

Western Yalanji native title determination

WHAT IT MEANS AND HOW IT WILL WORK

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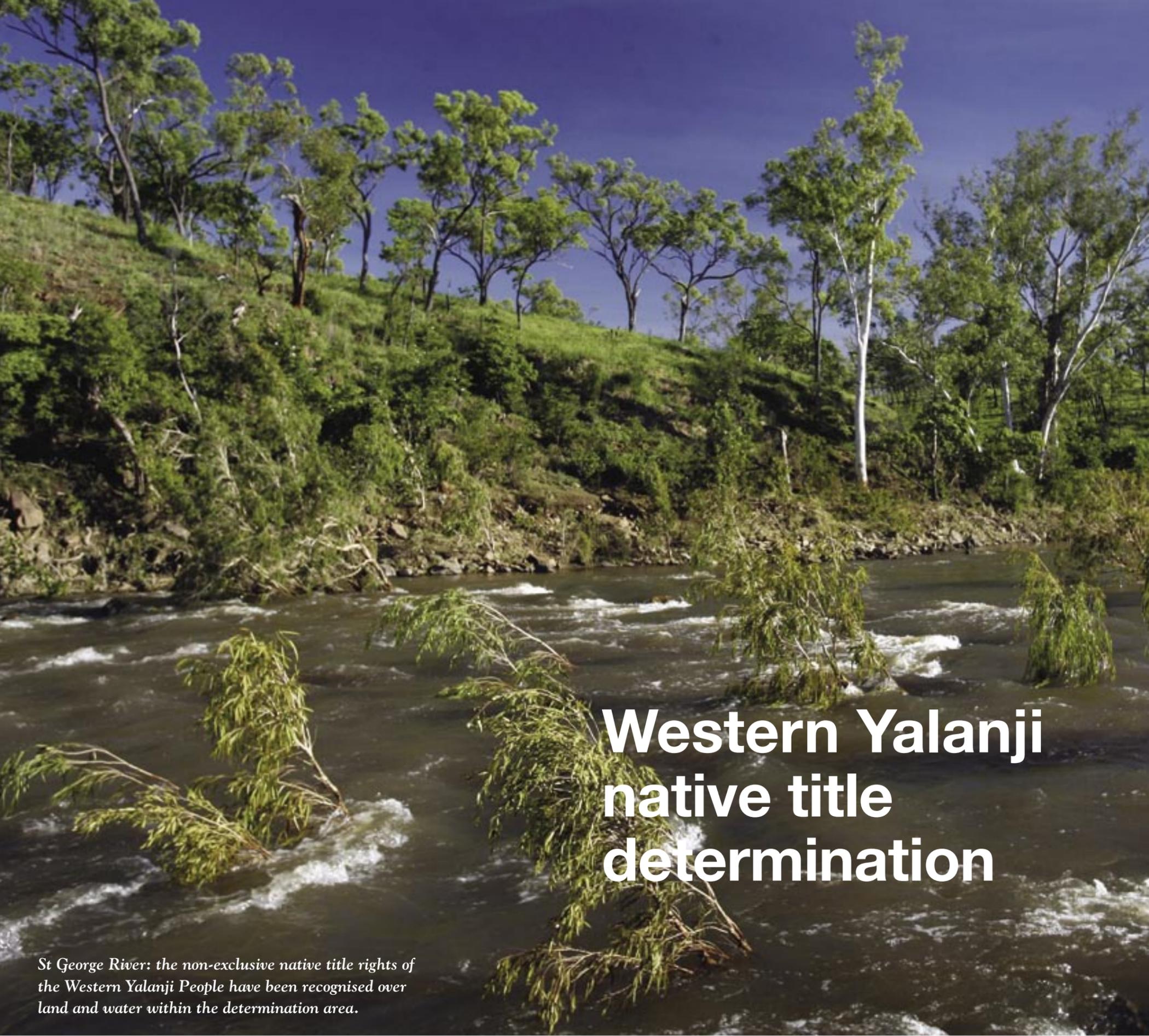
NATIONAL NATIVE TITLE TRIBUNAL

Western Yalanji determination

The Federal Court of Australia made a consent determination recognising the Western Yalanji People's non-exclusive native title rights over a pastoral property in far north Queensland on 17 February 2006. Under the determination and associated agreements, the Western Yalanji People will exercise their rights to carry out their traditional customs and activities, in cooperation with other people and organisations who have interests in the area. The area is approximately 120 km north-west of Cairns and 70 km west of Mt Carbine (see map) and settles the question of native title on this area.

