

# The Mandingalbay Yidinji People's native title determination

**WHAT IT MEANS AND HOW IT WILL WORK**

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NATIONAL NATIVE TITLE TRIBUNAL

## The Mandingalbay Yidinji People's determination

The Mandingalbay Yidinji People are Aboriginal people who are descendants of Yabalam/Jabulum Mandingalpai (Jimmy) and those recruited by adoption, in accordance with the traditional laws and customs of the Mandingalbay Yidinji People.

The Federal Court of Australia made a consent determination on 24 April 2006 recognising the Mandingalbay Yidinji People's native title rights in sections of Grey Peaks National Park, Malbon Thompson Forest Reserve, Giangurra Reserve and in certain lots adjacent to Trinity Inlet and Red Bank Creek near Cairns in far north Queensland. Before the determination was made, the Mandingalbay Yidinji People and other groups with interests in these areas developed an indigenous land use agreement (ILUA) relating to forest and national park areas. It establishes how they will exercise their rights and interests alongside one another in these areas. These groups (the parties) were the State of Queensland, the Mandingalbay Yidinji Aboriginal Corporation and Wet Tropics Management Authority. The determination and ILUA areas cover about 3140 hectares (see map).

The Mandingalbay Yidinji People lodged their native title application with the Federal Court on 18 August 1999. This application was a combination of two applications they had previously lodged in 1998. On 8 October 2004, the application was amended to remove land and

waters to the south of Bell Peak South. The National Native Title Tribunal mediated between the parties with interests in the claim from February 2001 under Federal Court supervision.

The determination over the forests and national park areas will come into effect once the ILUA has been registered on the Tribunal's Register of Indigenous Land Use Agreements. The ILUA will be known as the Mandingalbay Yidinji Indigenous Land Use Agreement (State Parks and Forests Area Agreement).

The recognition of native title over Grey Peaks National Park and Malbon Thompson Forest Reserve does not stop other people accessing or using those reserves. The interests of the general public have been recognised and protected in the determination. If the native title rights and interests are at odds with other interests, then the other interests will usually have priority. The laws of the State and the laws of the Commonwealth apply to the Mandingalbay Yidinji People.





# The Mandingalbay Yidinji People's native title determination

*The Mandingalbay Yidinji People's non-exclusive native title rights include recognition over parts of Grey Peaks National Park and Malbon Thompson State Forest.*

## More about the consent determination

A determination is a decision by the Federal Court on whether or not the common law of Australia recognises that native title exists over a particular area of land or waters. Where native title exists, the determination states who holds the native title and what those rights are, as well as the rights of others. When parties reach agreement after mediation, that native title claimants do or do not have native title rights and interests in a particular area, they can approach the court to make a determination with their consent.

This consent determination recognises that the Mandingalbay Yidinji People's native title has always existed — it is not a grant from the government or the court.

## More about the agreement

The determination is dependent on the State Parks and Forests Area ILUA being registered. The Mandingalbay Yidinji People, the State of Queensland, the Mandingalbay Yidinji Aboriginal Corporation and Wet Tropics Management Authority reached this agreement

about the exercise of native title rights and interests in the Grey Peaks National Park and Malbon Thompson Forest Reserve to ensure good management of the park and reserve.

The ILUA is binding on all native title holders of the area covered by the agreement, whether or not they are parties to the agreement.

The ILUA says that the Mandingalbay Yidinji People will access and use the ILUA area in a way that is consistent with:

- the protection and management of the Wet Tropics of Queensland World Heritage Area;
- the public enjoyment of Grey Peaks National Park and Malbon Thompson Forest Reserve;
- management principles of national parks and forest reserves to promote, preserve and present the area's cultural resources and values and ensure use is nature-based and ecologically sustainable.

The Mandingalbay Yidinji People also developed ILUAs with Telstra, Ergon Energy and Cairns City Council. These ILUAs provide for continued access by these organisations for emergency purposes and maintenance of essential public services.



## The native title rights and interests

The native title rights and interests of the Mandingalbay Yidinji People differ in some parts of the claim area.

### Exclusive rights and interests

The determination recognises that the Mandingalbay Yidinji People's native title rights and interests are exclusive over two lots on Trinity Inlet and one lot on Red Bank Creek (see map). This means that the Mandingalbay Yidinji have a right to control who can access or use these areas in accordance with their traditional laws and customs.

The rights and interests recognised are:

- A right in accordance with traditional laws and customs to possession, occupation, use and enjoyment to the exclusion of all others (except in relation to water).

