



National
Native Title
Tribunal



*Looking east over the township of Yarrabah from Mount Yarrabah, which forms part of the Combined Gunggandji People's native title determination.
Photo: Leon Yeatman.*

Combined Gunggandji People's native title determination

19 December 2011
Far North Queensland

Combined Gunggandji People's determination

On 19 December 2011, the Federal Court of Australia made a consent determination recognising the Combined Gunggandji People's native title rights over country, 6km east of Cairns in Far North Queensland. The determination area covers about 8297ha of land and waters, including the northern part of the Yarrabah Deed of Grant in Trust ('DOGIT'), including Yarrabah township, the foreshores of Mission Bay, Cape Grafton, Turtle Bay, Wide Bay and Oombunghi beach, part of Malbon Thompson Forest Reserve and two parcels of land on Fitzroy island.

The Combined Gunggandji People negotiated with representatives of the Queensland Government, Yarrabah Aboriginal Shire Council, Cairns Regional Council, Ergon Energy Corporation Limited, Black and White (Quick Service) Taxis Pty Ltd, Telstra Corporation Limited, Southern Cross Media Australia Pty Ltd, Seven Network (Operations) Limited, Miles Electronics Pty Ltd and residents of the Yarrabah DOGIT to reach agreement about the Combined Gunggandji People's native title rights and the rights of others with interests in the claim area.

The Gunggandji People also negotiated seven Indigenous Land Use Agreements (ILUAs) that establish how their respective rights and interests will be carried out on the ground. Parties reached agreement with the assistance of case management in the Federal Court of Australia, ILUA negotiation assistance from the National Native Title Tribunal, and legal representation of the Combined Gunggandji People by the North Queensland Land Council.

The determination brings the total number of determinations made in Australia to 176 and in Queensland to 66.

The Gunggandji PBC Aboriginal Corporation has been established as the Prescribed Body Corporate to manage the native title rights on behalf of all native title holders.



The view from Fitzroy Island looking over to Turtle Bay. The turquoise waters and coral outcrops are home to a superb variety of fish species and form an ideal habitat for green sea turtles. Photo: courtesy Great Barrier Reef Marine Park Authority.

What the consent determination means

A native title determination is a decision by the Federal Court of Australia that native title does or does not exist. If the parties to a native title claim reach agreement, and the Federal Court endorses the agreement, it is called a consent determination.

Non-exclusive native title rights recognised

The Court also recognised the group's non-exclusive rights over about 789ha of land and waters above and below the high water mark in the determination area. This includes the rights to:

- be present on, including by accessing and traversing the determination area;
- take and use traditional natural resources from the

Exclusive native title rights recognised

The Federal Court recognised the Gunggandji People's exclusive native title rights over about 7508 ha of land. The group therefore has the right to possess, occupy, use and enjoy these areas, to the exclusion of all others. It is important to note that "exclusive" does not mean that other residents of Yarrabah will be affected. The various ILUAs entered into ensure that the interests of historical residents and block holders are protected.

determination area for personal, domestic and non-commercial communal purposes;

- hunt and fish in or on, and gather from, the water for personal, domestic, and non-commercial communal purposes; and,
- take and use the water for personal, domestic and non-commercial communal purposes.

Relationship between the native title rights and other rights

The consent determination recognises the Gunggandji People's native title rights and interests while protecting the rights of the other parties, with respect to those areas where the non-exclusive rights of the native title holders have been recognised. If there is inconsistency between native title rights and interests and the valid interests of others in such areas, the other interests take precedence over the native title rights. The group will exercise its non-exclusive rights alongside the rights of others and parts of the determination area will continue to be shared by all those with an interest in the area, including members of the public.

Agreements related to the determinations

During case management conducted by the Federal Court of Australia and ILUA negotiations conducted by the National Native Title Tribunal, the Gunggandji People negotiated ILUAs with a range of parties. The ILUAs set out how the parties' rights and interests will be carried out on the ground.

