

Extract from the National Native Title Register

Determination Information:

Determination Reference: Federal Court Number(s): NSD6052/1998
NNTT Number: NCD2015/002

Determination Name: Yaegl People #1 v Attorney-General of New South Wales

Date(s) of Effect: 25/06/2015

Determination Outcome: Native title exists in parts of the determination area

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

Determination Date: 25/06/2015

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

COMMON LAW HOLDER(S) OF NATIVE TITLE:

4. 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:

BEING SATISFIED that a determination of native title in the terms sought by the parties is within the power of the Court, and it appearing appropriate to do so by consent of the parties,

PURSUANT TO SS87(1) AND (2) AND 94A OF THE *NATIVE TITLE ACT 1993* (CTH), 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. Yaegl Traditional Owners Aboriginal Corporation RNTBC is to:
 - (a) be the prescribed body corporate for the purposes of s 57(1) of the *Native Title Act 1993* (Cth) (the **NTA**); and
 - (b) perform the functions set out in s 57(1) of the NTA and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

THE DETERMINATION

Existence of native title

1. The Determination Area comprises the areas of land or waters described in Schedule One and shaded green on the plan in Schedule Two.
2. Native title exists in relation to the areas of land or waters in the Determination Area in the manner set out in paragraphs 5 to 8.
3. Native title has been extinguished in the land and waters described in Schedule Three ('the Extinguished Areas').

Native title holders

4. 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

5. Subject to paragraphs 6 to 8, the nature and extent of the native title rights are:
 - (a) the right to enter, travel over and remain on a non-permanent basis on the Determination Area;
 - (b) the right to live on the land, to camp, to erect shelters, and to move about the land in the Determination Area but not extending to a right to permanently occupy or possess the land;
 - (c) the right to engage in cultural activities, to conduct ceremonies, to hold meetings, and to participate in cultural practices relating to birth and death in the Determination Area;
 - (d) the right to hunt in the Determination Area;

- (e) the right to fish in the Determination Area;
 - (f) the right to take and use the water of the Determination Area for personal, domestic and communal purposes (including cultural purposes) but not extending to a right to control the use and flow of the water in any rivers or lakes which flow through or past or are situated within the land of two or more occupiers;
 - (g) the right to gather and use the natural resources in the Determination Area including food, medicinal plants, timber, stone, charcoal, ochre and resin as well as materials for fabricating tools and hunting implements and making artwork and musical instruments;
 - (h) the right to light fires on the Determination Area for domestic purposes, but not for the clearance of vegetation;
 - (i) the right to share, offer and exchange traditional resources derived from the Determination Area;
 - (j) the right to have access to, maintain and protect from physical harm, sites and places of importance in the Determination Area which are of significance to Yaegl People under their traditional laws and customs;
 - (k) the right to teach on the Determination Area the physical, cultural and spiritual attributes of places and areas of importance on or in the Determination Area; and
 - (l) the right to be accompanied on the Determination Area by persons who, though not native title holders, are:
 - (i) spouses, partners or parents of native title holders, together with their children and grandchildren;
 - (ii) people whose presence is required under traditional laws and customs for the performance of cultural activities, practices or ceremonies; and
 - (iii) people requested by the native title holders to assist in, observe or record cultural activities, practices or ceremonies.
6. The native title rights and interests referred to in paragraphs 5(a) to (l) are not exclusive.

General qualifications on native title rights and interests

7. 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).
8. The native title rights and interests in the Determination Area do not confer:
- (a) possession, occupation, use or enjoyment to the exclusion of all others; and
 - (b) any right to control public access to, or public use of, the land or waters in the Determination Area.
9. 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 at any time be registered by the National Native Title Tribunal in respect of any part of the Determination Area.

Nature and extent of other interests

10. The other interests in relation to the Determination Area are the interests described in Schedule Four ('Other Interests').

Relationship between native title rights and other interests

11. 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, acting in accordance with those Other Interests; 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.

Definitions

12. In this Determination and the associated orders, unless the contrary intention appears:

'Claim Area' means the land or waters subject to native title determination application NSD6052 or 1998 (The Yaegl People's #1 Application).

'Determination Area' means the land and waters described in Schedule One and depicted on the plan in Schedule Two.

'Extinguished Areas' means the land and waters described in Schedule Three and depicted on the plan in Schedule Two.

'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 Act' means the *Native Title Act 1993* (Cth).

'native title rights and interests' means the rights and interests described in paragraph 5.

'Other Interests' means the described in Schedule Four.

'validated' means acts validated in accordance with the *Native Title Act* or the *Native Title (New South Wales) Act 1994* (NSW).

'Yaegl People' means the native title holders described in paragraph 4.

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

13. If a word or expression is not defined in the Determination or the associated orders, but is defined in the *Native Title Act*, then it has the meaning given to it in the *Native Title Act*.