This decision follows an earlier consent determination made by the Federal Court of Australia on 28 September 1998 in which the Western Yalanji People's native title rights were recognised on another part of the same property. Known as the Western (Sunset) Yalanji determination, it was the first consent determination to be made over a pastoral property in Australia (see map).

In this second determination, the Federal Court recognised the Western Yalanji People's non-exclusive native title rights and interests over the land and waters in the determination area. This outcome was achieved because parties with interests in the claimed area agreed, through negotiation and mediation, that the Western Yalanji People are the native title holders for the area. As part of the determination negotiations, the parties have reached four other agreements, known as indigenous land use agreements (ILUAs), which establish how their rights and interests will co-exist in the determination area.



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St George River: the non-exclusive native title rights of the Western Yalanji People have been recognised over land and water within the determination area.

Interested parties

The Western Yalanji People made the native title application which led to this determination on 22 September 1998. The application was then placed on the Register of Native Title Claims and the National Native Title Tribunal advised people how they could become a respondent party to the claim in the Federal Court.

The respondent parties with an interest in the claim were:

- the State of Queensland;
- the leaseholders;
- Cook Shire Council;
- Mareeba Shire Council;
- mining interests; and
- Queensland Lapidary & Allied Craft Clubs Association Inc (QLACCA).

Mediation of the claims

The National Native Title Tribunal works closely with communities across Australia to help resolve land issues and make agreements

that recognise everyone's rights and interests in land and waters. The Tribunal conducts mediation between native title claimants and other groups with interests in the claimed areas. Mediation allows everyone involved to explore options for reaching agreement about the relationship between native title rights and interests and the interests of other parties.

At the request of parties to the Western Yalanji People's application, the Tribunal facilitated a number of mediation meetings to assist them to reach agreed outcomes. The Western Yalanji People and their legal representative, the North Queensland Land Council, participated in these meetings with the respondent parties.

A mediation process enables the people involved to explore workable agreements for the relationship between native title rights and interests and the interests of other parties. These agreements may result in a consent determination and/or an indigenous land use agreement (ILUA). ILUAs are practical and flexible agreements which can be made between native title groups and others to suit their specific land and water use issues. They are voluntary, legally-binding agreements about the use and management of land and water.

What the determination means

The Federal Court of Australia makes decisions (referred to as native title determinations) about whether or not the common law of Australia recognises that native title exists over an area of land and/or water. When parties agree that native title claimants do have native title rights and interests in a particular area, they can approach the Federal Court and ask the court to make a determination by consent (known as a consent determination).

In this instance, the Federal Court made a consent determination which recognised the native title rights and interests of the Western Yalanji People over two parcels of land. The land is approximately 200 square kilometres and the leaseholders hold a special lease and an occupational licence over the area. Under the determination, the leaseholders are able to carry out their activities in cooperation with the native title holders.

The court recognised the following non-exclusive native title rights and interests in the determination area:

- hunt, fish and gather for personal, domestic and non-commercial communal purposes;
- conduct ceremonies;
- bury native title holders on, and be buried in this area;
- maintain springs and wells where underground water rises naturally to ensure the free flow of water;
- take, use and enjoy natural resources, such as plants, animals, flints and clay, for personal, domestic or non-commercial communal purposes;
- maintain and protect from physical harm places of significance under traditional laws and customs;
- inherit and succeed to the native title rights and interests.

In regard to water in the determination area, the recognised native title rights and interests include the non-exclusive rights to:

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

The native title holders are to exercise their rights and interests in accordance with their traditional laws and customs, and under State and Commonwealth laws. The native title holders do not have the right to control how the determination area will be used or control access to the area. The native title holders also do not have native title rights or interests in relation to minerals or petroleum.