A Local Government ILUA between the Gunggandji People and Yarrabah Aboriginal Shire Council provides for the protection of Aboriginal cultural heritage, while establishing how development in the future will proceed in the local government area.

A Blockholder ILUA between the State of Queensland, Yarrabah Aboriginal Shire Council, Gunggandji People and individual blockholders to enable the grant of leases for historical blockholders and establish an opt-in process for future blockholders to obtain a lease with the consent of the Gunggandji people.

A DOGIT Transfer ILUA between the State of Queensland, Yarrabah Aboriginal Shire Council and Gunggandji people to consent to part of the land, subject of the DOGIT being transferred, and consent to another part being declared non-transferrable, pursuant to the *Aboriginal Land Act 1991*.

A Local Government ILUA between the Gunggandji People and Cairns Regional Council provides for the protection of Aboriginal cultural heritage, while establishing how development in the future will proceed in the local government area.

A Protected Areas ILUA between the Gunggandji People and the State Government establishes how the native title rights and interests will be exercised in parts of various conservation parks and forest reserves within the claim area.

An ILUA between the Gunggandji People and the State Government to provide for future act consent for the creation of tenures to facilitate the services provided by various communication tower operators.

An ILUA between Ergon Energy Corporation Limited and the Gunggandji People was also finalised. It provides for continued access by Ergon Energy to the determination area so that it can carry out its functions.



The determination area covers about 8297ha of land and waters, including two parcels of land on Fitzroy Island (above).

Stepping stones

Prior to 2001

The Federal Court of Australia combined two separate native title determination applications (QUD6005/98 Gurubana Gunggandji and QUD6014/98 Les Murgha and Vincent Schrieber) to become the Combined Gunggandji application in 2001.

27 April 2001

The Combined Gunggandji people native title determination application was filed with the Federal Court over the northern part of the Yarrabah DOGIT, reserves and unallocated State land and parcels on Fitzroy Island.

27 April 2001

The Combined Gunggandji application was referred to the National Native Title Tribunal for mediation. Mediation commenced with various parties but was delayed due to the resolution of blockholder interests. Two of these interests were referred to the Federal Court of Australia.

27 September 2007 – 31 August 2009

The first blockholder issue application filed with the Federal Court in September 2007 with a court hearing held on 28 November 2007. Refer to the decision handed down by the Federal Court: *Murgha v State of Queensland* [2008] FCA 33 Dowsett J, 25 January 2008.

A second blockholder issue application with the Federal Court in March 2008, with court hearings held 30 June, 1 and 2 July 2008. Refer to the decision handed down by the Federal Court: *Combined Gunggandji People v State of Queensland* [2009] FCA979 Dowsett J, 31 August 2009.

November 2009 – 15 April 2010

Mediation with the National Native Title Tribunal re-commenced. The Tribunal conducted substantive mediation between the parties to assist them to reach agreement through various ILUAs.

15 April 2010

Mediation ceased with the National Native Title Tribunal. The claim was referred to intensive case management by the Federal Court. The Federal Court convened approximately 18 case management conferences with the parties.

15 April 2010 - 14 March 2011

National Native Title Tribunal facilitated s.24CF ILUA negotiations to reach agreement in relation to a number of ILUAs.