### Non-exclusive rights and interests

The determination recognises that the native title rights and interests are non-exclusive in part of the Giangurra Reserve, part of the Malbon Thompson State Forest and part of Grey Peaks National Park (see map). The Mandingalbay Yidinji People do not have the right to control who can access or use these areas of the Park and Forest Reserve. These areas will continue to be shared by all those with an interest in the area, including members of the public.

The rights and interests recognised, are:

- The right to access and be physically present on the determination area.
- The right to camp on the determination area which does not include the right to permanently reside or build permanent structures or fixtures.
- The right to hunt, fish and gather on the determination area for the purpose of satisfying personal, domestic, social, cultural, religious, spiritual, ceremonial and non-commercial communal needs.
- The right to take, use and enjoy the natural resources of the determination area for the purpose of satisfying personal, domestic, social, cultural, religious, spiritual, ceremonial and non-commercial communal needs.
- The right to maintain and protect from physical harm, by lawful means, places within the determination area of importance to the native title holders.
- The right to perform social, cultural, religious, spiritual or ceremonial activities on the determination area and invite others to participate in those activities.
- The right to pass on native title rights and interests in the determination area.
- The right to make decisions about the access, use and enjoyment of the determination area by Aboriginal people who are governed by the traditional laws acknowledged and traditional customs observed by the native title holders.
- The right to determine membership and filiation to the native title holding group in accordance with traditional laws and customs.

The rights and interests described above do not confer possession, occupation, use and enjoyment of those land and waters to the native title holders to the exclusion of all others.

### Rights and interests in relation to water

Non-exclusive rights to:

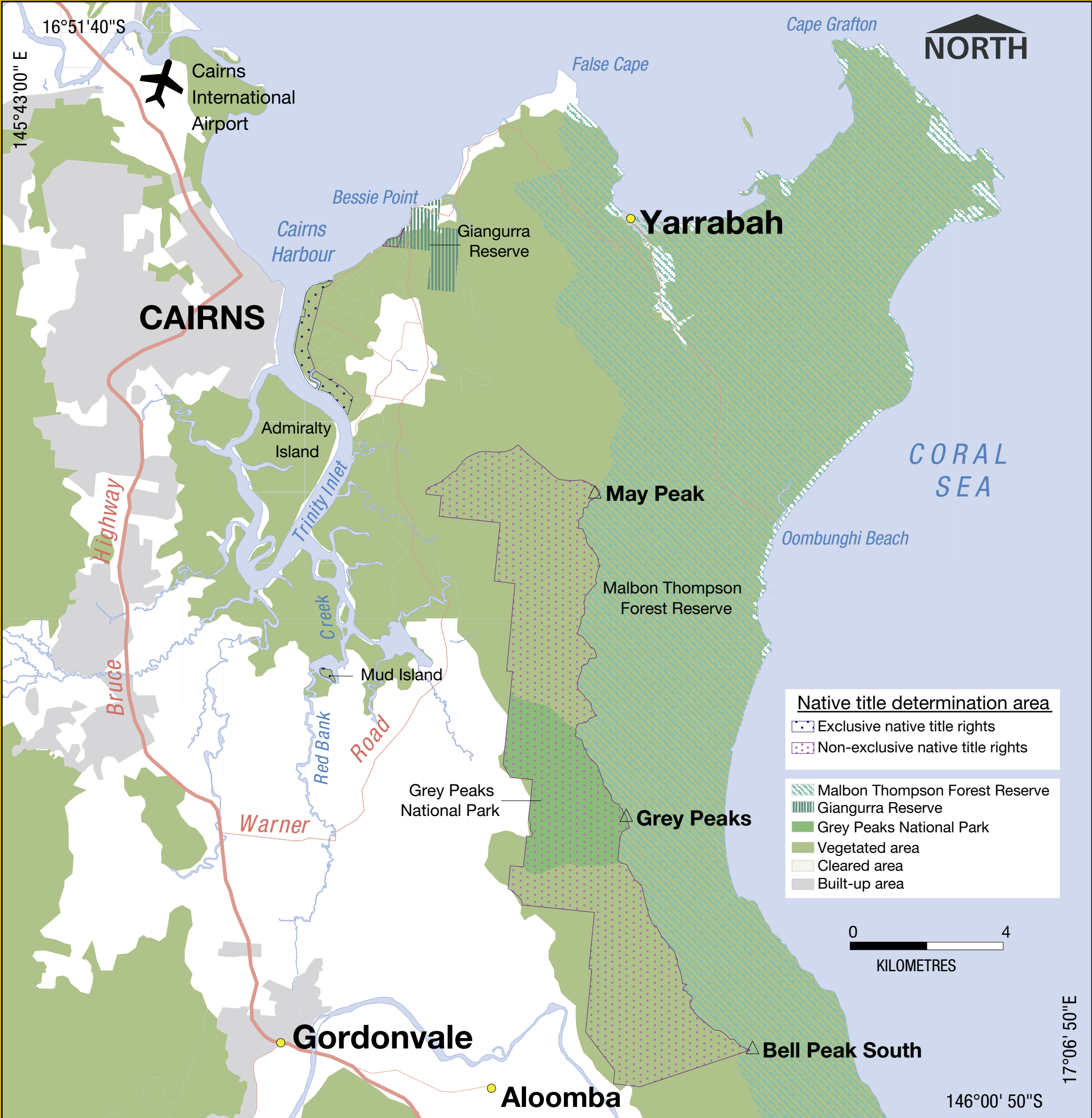
- Use, enjoy, hunt on and fish and gather from the water for personal, domestic, social, cultural, religious, spiritual, ceremonial and communal purposes provided that the purposes are non-commercial.
- Take and use the water and its resources for personal, domestic, social, cultural, religious, spiritual, ceremonial and communal purposes provided that the purposes are non-commercial.