Schedule One

Description of the Determination Area

1. The Determination Area is comprised of the areas of land and waters identified in paragraph 4 below.
2. The Determination Area is also depicted on the plan in Schedule Two. For the sake of clarity, it is confirmed that the Determination Area does not include the unclaimed areas of land or waters in respect of which native title does not exist by reason of extinguishment.
3. In the event of any inconsistency between the written description provided in paragraph 4 in this Schedule and the plan in Schedule Two, the written description shall prevail.
4. The area covered by the Determination is the lands and waters including the tidal water within the described area below:

Note for interpretation of description: *In this description all references to river banks (right, left or by cardinal points), foreshores and the South Pacific Ocean relate to their position at the Mean High Water Mark. All references to river banks relate to the right or left bank as the river flows. Due to the number of channels and*

lagoons that are tidal and do not flow in a specific direction reference to their banks is by cardinal points. DP refers to Deposited Plan.

- (a) Commencing on the right bank of the Clarence River at the eastern extremity of the breakwater that meets the South Pacific Ocean. Thence by the general right bank of the Clarence River, aforesaid, upwards to the general eastern bank of Oyster Channel. By the general eastern bank generally southerly and the foreshore of Wooloweyah Lagoon to the general south western bank of Palmer Channel. By that general south western bank generally north westerly to the general right bank of Clarence River, aforesaid. Again, by the general right bank of Clarence River and the right bank of James Creek upwards to its intersection with the prolongation of the general southern boundary of lot 1 of DP650930 (being the tidal limit of James Creek). By that prolongation generally north westerly to the left bank of James Creek, aforesaid. By that left bank downwards to again the general right bank of Clarence River upwards to its intersection with the eastern edge of Pacific Highway. By that eastern edge of the Pacific Highway, aforesaid, to the general left bank of Clarence River. By that left bank downwards and the general southern and western banks of Palm Channel generally westerly and generally northerly and the general right bank of Narho Creek upwards to the north west corner of lot 2 of DP594030.

Thence by an unnamed road generally north easterly to the left bank of Narho Creek, aforesaid. By that left bank downwards and the general western bank of Palm Channel, aforesaid, generally northerly to the general left bank of Clarence River. By that general left bank downwards to the general southern bank of Middle Channel. By that general southern bank generally westerly and the general south eastern bank of Serpentine Channel generally south westerly to its intersection with the general north eastern edge of Pacific Highway, aforesaid. By that general north eastern edge generally north westerly to the general north western bank of Serpentine Channel. By that general north western bank generally north easterly to the general western bank of Middle Channel, aforesaid. By that general western bank generally northerly to the right bank of North Arm. By that right bank upwards to its intersection with the north eastern edge of Pacific Highway, aforesaid (at Mororo Bridge). By that north eastern edge north westerly to the left bank of North Arm. By that left bank, the foreshore of Shallow Inlet and again the left bank of North Arm downwards and the right bank of Woolpack Gully upwards to the southern edge of Iluka Road. By that southern edge easterly to the left bank of Woolpack Gully. By that left bank and again the left bank of north arm downwards, the right bank of Esk River upwards to the general northern boundary of lot Pt.94 of DP751394 (at Billy Weily Bridge). By the prolongation of that northern boundary easterly to the left bank of Esk River, aforesaid.

By that left bank downwards, the general northern boundary of Woram Channel easterly, the left bank of North Arm downwards, the foreshore of Saltwater Inlet, again the left bank of North Arm and the left bank of Clarence River downwards to the foreshore of Iluka Bay. By that foreshore and again the left bank of Clarence River downward to the eastern end of the northern breakwater at the South Pacific Ocean.

Thence by a line to the point of commencement.

- (b) The following islands that lie within the above definition are excluded from the Determination Area:
- (i) Dart Island, Wangainan Island, Periko Island, Ano Island, Corokos Island, Joss Island, Micalo Island, Palmers Island, Panibona Island, Tomayen Island, Romiaka Island, Maritzos Island, Thorny Island, Eureka Island, Ungandam Island, Yargai Island, Whyuna Island, Sleeper Island, Arael Island, Turkey Island, Gourd Island, Palm Island, Goodwood Island, Freeburn Island, Rabbit Island, Arris Island, Bolorobo Island, Esk Island, Nihill Island, Narrabarribi Island, Garden Island, Woolbin Island; and
- (ii) three unnamed islands:
- (A) An unnamed island enclosed by the tidal waters of North Arm, Esk River and Woram Channel;
- (B) An unnamed island within Micalo Channel situated south west of Panibona Island and north east of Palmers Island; and
- (C) An unnamed island within Clarence River situated south east of Palm Island.

Schedule Two

Plan of the Determination Area

[See NNTR attachment 1: "Schedule Two - Plan of the Determination Area"]

Schedule Three

Extinguished Areas

[See NNTR attachment 2: "Schedule Three - Extinguished Areas"]

Schedule Four

Other Rights and Interests in the Determination Area

[See NNTR attachment 3: "Schedule Four - Other Rights and Interests in the Determination Area"]

REGISTER ATTACHMENTS:

1. Schedule Two - Plan of the Determination Area, 1 page - A3, 25/06/2015
2. Schedule Three - Extinguished Areas, 2 pages - A4, 25/06/2015
3. Schedule Four - Other Rights and Interests in the Determination Area, 3 pages - A4, 25/06/2015

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.