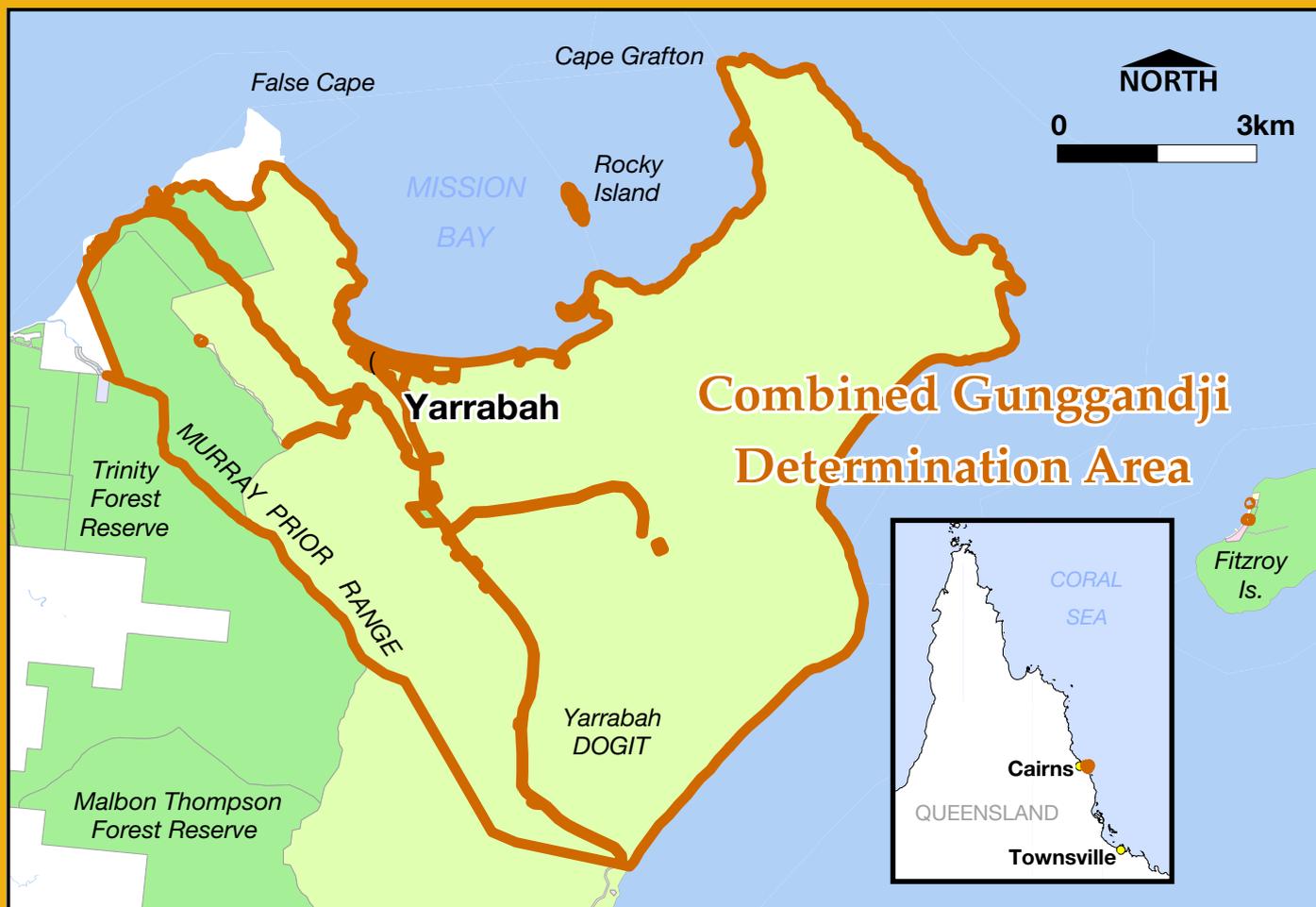
3 and 4 October 2011

The following ILUAs were registered and placed on the register of Indigenous Land Use Agreements: Yarrabah Blockholders ILUA, Yarrabah DOGIT Transfer ILUA, Yarrabah Towers ILUA, Yarrabah Local Government ILUA, Combined Gunggandji People and Ergon Energy ILUA and Yarrabah Protected Areas ILUA.

19 December 2011

Justice Dowsett of the Federal Court of Australia made the consent determination at Yarrabah.

Map of determination area



Copy of judgment and determinations

You can find a copy of the judgment and determination on the Federal Court of Australia's website: www.fedcourt.gov.au under the sub-heading 'Judgments'.

Further information

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The Tribunal welcomes feedback on whether this information was useful. Email the Communications unit with your comments and suggestions to enquiries@nntt.gov.au or telephone 1800 640 501.



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