Managing the native title rights

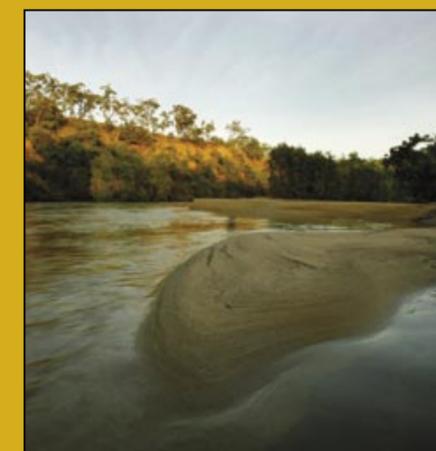
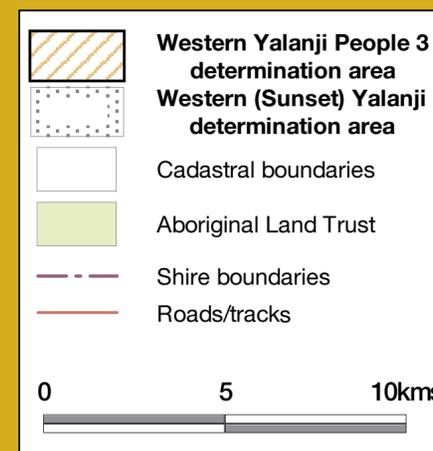
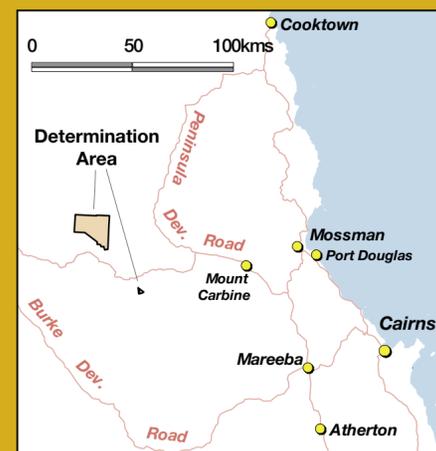
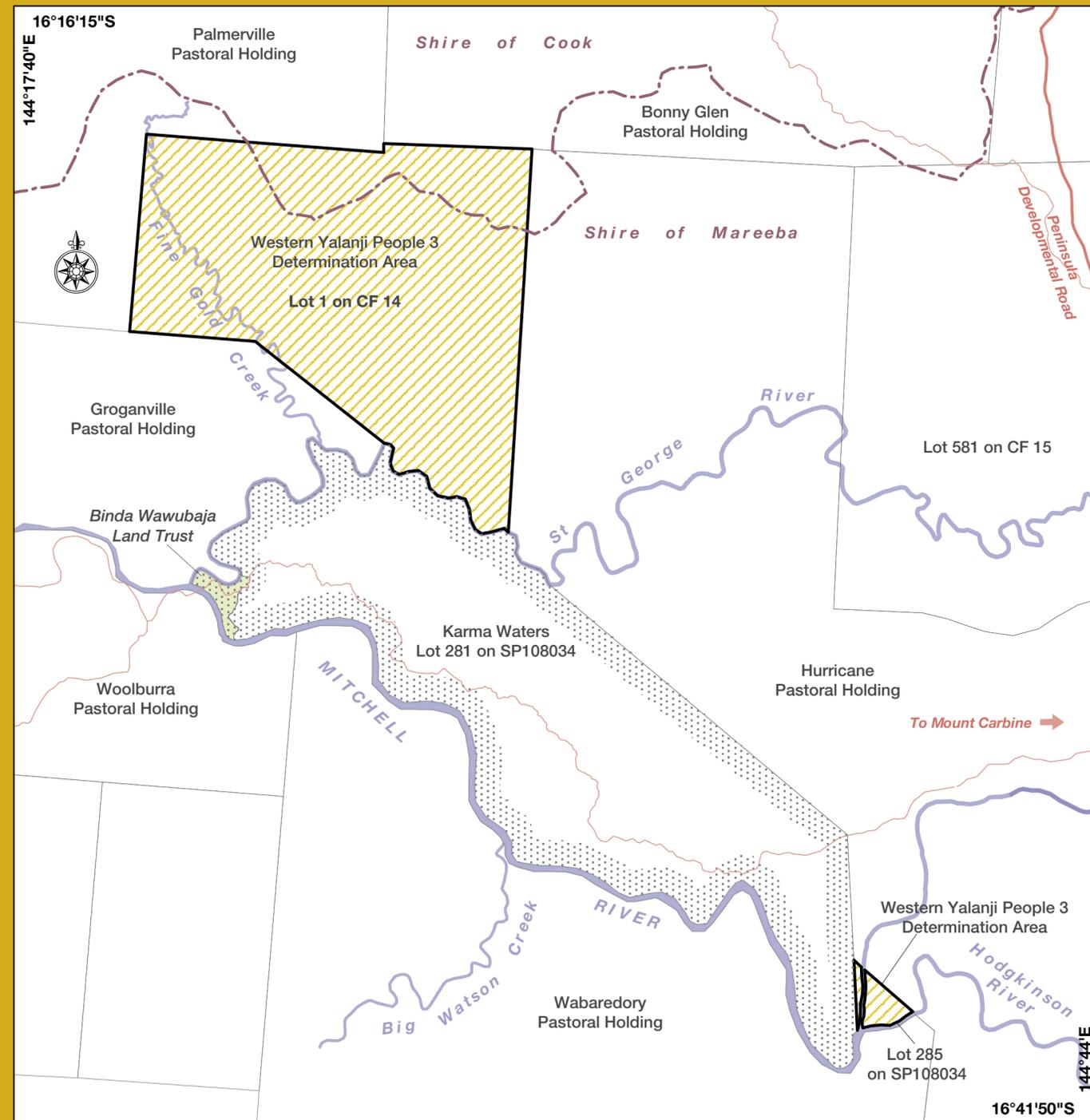
The *Native Title Act 1993* (Cwlth) requires the native title holders to set up an incorporated body, called a prescribed body corporate, to manage their native title rights and interests. The prescribed body corporate for this determination is the Western Yalanji Aboriginal Corporation. This corporation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

