pursuant to such legislation.

(b) Rights and interests held by reason of the force and operation of the laws of the State of New South Wales or of the Commonwealth.

(c) Rights and interests of members of the public arising under common law or statute including, but not limited to the following:

- (i) any public right to fish;
- (ii) the public right to navigate; and
- (iii) the international right of innocent passage through the territorial sea.

(d) So far as is confirmed pursuant to section 18 of the *Native Title (New South Wales) Act* as at the date of the Determination, any existing public access to and enjoyment of:

- (i) waterways;
- (ii) the bed and banks or foreshores of waterways;
- (iii) coastal waters;
- (iv) beaches;
- (v) stock routes; and
- (vi) areas that were public places at the end of 31 December 1993.

(e) The rights of:

- (i) an employee, agent or instrumentality of the State of New South Wales;
- (ii) an employee, agent or instrumentality of the Commonwealth;
- (iii) an employee, agent or instrumentality of any Local Government Authority,

to access the Determination Area and carry out actions as required in the performance of his/ her or its statutory or common law duty.

REGISTER ATTACHMENTS:

1. Schedule One Part B - Map of the Inner Extent Native Title Area, 2 pages - A4, 31/08/2017
2. Schedule Two Part B - Map of the Outer Extent Native Title Area, 1 page - A4, 31/08/2017

Note: The National Native Title Register may, in accordance with s. 195 of the Native Title Act 1993, contain confidential information that will not appear on the Extract.