## Areas where native title has not been recognised

Some areas within the boundary of the determination area are not covered by the determination and therefore no native title rights and interests have been recognised over those areas. They include any areas where there are public works established before 23 December 1996.

The determination also states that there are no native title rights to minerals or petroleum within the determination area.

## Map of the determination area



The Mandingalbay Yidinji People envisage that the determination and associated ILUA will continue to improve their cooperative involvement in the management of the determination area, for the benefit of the environment and the wider community.



The artwork on this shield depicts salt water turtles and fresh water turtles, marine life from Mandingalbay country. The shield is made from a local Quandong tree by Mandingalbay Yidinji elder, Vincent Mundraby (snr).



Non-exclusive native title rights have also been recognised over a part of Giangurra reserve.

## Effect of the determination

This is the first time that Mandingalbay Yidinji People have had their connection to their traditional lands legally recognised. However, not all their traditional laws and customs have been recognised.

Mandingalbay Yidinji People say that, under their laws and customs, they would have the right to make decisions about who is allowed to go onto their lands, and what people can do on that land. But they understand that not all of their laws and customs can be recognised. For example, members of the public may enter and use the Grey Peaks National Park and Malbon Thompson Forest Reserve without getting permission from the Mandingalbay Yidinji People.

Mandingalbay Yidinji People want to be more involved in managing their traditional lands including the Grey Peaks National Park and Malbon Thompson Forest Reserve. They envisage the determination of their native title and associated ILUA will continue to improve the cooperative involvement of the Mandingalbay Yidinji People in the management of the determination area, for the benefit of the environment and the wider community.

## Managing the native title rights

The *Native Title Act 1993* (Cwlth) requires the native title holders to set up an incorporated body, called a prescribed body corporate, to manage their native title rights and interests. The prescribed body corporate for this determination is the Mandingalbay Yidinji Aboriginal Corporation. This corporation is the first point of contact for anyone wanting to discuss any issues relating to native title with the native title holders.

## Further information

### Copy of judgment and determination

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

### Or contact:

Librarian  
Federal Court of Australia  
Level 8, Commonwealth Law Courts Building  
119 North Quay, Brisbane, Qld 4000  
Tel: (07) 3248 1100

### Copies of determination and ILUA Register Extract

Cairns Registry  
National Native Title Tribunal  
PO Box 9973  
CAIRNS Qld 4870  
Tel: (07) 4048 1500 or freecall 1800 640 501

The Registrar of the National Native Title Tribunal maintains information about the ILUA once it has been placed on the register including area description, the names of the parties and their contact addresses and the period during which it will operate.

### Prescribed Body Corporate

Mandingalbay Yidinji Aboriginal Corporation  
Box 13  
Gordonvale Qld 4865

The representative body for this determination is North Queensland Land Council, PO Box 679N, Cairns North, Qld 4879.  
Tel: (07) 4031 4779

### Management of Forest Reserve and Grey Peaks National Park

Manager, Park Services  
Environmental Protection Agency/Queensland Parks and Wildlife Service  
PO Box 2066, Cairns Qld 4870  
Tel: (07) 4046 6704