Western Yalanji Totems



The Sulphur-crested Cockatoo and the Red-tailed Black Cockatoo are the totems of the Western Yalanji people and can be found in the Western Yalanji native title determination area. Totems work as an emblem of group membership and social solidarity and can represent the mythological ancestors of different indigenous tribes. Aboriginal and Torres Strait Islander people are surrounded by totems and this sense of connection to the land brings with it an obligation to respect and care for the environment, according to cultural law.

Map of the determination area



Western Yalanji determination area: rights and interests will be exercised in accordance with traditional laws and customs.

Other agreements related to the determinations

During the consent determination negotiations, a number of the parties reached agreements about how their rights and interests will co-exist on the ground. They developed four ILUAs and one of these was between the leaseholders, Mr and Mrs Pedersen, the Western Yalanji People, the Western Yalanji Aboriginal Corporation and the State of Queensland. Under this ILUA, the parties agreed that the perpetual lease already held by Mr and Mrs Pedersen could be amended to include the areas of the determination. The Native Title Registrar registered this ILUA on the National Native Title Tribunal's Register of Indigenous Land Use Agreements on 2 September 2005. The ILUA includes a land use and access agreement which establishes how the Western Yalanji People and the lessees will co-operate to exercise their rights and interests in the lease area.

Two further ILUAs were developed between the Western Yalanji People, the Cook Shire Council and the Mareeba Shire Council and cover parts of each of the local government areas. The ILUAs address various issues including the relationship between each of the council's existing interests and the native title holders' rights and interests. They also establish a process which sets out how future works and activities may proceed.

The fourth ILUA was reached between the Western Yalanji People and the Queensland Lapidary & Allied Craft Clubs Association Inc. Under this agreement the native title holders have given their consent to the grant of fossickers' licences. The agreement also outlines the conditions for carrying out fossicking activities in the area.

Effect of the determination

At the time of publishing this document, the finalisation of the determination was conditional upon the ILUAs being accepted for registration by the Native Title Registrar.

As a result of the determination all the parties have certainty over their future in the determination area. The Western Yalanji People's native title rights and interests, and how these will co-exist with the interests of other people who use the area, are recognised under Australian law. However, the interests that other people hold in the determination area have not changed. Those interests are recognised and protected by the determination. For example, the holders of the perpetual lease still have the right to carry out activities allowed under that lease. To the extent of any inconsistency, these rights and interests prevail over the native title rights and interests but do not extinguish them.

The ILUAs establish how the co-existing rights will be implemented. For example, if the Cook Shire Council or Mareeba Shire Council plan a development or want to build any new roads in the area of the native title determination, a process has been put in place for the councils to obtain the consent of the Western Yalanji People.

Further information

Copy of judgment and determination

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

Or contact:

Librarian
Federal Court of Australia
Commonwealth Law Courts
Level 6/119 North Quay, Brisbane QLD 4000
Telephone: (07) 3248 1100

Copies of the ILUA register extract

National Native Title Tribunal
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Prescribed Body Corporate

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C/- North Queensland Land Council Aboriginal Corporation
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