



# Extract from the National Native Title Register

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## Determination Information:

**Determination Reference:** Federal Court Number(s): NSD6020/2001  
NNTT Number: NCD2019/001

**Determination Name:** [Nicholls on behalf of the Bundjalung People of Byron Bay and Attorney General of New South Wales](#)

**Date(s) of Effect:** 20/05/2020

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

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

**Determination Date:** 30/04/2019

**Determining Body:** Federal Court of Australia

### ADDITIONAL INFORMATION:

Order 2 of the determination provided that '[t]he Determination shall take effect upon the date on which the agreement referred to in paragraph 1 of Schedule Four [Cavanbah (Byron Bay) Arakwal Indigenous Land Use Agreement] is registered on the Register of Indigenous Land Use Agreements, pursuant to the *Native Title Act 1993* (Cth).' The agreement referred to in Order 2 was registered on 20 May 2020, and therefore this determination is in effect from 20 May 2020.

### REGISTERED NATIVE TITLE BODY CORPORATE:

Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)  
Trustee Body Corporate  
PO Box 1555  
Byron Bay New South Wales 2481

*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](http://www.oric.gov.au)*

### COMMON LAW HOLDER(S) OF NATIVE TITLE:

#### Native Title Holders

4. Native title in the Native Title Area is held by the Bundjalung People of Byron Bay who are those Aboriginal persons who:

(a)

- (i) are the biological descendants of the apical ancestor Bobby Bray, also known as King Bobby of Bumberbin; or
  - (ii) are persons adopted in accordance with Byron Bay Bundjalung law and custom into the families of those persons described in (i), (including the biological descendants of any such adopted persons); and
- (b) identify themselves as a Bundjalung person of Byron Bay; and
- (c) are recognised as a Bundjalung person of Byron Bay by Bundjalung People of Byron Bay in accordance with their law and custom.

**MATTERS DETERMINED:**

**THE COURT ORDERS THAT:**

1. There be a determination of native title in the terms set out below (the "Determination").
2. The Determination shall take effect upon the date on which the agreement referred to in paragraph 1 of Schedule Four is registered on the Register of Indigenous Land Use Agreements, pursuant to the *Native Title Act 1993* (Cth).
3. In the event that the agreement referred to in paragraph 2 above is not registered on the Register of Indigenous Land Use Agreements on or before 30 January 2020 or at such later time as this Court may order, the matter is to be listed for further directions.
4. On the Determination taking effect, Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) ICN 2663 shall hold the determined native title in trust for the common law holders pursuant to section 56(3) of the *Native Title Act 1993* (Cth) and is to:
  - (a) be the prescribed body corporate for the purposes of section 57(1) of the *Native Title Act 1993* (Cth); and
  - (b) perform the functions set out in section 57(1) of the *Native Title Act 1993* (Cth) and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth).

**THE COURT DETERMINES THAT:**

1. Native title exists in the Native Title Area (including the land to which section 47B of the *Native Title Act 1993* (Cth) applies) described and depicted in the map attached to Schedule One to this Determination.
2. Native title is extinguished in the Extinguished Area described and depicted in the map attached to Schedule Two to this Determination.
3. To the extent of any inconsistency between the written description in Schedules One and Two and the corresponding maps attached to those Schedules, the written description prevails.

**Native Title Holders**

4. Native title in the Native Title Area is held by the Bundjalung People of Byron Bay who are those Aboriginal persons who:
- (a)
    - (i) are the biological descendants of the apical ancestor Bobby Bray, also known as King Bobby of Bumberbin; or
    - (ii) are persons adopted in accordance with Byron Bay Bundjalung law and custom into the families of those persons described in (i), (including the biological descendants of any such adopted persons); and
  - (b) identify themselves as a Bundjalung person of Byron Bay; and
  - (c) are recognised as a Bundjalung person of Byron Bay by Bundjalung People of Byron Bay in accordance with their law and custom.

**Nature and extent of Non-Exclusive Native Title Rights and Interests**

5. Subject to paragraphs 6, 7 and 8, the native title rights and interests in relation to the Native Title Area are the non-exclusive, non-commercial rights to:
- (a) enter, travel over and remain on the land or waters;
  - (b) take and use, for personal, domestic and communal purposes (including cultural purposes), the natural resources

(other than water);

(c) take and use the water 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;

(d) camp and erect temporary shelters and temporary structures for personal, domestic and communal purposes (including cultural purposes);

(e) light fires for personal, domestic and communal purposes (including cultural purposes), but not for the clearance of vegetation;

(f) engage in cultural activities, to conduct ceremonies, to hold meetings, and to participate in cultural practices relating to birth and death including burials where permitted by the laws of New South Wales on the land or waters;

(g) have access to, to maintain and to protect from physical harm sites and places of importance which are of significance to the Bundjalung People of Byron Bay under their traditional laws and customs;

(h) teach the physical, cultural and spiritual attributes of places and areas of importance;

(i) hunt for personal, domestic and communal purposes (including cultural purposes);

(j) fish for personal, domestic and communal purposes (including cultural purposes);

(k) be accompanied 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.

#### **General qualifications on native title rights and interests**

6. 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).

7. The native title rights and interests described in paragraph 5 do not confer:

(a) possession, occupation, use and enjoyment to the exclusion of all others; and

(b) any right to control public access to, or use of, the Native Title Area.

8. The native title rights and interests in the Native Title 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 Native Title Holders; and

(c) the terms and conditions of the agreements referred to in Schedule Four.

#### **The nature and extent of any Other Interests**

9. The Other Interests in the Native Title Area are the interests described in Schedule Five ("Other Interests").

#### **Relationship between Native Title Rights and Other Interests**

10. Except as otherwise provided by law, the relationship between the native title rights and interests in the land or waters in the Native Title Area and the Other Interests described in Schedule Five, in relation to those areas, 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

(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

11. In this consent determination, unless the contrary intention appears:

**"Aboriginal Land Council Interests"** means the rights and interests set out in item 1 of Schedule Five.

**"Application Area"** means the land or waters subject to native title determination application NSD 6020 of 2001.

**"Bundjalung of Byron Bay (Arakwal) Aboriginal Corporation"** means Aboriginal Corporation ICN 2663 incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**"Bundjalung People of Byron Bay"** means the Native Title Holders as described in paragraph 4.

**"Determination Area"** means the Native Title Area together with the Extinguished Area.

**"external boundary of the Application"** means the boundary of the native title determination application filed by the Bundjalung People of Byron Bay in Federal Court of Australia proceeding NSD 6020 of 2001 which is described in Schedule Three.

**"Extinguished Area"** means the land or waters described in Schedule Two.

**"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 Area"** means the land and waters described in Schedule One.

**"Native Title Holders"** means the persons in the group described in paragraph 4.

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

**"Other Interests"** means the interests described in Schedule Five.

**"Unidentified CADID"** means the unique cadastre identifier of unidentified land or land which does not have a folio identifier.

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

12. 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.

## REGISTER ATTACHMENTS:

1. Schedule One - Description of the native title area, 32 pages - A4, 30/04/2019
2. Schedule Two - Extinguished area, 197 pages - A4, 30/04/2019
3. Schedule Three - External boundary of the application, 9 pages - A4, 30/04/2019
4. Schedule Four - Agreements, 2 pages - A4, 30/04/2019
5. Schedule Five - Other interests in the native title area, 4 pages - A4, 30/04/2019

*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.*